

STATE OF NEW YORK

1190--B

Cal. No. 80

2017-2018 Regular Sessions

IN ASSEMBLY

January 11, 2017

Introduced by M. of A. BRAUNSTEIN, SKOUFIS, MOSLEY, JAFFEE, M. G. MILLER, BRINDISI, ARROYO, HOOPER, GOTTFRIED, ZEBROWSKI, COOK, MONTESANO, FINCH, SEAWRIGHT, FRIEND, JENNE, GALEF, HEVESI, WEPRIN, CASTORINA -- Multi-Sponsored by -- M. of A. HIKIND, McDONOUGH, PALMESANO, PEOPLES-STOKES, SCHIMMINGER, SIMON, TITONE -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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 § 2806-c. Restrictions on broadcasting of patients. 1. Every patient
4 in a health care facility shall have the right to have privacy in treat-
5 ment and in caring for personal needs, including the broadcasting of the
6 recognizable image or speech of such patient involved in a health care
7 procedure in such facility, with the exception of broadcasting such
8 image or speech for the purposes of advancing the health care treatment
9 of the individual, a quality assurance program, the education or train-
10 ing of health care personnel, or necessary security purposes.

11 2. Such privacy in treatment shall include the obtaining by the health
12 care facility of express written consent on a separate document used
13 solely for such purpose from an individual receiving treatment in such
14 facility prior to broadcasting the recognizable image or speech of such

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

LBD01750-09-8

1 patient involved in such treatment. In the case of broadcasting the
2 recognizable image or speech for education or training of health care
3 personnel, the patient shall have the right to know of and shall have
4 the right to refuse the broadcasting for that purpose. A person legally
5 authorized to make health care decisions for the patient or otherwise
6 authorized to consent may grant such consent or exercise such refusal if
7 the patient cannot reasonably do so due to such patient's incapacity.

8 3. For the purposes of this section:

9 (a) "health care facility" shall mean a residential health care facil-
10 ity, general hospital, free-standing ambulatory care facility, diagnos-
11 tic and/or treatment center and clinic authorized under this article, or
12 ambulance operated by an ambulance service as defined by subdivision two
13 of section three thousand one of this chapter or by a voluntary ambu-
14 lance service as defined by subdivision three of section three thousand
15 one of this chapter;

16 (b) "quality assurance" shall mean any evaluation of services provided
17 in or by a health care facility for purposes of improvement in safety,
18 quality or outcomes;

19 (c) "education or training of health care personnel" shall mean a
20 program of education or training of health care personnel or students
21 being educated or trained to be health care personnel, that the health
22 care facility has authorized;

23 (d) "broadcasting" of an image or speech shall mean transmission by
24 broadcast, cable, closed circuit, internet or other television or visual
25 medium, social media, or other system by which it can be viewed in
26 violation of the privacy rights and expectations of a patient. Provided
27 however, that broadcasting shall not include incidental transmission of
28 the image or speech of an individual being treated, transported or
29 otherwise cared for or attended to by an ambulance service as defined in
30 subdivision two of section three thousand one of this chapter or by a
31 voluntary ambulance service as defined in subdivision three of section
32 three thousand one of this chapter, at an ambulance response scene,
33 public area or during delivery or admission to a health care facility,
34 that is captured by news media, bystanders or others who do not have the
35 written consent of such ambulance service or voluntary ambulance
36 service.

37 4. Nothing in this section shall diminish or impair any right or reme-
38 dy otherwise applicable to any patient.

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

41 § 50-c. Private right of action. 1. If the identity of the victim of
42 an offense defined in subdivision one of section fifty-b of this article
43 is disclosed in violation of such section, any person injured by such
44 disclosure may bring an action to recover damages suffered by reason of
45 such wrongful disclosure. In any action brought under this section, the
46 court may award reasonable [~~attorney's~~] attorneys' fees to a prevailing
47 plaintiff.

48 2. If the privacy of an individual as defined in section twenty-eight
49 hundred six-c of the public health law regarding the right to have
50 privacy in treatment and in caring for personal needs, including the
51 broadcasting of the recognizable image or speech of a patient involved
52 in a health care procedure in such a facility has been violated, such
53 individual or his or her estate representative may bring an action to
54 recover damages suffered by reason of such violation. In any action
55 brought under this section, the court may award reasonable attorneys'

1 fees to a prevailing plaintiff. The cause of action created herein shall
2 survive the death of such individual.

3 3. Nothing in this section shall diminish or impair any right or reme-
4 dy otherwise applicable to any patient.

5 § 3. This act shall take effect immediately.