

10719--A

I N A S S E M B L Y

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein)
-- read once and referred to the Committee on Judiciary -- 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 accrual
of causes of action for medical, dental and podiatric malpractice

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

1 Section 1. The opening paragraph of subdivision (g) of section 203 of
2 the civil practice law and rules is designated paragraph 1 and a new
3 paragraph 2 is added to read as follows:
4 2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, FOR THE
5 PURPOSES OF SECTIONS FIFTY-E AND FIFTY-I OF THE GENERAL MUNICIPAL LAW,
6 SECTION TEN OF THE COURT OF CLAIMS ACT, AND THE PROVISIONS OF ANY OTHER
7 LAW PERTAINING TO THE COMMENCEMENT OF AN ACTION OR SPECIAL PROCEEDING,
8 OR TO THE FILING OF A NOTICE OF CLAIM AS A CONDITION PRECEDENT TO
9 COMMENCEMENT OF AN ACTION OR SPECIAL PROCEEDING WITHIN A SPECIFIED TIME
10 PERIOD, THE PERIOD IN WHICH TO COMMENCE AN ACTION OR PROCEEDING OR TO
11 FILE SUCH NOTICE OF CLAIM FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE
12 SHALL NOT BEGIN TO RUN UNTIL THE LATER OF EITHER: (A) WHEN ONE KNOWS OR
13 REASONABLY SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT OR OMISSION
14 AND KNOWS OR REASONABLY SHOULD HAVE KNOWN THAT SUCH NEGLIGENT ACT OR
15 OMISSION HAS CAUSED AN INJURY; OR (B) THE DATE OF THE LAST TREATMENT
16 WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS, INJURY OR
17 CONDITION WHICH GAVE RISE TO THE ACCRUAL OF AN ACTION. HOWEVER, SUCH
18 ACTION SHALL COMMENCE NO LATER THAN SEVEN YEARS FROM THE ACT, OMISSION
19 OR FAILURE COMPLAINED OF OR LAST TREATMENT WHERE THERE IS CONTINUOUS
20 TREATMENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO
21 THE ACT, OMISSION OR FAILURE; PROVIDED, HOWEVER, THAT WHERE THE ACTION
22 IS BASED UPON THE DISCOVERY OF A FOREIGN OBJECT IN THE BODY OF A
23 PATIENT, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE OF SUCH
24 DISCOVERY OR OF THE DATE OF DISCOVERY OF FACTS WHICH WOULD REASONABLY
25 LEAD TO SUCH DISCOVERY, WHICHEVER IS EARLIER.

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

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1 S 2. Section 214-a of the civil practice law and rules, as amended by
2 chapter 485 of the laws of 1986, is amended to read as follows:

3 S 214-a. Action for medical, dental or podiatric malpractice to be
4 commenced within two years and six months; exceptions. An action for
5 medical, dental or podiatric malpractice must be commenced within two
6 years and six months of the ACCRUAL OF ANY SUCH ACTION. THE ACCRUAL OF
7 AN ACTION OCCURS AT THE LATER OF EITHER (A) WHEN ONE KNOWS OR REASONABLY
8 SHOULD HAVE KNOWN OF THE ALLEGED NEGLIGENT ACT OR OMISSION AND KNOWS OR
9 REASONABLY SHOULD HAVE KNOWN THAT SUCH NEGLIGENT ACT OR OMISSION HAS
10 CAUSED AN INJURY; OR (B) WITHIN TWO YEARS AND SIX MONTHS OF THE LAST
11 TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS,
12 INJURY OR CONDITION WHICH GAVE RISE TO THE ACCRUAL OF AN ACTION. HOWEV-
13 ER, SUCH ACTION SHALL COMMENCE NO LATER THAN SEVEN YEARS FROM THE act,
14 omission or failure complained of or last treatment where there is
15 continuous treatment for the same illness, injury or condition which
16 gave rise to the said act, omission or failure; provided, however, that
17 where the action is based upon the discovery of a foreign object in the
18 body of the patient, the action may be commenced within one year of the
19 date of such discovery or of the date of discovery of facts which would
20 reasonably lead to such discovery, whichever is earlier. For the purpose
21 of this section the term "continuous treatment" shall not include exam-
22 inations undertaken at the request of the patient for the sole purpose
23 of ascertaining the state of the patient's condition. For the purpose of
24 this section the term "foreign object" shall not include a chemical
25 compound, fixation device or prosthetic aid or device.

26 S 3. With regard to any person, who within two years and six months
27 (or in actions to which section 50-e or 50-i of the general municipal
28 law or section 10 of the court of claims act apply, the period applica-
29 ble under such sections) prior to the effective date of this act, (a)
30 knew or reasonably should have known of a negligent act or omission
31 constituting medical, dental or podiatric malpractice, and knew or
32 reasonably should have known that such negligent act or omission has
33 caused an injury, or (b) within two years and six months (or in actions
34 to which section 50-e or 50-i of the general municipal law or section 10
35 of the court of claims act apply, the period applicable under such
36 sections) of his or her last treatment where there was continuous treat-
37 ment for the same illness, injury or condition giving rise to the
38 accrual of a medical, dental or podiatric malpractice action; notwith-
39 standing any other provision of law to the contrary, such person's
40 action for medical, dental or podiatric malpractice shall be deemed to
41 accrue on the effective date of this act and shall be commenced within
42 two years and six months (or in actions to which section 50-e or 50-i of
43 the general municipal law or section 10 of the court of claims act
44 apply, the period applicable under such sections) of such effective
45 date, provided that if an action would be timely pursuant to subdivision
46 (a) of this section, such action must be commenced within seven years of
47 the act or omission referred to in subdivision (a) of this section.
48 Where a specific provision of law exists in any other provision of law
49 which is inconsistent with the provisions of this act, such provision
50 shall apply unless a provision of this act specifies that such provision
51 of this act shall apply notwithstanding any other provision of law.

52 S 4. This act shall take effect immediately.