S T A T E O F N E W Y O R K

1622

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. ZEBROWSKI, ALFANO, ESPAILLAT, JAFFEE, ORTIZ, ARROYO, FIELDS, LANCMAN, J. RIVERA, CLARK, GALEF, MAISEL, EDDINGTON, HEVESI -- Multi-Sponsored by -- M. of A. HOOPER, HYER-SPENCER, V. LOPEZ, McENENY, PHEFFER, ROBINSON, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to creating the crime of reckless infection of a patient with a communicable disease by a health care provider; to amend the public health law, in relation to requiring the notification of patients by the department of health if a health care provider is determined to have exposed patients to a communicable disease through reckless conduct; to amend the education law, in relation to establishing as professional misconduct certain reckless conduct; and to amend the civil practice law and rules, in relation to the time period for commencing certain medical malpractice actions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 240.67 to read as follows:

S 240.67 RECKLESS INFECTION OF A PATIENT WITH A COMMUNICABLE DISEASE BY A HEALTH CARE PROVIDER.

A PERSON IS GUILTY OF RECKLESS INFECTION OF A PATIENT WITH A COMMUNICABLE DISEASE BY A HEALTH CARE PROVIDER WHEN A HEALTH CARE PROVIDER THROUGH RECKLESS CONDUCT, INCLUDING, BUT NOT LIMITED TO, THE REUSE OF A SYRINGE, NEEDLE OR OTHER SHARP, INFECTS A PATIENT WITH A COMMUNICABLE DISEASE. FOR THE PURPOSES OF THIS SECTION, "HEALTH CARE PROVIDER" MEANS ANY PERSON WHO IS, OR IS REQUIRED TO BE, LICENSED OR REGISTERED OR HOLDS HIMSELF OR HERSELF OUT TO BE LICENSED OR REGISTERED, OR PROVIDES SERVICES AS IF HE OR SHE WERE LICENSED OR REGISTERED IN THE PROFESSION OF MEDICINE, CHIROPRACTIC, DENTISTRY OR PODIATRY UNDER ANY OF THE

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

LBD01933-01-9

FOLLOWING: ARTICLE ONE HUNDRED THIRTY-ONE, ONE HUNDRED THIRTY-TWO, ONE HUNDRED THIRTY-THREE, OR ONE HUNDRED FORTY-ONE OF THE EDUCATION LAW.

RECKLESS INFECTION OF A PATIENT WITH A COMMUNICABLE DISEASE BY A HEALTH CARE PROVIDER IS A CLASS E FELONY.

S 2. Subdivision 1 of section 206 of the public health law is amended by adding a new paragraph (t) to read as follows:

(T) NOTIFY THE PATIENT OR PATIENTS OF A HEALTH CARE PROVIDER IF SUCH HEALTH CARE PROVIDER IS DETERMINED TO HAVE EXPOSED SUCH PATIENT OR PATIENTS TO A COMMUNICABLE DISEASE THROUGH RECKLESS CONDUCT, INCLUDING, BUT NOT LIMITED TO, THE REUSE OF A SYRINGE, NEEDLE OR OTHER SHARP.

S 3. Section 6530 of the education law is amended by adding a new subdivision 50 to read as follows:

50. EXPOSING PATIENTS TO A COMMUNICABLE DISEASE DUE TO RECKLESS CONDUCT, INCLUDING, BUT NOT LIMITED TO, THE REUSE OF A SYRINGE, NEEDLE OR OTHER SHARP.

S 4. Section 214-a of the civil practice law and rules, as amended by chapter 485 of the laws of 1986, is amended to read as follows:

S 214-a. Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions. 1. An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure; provided, however, that:

(A) where the action is based upon the discovery of a foreign object in the body of the patient, the action may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; AND

(B) WHERE THE ACTION IS BASED UPON THE INFECTION OF THE PATIENT WITH A COMMUNICABLE DISEASE THROUGH THE RECKLESS CONDUCT OF A HEALTH CARE PROVIDER INCLUDING, BUT NOT LIMITED TO, THE REUSE OF A SYRINGE, NEEDLE OR OTHER SHARP, THE ACTION SHALL BE COMMENCED WITHIN TWO YEARS AND SIX MONTHS OF THE DATE UPON WHICH A PATIENT: (I) IS INFORMED BY THE DEPARTMENT OF HEALTH THAT HE OR SHE MAY HAVE BEEN EXPOSED TO A COMMUNICABLE DISEASE BY THE RECKLESS CONDUCT OF A HEALTH CARE PROVIDER; OR (II) OTHERWISE BECOMES AWARE OF SUCH FACTS AS WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT HE OR SHE HAD BEEN SO EXPOSED.

2. For the purpose of this section the term "continuous treatment" shall not include examinations undertaken at the request of the patient for the sole purpose of ascertaining the state of the patient's condition. For the purpose of this section the term "foreign object" shall not include a chemical compound, fixation device or prosthetic aid or device.

S 5. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.