

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

4622--A

2015-2016 Regular Sessions

I N S E N A T E

April 1, 2015

Introduced by Sens. GOLDEN, HOYLMAN, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the civil rights law, in relation to prohibiting the making and/or broadcasting of visual images of individuals undergoing medical treatment without prior written consent

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

1 Section 1. The public health law is amended by adding a new section
2 2806-c to read as follows:
3 S 2806-C. RESTRICTIONS ON VISUAL IMAGES OF PATIENTS. 1. EVERY PATIENT,
4 IN OR BEING SERVED BY A HEALTH CARE FACILITY, SHALL HAVE THE RIGHT TO
5 HAVE PRIVACY IN TREATMENT AND IN CARING FOR PERSONAL NEEDS, INCLUDING
6 THE MAKING OR BROADCASTING OF A VISUAL IMAGE OF A HEALTH CARE PROCEDURE
7 INCLUDING THE PATIENT, WITH THE EXCEPTION OF MAKING OR BROADCASTING A
8 VISUAL IMAGE FOR THE PURPOSES OF ADVANCING THE HEALTH CARE TREATMENT OF
9 THE INDIVIDUAL, A QUALITY ASSURANCE PROGRAM, THE EDUCATION OR TRAINING
10 OF HEALTH CARE PERSONNEL, OR SECURITY.
11 2. PRIVACY IN TREATMENT SHALL INCLUDE THE OBTAINING BY THE HEALTH CARE
12 FACILITY OF EXPRESS WRITTEN CONSENT ON A SEPARATE DOCUMENT USED SOLELY
13 FOR SUCH PURPOSE FROM AN INDIVIDUAL RECEIVING TREATMENT FROM SUCH FACIL-
14 ITY OR SERVICES PRIOR TO MAKING OR BROADCASTING A VISUAL IMAGE OF SUCH
15 TREATMENT. IN THE CASE OF MAKING OR BROADCASTING A VISUAL IMAGE FOR
16 EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL, THE PATIENT SHALL HAVE
17 THE RIGHT TO KNOW OF AND SHALL HAVE THE RIGHT TO REFUSE THE MAKING OR
18 BROADCASTING FOR THAT PURPOSE. A PERSON LEGALLY AUTHORIZED TO MAKE
19 HEALTH CARE DECISIONS FOR THE PATIENT OR OTHERWISE AUTHORIZED TO CONSENT
20 MAY GRANT SUCH CONSENT OR EXERCISE SUCH REFUSAL IF THE PATIENT CANNOT
21 REASONABLY DO SO DUE TO SUCH PATIENT'S INCAPACITY.

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

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3. FOR THE PURPOSES OF THIS SECTION:

(A) "HEALTH CARE FACILITY" SHALL MEAN A RESIDENTIAL HEALTH CARE FACILITY, GENERAL HOSPITAL, FREE-STANDING AMBULATORY CARE FACILITY, DIAGNOSTIC AND/OR TREATMENT CENTER AND CLINIC AUTHORIZED UNDER THIS ARTICLE, AMBULANCE SERVICE AS DEFINED BY SUBDIVISION TWO OF SECTION THREE THOUSAND ONE OF THIS CHAPTER, VOLUNTARY AMBULANCE SERVICE AS DEFINED BY SUBDIVISION THREE OF SECTION THREE THOUSAND ONE OF THIS CHAPTER, OR CERTIFIED FIRST RESPONDERS AS DEFINED BY SUBDIVISION FIVE OF SECTION THREE THOUSAND ONE OF THIS CHAPTER;

(B) "QUALITY ASSURANCE" SHALL MEAN ANY EVALUATION OF SERVICES PROVIDED IN OR BY A HEALTH CARE FACILITY FOR PURPOSES OF IMPROVEMENT IN SAFETY, QUALITY OR OUTCOMES;

(C) "EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL" SHALL MEAN A PROGRAM OF EDUCATION OR TRAINING OF HEALTH CARE PERSONNEL OR STUDENTS BEING EDUCATED OR TRAINED TO BE HEALTH CARE PERSONNEL, THAT THE HEALTH CARE FACILITY HAS AUTHORIZED;

(D) "BROADCASTING A VISUAL IMAGE" SHALL MEAN TRANSMISSION BY BROADCAST, CABLE, CLOSED CIRCUIT, INTERNET OR OTHER TELEVISION OR VISUAL MEDIUM; SOCIAL MEDIA; OR OTHER SYSTEM BY WHICH IT CAN BE VIEWED IN VIOLATION OF THE PRIVACY RIGHTS AND EXPECTATIONS OF A PATIENT.

4. NOTHING IN THIS SECTION SHALL DIMINISH OR IMPAIR ANY RIGHT OR REMEDY OTHERWISE APPLICABLE TO ANY PATIENT.

S 2. Section 50-c of the civil rights law, as amended by chapter 643 of the laws of 1999, is amended to read as follows:

S 50-c. Private right of action. 1. If the identity of the victim of an offense defined in subdivision one of section fifty-b of this article is disclosed in violation of such section, any person injured by such disclosure may bring an action to recover damages suffered by reason of such wrongful disclosure. In any action brought under this section, the court may award reasonable attorney's fees to a prevailing plaintiff.

2. IF THE PRIVACY OF AN INDIVIDUAL AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED SIX-C OF THE PUBLIC HEALTH LAW REGARDING THE MAKING AND BROADCASTING OF VISUAL IMAGES OF MEDICAL PROCEDURES IS VIOLATED, SUCH INDIVIDUAL OR THEIR ESTATE REPRESENTATIVE MAY BRING AN ACTION TO RECOVER DAMAGES SUFFERED BY REASON OF SUCH VIOLATION. IN ANY ACTION BROUGHT UNDER THIS SECTION, THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF. THE CAUSE OF ACTION CREATED HEREIN SHALL SURVIVE THE DEATH OF SUCH INDIVIDUAL.

S 3. This act shall take effect immediately.