

STATE OF NEW YORK

163--B

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. GIANARIS, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to establishing a penalty and cause of action for the intentional destruction, mutilation or significant alteration of certain medical records; and requires disclosure of metadata, audit trail, and log-in information associated with electronic medical records in certain actions

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

1 Section 1. Section 3126 of the civil practice law and rules, as
2 amended by chapter 98 of the laws of 1993, is amended to read as
3 follows:
4 § 3126. Penalties for refusal to comply with order or to disclose.
5 (a) If any party, or a person who at the time a deposition is taken or
6 an examination or inspection is made is an officer, director, member,
7 employee or agent of a party or otherwise under a party's control,
8 refuses to obey an order for disclosure or wilfully fails to disclose
9 information which the court finds ought to have been disclosed pursuant
10 to this article, the court may make such orders with regard to the fail-
11 ure or refusal as are just, among them:
12 1. an order that the issues to which the information is relevant shall
13 be deemed resolved for purposes of the action in accordance with the
14 claims of the party obtaining the order; or
15 2. an order prohibiting the disobedient party from supporting or
16 opposing designated claims or defenses, from producing in evidence
17 designated things or items of testimony, or from introducing any

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

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1 evidence of the physical, mental or blood condition sought to be deter-
2 mined, or from using certain witnesses; or

3 3. an order striking out pleadings or parts thereof, or staying
4 further proceedings until the order is obeyed, or dismissing the action
5 or any part thereof, or rendering a judgment by default against the
6 disobedient party.

7 (b) If any party to a medical malpractice action, or a person who is
8 or was an officer, director, member, employee or agent of a party or
9 otherwise under the party's control, intentionally destroys, mutilates
10 or significantly alters any medical record, including any metadata,
11 audit trail or log-in information associated with any electronic
12 records, the party or person shall be subject to a civil penalty of not
13 less than one thousand dollars for each such act, as well as compensato-
14 ry and punitive damages.

15 (c) Any person who has been injured because of the intentional
16 destruction, mutilation or significant alteration of a medical record,
17 including any metadata, audit trail or log-in information associated
18 with any electronic records, shall have a private right of action
19 against the person or entity responsible therefor to recover damages
20 where such destruction, mutilation or significant alteration prevented
21 or significantly impeded the ability of the person so injured to prove
22 his or her claim.

23 (d) The provisions of this section are in addition to, but shall not
24 supersede, any other rights or remedies available in law or equity.

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

27 (j) In addition to any other matter which may be subject to disclo-
28 sure, a healthcare provider must produce any metadata, audit trail, and
29 log-in information associated with any electronic medical records of the
30 person whose care or treatment is the subject of the action.

31 § 3. This act shall take effect immediately and shall apply to any
32 intentional destruction, mutilation or significant alteration of a
33 medical record occurring on or after such date.