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

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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:

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

ARTICLE 44-A

HEALTH CARE COURTS PILOT PROGRAM

SECTION 4410. CREATION.
4411. HEALTH CARE COURT JUDGES; SELECTION.
4412. JUDICIAL TRAINING.
4413. COURT APPOINTED MEDICAL EXPERTS.
4414. PROCEDURE.
4415. APPELLATE REVIEW.
4416. REPORTS.
4417. DISCLAIMER.

S 4410. CREATION. THE OFFICE OF COURT ADMINISTRATION MAY SELECT UP TO FIVE COUNTIES, EACH WITHIN A SEPARATE JUDICIAL DISTRICT IN THIS STATE, TO ESTABLISH SPECIALIZED HEALTH CARE COURTS WITHIN THE SUPREME COURT OF SUCH COUNTIES TO GOVERN CLAIMS FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE AS SET FORTH IN THIS SECTION. ONCE A SUPREME COURT WITHIN A PARTICULAR COUNTY HAS ESTABLISHED A HEALTH CARE COURT AS SET FORTH IN THIS SECTION, SUCH COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL THE CLAIMS FOR MEDIAL, DENTAL OR PODIATRIC MALPRACTICE BROUGHT WITHIN THE SUPREME COURT OF SUCH COUNTY.

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

S 4412. JUDICIAL TRAINING. (A) UPON SELECTION OF A PARTICULAR SUPREME 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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HEARING SUCH CASES, EACH JUDGE SHALL COMPLETE A JUDICIAL TRAINING PROGRAM ON THE LAW AND SCIENCE OF MEDICINE THAT MAY BE THE BASIS FOR CASES FALLING UNDER THE JURISDICTION OF THE HEALTH CARE COURT. SUCH PROGRAM SHALL BE ADMINISTERED BY THE OFFICE OF COURT ADMINISTRATION.

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

(C) THE CURRICULUM TO BE CREATED PURSUANT TO SUBDIVISION (B) OF THIS SECTION SHALL INCLUDE BOTH IN-CLASSROOM CLINICAL TRAINING AND AN INTERNSHIP. THE IN-CLASSROOM CLINICAL TRAINING SHALL INCLUDE AT THE MINIMUM THE FOLLOWING: AN OVERVIEW OF THE MAJOR BODY SYSTEMS, PHARMACOLOGY, COMMON DISEASE PATHOLOGY, ALTERNATIVE MEDICINE THERAPIES, AND THE EDUCATION AND TRAINING REQUIRED FOR VARIOUS HEALTH PROFESSIONALS. THE INTERNSHIP SHALL PROVIDE JUDGES AN OPPORTUNITY TO FOLLOW A PRACTICING PHYSICIAN AND OTHER HEALTH CARE PROFESSIONALS IN DIFFERENT HEALTH CARE SETTINGS. THE TRAINING PROGRAM MAY ALSO INCLUDE A LEGAL COMPONENT WHICH SHALL INCLUDE A REVIEW OF MEDICAL LEGAL ISSUES THAT MAY BE THE BASIS OF CASES FALLING UNDER THE JURISDICTION OF THE HEALTH CARE COURT.

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

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

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

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

(3) IF THE DEFENDANT IS CERTIFIED BY A BOARD RECOGNIZED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN OSTEOPATHIC ASSOCIATION, THE EXPERT MUST BE CERTIFIED IN THE SAME SPECIALTY BY A BOARD RECOGNIZED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN OSTEOPATHIC ASSOCIATION AND MUST HAVE ACKNOWLEDGED EXPERTISE AND TRAINING DIRECTLY RELATED TO THE PARTICULAR HEALTH CARE OR MATTER AT ISSUE; AND

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

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

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

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

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

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

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

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

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