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

7519

I N S E N A T E

April 16, 2010

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

AN ACT to amend the civil practice law and rules, in relation to evidence of admissions in medical, dental or podiatric malpractice actions

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

Section 1. The civil practice law and rules is amended by adding a new section 4549 to read as follows:

S 4549. EVIDENCE OF ADMISSIONS IN MEDICAL, DENTAL OR PODIATRIC MALPRACTICE ACTIONS. 1. IN ANY CIVIL ACTION BROUGHT FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE, OR IN ANY ARBITRATION PROCEEDING RELATED TO SUCH CIVIL ACTION, ANY AND ALL STATEMENTS, WRITINGS, AFFIRMATIONS, GESTURES, OR CONDUCT EXPRESSING APOLOGY, FAULT, SYMPATHY, COMMISERATION, CONDOLENCE, COMPASSION, OR A GENERAL SENSE OF BENEVOLENCE WHICH ARE MADE BY A HEALTH CARE PROVIDER OR AN EMPLOYEE OF A HEALTH CARE PROVIDER TO THE PATIENT, A RELATIVE OF THE PATIENT, OR A REPRESENTATIVE OF THE PATIENT AND WHICH RELATE TO THE DISCOMFORT, PAIN, SUFFERING, INJURY, OR DEATH OF THE PATIENT, SHALL BE INADMISSIBLE AS EVIDENCE OF AN ADMISSION OF LIABILITY OR AS EVIDENCE OF AN ADMISSION AGAINST INTEREST.

2. FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "HEALTH CARE PROVIDER" MEANS ANY PERSON LICENSED OR CERTIFIED BY THE STATE OF NEW YORK TO DELIVER HEALTH CARE AND ANY CLINIC, HEALTH DISPENSARY, OR HEALTH FACILITY LICENSED BY THE STATE OF NEW YORK. THE TERM INCLUDES ANY PROFESSIONAL CORPORATION OR OTHER PROFESSIONAL ENTITY COMPRISED OF SUCH HEALTH CARE PROVIDERS AS PERMITTED BY THE LAWS OF THIS STATE.

(B) "RELATIVE" MEANS A PATIENT'S SPOUSE, PARENT, GRANDPARENT, STEPFATHER, STEPMOTHER, CHILD, GRANDCHILD, BROTHER, SISTER, HALF BROTHER, HALF SISTER, OR SPOUSE'S PARENTS. THE TERM INCLUDES SAID RELATIONSHIPS THAT ARE CREATED AS A RESULT OF ADOPTION. IN ADDITION, "RELATIVE" INCLUDES ANY PERSON WHO HAS A FAMILY-TYPE RELATIONSHIP WITH THE PATIENT.

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

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(C) "REPRESENTATIVE" MEANS A LEGAL GUARDIAN, ATTORNEY, PERSON DESIGNATED TO MAKE DECISIONS ON BEHALF OF A PATIENT UNDER A HEALTH CARE PROXY, OR ANY PERSON RECOGNIZED IN LAW OR CUSTOM AS A PATIENT'S AGENT.

S 2. This act shall take effect immediately.