

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, the county law and the civil practice law and rules, in relation to review and investigation of claims of professional medical misconduct or medical malpractice and requirements for the filing of such claims

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

1 Section 1. Section 230 of the public health law is amended by adding
2 a new subdivision 12-a to read as follows:
3 12-A. (A) UPON RECEIPT BY THE COMMISSIONER OF A REPORT IDENTIFYING
4 CLAIMS OF MEDICAL MALPRACTICE, AS REQUIRED BY PARAGRAPHS ONE AND TWO OF
5 SUBSECTION (B) OF SECTION THREE HUNDRED FIFTEEN OF THE INSURANCE LAW,
6 THE COMMISSIONER SHALL IMMEDIATELY REFER THE SAME TO THE STATE BOARD FOR
7 PROFESSIONAL MEDICAL CONDUCT FOR AN EXPEDITED REVIEW TO DETERMINE WHETH-
8 ER THE SAID CLAIMS INVOLVE PROFESSIONAL MISCONDUCT AS DEFINED BY SUBDI-
9 VISIONS THREE, FOUR, FIVE AND SIX OF SECTION SIXTY-FIVE HUNDRED THIRTY
10 OF THE EDUCATION LAW. EACH SUCH CLAIM WHICH ALLEGES PROFESSIONAL MISCON-
11 DUCT, AS DEFINED IN SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SUCH
12 SECTION SIXTY-FIVE HUNDRED THIRTY, SHALL BE REFERRED FOR AN EXPEDITED
13 INVESTIGATION IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TEN OF
14 THIS SECTION.
15 (B) UPON RECEIPT BY THE COMMISSIONER OF A COPY OF A SUMMONS AND
16 COMPLAINT WHICH ALLEGES PROFESSIONAL MEDICAL MISCONDUCT AND/OR MEDICAL
17 MALPRACTICE, AS REQUIRED BY SECTION FIVE HUNDRED THIRTY-FIVE OF THE
18 COUNTY LAW, THE COMMISSIONER SHALL IMMEDIATELY REFER SAME TO THE STATE
19 BOARD FOR PROFESSIONAL MEDICAL CONDUCT, FOR AN EXPEDITED REVIEW TO
20 DETERMINE WHETHER SAID ALLEGATIONS INVOLVE PROFESSIONAL MISCONDUCT AS
21 DEFINED BY SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SECTION SIXTY-FIVE
22 HUNDRED THIRTY OF THE EDUCATION LAW. EACH SUCH SUMMONS AND COMPLAINT

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

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1 WHICH ALLEGES PROFESSIONAL MISCONDUCT, AS DEFINED IN SUBDIVISIONS
2 THREE, FOUR, FIVE AND SIX OF SUCH SECTION SIXTY-FIVE HUNDRED THIRTY,
3 SHALL BE REFERRED FOR AN EXPEDITED INVESTIGATION IN ACCORDANCE WITH THE
4 PROVISIONS OF SUBDIVISION TEN OF THIS SECTION.

5 S 2. The county law is amended by adding a new section 535 to read as
6 follows:

7 S 535. REPORTING OF PROFESSIONAL MEDICAL MISCONDUCT AND/OR MEDICAL
8 MALPRACTICE. UPON THE FILING OF A SUMMONS AND COMPLAINT WHICH ALLEGES
9 PROFESSIONAL MEDICAL MISCONDUCT AND/OR MEDICAL MALPRACTICE PURSUANT TO
10 SECTION THREE HUNDRED FOUR OF THE CIVIL PRACTICE LAW AND RULES, THE
11 COUNTY CLERK SHALL FORWARD A COPY OF SAME TO THE COMMISSIONER OF HEALTH.

12 S 3. Subdivision (a) of section 304 of the civil practice law and
13 rules, as amended by chapter 125 of the laws of 2007, is amended to read
14 as follows:

15 (a) An action is commenced by filing a summons and complaint or
16 summons with notice in accordance with rule twenty-one hundred two of
17 this chapter; EXCEPT THAT WHERE AN ACTION ALLEGES MEDICAL MALPRACTICE OR
18 PROFESSIONAL MEDICAL MISCONDUCT, TWO COPIES OF SAID SUMMONS AND
19 COMPLAINT MUST BE FILED WITH SAID CLERK OF THE COURT WITH A NOTICE ON
20 THE FRONT OF THE SUMMONS STATING THAT SUCH ACTION ALLEGES SUCH CONDUCT;
21 PROVIDED THAT A FAILURE TO FILE A SECOND COPY WITH THE COUNTY CLERK
22 SHALL NOT BE GROUNDS FOR DISMISSAL OF ANY ACTION INITIATED PURSUANT TO
23 THIS CHAPTER; AND PROVIDED FURTHER THAT SAID FAILURE TO FILE SUCH SECOND
24 COPY SHALL NOT RELIEVE THE COUNTY CLERK FROM THE OBLIGATION TO FORWARD A
25 COPY OF THE FILED PLEADING TO THE COMMISSIONER OF HEALTH. A special
26 proceeding is commenced by filing a petition in accordance with rule
27 twenty-one hundred two of this chapter. Where a court finds that circum-
28 stances prevent immediate filing, the signing of an order requiring the
29 subsequent filing at a specific time and date not later than five days
30 thereafter shall commence the action.

31 S 4. Section 304 of the civil practice law and rules, as amended by
32 section 2 of chapter 473 of the laws of 2001, is amended to read as
33 follows:

34 S 304. Method of commencing action or special proceeding. An action is
35 commenced by filing a summons and complaint or summons with notice;
36 EXCEPT THAT WHERE AN ACTION ALLEGES MEDICAL MALPRACTICE OR PROFESSIONAL
37 MEDICAL MISCONDUCT, TWO COPIES OF SAID SUMMONS AND COMPLAINT MUST BE
38 FILED WITH SAID CLERK OF THE COURT WITH A NOTICE ON THE FRONT OF THE
39 SUMMONS STATING THAT SUCH ACTION ALLEGES SUCH CONDUCT; PROVIDED THAT A
40 FAILURE TO FILE A SECOND COPY WITH THE COUNTY CLERK SHALL NOT BE GROUNDS
41 FOR DISMISSAL OF ANY ACTION INITIATED PURSUANT TO THIS CHAPTER; AND
42 PROVIDED FURTHER THAT SAID FAILURE TO FILE SUCH SECOND COPY SHALL NOT
43 RELIEVE THE COUNTY CLERK FROM THE OBLIGATION TO FORWARD A COPY OF THE
44 FILED PLEADING TO THE COMMISSIONER OF HEALTH. A special proceeding is
45 commenced by filing a petition. Where a court finds that circumstances
46 prevent immediate filing, the signing of an order requiring the subse-
47 quent filing at a specific time and date not later than five days there-
48 after shall commence the action. For purposes of this section, and for
49 purposes of sections two hundred three and three hundred six-a of this
50 chapter, filing shall mean the delivery of the summons with notice,
51 summons and complaint or petition to the clerk of the court in the coun-
52 ty in which the action or special proceeding is brought or any other
53 person designated by the clerk of the court for that purpose together
54 with any fee required as specified in rule twenty-one hundred two of
55 this chapter for filing. At such time of filing, the original and a copy
56 of such papers shall be date stamped by a court clerk who shall file the

1 original and maintain a record of the date of the filing and who shall
2 immediately return the copy to the party who brought the filing.

3 S 5. Paragraph 1 of subdivision (a) of section 8018 of the civil prac-
4 tice law and rules, as amended by section 23 of part J of chapter 62 of
5 the laws of 2003, is amended to read as follows:

6 1. A county clerk is entitled, for the assignment of an index number
7 to an action pending in a court of which he or she is clerk, to a fee of
8 one hundred ninety dollars, payable in advance; EXCEPT WHERE AN ACTION
9 ALLEGES MEDICAL MALPRACTICE OR PROFESSIONAL MISCONDUCT THE COUNTY CLERK
10 IS ENTITLED TO A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS, PAYABLE IN
11 ADVANCE.

12 S 6. This act shall take effect on the one hundred eightieth day after
13 it shall have become a law; provided, however, that the amendments to
14 section 304 of the civil practice law and rules made by section three of
15 this act shall be subject to the expiration and reversion of such
16 section pursuant to section 10 of chapter 367 of the laws of 1999, as
17 amended, when upon such date the provisions of section four of this act
18 shall take effect.