

6596

I N S E N A T E

January 29, 2016

Introduced by Sens. DeFRANCISCO, ADDABBO, AMEDORE, AVELLA, BOYLE, BRESLIN, DILAN, ESPAILLAT, FUNKE, GALLIVAN, GIANARIS, HAMILTON, HASSELL-THOMPSON, HOYLMAN, KENNEDY, KRUEGER, LANZA, LARKIN, LATIMER, MONTGOMERY, PANEPINTO, PARKER, PERALTA, PERKINS, RITCHIE, ROBACH, SANDERS, SERRANO, SQUADRON, STAVISKY, YOUNG -- 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 accrual of causes of action for medical, dental and podiatric malpractice

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 TEN YEARS FROM THE ACT, OMISSION OR
19 FAILURE COMPLAINED OF OR LAST TREATMENT WHERE THERE IS CONTINUOUS TREAT-
20 MENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO THE
21 ACT, OMISSION OR FAILURE; PROVIDED, HOWEVER, THAT WHERE THE ACTION IS
22 BASED UPON THE DISCOVERY OF A FOREIGN OBJECT IN THE BODY OF A PATIENT,
23 THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE OF SUCH DISCOV-

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

LBD00100-04-5

1 ERY OR OF THE DATE OF DISCOVERY OF FACTS WHICH WOULD REASONABLY LEAD TO
2 SUCH DISCOVERY, WHICHEVER IS EARLIER.

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

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

28 S 3. This act shall take effect immediately.