

§ 3119. Uniform interstate depositions and discovery. (a) Definitions. For purposes of this section:

(1) "Out-of-state subpoena" means a subpoena issued under authority of a court of record of a state other than this state.

(2) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(3) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(4) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(i) attend and give testimony at a deposition;

(ii) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody or control of the person; or

(iii) permit inspection of premises under the control of the person.

(5) "Legally protected health activity" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

(6) "Gender-affirming care" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

(7) "Reproductive health care" shall have the same meaning as defined by section 570.17 of the criminal procedure law.

(b) Issuance of subpoena. (1) To request issuance of a subpoena under this section, a party must submit an out-of-state subpoena to the county clerk in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute an appearance in the courts of this state except as provided in subparagraph (iii) of paragraph two of this subdivision.

(2) (i) Any request for the issuance of a subpoena under paragraph one of this subdivision and any subpoena issued under paragraph five of this subdivision shall include an affirmation under penalty of perjury that such subpoena either:

(A) is not related to any investigation or proceeding that seeks to impose civil or criminal liability, professional sanctions, or any other

legal consequences upon a person for any legally protected health activity; or

(B) is related to such an investigation or proceeding, but falls within an exception provided in subparagraph (i) of paragraph one of subdivision (g) of this section. Such affirmation shall identify which exception applies to the request.

(ii) The chief administrator of the courts shall promulgate a standardized form for any affirmation submitted pursuant to this paragraph.

(iii) A party that submits a false affirmation pursuant to this section shall be subject to the jurisdiction of the courts of this state for any suit, penalties, or damages arising out of such false affirmation. A court shall assess a statutory penalty of fifteen thousand dollars per violation if the court finds such false affirmation was made intentionally, knowingly, willingly or recklessly. This shall be in addition to any other legal or equitable remedy lawfully available. The attorney general may commence an action or special proceeding for damages and/or penalties against any party that submits a false affirmation pursuant to this subparagraph.

(iv) Any action or special proceeding brought by the attorney general pursuant to this paragraph shall be commenced within six years of either (A) the date on which the inquiry, investigation, subpoena, or summons that such false affirmation accompanied was filed with the county clerk, for subpoenas requested pursuant to paragraph one of this subdivision; or (B) the date on which the subpoena was issued, for subpoenas issued pursuant to paragraph five of this subdivision.

(3) Except as provided by subdivision (g) of this section, when a party submits an out-of-state subpoena to the county clerk, the clerk, in accordance with that court's procedure and subject to the provisions of article twenty-three of this chapter, shall promptly issue a subpoena for service upon the person to which the out-of-state subpoena is directed.

(4) A subpoena under paragraph three of this subdivision must:

(i) incorporate the terms used in the out-of-state subpoena;

(ii) contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel; and

(iii) include the affirmation required by paragraph two of this subdivision.

(5) Notwithstanding paragraph one of this subdivision, and except as provided by subdivision (g) of this section, if a party to an out-of-state proceeding retains an attorney licensed to practice in this state, and that attorney receives the original or a true copy of an out-of-state subpoena, the attorney may issue a subpoena under this section.

(c) Service of subpoena. A subpoena issued under this section must be served in compliance with sections two thousand three hundred two and two thousand three hundred three of this chapter.

(d) Deposition, production and inspection. Sections two thousand three hundred three, two thousand three hundred five, two thousand three hundred six, two thousand three hundred seven, two thousand three hundred eight and this article apply to subpoenas issued under subdivision (b) of this section.

(e) Application to court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued under this section must comply with the rules or statutes of this state and be submitted to the court in the county in which discovery is to be conducted.

(f) Uniformity of application and construction. Except as provided in subdivision (g) of this section, in applying and constructing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(g) Out-of-state proceedings regarding legally protected health activities. Notwithstanding any other provisions of this section or any other law, no court, county clerk, or attorney licensed to practice in this state shall issue a subpoena under this section in connection with an out-of-state proceeding relating to any legally protected health activity, unless:

(1) such out-of-state proceeding (i) sounds in tort or contract, (ii) is actionable, in an equivalent or similar manner, under the laws of this state, and (iii) was brought by the person who received reproductive health care or gender-affirming care, or the person's legal representative, so long as the person gives express consent unless

express consent is not feasible due to their injury or death; and

(2) the subpoena is accompanied by an affirmation compliant with paragraph two of subdivision (b) of this section.