STATE OF NEW YORK

7675

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. LAVINE -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to discovery of the plaintiff's medical records in a personal injury action

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

Section 1. Section 3101 of the civil practice law and rules is amended by adding a new subdivision (j) to read as follows:

(j) Medical records in personal injury actions. 1. Medical records are material and necessary to the defense of a personal injury action if they reasonably relate to the injuries or limitations claimed by the plaintiff in the action. A person who commences a personal injury action waives his or her privilege under sections four thousand five hundred four, four thousand five hundred seven and four thousand five hundred eight of this chapter regarding medical records, but only with respect to those medical records shown to be material and necessary to the defense of such action. A claim by the plaintiff of loss of enjoyment of life or emotional injury shall not of itself render the plaintiff's entire medical history material and necessary to the defense of an action, but such claims shall be considered in assessing whether, or to what extent, the records sought for the defense of such action reasonably relate to the injuries and limitations claimed by the plaintiff.

2. A party seeking disclosure of another party's medical records bears the burden of establishing prima facie evidence that the records sought are material and necessary for the defense of the plaintiff's claims. If the party seeking disclosure establishes such prima facie evidence, the party seeking to withhold medical records subject to disclosure may seek a protective order pursuant to subdivision (a) of section three thousand one hundred three of this article and shall bear the burden of establishing why such records shall not be disclosed.

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 subdivision, the term "medical records" shall mean records of a licensed, registered or authorized professional, or of that professional's employee, pursuant to section four thousand five hundred four, four thousand five hundred seven, four thousand five hundred eight or four thousand five hundred ten of this chapter.

§ 2. This act shall take effect immediately and shall apply to all actions pending or commenced on and after such effective date.