

# STATE OF NEW YORK

9216

## IN SENATE

May 12, 2022

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law and the public health law, in relation to removing the prohibition relating to certain discovery of testimony

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

1 Section 1. Subdivision 3 of section 6527 of the education law, as  
2 amended by chapter 257 of the laws of 1987, is amended to read as  
3 follows:

4 3. No individual who serves as a member of (a) a committee established  
5 to administer a utilization review plan of a hospital, including a  
6 hospital as defined in article twenty-eight of the public health law or  
7 a hospital as defined in subdivision ten of section 1.03 of the mental  
8 hygiene law, or (b) a committee having the responsibility of the inves-  
9 tigation of an incident reported pursuant to section 29.29 of the mental  
10 hygiene law or the evaluation and improvement of the quality of care  
11 rendered in a hospital as defined in article twenty-eight of the public  
12 health law or a hospital as defined in subdivision ten of section 1.03  
13 of the mental hygiene law, or (c) any medical review committee or  
14 subcommittee thereof of a local, county or state medical, dental, podia-  
15 try or optometrical society, any such society itself, a professional  
16 standards review organization or an individual when such committee,  
17 subcommittee, society, organization or individual is performing any  
18 medical or quality assurance review function including the investigation  
19 of an incident reported pursuant to section 29.29 of the mental hygiene  
20 law, either described in clauses (a) and (b) of this subdivision,  
21 required by law, or involving any controversy or dispute between (i) a  
22 physician, dentist, podiatrist or optometrist or hospital administrator  
23 and a patient concerning the diagnosis, treatment or care of such  
24 patient or the fees or charges therefor or (ii) a physician, dentist,  
25 podiatrist or optometrist or hospital administrator and a provider of  
26 medical, dental, podiatric or optometrical services concerning any  
27 medical or health charges or fees of such physician, dentist, podiatrist  
28 or optometrist, or (d) a committee appointed pursuant to section twen-  
29 ty-eight hundred five-j of the public health law to participate in the  
30 medical and dental malpractice prevention program, or (e) any individual

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

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1 who participated in the preparation of incident reports required by the  
2 department of health pursuant to section twenty-eight hundred five-l of  
3 the public health law, or (f) a committee established to administer a  
4 utilization review plan, or a committee having the responsibility of  
5 evaluation and improvement of the quality of care rendered, in a health  
6 maintenance organization organized under article forty-four of the  
7 public health law or article forty-three of the insurance law, including  
8 a committee of an individual practice association or medical group  
9 acting pursuant to a contract with such a health maintenance organiza-  
10 tion, shall be liable in damages to any person for any action taken or  
11 recommendations made, by him or her within the scope of his or her func-  
12 tion in such capacity provided that (a) such individual has taken action  
13 or made recommendations within the scope of his or her function and  
14 without malice, and (b) in the reasonable belief after reasonable inves-  
15 tigation that the act or recommendation was warranted, based upon the  
16 facts disclosed.

17 Neither the proceedings nor the records relating to performance of a  
18 medical or a quality assurance review function or participation in a  
19 medical and dental malpractice prevention program nor any report  
20 required by the department of health pursuant to section twenty-eight  
21 hundred five-l of the public health law described herein, including the  
22 investigation of an incident reported pursuant to section 29.29 of the  
23 mental hygiene law, shall be subject to disclosure under article thir-  
24 ty-one of the civil practice law and rules except as hereinafter  
25 provided or as provided by any other provision of law. No person in  
26 attendance at a meeting when a medical or a quality assurance review or  
27 a medical and dental malpractice prevention program or an incident  
28 reporting function described herein was performed, including the inves-  
29 tigation of an incident reported pursuant to section 29.29 of the mental  
30 hygiene law, shall be required to testify as to what transpired thereat.  
31 The prohibition relating to discovery of testimony shall ~~[not]~~ apply to  
32 the statements made by any person in attendance at such a meeting who is  
33 a party to an action or proceeding the subject matter of which was  
34 reviewed at such meeting.

35 § 2. Subdivision 2 of section 2805-m of the public health law, as  
36 amended by chapter 808 of the laws of 1987, is amended to read as  
37 follows:

38 2. Notwithstanding any other provisions of law, none of the records,  
39 documentation or committee actions or records required pursuant to  
40 sections twenty-eight hundred five-j and twenty-eight hundred five-k of  
41 this article, the reports required pursuant to section twenty-eight  
42 hundred five-l of this article nor any incident reporting requirements  
43 imposed upon diagnostic and treatment centers pursuant to the provisions  
44 of this chapter shall be subject to disclosure under article six of the  
45 public officers law or article thirty-one of the civil practice law and  
46 rules, except as hereinafter provided or as provided by any other  
47 provision of law. No person in attendance at a meeting of any such  
48 committee shall be required to testify as to what transpired thereat.  
49 The prohibition relating to discovery of testimony shall ~~[not]~~ apply to  
50 the statements made by any person in attendance at such a meeting who is  
51 a party to an action or proceeding the subject matter of which was  
52 reviewed at such meeting.

53 § 3. This act shall take effect on the one hundred eightieth day after  
54 it shall have become a law and shall apply to all actions and  
55 proceedings commenced on or after such date.