

6800

2017-2018 Regular Sessions

I N S E N A T E

June 18, 2017

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 NEGLIGENT FAILURE TO DIAGNOSE CANCER
14 OR A MALIGNANT TUMOR WHETHER BY ACT OR OMISSION AND KNOWS OR REASONABLY
15 SHOULD HAVE KNOWN THAT SUCH NEGLIGENT ACT OR OMISSION HAS CAUSED THE
16 INJURY; OR (B) THE DATE OF THE LAST TREATMENT WHERE THERE IS CONTINUOUS
17 TREATMENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO
18 THE ACCRUAL OF AN ACTION. HOWEVER, SUCH ACTION SHALL COMMENCE NO LATER
19 THAN SEVEN YEARS FROM THE ACT, OMISSION OR FAILURE COMPLAINED OF OR LAST
20 TREATMENT WHERE THERE IS CONTINUOUS TREATMENT FOR THE SAME ILLNESS,
21 INJURY OR CONDITION WHICH GAVE RISE TO THE ACT, OMISSION OR FAILURE;
22 PROVIDED, HOWEVER, THAT WHERE THE ACTION IS BASED UPON THE DISCOVERY OF
23 A FOREIGN OBJECT IN THE BODY OF A PATIENT, THE ACTION MAY BE COMMENCED
24 WITHIN ONE YEAR OF THE DATE OF SUCH DISCOVERY OR OF THE DATE OF DISCOV-

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

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

3 § 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 § 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 FAILURE TO DIAGNOSE A MALIG-
11 NANT TUMOR OR CANCER, WHETHER BY ACT OR OMISSION AND KNOWS OR REASONABLY
12 SHOULD HAVE KNOWN THAT SUCH NEGLIGENT ACT OR OMISSION HAS CAUSED THE
13 INJURY; OR (B) THE DATE OF THE LAST TREATMENT WHERE THERE IS CONTINUOUS
14 TREATMENT FOR THE SAME ILLNESS, INJURY OR CONDITION WHICH GAVE RISE TO
15 THE ACCRUAL OF AN ACTION. HOWEVER, SUCH ACTION SHALL COMMENCE NO LATER
16 THAN SEVEN YEARS FROM THE act, omission or failure complained of or last
17 treatment where there is continuous treatment for the same illness,
18 injury or condition which gave rise to the said act, omission or fail-
19 ure; provided, however, that where the action is based upon the discov-
20 ery of a foreign object in the body of the patient, the action may be
21 commenced within one year of the date of such discovery or of the date
22 of discovery of facts which would reasonably lead to such discovery,
23 whichever is earlier. For the purpose of this section the term "contin-
24 uous treatment" shall not include examinations undertaken at the request
25 of the patient for the sole purpose of ascertaining the state of the
26 patient's condition. For the purpose of this section the term "foreign
27 object" shall not include a chemical compound, fixation device or pros-
28 thetic aid or device.

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

55 § 4. This act shall take effect immediately.