

6929

2009-2010 Regular Sessions

I N A S S E M B L Y

March 17, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the use of prescription information containing prescriber-identifiable data

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

1 Section 1. The general business law is amended by adding a new article
2 9-D to read as follows:

3 ARTICLE 9-D

4 USE OF PRESCRIPTION INFORMATION

5 CONTAINING PRESCRIBER-IDENTIFIABLE DATA

6 SECTION 149-A. PRESCRIPTION INFORMATION TO BE KEPT CONFIDENTIAL.

7 S 149-A. PRESCRIPTION INFORMATION TO BE KEPT CONFIDENTIAL. 1. RECORDS
8 RELATIVE TO PRESCRIPTION INFORMATION, INCLUDING BUT NOT LIMITED TO PHAR-
9 MACEUTICAL DRUGS, CONTAINING PHYSICIAN PRESCRIBER-IDENTIFIABLE DATA
10 SHALL NOT BE LICENSED, TRANSFERRED, USED, OR SOLD BY ANY PHARMACY, BENE-
11 FITS MANAGER, INSURANCE COMPANY, ELECTRONIC TRANSMISSION INTERMEDIARY,
12 RETAIL, MAIL ORDER, OR INTERNET PHARMACY OR OTHER SIMILAR ENTITY, FOR
13 ANY COMMERCIAL PURPOSE, EXCEPT WITH THE WRITTEN CONSENT OF THE PHYSICIAN
14 PRESCRIBER THE AUTHORIZATION FOR WHICH SHALL BE VALID FOR NO MORE THAN
15 ONE YEAR AND MUST BE RENEWED THEREAFTER IN WRITING BY THE PHYSICIAN
16 PRESCRIBER FOR AN ADDITIONAL ONE YEAR PERIOD TO REMAIN IN EFFECT.

17 2. SUCH WRITTEN PHYSICIAN PRESCRIBER CONSENT, HOWEVER, SHALL NOT BE
18 REQUIRED FOR THE LIMITED PURPOSES OF PHARMACY REIMBURSEMENT; FORMULARY
19 COMPLIANCE; CARE MANAGEMENT; UTILIZATION REVIEW BY A HEALTH CARE PROVID-
20 ER, THE PATIENT'S INSURANCE PROVIDER OR THE AGENT OF EITHER; HEALTH CARE
21 RESEARCH; OR AS OTHERWISE PROVIDED BY LAW. COMMERCIAL PURPOSE INCLUDES,
22 BUT IS NOT LIMITED TO, ADVERTISING, MARKETING, PROMOTION, OR ANY ACTIV-
23 ITY THAT COULD BE USED TO INFLUENCE SALES OR MARKET SHARE OF A PHARMA-
24 CEUTICAL PRODUCT, INFLUENCE OR EVALUATE THE PRESCRIBING BEHAVIOR OF AN

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

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1 INDIVIDUAL HEALTH CARE PROFESSIONAL, OR EVALUATE THE EFFECTIVENESS OF A
2 PROFESSIONAL PHARMACEUTICAL DETAILING SALES FORCE.

3 3. NOTHING IN THIS SECTION SHALL PROHIBIT THE DISPENSING OF
4 PRESCRIPTION MEDICATIONS TO A PATIENT OR TO THE PATIENT'S AUTHORIZED
5 REPRESENTATIVE; THE TRANSMISSION OF PRESCRIPTION INFORMATION BETWEEN AN
6 AUTHORIZED PHYSICIAN PRESCRIBER AND A LICENSED PHARMACY; THE TRANSFER OF
7 PRESCRIPTION INFORMATION BETWEEN LICENSED PHARMACIES; THE TRANSFER OF
8 PRESCRIPTION RECORDS THAT MAY OCCUR IN THE EVENT A PHARMACY OWNERSHIP IS
9 CHANGED OR TRANSFERRED; CARE MANAGEMENT EDUCATIONAL COMMUNICATIONS
10 PROVIDED TO A PATIENT ABOUT THE PATIENT'S HEALTH CONDITION, ADHERENCE TO
11 A PRESCRIBED COURSE OF THERAPY OR OTHER INFORMATION ABOUT THE DRUG BEING
12 DISPENSED, TREATMENT OPTIONS, OR CLINICAL TRIALS. NOTHING IN THIS
13 SECTION SHALL PROHIBIT THE COLLECTION, USE, TRANSFER, OR SALE OF PATIENT
14 AND PHYSICIAN PRESCRIBER-IDENTIFIABLE DATA BY ZIP CODE, GEOGRAPHIC
15 REGION, OR MEDICAL SPECIALTY FOR COMMERCIAL PURPOSES.

16 4. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
17 MAY BE MADE BY THE PHYSICIAN PRESCRIBER ON HIS OR HER OWN BEHALF OR BY
18 THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK,
19 AND UPON NOTICE TO THE RESPONDENT OF NOT LESS THAN FIVE DAYS, TO ENJOIN
20 AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR
21 TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE RESPONDENT HAS, IN
22 FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT
23 OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT
24 REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED
25 THEREBY. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
26 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT LESS
27 THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY
28 SUCH PROPOSED APPLICATION, THE PHYSICIAN PRESCRIBER AND/OR THE ATTORNEY
29 GENERAL, AS THE CASE MAY BE, IS AUTHORIZED TO TAKE PROOF AND MAKE A
30 DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE
31 WITH THE CIVIL PRACTICE LAW AND RULES. THE SALE OF EACH UNAUTHORIZED
32 PRESCRIPTION WITH PHYSICIAN PRESCRIBER IDENTIFIABLE DATA SHALL CONSTI-
33 TUTE A SEPARATE AND DISTINCT VIOLATION.

34 5. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REME-
35 DIES WHICH ARE OTHERWISE AVAILABLE TO A PERSON UNDER ANY OTHER LAW.

36 S 2. This act shall take effect immediately.