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I N S E N A T E

May 3, 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 establishing the health care courts pilot program

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

1 Section 1. The civil practice law and rules is amended by adding a new
2 article 44-A to read as follows:

3 ARTICLE 44-A

4 HEALTH CARE COURTS PILOT PROGRAM

5 SECTION 4410. CREATION.

6 4411. HEALTH CARE COURT JUDGES; SELECTION.

7 4412. JUDICIAL TRAINING.

8 4413. COURT APPOINTED MEDICAL EXPERTS.

9 4414. PROCEDURE.

10 4415. APPELLATE REVIEW.

11 4416. REPORTS.

12 4417. DISCLAIMER.

13 S 4410. CREATION. THE OFFICE OF COURT ADMINISTRATION MAY SELECT UP TO
14 FIVE COUNTIES, EACH WITHIN A SEPARATE JUDICIAL DISTRICT IN THIS STATE,
15 TO ESTABLISH SPECIALIZED HEALTH CARE COURTS WITHIN THE SUPREME COURT OF
16 SUCH COUNTIES TO GOVERN CLAIMS FOR MEDICAL, DENTAL OR PODIATRIC MALPRAC-
17 TICE AS SET FORTH IN THIS SECTION. ONCE A SUPREME COURT WITHIN A PARTIC-
18 ULAR COUNTY HAS ESTABLISHED A HEALTH CARE COURT AS SET FORTH IN THIS
19 SECTION, SUCH COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL THE
20 CLAIMS FOR MEDIAL, DENTAL OR PODIATRIC MALPRACTICE BROUGHT WITHIN THE
21 SUPREME COURT OF SUCH COUNTY.

22 S 4411. HEALTH CARE COURT JUDGES; SELECTION. JUDGES SHALL BE SELECTED
23 TO SERVE IN THE HEALTH CARE COURT DIVISION FROM AMONG THOSE JUDGES WHO
24 ARE ELECTED OR APPOINTED TO THE SUPREME COURT IN A COUNTY SELECTED TO
25 PARTICIPATE IN THE HEALTH CARE COURTS PILOT PROGRAM. FOR THE PURPOSES OF
26 THIS ARTICLE, "JUDGE" SHALL MEAN A JUDGE OF THE HEALTH CARE DIVISION.

27 S 4412. JUDICIAL TRAINING. (A) UPON SELECTION OF A PARTICULAR SUPREME
28 COURT JUDGE TO HEAR CASES IN THE COUNTY'S HEALTH CARE COURT AND PRIOR TO

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

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1 HEARING SUCH CASES, EACH JUDGE SHALL COMPLETE A JUDICIAL TRAINING
2 PROGRAM ON THE LAW AND SCIENCE OF MEDICINE THAT MAY BE THE BASIS FOR
3 CASES FALLING UNDER THE JURISDICTION OF THE HEALTH CARE COURT. SUCH
4 PROGRAM SHALL BE ADMINISTERED BY THE OFFICE OF COURT ADMINISTRATION.

5 (B) A COMMITTEE SHALL BE CREATED TO DEVELOP THE CURRICULUM OF THE
6 JUDICIAL TRAINING PROGRAM. A TASK FORCE SHALL BE COORDINATED BY THE
7 OFFICE OF COURT ADMINISTRATION AND SHALL INCLUDE EQUAL REPRESENTATION
8 FROM THE MEDICAL SOCIETY OF THE STATE OF NEW YORK AND THE NEW YORK STATE
9 BAR ASSOCIATION.

10 (C) THE CURRICULUM TO BE CREATED PURSUANT TO SUBDIVISION (B) OF THIS
11 SECTION SHALL INCLUDE BOTH IN-CLASSROOM CLINICAL TRAINING AND AN INTERN-
12 SHIP. THE IN-CLASSROOM CLINICAL TRAINING SHALL INCLUDE AT THE MINIMUM
13 THE FOLLOWING: AN OVERVIEW OF THE MAJOR BODY SYSTEMS, PHARMACOLOGY,
14 COMMON DISEASE PATHOLOGY, ALTERNATIVE MEDICINE THERAPIES, AND THE EDUCA-
15 TION AND TRAINING REQUIRED FOR VARIOUS HEALTH PROFESSIONALS. THE INTERN-
16 SHIP SHALL PROVIDE JUDGES AN OPPORTUNITY TO FOLLOW A PRACTICING PHYSI-
17 CIAN AND OTHER HEALTH CARE PROFESSIONALS IN DIFFERENT HEALTH CARE
18 SETTINGS. THE TRAINING PROGRAM MAY ALSO INCLUDE A LEGAL COMPONENT WHICH
19 SHALL INCLUDE A REVIEW OF MEDICAL LEGAL ISSUES THAT MAY BE THE BASIS OF
20 CASES FALLING UNDER THE JURISDICTION OF THE HEALTH CARE COURT.

21 S 4413. COURT APPOINTED MEDICAL EXPERTS. (A) THE HEALTH CARE COURT
22 SHALL MAINTAIN A LIST OF QUALIFIED MEDICAL EXPERTS WHO MAY BE UTILIZED
23 BY THE COURT TO PROVIDE INDEPENDENT EXPERT OPINIONS TO THE JUDGE. SUCH
24 EXPERTS MAY PROVIDE OPINIONS IN WRITING TO THE JUDGE OR MAY BE CALLED BY
25 THE JUDGE TO TESTIFY BEFORE THE COURT TO CLARIFY OR INTERPRET MEDICAL
26 TESTIMONY OR EVIDENCE, OR FOR ANY OTHER PURPOSE THE JUDGE DEEMS RELEVANT
27 TO THE PROCEEDINGS.

28 (B) A COURT APPOINTED MEDICAL EXPERT MUST MEET THE FOLLOWING MINIMUM
29 EXPERT WITNESS REQUIREMENTS:

30 (1) HOLDS AN ACTIVE LICENSE IN THE SAME PROFESSION AS THE DEFENDANT.
31 IF THE DEFENDANT IS A LICENSED NEW YORK PHYSICIAN OR DOCTOR OF OSTEO-
32 PATHIC MEDICINE, THE EXPERT WITNESS MUST ALSO BE LICENSED IN NEW YORK
33 STATE AS A DOCTOR OF MEDICINE OR OSTEOPATHIC MEDICINE;

34 (2) IS TRAINED AND EXPERIENCED IN THE SAME DISCIPLINE OR SCHOOL OF
35 PRACTICE AS THE DEFENDANT AND CAN DEMONSTRATE BY COMPETENT EVIDENCE
36 THAT, AS A RESULT OF TRAINING, EDUCATION, KNOWLEDGE, AND EXPERIENCE IN
37 THE EVALUATION, DIAGNOSIS, AND TREATMENT OF THE DISEASE OR INJURY WHICH
38 IS THE SUBJECT MATTER OF THE LAWSUIT AGAINST THE DEFENDANT, THE INDIVID-
39 UAL WAS SUBSTANTIALLY FAMILIAR WITH THE APPLICABLE STANDARDS OF CARE AND
40 PRACTICE AS THEY RELATE TO THE ACT OR OMISSION WHICH IS THE SUBJECT OF
41 THE LAWSUIT ON THE DATE OF THE INCIDENT;

42 (3) IF THE DEFENDANT IS CERTIFIED BY A BOARD RECOGNIZED BY THE AMERI-
43 CAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN OSTEOPATHIC ASSOCI-
44 ATION, THE EXPERT MUST BE CERTIFIED IN THE SAME SPECIALTY BY A BOARD
45 RECOGNIZED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN
46 OSTEOPATHIC ASSOCIATION AND MUST HAVE ACKNOWLEDGED EXPERTISE AND TRAIN-
47 ING DIRECTLY RELATED TO THE PARTICULAR HEALTH CARE OR MATTER AT ISSUE;
48 AND

49 (4) WITHIN FIVE YEARS OF THE DATE OF THE ALLEGED OCCURRENCE GIVING
50 RISE TO THE CLAIM, WAS IN ACTIVE MEDICAL PRACTICE IN THE SAME DISCIPLINE
51 OR SCHOOL OF PRACTICE AS THE DEFENDANT OR DEVOTED A SUBSTANTIAL PORTION
52 OF HIS TIME TEACHING AT AN ACCREDITED MEDICAL SCHOOL, OR IN UNIVERSITY-
53 BASED RESEARCH IN RELATION TO THE MEDICAL CARE AND TYPE OF TREATMENT AT
54 ISSUE.

1 (C) A COURT APPOINTED MEDICAL EXPERT SHALL HAVE NO FINANCIAL TIES OR
2 FAMILIAL RELATIONSHIP WITH ANY PARTY TO THE LAWSUIT, ANY EXPERT CALLED
3 TO TESTIFY, OR ANY ATTORNEY REPRESENTING ANY PARTY TO THE LAWSUIT.

4 (D) THE COURT APPOINTED MEDICAL EXPERT SHALL HAVE NO EX PARTE COMMUNI-
5 CATIONS WITH ANY PARTY TO THE LAWSUIT, EXCEPT AS PERMITTED BY THE COURT.

6 (E) THE PLAINTIFF AND DEFENDANT SHALL EQUALLY COMPENSATE THE COURT
7 APPOINTED MEDICAL EXPERT BASED ON THE PREVAILING FEE FOR MEDICAL EXPERTS
8 WITH SIMILAR QUALIFICATIONS.

9 S 4414. PROCEDURE. CLAIMS ADJUDICATED THROUGH THE HEALTH CARE COURT
10 SHALL ADHERE TO THIS CHAPTER EXCEPT AS OTHERWISE PROVIDED FOR IN THIS
11 ARTICLE.

12 S 4415. APPELLATE REVIEW. ANY PARTY TO AN ACTION IN A HEALTH CARE
13 COURT MAY AVAIL THEMSELVES OF ALL APPEAL RIGHTS THAT OTHERWISE WOULD BE
14 AVAILABLE UNDER THIS CHAPTER.

15 S 4416. REPORTS. THE OFFICE OF COURT ADMINISTRATION SHALL SUBMIT AN
16 ANNUAL REPORT TO THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF
17 THE SENATE, THE MINORITY LEADER OF THE SENATE, THE MINORITY LEADER OF
18 THE ASSEMBLY AND THE GOVERNOR DESCRIBING THE FUNCTIONING OF THE HEALTH
19 CARE COURTS, INCLUDING THE NUMBER OF DISPUTES HEARD BY THE COURTS AND
20 RECOMMENDATIONS FOR IMPROVING THE ABILITY OF SUCH COURTS TO RESOLVE
21 CLAIMS INVOLVING MEDICAL, DENTAL OR PODIATRIC MALPRACTICE.

22 S 4417. DISCLAIMER. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO
23 REMOVE THE JURY AS THE ULTIMATE FINDER OF FACT IN AN ACTION FOR MEDICAL,
24 DENTAL OR PODIATRIC MALPRACTICE.

25 S 2. This act shall take effect on the ninetieth day after it shall
26 have become a law.