

4627

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. WEINSTEIN, GOTTFRIED, JOHN, N. RIVERA, GREENE, McENENY, POWELL, HOOPER, KOON, PAULIN, PERALTA, CAHILL -- Multi-Sponsored by -- M. of A. BING, MILLMAN, PHEFFER -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to the limitations of time within which an action for medical, dental or podiatric malpractice accrues; and providing for one year revival of previously dismissed actions

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

1 Section 1. Section 214-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. An action for  
6 medical, dental or podiatric malpractice must be commenced within two  
7 years and six months of the [act, omission or failure complained of or  
8 last treatment where there is continuous treatment for the same illness,  
9 injury or condition which gave rise to the said act, omission or fail-  
10 ure; provided, however, that where the action is based upon the discov-  
11 ery of a foreign object in the body of the patient, the action may be  
12 commenced within one year of the date of such discovery or of the date  
13 of discovery of facts which would reasonably lead to such discovery,  
14 whichever is earlier. For the purpose of this section the term "contin-  
15 uous treatment" shall not include examinations undertaken at the request  
16 of the patient for the sole purpose of ascertaining the state of the  
17 patient's condition. For the purpose of this section the term "foreign  
18 object" shall not include a chemical compound, fixation device or pros-  
19 thetic aid or device] ACCRUAL OF ANY SUCH ACTION. FOR PURPOSES OF THIS  
20 SECTION, THE ACCRUAL OF AN ACTION OCCURS WHEN ONE KNOWS OR REASONABLY  
21 SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT OR OMISSION AND KNOWS OR

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

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1 REASONABLY SHOULD HAVE KNOWN THAT SAID NEGLIGENT ACT HAS CAUSED AN INJU-  
2 RY; OR, WITHIN TWO YEARS AND SIX MONTHS OF THE LAST TREATMENT WHERE  
3 THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS, INJURY OR CONDITION  
4 WHICH GAVE RISE TO THE ACCRUAL OF AN ACTION.

5 S 2. Every action for personal injury or death sounding in medical,  
6 dental or podiatric malpractice, which is barred as of the effective  
7 date of this act or which was dismissed prior to the effective date of  
8 this act solely because the applicable period of limitations has or had  
9 expired, is hereby revived and an action thereon may be commenced  
10 provided such action is commenced within one year from the effective  
11 date of this act; provided however, that this section shall not revive  
12 any action for damages for a wrongful act, neglect or default causing a  
13 decedent's death and could have been brought pursuant to section 5-4.1  
14 of the estates, powers and trusts law, and provided, further, that for  
15 any revived claim or action, including third party claims and claims for  
16 contribution pursuant to article 14 of the civil practice law and rules  
17 for which a notice of claim is or would have been required by law as a  
18 condition precedent to the claim or action, a notice of claim shall not  
19 be required.

20 S 3. This act shall take effect immediately.