

Memorandum in Support

CPLR Memorandum #3

July 21, 2005

S. 4855-B

By: Senator DeFrancisco

A. 8560-A

By: M. of A. Weinstein

Senate Committee: Rules

Assembly Committee: Judiciary

Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to service of a subpoena duces tecum upon a hospital or a health care professional.

LAW AND SECTIONS REFERRED TO: CPLR §2306

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW & RULES

THE COMMITTEE SUPPORTS THE BILL

This bill would extend the current practice of making properly certified copies of hospital and medical records of a municipal corporation produced pursuant to subpoena duces tecum admissible into evidence without the foundation of a custodian to authenticate such copies, to similarly certified records of a health care practitioner licensed under the education law.

Presently, dispensing with the production of a knowledgeable person in court to attest to the authenticity of hospital records and medical records of a municipal corporation, is an accommodation limited only to those entities. No adverse consequences have been noted, whether employed by plaintiffs or defendants. This bill would extend the accommodation to the records of health care practitioners who are licensed under the Education Law. The practice is a salutary one from the public standpoint and, to a lesser extent, for the convenience of the courts and the attorneys offering such evidentiary material. An omission which case law may fill in is the records of health care practitioners equally qualified in other jurisdictions, where the party was examined or treated outside New York State. Should it prove otherwise, the statute still is a useful extension of a time-proven practice for the convenience of New York health-care practitioners.

Opinions expressed are those of the Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

Those health-care practitioners who are comprehended by this proposed law are licensed under Title 8 of the Education Law, specifically Chiropractors, Dentists, Dental Hygienists, Veterinarians, Veterinary Technicians, Physical Therapists, Pharmacists, Registered Nurses and Licensed Practical Nurses, Professional Midwives, Podiatrists, Optometrists, Opticians, Psychologists, Master Social Workers, Clinical Social Workers, Massage Therapists, Speech Language and Pathological Occupational Therapists, Audiologists, Acupuncturists, Occupational Therapists, Respiratory Therapy Technicians, Clinical Laboratory Technologists and Mental Health Practitioners.

Since the proposed law does not refer to those occupations identified in the Education Law as “Registered”, as distinguished from “Licensed”, presumably other categories such as Physician Assistant, Medical Specialist Assistant, Dietician, Physical Therapist Assistant which are recognized by the term “Registered” are not included. However, for purposes of the litigants, records of providers in these other categories would often be incorporated in hospital records or physician records.

The bill would accomplish its purposes to reduce court delays and cost to litigants regarding authentication of records. Further, the bill appears to be consistent with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). See, Smith v. Rafalin, 6 Misc.3d 1041(A), 2005 WL 697581 (Sup. Ct. N.Y. Co., J Sklar, 3/24/05).

Based on the foregoing, the Committee on Civil Practice Law and Rules **SUPPORTS** this bill.

Person who prepared the report: Maurice Chayt, Esq.
Chair of the Committee: David L. Ferstendig, Esq.