

# STATE OF NEW YORK

3339

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

Introduced by M. of A. WEINSTEIN, GOTTFRIED, PERRY, JAFFEE, BRINDISI, ROSENTHAL, THIELE, PAULIN, HOOPER, SIMANOWITZ, ABINANTI, TITONE, LIFTON, M. G. MILLER, AUBRY, JENNE, DINOWITZ, HYNDMAN, RODRIGUEZ, SEPULVEDA, SANTABARBARA -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, BUCHWALD, CYMBROWITZ, KEARNS, TITUS -- read once and referred to the Committee on Codes

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

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

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1 based upon the discovery of a foreign object in the body of a patient,  
2 the action may be commenced within one year of the date of such discov-  
3 ery or of the date of discovery of facts which would reasonably lead to  
4 such discovery, whichever is earlier.

5 § 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 § 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 ten 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 § 3. This act shall take effect immediately.