S T A T E  O F  N E W  Y O R K

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2009-2010 Regular Sessions

I N  A S S E M B L Y

March 2, 2009

Introduced by M. of A. GORDON, HOOPER, PHEFFER, ZEBROWSKI, MORELLE, ROSENTHAL, STIRPE -- Multi-Sponsored by -- M. of A. ALFANO, BOYLAND, GIGLIO, KOON, McDONOUGH, McENENY, SPANO, TOWNS, WEISENBERG -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the education law, in relation to requiring patient disclosure of and consent to co-management agreements for postoperative eye surgery care

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

Section 1. Short title. This act shall be known and may be cited as the "patient disclosure for eye surgery act".

S 2. The public health law is amended by adding a new article 2-B to read as follows:

ARTICLE 2-B

PATIENT DISCLOSURE FOR EYE SURGERY

SECTION 290. DEFINITIONS.

291. LIMITATIONS ON CO-MANAGEMENT AGREEMENTS.

S 290. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "OPERATING PHYSICIAN" MEANS A PHYSICIAN WHO PERFORMS EYE SURGERY.

2. "OPTOMETRIST" MEANS A PERSON WHO IS LICENSED TO PRACTICE OPTOMETRY IN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED FORTY-THREE OF THE EDUCATION LAW.

3. "PHYSICIAN" MEANS A PERSON WHO IS LICENSED TO PRACTICE MEDICINE IN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THE EDUCATION LAW.

S 291. LIMITATIONS ON CO-MANAGEMENT AGREEMENTS. 1. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN OPERATING PHYSICIAN SHALL BE PHYSICALLY AVAILABLE TO A PATIENT FOR POSTOPERATIVE CARE IN THE COMMUNITY IN WHICH THE OPERATION WAS PERFORMED FOR AT LEAST ONE HUNDRED TWENTY HOURS AFTER THE SURGERY IS COMPLETED. SUCH OPERATING PHYSICIAN MAY DELEGATE THE RESPONSIBILITY FOR THE FIRST ONE HUNDRED TWENTY HOURS OF POSTOPERATIVE CARE FOR A PATIENT FOR WHOM THE PHYSICIAN PERFORMED EYE SURGERY IN THIS STATE ONLY BY ENTERING INTO A CO-MANAGEMENT AGREEMENT WITH ANOTHER

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

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PHYSICIAN OR AN OPTOMETRIST TO PROVIDE SUCH POSTOPERATIVE CARE UNDER THE PROVISIONS OF THIS ARTICLE. SUCH DELEGATION SHALL ONLY BE MADE THROUGH A CO-MANAGEMENT AGREEMENT THAT MEETS THE REQUIREMENTS OF THIS SECTION AND IF THE PERSON TO WHOM THE RESPONSIBILITY IS DELEGATED IS:

(A) AN OPTOMETRIST; OR

(B) A PHYSICIAN.

2. A CO-MANAGEMENT AGREEMENT FOR POSTOPERATIVE EYE CARE OF A PATIENT SHALL MEET THE FOLLOWING REQUIREMENTS:

(A) THE AGREEMENT MAY BE ENTERED INTO ONLY WHEN:

(I) THE DISTANCE THE PATIENT WOULD HAVE TO TRAVEL TO THE REGULAR OFFICE OF THE OPERATING PHYSICIAN WOULD RESULT IN AN UNREASONABLE HARDSHIP FOR THE PATIENT, AS DETERMINED BY THE PATIENT, OR THE PATIENT HAS OR DEVELOPS AN ILLNESS WHICH PRECLUDES TRAVEL, OR

(II) THE OPERATING PHYSICIAN WILL NOT BE AVAILABLE FOR POSTOPERATIVE EYE CARE OF THE PATIENT AS A RESULT OF THE OPERATING PHYSICIAN'S PERSONAL TRAVEL, ILLNESS, PHYSICIAN'S LEAVE OF ABSENCE, TRAVEL TO A RURAL AREA OF THE STATE FOR THE OCCASIONAL PRACTICE OF MEDICINE, OR SURGERY PERFORMED IN A DESIGNATED PHYSICIAN SHORTAGE AREA;

(B) THE AGREEMENT SHALL PROVIDE A FEE TO THE PERSON TO WHOM THE CARE IS DELEGATED THAT REFLECTS THE FAIR MARKET VALUE OF THE SERVICES PROVIDED BY SUCH PERSON;

(C) THE AGREEMENT SHALL BE ENTERED INTO ONLY IF THE OPERATING PHYSICIAN CONFIRMS THAT THE PERSON TO WHOM THE CARE IS DELEGATED IS QUALIFIED TO TREAT THE PATIENT DURING THE POSTOPERATIVE PERIOD;

(D) THE AGREEMENT SHALL NOT TAKE EFFECT UNLESS THERE IS A WRITTEN STATEMENT IN THE OPERATING PHYSICIAN'S FILE AND IN THE FILES OF THE PERSON TO WHOM POSTOPERATIVE EYE CARE IS BEING DELEGATED THAT IS SIGNED BY THE PATIENT IN WHICH THE PATIENT STATES HIS OR HER CONSENT TO THE CO-MANAGEMENT AGREEMENT AND IN WHICH THE PATIENT ACKNOWLEDGES THAT THE DETAILS OF THE CO-MANAGEMENT AGREEMENT HAVE BEEN EXPLAINED TO THE EXTENT REQUIRED PURSUANT TO PARAGRAPH (E) OF THIS SUBDIVISION; AND

(E) THE SPECIFIC TERMS OF THE AGREEMENT SHALL BE DISCLOSED TO THE PATIENT IN WRITING BEFORE SURGERY IS PERFORMED, AND SHALL INCLUDE:

(I) THE REASON FOR THE DELEGATION,

(II) THE QUALIFICATIONS, INCLUDING LICENSURE OR CERTIFICATION, OF THE PERSON TO WHOM THE CARE IS DELEGATED,

(III) THE FINANCIAL DETAILS ABOUT HOW THE SURGICAL FEE WILL BE DIVIDED BETWEEN THE OPERATING PHYSICIAN AND THE PERSON WHO PROVIDES THE POSTOPERATIVE EYE CARE,

(IV) A NOTICE THAT, NOTWITHSTANDING THE DELEGATION OF CARE, THE PATIENT MAY RECEIVE POSTOPERATIVE EYE CARE FROM THE OPERATING PHYSICIAN AT THE PATIENT'S REQUEST WITHOUT THE PAYMENT OF ADDITIONAL FEES AND THAT THE PATIENT ALWAYS HAS ACCESS TO THE OPERATING SURGEON DURING THE POSTOPERATIVE PERIOD,

(V) A STATEMENT THAT THE OPERATING PHYSICIAN WILL BE ULTIMATELY RESPONSIBLE FOR THE PATIENT'S CARE UNTIL THE PATIENT IS POSTOPERATIVELY STABLE,

(VI) A STATEMENT THAT THERE IS NO FIXED DATE ON WHICH THE PATIENT WILL BE REQUIRED TO RETURN TO THE REFERRING PHYSICIAN OR OPTOMETRIST, AND

(VII) A DESCRIPTION OF SPECIAL RISKS TO THE PATIENT THAT MAY RESULT FROM THE CO-MANAGEMENT AGREEMENT.

3. NO OPERATING PHYSICIAN SHALL ENTER INTO A CO-MANAGEMENT AGREEMENT GOVERNED BY THIS SECTION:

(A) UNDER WHICH TWO OR MORE PHYSICIANS OR OPTOMETRISTS AGREE TO CO-MANAGE PATIENTS OF THE OPERATING PHYSICIAN AS A MATTER OF ROUTINE POLICY RATHER THAN ON A CASE-BY-CASE BASIS;

(B) THAT IS NOT CLINICALLY APPROPRIATE FOR THE PATIENT;
(C) THAT IS MADE WITH THE INTENT TO INDUCE SURGICAL REFERRALS; OR
(D) THAT IS BASED ON ECONOMIC CONSIDERATIONS AFFECTING THE OPERATING PHYSICIAN.

4. NO PHYSICIAN OR OPTOMETRIST SHALL REQUIRE AS A CONDITION OF MAKING REFERRALS TO AN OPERATING PHYSICIAN THAT THE OPERATING PHYSICIAN ENTER INTO A CO-MANAGEMENT AGREEMENT WITH THE PHYSICIAN OR OPTOMETRIST FOR THE POSTOPERATIVE EYE CARE OF THE PATIENT WHO IS REFERRED.

5. NO PHYSICIAN OR OPTOMETRIST TO WHOM POSTOPERATIVE EYE CARE IS DELEGATED UNDER A CO-MANAGEMENT AGREEMENT GOVERNED BY THIS SECTION SHALL DELEGATE THE CARE TO ANOTHER PERSON, REGARDLESS OF WHETHER SUCH PERSON IS UNDER THE SUPERVISION OF THE PHYSICIAN OR OPTOMETRIST.

6. NOTHING IN THIS SECTION SHALL PROHIBIT THE PROVISION OF POSTOPERATIVE EYE CARE BY A PHYSICIAN WHO IS A MEMBER OF THE SAME GROUP PRACTICE AS THE OPERATING PHYSICIAN.

7. IT SHALL BE AN AFFIRMATIVE DEFENSE IN A DISCIPLINARY PROCEEDING FOR VIOLATION OF THIS SECTION THAT THE OPERATING PHYSICIAN DELEGATED POSTOPERATIVE EYE CARE OF A PATIENT BECAUSE OF UNANTICIPATED CIRCUMSTANCES THAT WERE NOT REASONABLY FORESEEABLE BY SUCH PHYSICIAN BEFORE THE SURGERY WAS PERFORMED.

S 3. Subdivisions 44, 45, 46, 47, 48 and 49 of section 6530 of the education law, subdivisions 44 and 45 as added by chapter 606 of the laws of 1991, subdivision 46 as amended and subdivision 49 as added by chapter 477 of the laws of 2008, subdivision 47 as added by chapter 786 of the laws of 1992, and subdivision 48 as added by chapter 365 of the laws of 2007, are amended and a new subdivision 50 is added to read as follows:

44. In the practice of psychiatry, (a) any physical contact of a sexual nature between licensee and patient except the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction and (b) in therapy groups, activities which promote explicit physical sexual contact between group members during sessions; [and]

45. In the practice of ophthalmology, failing to provide a patient, upon request, with the patient's prescription including the name, address, and signature of the prescriber and the date of the prescription[.];

46. A violation of section two hundred thirty-nine of the public health law by a professional[.];

47. Failure to use scientifically accepted barrier precautions and infection control practices as established by the department of health pursuant to section two hundred thirty-a of the public health law[.];

48. A violation of section two hundred thirty-d of the public health law or the regulations of the commissioner of health enacted thereunder[.];

49. Except for good cause shown, failing to provide within one day any relevant records or other information requested by the state or local department of health with respect to an inquiry into a report of a communicable disease as defined in the state sanitary code, or HIV/AIDS[.]; AND

50. FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION TWO HUNDRED NINETY-ONE OF THE PUBLIC HEALTH LAW, RELATING TO LIMITATIONS ON CO-MANAGEMENT AGREEMENTS FOR POSTOPERATIVE CARE.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.