

9114

2009-2010 Regular Sessions

I N   A S S E M B L Y

September 4, 2009

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

AN ACT to amend the civil practice law and rules and the public health law, in relation to the provision of hospital incident reports to the affected patients or their representatives

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "patient sunlight act".  
3     S 2. Section 214-a of the civil practice law and rules, as amended by  
4     chapter 485 of the laws of 1986, is amended to read as follows:  
5     S 214-a. Action for medical, dental or podiatric malpractice to be  
6     commenced within two years and six months; exceptions. 1. An action for  
7     medical, dental or podiatric malpractice must be commenced within two  
8     years and six months of the act, omission or failure complained of or  
9     last treatment where there is continuous treatment for the same illness,  
10    injury or condition which gave rise to the said act, omission or fail-  
11    ure[; provided, however, that where].  
12    2. (A) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS  
13    SECTION, AN ACTION FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE NEED NOT  
14    BE COMMENCED WITHIN TWO YEARS AND SIX MONTHS OF THE ACT, OMISSION OR  
15    FAILURE COMPLAINED OF OR LAST TREATMENT WHERE THERE IS CONTINUOUS TREAT-  
16    MENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO SAID  
17    ACT, OMISSION OR FAILURE, IF THE DEFENDANT IS A GENERAL HOSPITAL, AS  
18    DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE  
19    PUBLIC HEALTH LAW, AND HAS FAILED TO FILE AN INCIDENT REPORT, AS  
20    REQUIRED BY SECTION TWENTY-EIGHT HUNDRED FIVE-L OF SUCH LAW, IN  
21    CONNECTION WITH THE INCIDENT THAT IS THE SUBJECT OF THE MALPRACTICE  
22    ACTION. IN SUCH CASE, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE  
23    DATE SUCH INCIDENT REPORT IS FILED.

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

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1 (B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,  
2 AN ACTION FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE NEED NOT BE  
3 COMMENCED WITHIN TWO YEARS AND SIX MONTHS OF THE ACT, OMISSION OR FAIL-  
4 URE COMPLAINED OF OR LAST TREATMENT WHERE THERE IS CONTINUOUS TREATMENT  
5 FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO SAID ACT,  
6 OMISSION OR FAILURE, WHERE SUCH ACTION IS AGAINST A GENERAL HOSPITAL, AS  
7 DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE  
8 PUBLIC HEALTH LAW, REGARDLESS OF WHETHER SUCH ACTION IS OTHERWISE BARRED  
9 BY SUBDIVISION ONE OF THIS SECTION AGAINST ANY PERSON LICENSED, CERTI-  
10 FIED OR REGISTERED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW, WHERE  
11 SUCH INDIVIDUAL OR GENERAL HOSPITAL HAS FAILED TO FILE AN INCIDENT  
12 REPORT, AS REQUIRED BY SECTION TWENTY-EIGHT HUNDRED FIVE-L OF SUCH LAW,  
13 IN CONNECTION WITH THE INCIDENT THAT IS THE SUBJECT OF THE MALPRACTICE  
14 ACTION. IN SUCH CASE, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE  
15 DATE SUCH INCIDENT REPORT IS FILED.

16 3. WHERE the action is based upon the discovery of a foreign object  
17 in the body of the patient, the action may be commenced within one year  
18 of the date of such discovery or of the date of discovery of facts which  
19 would reasonably lead to such discovery, whichever is earlier. For the  
20 purpose of this section the term "continuous treatment" shall not  
21 include examinations undertaken at the request of the patient for the  
22 sole purpose of ascertaining the state of the patient's condition. For  
23 the purpose of this section the term "foreign object" shall not include  
24 a chemical compound, fixation device or prosthetic aid or device.

25 S 3. Subdivisions 4 and 5 of section 2805-1 of the public health law,  
26 subdivision 5 as renumbered by chapter 632 of the laws of 2006, are  
27 renumbered subdivisions 5 and 6, and a new subdivision 4 is added to  
28 read as follows:

29 4. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, COPIES OF ANY  
30 REPORTS SUBMITTED TO THE DEPARTMENT PURSUANT TO THIS SECTION SHALL  
31 SIMULTANEOUSLY BE PROVIDED TO:

32 (A) THE PATIENT OR PATIENTS WHO WERE AFFECTED IN SUCH A MANNER AS TO  
33 REQUIRE THE SUBMISSION OF SUCH INCIDENT REPORT;

34 (B) IN THE EVENT SUCH A PATIENT IS DECEASED OR INCAPACITATED, SUCH  
35 REPORT SHALL BE PROVIDED TO THE PATIENT'S LEGAL REPRESENTATIVE OR THE  
36 LEGAL REPRESENTATIVE OF THE PATIENT'S ESTATE; AND

37 (C) THE PERSONS, FAMILY OR OTHER PARTY IDENTIFIED IN THE HOSPITAL'S  
38 RECORDS AS THE PARTY OR PARTIES DESIGNATED BY SUCH PATIENT FOR NOTIFICA-  
39 TION OR CONSULTATION IN THE EVENT OF THE PATIENT'S INCAPACITY OR DEATH.

40 S 4. This act shall take effect immediately.