

# STATE OF NEW YORK

6800

2017-2018 Regular Sessions

## IN SENATE

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.