

STATE OF NEW YORK

420--A

Cal. No. 215

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. BRAUNSTEIN, MOSLEY, JAFFEE, M. G. MILLER, ARROYO, GOTTFRIED, ZEBROWSKI, COOK, MONTESANO, FINCH, SEAWRIGHT, FRIEND, GALEF, HEVESI, WEPRIN, ABINANTI, L. ROSENTHAL, GRIFFIN -- Multi-Sponsored by -- M. of A. McDONOUGH, NOLAN, PALMESANO, PEOPLES-STOKES, SCHIMMINGER, SIMON -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- reported from committee, advanced 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 within the confines of such facility, with the exception of
8 broadcasting such image or speech for the purposes of advancing the
9 health care treatment of the individual, a quality assurance program,
10 the education or training of health care personnel, or necessary securi-
11 ty purposes.

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

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

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

7 3. For the purposes of this section:

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

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

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

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

36 (e) Nothing in this section shall apply where such recognizable image
37 or speech is broadcast or conveyed as part of the news gathering process
38 among professional journalists, newscasters or other individuals or
39 entities defined in subdivision (a) of section seventy-nine-h of the
40 civil rights law, but not broadcast to the public.

41 4. No health care facility, as defined in paragraph (a) of subdivision
42 three of this section, shall incur any liability under this section for
43 the broadcasting by a third party of the recognizable image or speech of
44 a patient involved in a health care procedure in the facility when such
45 image or speech was obtained by the third party without the knowledge or
46 consent of the facility or its staff.

47 5. Nothing in this section shall diminish or impair any right or
48 remedy otherwise applicable to any patient.

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

51 § 50-c. Private right of action. 1. If the identity of the victim of
52 an offense defined in subdivision one of section fifty-b of this article
53 is disclosed in violation of such section, any person injured by such
54 disclosure may bring an action to recover damages suffered by reason of
55 such wrongful disclosure. In any action brought under this section, the
56 court may award reasonable attorney's fees to a prevailing plaintiff.

1 2. If the privacy of an individual as defined in section twenty-eight
2 hundred six-c of the public health law regarding the right to have
3 privacy in treatment and in caring for personal needs, including the
4 broadcasting of the recognizable image or speech of a patient involved
5 in a health care procedure in such a facility has been violated, such
6 individual or his or her estate representative may bring an action to
7 recover damages suffered by reason of such violation. In any action
8 brought under this section, the court may award reasonable attorney's
9 fees to a prevailing plaintiff. The cause of action created herein shall
10 survive the death of such individual and shall only apply to violations
11 occurring on and after the effective date of this subdivision.

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

14 § 3. This act shall take effect immediately.