

1673

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GOTTFRIED, GANTT, MAGNARELLI, MAYERSOHN, McENENY, PAULIN, PERRY, POWELL, GALEF, GREENE, WALKER -- Multi-Sponsored by -- M. of A. BRENNAN, COLTON, DIAZ, DINOWITZ, EDDINGTON, HOOPER, JACOBS, MILLER, PHEFFER, WEINSTEIN, WRIGHT -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to requiring health care providers to inform patients or their representatives of certain errors in diagnosis, treatment or other services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that the Ameri-
2 can Medical Association (AMA) has expressed its support for physicians
3 providing full disclosure to their patients regarding their medical
4 treatments and conditions. The AMA's council on ethical and judicial
5 affairs has stated: "It is a fundamental ethical requirement that a
6 physician should at all times deal honestly and openly with patients.
7 Patients have a right to know their past and present medical status and
8 to be free of any mistaken beliefs concerning their conditions. Situ-
9 ations occasionally occur in which a patient suffers significant medical
10 complications that may have resulted from the physician's mistake or
11 judgment. In these situations, the physician is ethically required to
12 inform the patient of all the facts necessary to ensure understanding of
13 what has occurred. Only through full disclosure is a patient able to
14 make informed decisions regarding future medical care." The AMA adds:
15 "Concern regarding legal liability which might result following truthful
16 disclosure should not affect the physician's honesty with a patient."
17 (code of medical ethics: current opinions of the council on ethical and
18 judicial affairs, AMA Policy Finder, E-8.12, updated June, 1994.) The
19 legislature further finds that this ethical mandate ought to have the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 support of law, and ought to apply not only to physicians, but to all
2 health care providers.

3 S 2. The public health law is amended by adding a new section 2805-t
4 to read as follows:

5 S 2805-T. HEALTH CARE PROVIDER; DUTY TO INFORM PATIENT OF ERROR. 1.
6 DEFINITION. AS USED IN THIS SECTION, "HEALTH CARE PROVIDER" MEANS AN
7 ENTITY LICENSED OR CERTIFIED UNDER THIS ARTICLE OR ARTICLE THIRTY-SIX OF
8 THIS CHAPTER OR UNDER ARTICLE THIRTY-ONE OR THIRTY-TWO OF THE MENTAL
9 HYGIENE LAW, A HEALTH CARE PRACTITIONER LICENSED, REGISTERED OR CERTI-
10 FIED UNDER TITLE EIGHT OF THE EDUCATION LAW, OR A PROVIDER OF PHARMACEU-
11 TICAL PRODUCTS OR SERVICES OR DURABLE MEDICAL EQUIPMENT.

12 2. A HEALTH CARE PROVIDER SHALL DISCLOSE TO HIS, HER, OR ITS PATIENT
13 OR THE PATIENT'S REPRESENTATIVE, ANY ERROR IN DIAGNOSIS, TREATMENT OR
14 OTHER SERVICE BY THE HEALTH CARE PROVIDER THAT THE HEALTH CARE PROVIDER
15 KNOWS HAS CAUSED SUBSTANTIAL HARM OR SIGNIFICANT RISK OF SUBSTANTIAL
16 HARM TO THE PATIENT. THERE SHALL BE A REBUTTABLE PRESUMPTION THAT THE
17 HEALTH CARE PROVIDER KNEW OF SUCH ERROR AND OF SUCH HARM OR RISK OF HARM
18 IF, UNDER THE CIRCUMSTANCES, THE HEALTH CARE PROVIDER REASONABLY SHOULD
19 HAVE HAD KNOWLEDGE THEREOF. THE DISCLOSURE SHALL BE MADE WITHIN A
20 REASONABLE PERIOD OF TIME AND BE REASONABLY UNDERSTANDABLE TO THE
21 PATIENT OR THE PATIENT'S REPRESENTATIVE, AND SHALL INCLUDE A STATEMENT
22 OF THE HARM OR RISK OF HARM.

23 3. A HEALTH CARE PROVIDER SHALL NOT BE LIABLE FOR FAILURE TO DISCLOSE
24 AN ERROR, HARM OR RISK OF HARM UNDER THIS SECTION IF THE HEALTH CARE
25 PROVIDER REASONABLY BELIEVES THAT SUCH DISCLOSURE HAS ALREADY BEEN MADE
26 BY ANOTHER HEALTH CARE PROVIDER.

27 S 3. This act shall take effect immediately.