STATE OF NEW YORK

6797

2017-2018 Regular Sessions

IN SENATE

June 18, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to prohibiting certain ex-parte interviews; in relation to the scope of disclosure of certain experts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 3102 of the civil practice law and rules is amended by adding a new subdivision (c-1) to read as follows:

(c-1) Ex-parte interviews. In any action involving personal injury, medical, dental or podiatric malpractice, or wrongful death, no party or anyone acting on behalf of a party may either directly or indirectly conduct ex-parte interviews with the treating physicians or other health care providers of any other party. Nothing in this subdivision shall prohibit an attorney or the agent or employee of an attorney who represents the patient, the estate of the patient, or the natural or duly appointed guardian of the patient whose condition is at issue in the action from conducting ex-parte conversations with a treating physician or other health care provider of the patient.

§ 2. Subparagraph (i) of paragraph 1 of subdivision (d) of section 3101 of the civil practice law and rules, as amended by chapter 184 of the laws of 1988, is amended to read as follows:

(i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's

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

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testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical, dental or podiatric malpractice, a party, in responding to a request, [~~may omit the names of medical, dental or podiatric experts but~~] shall be required to disclose all [~~other~~] information concerning such experts otherwise required by this paragraph.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to all actions involving personal injury, medical, dental or podiatric malpractice, or wrongful death filed on and after such date and to all such actions pending on such effective date except as to conduct prohibited by section one of this act which occurred prior to such effective date.