

5239

2009-2010 Regular Sessions

I N A S S E M B L Y

February 11, 2009

Introduced by M. of A. GIANARIS, CANESTRARI, MAYERSOHN, CYMBROWITZ, ORTIZ, CUSICK, MARKEY, ESPAILLAT, TITONE -- Multi-Sponsored by -- M. of A. BOYLAND, BRENNAN, BRODSKY, COLTON, FARRELL, GALEF, HIKIND, V. LOPEZ, McENENY, PERALTA, PHEFFER, TOWNS, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to establishing a penalty and cause of action for the intentional destruction, mutilation or significant alteration of certain medical records

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

1 Section 1. Section 3126 of the civil practice law and rules, as
2 amended by chapter 98 of the laws of 1993, is amended to read as
3 follows:
4 S 3126. Penalties for refusal to comply with order or to disclose.
5 (A) If any party, or a person who at the time a deposition is taken or
6 an examination or inspection is made is an officer, director, member,
7 employee or agent of a party or otherwise under a party's control,
8 refuses to obey an order for disclosure or wilfully fails to disclose
9 information which the court finds ought to have been disclosed pursuant
10 to this article, the court may make such orders with regard to the fail-
11 ure or refusal as are just, among them:
12 1. an order that the issues to which the information is relevant shall
13 be deemed resolved for purposes of the action in accordance with the
14 claims of the party obtaining the order; or
15 2. an order prohibiting the disobedient party from supporting or
16 opposing designated claims or defenses, from producing in evidence
17 designated things or items of testimony, or from introducing any
18 evidence of the physical, mental or blood condition sought to be deter-
19 mined, or from using certain witnesses; or
20 3. an order striking out pleadings or parts thereof, or staying
21 further proceedings until the order is obeyed, or dismissing the action

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

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1 or any part thereof, or rendering a judgment by default against the
2 disobedient party.

3 (B) IF ANY PARTY, OR A PERSON WHO AT THE TIME THAT AN ACTION FOR
4 MEDICAL MALPRACTICE IS COMMENCED OR THEREAFTER IS AN OFFICER, DIRECTOR,
5 MEMBER, EMPLOYEE OR AGENT OF A PARTY OR OTHERWISE UNDER THE PARTY'S
6 CONTROL, INTENTIONALLY DESTROYS, MUTILATES OR SIGNIFICANTLY ALTERS ANY
7 MEDICAL RECORD, THE PARTY OR PERSON SHALL BE SUBJECT TO A CIVIL PENALTY
8 OF NOT LESS THAN ONE THOUSAND DOLLARS FOR EACH SUCH ACT. IN ADDITION,
9 ANY PERSON WHO HAS BEEN INJURED BECAUSE OF SUCH INTENTIONAL DESTRUCTION,
10 MUTILATION OR SIGNIFICANT ALTERATION OF A MEDICAL RECORD MAY BRING AN
11 ACTION AGAINST THE PARTY AND/OR PERSON RESPONSIBLE THEREFOR TO RECOVER
12 DAMAGES IF SUCH DESTRUCTION OF EVIDENCE MADE IT IMPOSSIBLE OR SIGNIF-
13 ICANTLY IMPEDED THE PLAINTIFF'S ABILITY TO PROVE HIS OR HER CLAIM. THE
14 COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

15 S 2. This act shall take effect immediately and shall apply to any
16 intentional destruction, mutilation or significant alteration of a
17 medical record occurring on or after such date.