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

348

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:

Section 1. Section 230 of the public health law is amended by adding a new subdivision 12-a to read as follows:

12-A. (A) UPON RECEIPT BY THE COMMISSIONER OF A REPORT IDENTIFYING CLAIMS OF MEDICAL MALPRACTICE, AS REQUIRED BY PARAGRAPHS ONE AND TWO OF SUBSECTION (B) OF SECTION THREE HUNDRED FIFTEEN OF THE INSURANCE LAW, THE COMMISSIONER SHALL IMMEDIATELY REFER THE SAME TO THE STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT FOR AN EXPEDITED REVIEW TO DETERMINE WHETHER THE SAID CLAIMS INVOLVE PROFESSIONAL MISCONDUCT AS DEFINED BY SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SECTION SIXTY-FIVE HUNDRED THIRTY OF THE EDUCATION LAW. EACH SUCH CLAIM WHICH ALLEGES PROFESSIONAL MISCONDUCT, AS DEFINED IN SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SUCH SECTION SIXTY-FIVE HUNDRED THIRTY, SHALL BE REFERRED FOR AN EXPEDITED INVESTIGATION IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TEN OF THIS SECTION.

(B) UPON RECEIPT BY THE COMMISSIONER OF A COPY OF A SUMMONS AND COMPLAINT WHICH ALLEGES PROFESSIONAL MEDICAL MISCONDUCT AND/OR MEDICAL MALPRACTICE, AS REQUIRED BY SECTION FIVE HUNDRED THIRTY-FIVE OF THE COUNTY LAW, THE COMMISSIONER SHALL IMMEDIATELY REFER SAME TO THE STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT, FOR AN EXPEDITED REVIEW TO DETERMINE WHETHER SAID ALLEGATIONS INVOLVE PROFESSIONAL MISCONDUCT AS DEFINED BY SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SECTION SIXTY-FIVE 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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WHICH ALLEGES PROFESSIONAL MISCONDUCT, AS DEFINED IN SUBDIVISIONS THREE, FOUR, FIVE AND SIX OF SUCH SECTION SIXTY-FIVE HUNDRED THIRTY, SHALL BE REFERRED FOR AN EXPEDITED INVESTIGATION IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TEN OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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