STATE OF NEW YORK

1489

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the disclosure of medical records in third party medical malpractice actions

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

Section 1. The civil practice law and rules is amended by adding a new section 4549 to read as follows:

§ 4549. Disclosure of medical records in third party medical malpractice action. 1. In medical malpractice actions where the plaintiff is not the patient of the defendant and the alleged malpractice is the result of the defendant's treatment or care of a non-party, the defendant may make a motion to the court to compel the non-party patient, notwithstanding any state or federal privacy laws to the contrary, to waive the privilege in order to obtain disclosure of medical records relevant to the litigation or permit the defendant to testify about his or her interactions with the non-party patient. The court shall grant a waiver of the privilege if:

(a) The defendant can show that the non-party patient has failed to waive the privilege after a good faith effort by the defendant was made to obtain the waiver; and

(b) The record or testimony demonstrates that the requested information and/or records may provide a defense to the action.

2. In the interest of confidentiality, the judge may order that the hearing be held in camera. The judge may also limit the scope of any disclosure order to only medical information that is relevant to the pending action.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.

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

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