

BILL TEXT:

STATE OF NEW YORK

5498

2005-2006 Regular Sessions

IN ASSEMBLY

February 23, 2005

Introduced by M. of A. GOTTFRIED, PAULIN -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to changing reference from physician, osteopath or dentist to health care practitioner

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

1 Section 1. Rule 2106 of the civil practice law and rules, as amended
2 by judicial conference proposal No. 3 for the year 1973, is amended to
3 read as follows:

4 Rule 2106. Affirmation of truth of statement by attorney[~~, physician,~~
5 ~~osteopath or dentist~~] or health care practitioner. The statement of an
6 attorney admitted to practice in the courts of the state, or of a
7 [~~physician, osteopath or dentist~~] health care practitioner, authorized
8 by title eight of the education law to practice in the state, who is not
9 a party to an action, when subscribed and affirmed by him or her to be
10 true under the penalties of perjury, may be served or filed in the
11 action in lieu of and with the same force and effect as an affidavit.

12 § 2. This act shall take effect immediately.

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

LBD05421-01-5

SPONSORS MEMO:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)

BILL NUMBER: A5498

SPONSOR: Gottfried (MS)

TITLE OF BILL: An act to amend the civil practice law and rules, in relation to changing reference from physician, osteopath or dentist to health care practitioner

SUMMARY OF SPECIFIC PROVISIONS: Amends rule 2106 section 1 of the civil practice law and rules. Would extend to all licensed health care practitioners to the right of affirmation of affidavits.

JUSTIFICATION: CPLR 2106 was intended to ease the burdens of attorneys who, as a prerequisite to the submission of their own sworn written statement in an action, were required under prior law to find a notary public to administer an oath. The drafters of the CPLR determined that the attorney's professional obligations and the possibility of prosecution for making a false statement provided sufficient safeguards to dispense with the need for an appearance by the attorney before a notary public. Thus, the attorney is authorized by CPLR 2106 to simply sign his or her own statement and affirm its truth subject to the penalties of perjury. Such affirmation has the same effect as an affidavit sworn to before a notary public.

Similar considerations of convenience led to an amendment of the statute in 1973 to extend the same right of affirmation to physicians, osteopaths and dentists, whose affidavits are also frequently required in civil litigation. It is appropriate that this right be extended to other practitioners.

PRIOR LEGISLATIVE HISTORY:

1999: A6945 - reported to Rules Committee
2000: A6945 - referred to Codes Committee
2001: A9400 - referred to Codes Committee
2002: A.9400 - passed Assembly
2003-04: A5589 - passed Assembly

FISCAL IMPLICATIONS: None

EFFECTIVE DATE: Immediately
