

3437

2011-2012 Regular Sessions

I N S E N A T E

February 22, 2011

Introduced by Sen. PARKER -- 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

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

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1 PARTICIPATE IN THE HEALTH CARE COURTS PILOT PROGRAM. FOR THE PURPOSES OF
2 THIS ARTICLE, "JUDGE" SHALL MEAN A JUDGE OF THE HEALTH CARE DIVISION.

3 S 4412. JUDICIAL TRAINING. (A) UPON SELECTION OF A PARTICULAR SUPREME
4 COURT JUDGE TO HEAR CASES IN THE COUNTY'S HEALTH CARE COURT AND PRIOR TO
5 HEARING SUCH CASES, EACH JUDGE SHALL COMPLETE A JUDICIAL TRAINING
6 PROGRAM ON THE LAW AND SCIENCE OF MEDICINE THAT MAY BE THE BASIS FOR
7 CASES FALLING UNDER THE JURISDICTION OF THE HEALTH CARE COURT. SUCH
8 PROGRAM SHALL BE ADMINISTERED BY THE OFFICE OF COURT ADMINISTRATION.

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

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

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

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

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

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

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

53 (4) WITHIN FIVE YEARS OF THE DATE OF THE ALLEGED OCCURRENCE GIVING
54 RISE TO THE CLAIM, WAS IN ACTIVE MEDICAL PRACTICE IN THE SAME DISCIPLINE
55 OR SCHOOL OF PRACTICE AS THE DEFENDANT OR DEVOTED A SUBSTANTIAL PORTION
56 OF HIS TIME TEACHING AT AN ACCREDITED MEDICAL SCHOOL, OR IN UNIVERSITY-

1 BASED RESEARCH IN RELATION TO THE MEDICAL CARE AND TYPE OF TREATMENT AT
2 ISSUE.

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

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

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

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

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

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

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

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