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

4586--A

2011-2012 Regular Sessions

I N S E N A T E

April 13, 2011

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to subpoenas duces tecum for medical records

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

Section 1. Subdivision (b) of section 2302 of the civil practice law and rules, as amended by chapter 136 of the laws of 2007, is amended to read as follows:

(b) Issuance by court. A subpoena to compel production of an original record or document where a certified transcript or copy is admissible in evidence, or to compel attendance of any person confined in a penitentiary or jail, shall be issued by the court. Unless the court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the person having custody of the record, document or person confined. A subpoena to produce a prisoner so confined shall be issued by a judge to whom a petition for habeas corpus could be made under subdivision (b) of section seven thousand two of this chapter or a judge of the court of claims, if the matter is pending before the court of claims, or a judge of the surrogate's court, if the matter is pending before the surrogate's court, or a judge or support magistrate of the family court, if the matter is pending before the family court, or a judge of the New York city civil court, if the matter is pending before the New York city civil court and it has been removed thereto from the supreme court pursuant to subdivision (d) of section three hundred twenty-five of this chapter. *IN THE ABSENCE OF AN AUTHORIZATION BY A PATIENT, A TRIAL SUBPOENA DUCES TECUM FOR THE PATIENT'S MEDICAL RECORDS MAY ONLY BE ISSUED BY A COURT.*

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

LBD09303-02-1

S 2. Subdivision (a) of rule 3122 of the civil practice law and rules, as amended by chapter 575 of the laws of 2002, is amended to read as follows:

(a) 1. Within twenty days of service of a notice or subpoena duces tecum under rule 3120 or section 3121, the party or person to whom the notice or subpoena duces tecum is directed, if that party or person objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularity the reasons for each objection. If objection is made to part of an item or category, the part shall be specified. [A medical provider served with a subpoena duces tecum requesting the production of a patient's medical records pursuant to this rule need not respond or object to the subpoena if the subpoena is not accompanied by a written authorization by the patient. Any subpoena served upon a medical provider requesting the medical records of a patient shall state in conspicuous bold-faced type that the records shall not be provided unless the subpoena is accompanied by a written authorization by the patient.] The party seeking disclosure under rule 3120 or section 3121 may move for an order under rule 3124 or section 2308 with respect to any objection to, or other failure to respond to or permit inspection as requested by, the notice or subpoena duces tecum, respectively, or any part thereof.

2. A MEDICAL PROVIDER SERVED WITH A SUBPOENA DUCES TECUM, OTHER THAN A TRIAL SUBPOENA ISSUED BY A COURT, REQUESTING THE PRODUCTION OF A PATIENT'S MEDICAL RECORDS PURSUANT TO THIS RULE NEED NOT RESPOND OR OBJECT TO THE SUBPOENA IF THE SUBPOENA IS NOT ACCOMPANIED BY A WRITTEN AUTHORIZATION BY THE PATIENT. ANY SUBPOENA SERVED UPON A MEDICAL PROVIDER REQUESTING THE MEDICAL RECORDS OF A PATIENT SHALL STATE IN CONSPICUOUS BOLD-FACED TYPE THAT THE RECORDS SHALL NOT BE PROVIDED UNLESS THE SUBPOENA IS ACCOMPANIED BY A WRITTEN AUTHORIZATION BY THE PATIENT, OR THE COURT HAS ISSUED THE SUBPOENA OR OTHERWISE DIRECTED THE PRODUCTION OF THE DOCUMENTS.

S 3. This act shall take effect immediately.