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

5242

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

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

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:

Section 1. 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. 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 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. 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] ACCRUAL OF ANY SUCH ACTION. FOR PURPOSES OF THIS SECTION, THE ACCRUAL OF AN ACTION OCCURS AT THE LATER OF EITHER (A) WHEN ONE KNOWS OR REASONABLY SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT OR OMISSION AND KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT SAID NEGLIGENT ACT HAS CAUSED AN INJURY; OR, (B) WITHIN TWO YEARS AND SIX MONTHS OF THE LAST TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO THE ACCRUAL OF AN ACTION.

S 2. This act shall take effect immediately.

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

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