

5183

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

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

AN ACT to amend the public health law, in relation to the reporting of
certain incidents by hospitals to patients and prohibiting retaliatory
action, in connection therewith

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

1 Section 1. Section 2805-l of the public health law is amended by
2 adding a new subdivision 1-a to read as follows:
3 1-A. IN ADDITION TO THE REPORTS REQUIRED BY SUBDIVISION ONE OF THIS
4 SECTION, ALL HOSPITALS, AS DEFINED IN SUBDIVISION ONE OF SECTION TWEN-
5 TY-EIGHT HUNDRED ONE OF THIS ARTICLE, SHALL REPORT TO THE DEPARTMENT AND
6 TO ANY PATIENT, OR HIS OR HER REPRESENTATIVE, THE OCCURRENCE OF ANY
7 INCIDENT WITHIN THE SCOPE OF SUBDIVISION TWO OF THIS SECTION THAT HAS AN
8 ADVERSE IMPACT ON SUCH PATIENT.
9 S 2. Section 2805-m of the public health law, as amended by chapter
10 808 of the laws of 1987, is amended to read as follows:
11 S 2805-m. Confidentiality. 1. The information required to be
12 collected and maintained pursuant to sections twenty-eight hundred
13 five-j and twenty-eight hundred five-k of this article, reports required
14 to be submitted pursuant to section twenty-eight hundred five-l of this
15 article and any incident reporting requirements imposed upon diagnostic
16 and treatment centers pursuant to the provisions of this chapter shall
17 be kept confidential and shall not be released except to the department
18 [or], pursuant to subdivision four of section twenty-eight hundred
19 five-k of this article OR PURSUANT TO SUBDIVISION ONE-A OF SECTION TWEN-
20 TY-EIGHT HUNDRED FIVE-L OF THIS ARTICLE AS OTHERWISE PERMITTED BY LAW.
21 2. Notwithstanding any other provisions of law, none of the records,
22 documentation or committee actions or records required pursuant to
23 sections twenty-eight hundred five-j and twenty-eight hundred five-k of
24 this article, the reports required pursuant to section twenty-eight

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

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1 hundred five-l of this article nor any incident reporting requirements
2 imposed upon diagnostic and treatment centers pursuant to the provisions
3 of this chapter shall be subject to disclosure under article six of the
4 public officers law or article thirty-one of the civil practice law and
5 rules, except as hereinafter provided or as provided by any other
6 provision of law. No person in attendance at a meeting of any such
7 committee shall be required to testify as to what transpired thereat.
8 The prohibition relating to discovery of testimony shall not apply to
9 the statements made by any person in attendance at such a meeting who is
10 a party to an action or proceeding the subject matter of which was
11 reviewed at such meeting. NONE OF THE PROHIBITIONS IN THIS SUBDIVISION
12 SHALL APPLY TO INFORMATION WITHIN THE SCOPE OF SUBDIVISION ONE-A OF
13 SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS ARTICLE.

14 3. There shall be no monetary liability on the part of, and no cause
15 of action for damages shall arise against, any person, partnership,
16 corporation, firm, society, or other entity on account of the communi-
17 cation of information in the possession of such person or entity, or on
18 account of any recommendation or evaluation, regarding the qualifica-
19 tions, fitness, or professional conduct or practices of a physician, to
20 any governmental agency, medical or specialists society, or hospital as
21 required by sections twenty-eight hundred five-j, twenty-eight hundred
22 five-k and twenty-eight hundred five-l of this article or any incident
23 reporting requirements imposed upon diagnostic and treatment centers
24 pursuant to the provisions of this chapter, NOR SHALL THERE BE ANY MONE-
25 TARY LIABILITY OR CAUSE OF ACTION FOR DAMAGES AGAINST ANY PERSON DUE
26 SOLELY TO HIS OR HER DISCLOSURE OF ANY INFORMATION PURSUANT TO SUBDIVI-
27 SION ONE-A OF SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS ARTICLE. The
28 foregoing shall not apply to information which is untrue and communi-
29 cated with malicious intent.

30 S 3. The public health law is amended by adding a new section 2805-t
31 to read as follows:

32 S 2805-T. PENALTIES AND CIVIL ACTION; HOSPITAL WHO PENALIZES EMPLOYEES
33 OR PHYSICIANS BECAUSE OF COMPLAINTS OF HOSPITAL VIOLATIONS. 1. DEFI-
34 NITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE
35 FOLLOWING MEANINGS:

36 (A) "EMPLOYEE" MEANS ANY PERSON WHO PERFORMS SERVICES FOR AND UNDER
37 THE CONTROL OF AN EMPLOYER FOR WAGES OR OTHER REMUNERATION AND SHALL BE
38 DEEMED TO MEAN AND INCLUDE, FOR PURPOSES OF THIS SECTION, ANY PHYSICIAN
39 HAVING PROFESSIONAL PRIVILEGES OR ASSOCIATION WITH ANY EMPLOYER.

40 (B) "EMPLOYER" MEANS ANY HOSPITAL, AS DEEMED IN SUBDIVISION TEN OF
41 SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE.

42 (C) "INCIDENT" MEANS ANY INCIDENT SUBJECT TO THE PROVISIONS OF SUBDI-
43 VISION ONE-A OF SECTION TWENTY-EIGHT HUNDRED FIVE-L OF THIS ARTICLE.

44 (D) "RETALIATORY ACTION" MEANS THE DISCHARGE, SUSPENSION, DEMOTION,
45 PENALIZATION OR DISCRIMINATION AGAINST AN EMPLOYEE, OR OTHER ADVERSE
46 EMPLOYMENT ACTION TAKEN AGAINST AN EMPLOYEE IN THE TERMS AND CONDITIONS
47 OF EMPLOYMENT OR WITH RESPECT TO HOSPITAL PRIVILEGES OR ASSOCIATION.

48 2. RETALIATORY ACTION PROHIBITED. NO EMPLOYER SHALL TAKE RETALIATORY
49 ACTION AGAINST ANY EMPLOYEE BECAUSE THE EMPLOYEE DISCLOSES OR THREATENS
50 TO DISCLOSE TO A PATIENT OR HIS OR HER REPRESENTATIVE OR THE DEPARTMENT
51 AN INCIDENT.

52 IF AFTER INVESTIGATION THE COMMISSIONER FINDS THAT AN EMPLOYER HAS
53 VIOLATED THIS SUBDIVISION, THE COMMISSIONER MAY, BY AN ORDER WHICH SHALL
54 DESCRIBE PARTICULARLY THE NATURE OF THE VIOLATION, ASSESS THE EMPLOYER A
55 CIVIL PENALTY OF NOT LESS THAN TWO HUNDRED NOR MORE THAN TWO THOUSAND
56 DOLLARS.

1 3. CIVIL CAUSE OF ACTION. AN EMPLOYEE MAY BRING A CIVIL ACTION IN A
2 COURT OF COMPETENT JURISDICTION AGAINST ANY EMPLOYER ALLEGED TO HAVE
3 VIOLATED THE PROVISIONS OF THIS SECTION. THE COURT SHALL HAVE JURISDIC-
4 TION TO RESTRAIN VIOLATIONS OF THIS SECTION, WITHIN TWO YEARS AFTER SUCH
5 VIOLATION, AND TO ORDER ALL APPROPRIATE RELIEF, INCLUDING REHIRING OR
6 REINSTATEMENT OF THE EMPLOYEE TO HIS OR HER FORMER POSITION WITH RESTO-
7 RATION OF SENIORITY, PAYMENT OF LOST COMPENSATION, DAMAGES, AND REASON-
8 ABLE ATTORNEYS' FEES. AT OR BEFORE THE COMMENCEMENT OF ANY ACTION UNDER
9 THIS SECTION, NOTICE THEREOF SHALL BE SERVED UPON THE ATTORNEY GENERAL
10 BY THE EMPLOYEE.

11 S 4. This act shall take effect on the one hundred twentieth day after
12 it shall have become a law; provided that the commissioner of health is
13 authorized to promulgate any and all rules and regulations and take any
14 other measures necessary to implement this act on its effective date on
15 or before such date.