

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

3913--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 28, 2011

Introduced by M. of A. TITUS -- Multi-Sponsored by -- M. of A. BARRON, CASTRO, LANCMAN, ROBINSON -- read once and referred to the Committee on Codes -- 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 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 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. (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 LAW IN CONNECTION WITH THE INCIDENT THAT IS THE
20 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 3, 4, 5, 6 and 7 of section 2805-l of the public
21 health law are renumbered subdivisions 4, 5, 6, 7 and 8 and a new subdivi-
22 sion 3 is added to read as follows:

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

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

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

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

36 S 3. The public health law is amended by adding two new sections 2823
37 and 2824 to read as follows:

38 S 2823. LIABILITY OF HOSPITALS FOR INFECTIONS; PRIVATE RIGHT OF
39 ACTION. ANY PERSON, WHO IN THE COURSE OF A TREATMENT, PROCEDURE OR
40 DELIVERY OF HEALTH CARE SERVICE, BY ANY HOSPITAL AS DEFINED IN SUBDIVI-
41 SION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THIS ARTICLE, IS
42 SUBJECTED TO A HOSPITAL ACQUIRED INFECTION AS DEFINED BY PARAGRAPH (A)
43 OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED NINETEEN OF THIS
44 ARTICLE, MAY BRING A CAUSE OF ACTION FOR ANY INJURIES SUFFERED AS A
45 RESULT OF SUCH INFECTION, PURSUANT TO THE STATUTE OF LIMITATIONS SET
46 FORTH IN SECTION TWO HUNDRED FOURTEEN-A OF THE CIVIL PRACTICE LAW AND
47 RULES.

48 S 2824. STRICT LIABILITY FOR MEDICATION ERRORS; PRIVATE RIGHT OF
49 ACTION. EVERY HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWEN-
50 TY-EIGHT HUNDRED ONE OF THIS ARTICLE, IS STRICTLY LIABLE FOR ANY INJU-
51 RIES SUFFERED TO ANY PATIENT AS A RESULT OF AN ERROR IN PROVIDING MEDI-
52 CATION TO SAID PATIENT IN THE COURSE OF A TREATMENT, PROCEDURE OR
53 DELIVERY OF HEALTH CARE SERVICE.

54 S 4. This act shall take effect immediately.