

5558

2009-2010 Regular Sessions

I N   S E N A T E

May 15, 2009

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Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules and the public health law, in relation to the time to commence certain malpractice actions

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

1     Section 1. Section 241-a of the civil practice law and rules, as  
2     amended by chapter 485 of the laws of 1986, is amended to read as  
3     follows:  
4     S 214-a. Action for medical, dental or podiatric malpractice to be  
5     commenced within two years and six months; exceptions. (A) An action  
6     for medical, dental or podiatric malpractice must be commenced within  
7     two years and six months of the act, omission or failure complained of  
8     or last treatment where there is continuous treatment for the same  
9     illness, injury or condition which gave rise to the said act, omission  
10    or failure[; provided, however, that where].  
11    (B) (1) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, AN ACTION FOR  
12    MEDICAL, DENTAL OR PODIATRIC MALPRACTICE NEED NOT BE COMMENCED WITHIN  
13    TWO YEARS AND SIX MONTHS OF THE ACT, OMISSION OR FAILURE COMPLAINED OF  
14    OR LAST TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME  
15    ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO THE SAID ACT, OMISSION  
16    OR FAILURE, IF THE DEFENDANT IS A HOSPITAL AS DEFINED IN SUBDIVISION TEN  
17    OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW, AND HAS  
18    FAILED TO FILE AN INCIDENT REPORT AS REQUIRED BY SECTION TWENTY-EIGHT  
19    HUNDRED FIVE-L OF SUCH ARTICLE IN CONNECTION WITH THE INCIDENT THAT IS  
20    THE SUBJECT OF THE MALPRACTICE ACTION. IN SUCH CASE, THE ACTION MAY BE  
21    COMMENCED WITHIN ONE YEAR OF THE DATE OF THE REQUIRED FILING.  
22    (2) NOTWITHSTANDING SUBDIVISION (A) OF THIS SECTION, AN ACTION FOR  
23    MEDICAL, DENTAL OR PODIATRIC MALPRACTICE NEED NOT BE COMMENCED WITHIN  
24    TWO YEARS AND SIX MONTHS OF THE ACT, OMISSION OR FAILURE COMPLAINED OF  
25    OR LAST TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME

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

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1 ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO THE SAID ACT, OMISSION  
2 OR FAILURE, WHERE SUCH ACTION IS AGAINST A HOSPITAL AS DEFINED IN SUBDI-  
3 VISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW,  
4 REGARDLESS OF WHETHER SUCH ACTION IS OTHERWISE BARRED BY SUBDIVISION (A)  
5 OF THIS SECTION AGAINST ANY INDIVIDUAL LICENSED UNDER TITLE EIGHT OF THE  
6 EDUCATION LAW, WHERE EITHER SUCH INDIVIDUAL OR SUCH HOSPITAL HAS FAILED  
7 TO FILE AN INCIDENT REPORT AS REQUIRED BY SECTION TWENTY-EIGHT HUNDRED  
8 FIVE-L OF THE PUBLIC HEALTH LAW IN CONNECTION WITH THE INCIDENT THAT IS  
9 THE SUBJECT OF THE MALPRACTICE ACTION. IN SUCH CASE, THE ACTION MAY BE  
10 COMMENCED WITHIN ONE YEAR OF THE DATE OF THE REQUIRED FILING.

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

20 S 2. Subdivisions 4 and 5 of section 2805-1 of the public health law,  
21 subdivision 5 as renumbered by chapter 632 of the laws of 2006, are  
22 renumbered subdivisions 5 and 6 and a new subdivision 4 is added to read  
23 as follows:

24 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, COPIES OF ANY REPORTS  
25 SUBMITTED TO THE DEPARTMENT UNDER THIS SECTION SHALL ALSO SIMULTANEOUSLY  
26 BE SUBMITTED TO:

27 (A) THE PATIENT OR PATIENTS WHO ARE AFFECTED IN SUCH A MANNER AS TO  
28 TRIGGER THE REPORTING REQUIREMENTS AS SET FORTH IN PARAGRAPHS (A)  
29 THROUGH (G) OF SUBDIVISION TWO OF THIS SECTION;

30 (B) IN THE EVENT THE PATIENT IS DECEASED OR INCAPACITATED, SUCH  
31 REPORTS SHALL BE SUBMITTED WITH THE PATIENT'S OR ESTATE'S LEGAL REPRE-  
32 SENTATIVE; AND

33 (C) THE PERSON, FAMILY OR OTHERWISE, WHO HAS BEEN IDENTIFIED IN THE  
34 HOSPITAL'S RECORDS HAS THE PERSON DESIGNATED BY THE PATIENT FOR NOTIFI-  
35 CATION OR CONSULTATION IN THE EVENT OF THE PATIENT'S INCAPACITY OR  
36 DEATH.

37 S 3. The public health law is amended by adding two new sections 2822  
38 and 2823 to read as follows:

39 S 2822. LIABILITY OF HOSPITALS FOR INFECTIONS; PRIVATE RIGHT OF  
40 ACTION. ANY PERSON, WHO IN THE COURSE OF A TREATMENT, PROCEDURE OR  
41 DELIVERY OF HEALTH CARE SERVICE, BY ANY HOSPITAL AS DEFINED IN SUBDIVI-  
42 SION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE, IS  
43 SUBJECTED TO A HOSPITAL ACQUIRED INFECTION AS DEFINED BY PARAGRAPH (A)  
44 OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED NINETEEN OF THIS  
45 ARTICLE, MAY BRING A CAUSE OF ACTION FOR ANY INJURIES SUFFERED AS A  
46 RESULT OF SUCH INFECTION, PURSUANT TO THE STATUTE OF LIMITATIONS SET  
47 FORTH IN SECTION TWO HUNDRED FOURTEEN-A OF THE CIVIL PRACTICE LAW AND  
48 RULES.

49 S 2823. STRICT LIABILITY FOR MEDICATION ERRORS; PRIVATE RIGHT OF  
50 ACTION. EVERY HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWEN-  
51 TY-EIGHT HUNDRED ONE OF THIS ARTICLE, IS STRICTLY LIABLE FOR ANY INJU-  
52 RIES SUFFERED TO ANY PATIENT AS A RESULT OF AN ERROR IN PROVIDING MEDI-  
53 CATION TO SAID PATIENT IN THE COURSE OF A TREATMENT, PROCEDURE OR  
54 DELIVERY OF HEALTH CARE SERVICE.

55 S 4. This act shall take effect immediately.