

STATE OF NEW YORK

5316

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. McDONALD -- read once and referred 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,

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

LBD02508-01-3

1 podiatrist or optometrist or hospital administrator and a provider of
2 medical, dental, podiatric or optometrical services concerning any
3 medical or health charges or fees of such physician, dentist, podiatrist
4 or optometrist, or (d) a committee appointed pursuant to section twenty-eight hundred five-j of the public health law to participate in the
5 medical and dental malpractice prevention program, or (e) any individual
6 who participated in the preparation of incident reports required by the
7 department of health pursuant to section twenty-eight hundred five-l of
8 the public health law, or (f) a committee established to administer a
9 utilization review plan, or a committee having the responsibility of
10 evaluation and improvement of the quality of care rendered, in a health
11 maintenance organization organized under article forty-four of the
12 public health law or article forty-three of the insurance law, including
13 a committee of an individual practice association or medical group
14 acting pursuant to a contract with such a health maintenance organization, shall be liable in damages to any person for any action taken or
15 recommendations made, by him or her within the scope of his or her function in such capacity provided that (a) such individual has taken action
16 or made recommendations within the scope of his or her function and
17 without malice, and (b) in the reasonable belief after reasonable investigation that the act or recommendation was warranted, based upon the
18 facts disclosed.

19 Neither the proceedings nor the records relating to performance of a
20 medical or a quality assurance review function or participation in a
21 medical and dental malpractice prevention program nor any report
22 required by the department of health pursuant to section twenty-eight
23 hundred five-l of the public health law described herein, including the
24 investigation of an incident reported pursuant to section 29.29 of the
25 mental hygiene law, shall be subject to disclosure under article thirty-one of the civil practice law and rules except as hereinafter
26 provided or as provided by any other provision of law. No person in
27 attendance at a meeting when a medical or a quality assurance review or
28 a medical and dental malpractice prevention program or an incident
29 reporting function described herein was performed, including the investigation 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

1 a party to an action or proceeding the subject matter of which was
2 reviewed at such meeting.
3 § 3. This act shall take effect on the one hundred eightieth day after
4 it shall have become a law and shall apply to all actions and
5 proceedings commenced on or after such date.