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I N S E N A T E

January 29, 2016

Introduced by Sens. DeFRANCISCO, ADDABBO, AKSHAR, AMEDORE, AVELLA, BOYLE, BRESLIN, COMRIE, DILAN, ESPAILLAT, FELDER, FUNKE, GALLIVAN, GIANARIS, HAMILTON, HASSELL-THOMPSON, HOYLMAN, KAMINSKY, KENNEDY, KRUEGER, LANZA, LARKIN, LATIMER, MONTGOMERY, PANEPINTO, PARKER, PERALTA, PERKINS, PERSAUD, RANZENHOFER, RITCHIE, RIVERA, ROBACH, SANDERS, SERRANO, SQUADRON, STAVISKY, YOUNG -- read twice and ordered printed, and when printed to be committed 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 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 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

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

LBD00100-09-6

1 IS BASED UPON THE DISCOVERY OF A FOREIGN OBJECT IN THE BODY OF A
2 PATIENT, THE ACTION MAY BE COMMENCED WITHIN ONE YEAR OF THE DATE OF SUCH
3 DISCOVERY OR OF THE DATE OF DISCOVERY OF FACTS WHICH WOULD REASONABLY
4 LEAD TO SUCH DISCOVERY, WHICHEVER IS EARLIER.

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

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

30 S 3. This act shall take effect immediately; and, with regard to any
31 person, who within two years and six months prior to the effective date
32 of this act, (a) knew or reasonably should have known of a negligent act
33 or omission constituting medical, dental or podiatric malpractice, and
34 knew or reasonably should have known that such negligent act or omission
35 has caused an injury, or (b) within two years and six months of his or
36 her last treatment where there was continuous treatment for the same
37 illness, injury or condition giving rise to the accrual of a medical,
38 dental or podiatric malpractice action; notwithstanding any other
39 provision of law to the contrary, such person's action for medical
40 dental or podiatric malpractice shall be deemed to accrue on the effec-
41 tive date of this act and shall be commenced within two years and six
42 months of such effective date, provided that the action is commenced
43 within seven years of the act or omission referred to in subdivision (a)
44 of this section or the last treatment referred to in subdivision (b) of
45 this section, as the case may be.