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

1749

2009-2010 Regular Sessions

I N A S S E M B L Y

January 9, 2009

Introduced by M. of A. GOTTFRIED -- Multi-Sponsored by -- M. of A. HOOPER -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to disclosure of medical records and clinical records

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

Section 1. Subdivision (d) of rule 3122 of the civil practice law and rules, as added by chapter 575 of the laws of 2002, is amended to read as follows:

(d) Unless the subpoena duces tecum directs the production of original documents for inspection and copying at the place where such items are usually maintained, it shall be sufficient for the custodian or other qualified person to deliver complete and accurate copies of the items to be produced. The reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery. THE CHARGES AND FEES AUTHORIZED BY SUBDIVISION TWO OF SECTION EIGHTEEN OF THE PUBLIC HEALTH LAW AND PARAGRAPH SIX OF SUBDIVISION (B) OF SECTION 33.16 OF THE MENTAL HYGIENE LAW, RELATIVE TO REQUESTS FOR INSPECTIONS AND COPYING OF MEDICAL RECORDS SHALL BE DEEMED TO BE REASONABLE PRODUCTION EXPENSES FOR PURPOSES OF THIS SUBDIVISION.

S 2. Subdivision (a) of section 2303 of the civil practice law and rules, as amended by chapter 26 of the laws of 2004, is amended to read as follows:

(a) A subpoena requiring attendance or a subpoena duces tecum shall be served in the same manner as a summons, except that where service of such a subpoena is made pursuant to subdivision two or four of section three hundred eight of this chapter, the filing of proof of service shall not be required and service shall be deemed complete upon the later of the delivering or mailing of the subpoena, if made pursuant to subdivision two of section three hundred eight of this chapter, or upon the later of the affixing or mailing of the subpoena, if made pursuant

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

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to subdivision four of section three hundred eight of this chapter. Any person subpoenaed shall be paid or tendered in advance authorized traveling expenses and one day's witness fee. ANY NON-PARTY WITNESS REQUIRED TO PRODUCE MEDICAL RECORDS IN ORDER TO COMPLY WITH A SUBPOENA SHALL BE ENTITLED TO RECEIVE FROM THE PARTY SEEKING DISCOVERY THE CHARGES AND FEES AUTHORIZED BY SUBDIVISION TWO OF SECTION EIGHTEEN OF THE PUBLIC HEALTH LAW OR PARAGRAPH SIX OF SUBDIVISION (B) OF SECTION 33.16 OF THE MENTAL HYGIENE LAW, RELATIVE TO REQUESTS FOR INSPECTIONS AND COPYING OF MEDICAL RECORDS. A copy of any subpoena duces tecum served in a pending civil judicial proceeding shall also be served, in the manner set forth in rule twenty-one hundred three of this chapter, on each party who has appeared in the civil judicial proceeding so that it is received by such parties promptly after service on the witness and before the production of books, papers or other things.

S 3. Subdivision (c) of section 8001 of the civil practice law and rules is amended to read as follows:

(c) Transcripts of records. Wherever the preparation of a transcript of records is required in order to comply with a subpoena, the person subpoenaed shall receive an additional fee of ten cents per folio upon demand. THIS SUBDIVISION SHALL NOT APPLY TO REIMBURSEMENT FOR COMPLIANCE WITH A SUBPOENA SEEKING THE PRODUCTION OF FULL SIZED LEGIBLE REPRODUCTIONS OF RECORDS RELATING TO THE CONDITION OR TREATMENT OF A PATIENT. REIMBURSEMENT FOR COMPLIANCE WITH SUCH A SUBPOENA SHALL BE IN ACCORDANCE WITH SECTION TWENTY-THREE HUNDRED THREE OR RULE THIRTY-ONE HUNDRED TWENTY-TWO OF THIS CHAPTER.

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