

4627--B

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, McENENY, POWELL, HOOPER, PAULIN, CAHILL, PERRY, JAFFEE, STIRPE, D. WEPRIN, CUSICK -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, MILLMAN, PHEFFER -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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1 object" shall not include a chemical compound, fixation device or pros-
2 thetic aid or device] ACCRUAL OF ANY SUCH ACTION. FOR PURPOSES OF THIS
3 SECTION, THE ACCRUAL OF AN ACTION OCCURS AT THE LATER OF EITHER (A) WHEN
4 ONE KNOWS OR REASONABLY SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT
5 OR OMISSION AND KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT SAID NEGLI-
6 GENT ACT HAS CAUSED AN INJURY; OR, (B) WITHIN TWO YEARS AND SIX MONTHS
7 OF THE LAST TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME
8 ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO THE ACCRUAL OF AN
9 ACTION.
10 S 2. This act shall take effect immediately.