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

4483

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules and the public health law, in relation to enacting the "medical malfeasance accountability act"

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

Section 1. Short title. This act shall be known and may be cited as the "medical malfeasance accountability act".

S 2. 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. 1. 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].

2. (A) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, AN ACTION FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE NEED NOT 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 SAID ACT, OMISSION OR FAILURE, IF THE DEFENDANT IS A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW, AND HAS FAILED TO FILE AN INCIDENT REPORT, AS REQUIRED BY SECTION TWENTY-EIGHT HUNDRED FIVE-L OF SUCH LAW, IN CONNECTION WITH THE INCIDENT THAT IS THE SUBJECT OF THE MALPRACTICE ACTION. IN SUCH CASE, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE SUCH INCIDENT REPORT IS FILED.

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

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(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, AN ACTION FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE NEED NOT 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 SAID ACT, OMISSION OR FAILURE, WHERE SUCH ACTION IS AGAINST A GENERAL HOSPITAL, AS DEFINED IN SUBDIVISION TEN OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW, REGARDLESS OF WHETHER SUCH ACTION IS OTHERWISE BARRED BY SUBDIVISION ONE OF THIS SECTION AGAINST ANY PERSON LICENSED, CERTIFIED OR REGISTERED PURSUANT TO TITLE EIGHT OF THE EDUCATION LAW, WHERE SUCH INDIVIDUAL OR GENERAL HOSPITAL HAS FAILED TO FILE AN INCIDENT REPORT, AS REQUIRED BY SECTION TWENTY-EIGHT HUNDRED FIVE-L OF SUCH LAW, IN CONNECTION WITH THE INCIDENT THAT IS THE SUBJECT OF THE MALPRACTICE ACTION. IN SUCH CASE, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE SUCH INCIDENT REPORT IS FILED.

3. 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.

S 3. Subdivisions 4 and 5 of section 2805-l of the public health law, subdivision 5 as renumbered by chapter 632 of the laws of 2006, are renumbered subdivisions 5 and 6 and a new subdivision 4 is added to read as follows:

4. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, COPIES OF ANY REPORTS SUBMITTED TO THE DEPARTMENT PURSUANT TO THIS SECTION SHALL SIMULTANEOUSLY BE PROVIDED TO:

(A) THE PATIENT OR PATIENTS WHO WERE AFFECTED IN SUCH A MANNER AS TO REQUIRE THE SUBMISSION OF SUCH INCIDENT REPORT;

(B) IN THE EVENT SUCH A PATIENT IS DECEASED OR INCAPACITATED, SUCH REPORT SHALL BE PROVIDED TO THE PATIENT'S LEGAL REPRESENTATIVE OR THE LEGAL REPRESENTATIVE OF THE PATIENT'S ESTATE; AND

(C) THE PERSONS, FAMILY OR OTHER PARTY IDENTIFIED IN THE HOSPITAL'S RECORDS AS THE PARTY OR PARTIES DESIGNATED BY SUCH PATIENT FOR NOTIFICATION OR CONSULTATION IN THE EVENT OF THE PATIENT'S INCAPACITY OR DEATH.

S 4. This act shall take effect immediately.