

# STATE OF NEW YORK

9633--A

## IN ASSEMBLY

January 26, 2018

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Codes -- 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 certain negligent actions or claims; to amend a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S. 6800 and A. 8516, in relation to the effectiveness thereof; to repeal certain provisions of a chapter of the laws of 2017, amending the civil practice law and rules relating to accrual of causes of action for medical, dental and podiatric malpractice, as proposed in legislative bills numbers S. 6800 and A. 8516, relating to certain negligent acts or omissions; and to repeal certain provisions of the civil practice law and rules relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph 2 of subdivision (g) of section 203 of the civil  
2 practice law and rules, as added by a chapter of the laws of 2017,  
3 amending the civil practice law and rules relating to accrual of causes  
4 of action for medical, dental and podiatric malpractice, as proposed in  
5 legislative bills numbers S.6800 and A.8516, is REPEALED and a new para-  
6 graph 2 is added to read as follows:

7 2. Notwithstanding paragraph one of this subdivision, in an action or  
8 claim for medical, dental or podiatric malpractice, where the action or  
9 claim is based upon the alleged negligent failure to diagnose cancer or  
10 a malignant tumor, whether by act or omission, for the purposes of  
11 sections fifty-e and fifty-i of the general municipal law, section ten  
12 of the court of claims act, and the provisions of any other law pertain-  
13 ing to the commencement of an action or special proceeding, or to the  
14 serving of a notice of claim as a condition precedent to commencement of  
15 an action or special proceeding within a specified time period, the time  
16 in which to commence an action or special proceeding or to serve a  
17 notice of claim shall not begin to run until the later of either (i)

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

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1 when the person knows or reasonably should have known of such alleged  
2 negligent act or omission and knows or reasonably should have known that  
3 such alleged negligent act or omission has caused injury, provided, that  
4 such action shall be commenced no later than seven years from such  
5 alleged negligent act or omission, or (ii) the date of the last treat-  
6 ment where there is continuous treatment for such injury, illness or  
7 condition.

8 § 2. Section 214-a of the civil practice law and rules, as amended by  
9 a chapter of the laws of 2017, amending the civil practice law and rules  
10 relating to accrual of causes of action for medical, dental and podia-  
11 tric malpractice, as proposed in legislative bills numbers S.6800 and  
12 A.8516, is amended to read as follows:

13 § 214-a. Action for medical, dental or podiatric malpractice to be  
14 commenced within two years and six months; exceptions. An action for  
15 medical, dental or podiatric malpractice must be commenced within two  
16 years and six months of the [~~accrual of any such action. The accrual of~~  
17 ~~an action occurs at the later of either (a) when one knows or reasonably~~  
18 ~~should have known of the alleged negligent failure to diagnose a malig-~~  
19 ~~nant tumor or cancer, whether by act or omission and knows or reasonably~~  
20 ~~should have known that such negligent act or omission has caused the~~  
21 ~~injury, or (b) the date of the last treatment where there is continuous~~  
22 ~~treatment for the same illness, injury or condition which gave rise to~~  
23 ~~the accrual of an action. However, such action shall commence no later~~  
24 ~~than seven years from the]~~ act, omission or failure complained of or  
25 last treatment where there is continuous treatment for the same illness,  
26 injury or condition which gave rise to the said act, omission or fail-  
27 ure; provided, however, that: (a) where the action is based upon the  
28 discovery of a foreign object in the body of the patient, the action may  
29 be commenced within one year of the date of such discovery or of the  
30 date of discovery of facts which would reasonably lead to such discov-  
31 ery, whichever is earlier; and (b) where the action is based upon the  
32 alleged negligent failure to diagnose cancer or a malignant tumor,  
33 whether by act or omission, the action may be commenced within two years  
34 and six months of the later of either (i) when the person knows or  
35 reasonably should have known of such alleged negligent act or omission  
36 and knows or reasonably should have known that such alleged negligent  
37 act or omission has caused injury, provided, that such action shall be  
38 commenced no later than seven years from such alleged negligent act or  
39 omission, or (ii) the date of the last treatment where there is contin-  
40 uous treatment for such injury, illness or condition. For the purpose  
41 of this section the term "continuous treatment" shall not include exam-  
42 inations undertaken at the request of the patient for the sole purpose  
43 of ascertaining the state of the patient's condition. For the purpose of  
44 this section the term "foreign object" shall not include a chemical  
45 compound, fixation device or prosthetic aid or device.

46 § 3. Section 3 of a chapter of the laws of 2017, amending the civil  
47 practice law and rules relating to accrual of causes of action for  
48 medical, dental and podiatric malpractice, as proposed in legislative  
49 bills numbers S.6800 and A.8516, is REPEALED.

50 § 4. Notwithstanding sections 50-e and 50-i of the general municipal  
51 law, section 10 of the court of claims act, and the provisions of any  
52 other law pertaining to the commencement of an action or special  
53 proceeding, or to the serving of a notice of claim as a condition prece-  
54 dent to commencement of an action or special proceeding within a speci-  
55 fied time period, with regard to any action or claim arising from  
56 alleged medical malpractice based upon an alleged negligent failure to

1 diagnose cancer or a malignant tumor, whether by act or omission, which,  
2 within ten months prior to the effective date of the act that created  
3 this section, became time-barred under any applicable limitations period  
4 then in effect, such action or claim may be commenced within six months  
5 of the effective date of the act that created this section, and not  
6 beyond. The provisions added by section one and amended by section two  
7 of the act that created this section shall not apply to such actions.

8 § 5. Section 4 of a chapter of the laws of 2017, amending the civil  
9 practice law and rules relating to accrual of causes of action for  
10 medical, dental and podiatric malpractice, as proposed in legislative  
11 bills numbers S.6800 and A.8516, is amended to read as follows:

12 § 4. This act shall take effect immediately and shall apply to acts,  
13 omissions, or failures occurring on or after such effective date.

14 § 6. This act shall take effect immediately; provided, however, that  
15 sections one, two and three of this act shall take effect on the same  
16 date and in the same manner as a chapter of the laws of 2017, amending  
17 the civil practice law and rules relating to accrual of causes of action  
18 for medical, dental and podiatric malpractice, as proposed in legisla-  
19 tive bills numbers S.6800 and A.8516, takes effect provided, further,  
20 that the provisions added by section one of this act shall also apply to  
21 acts, omissions, or failures occurring within 1 year and 90 days prior  
22 to the effective date of this act, and not before, and further provided,  
23 however, that for actions or claims governed by section 10 of the court  
24 of claims act such section one shall also apply to acts, omissions, or  
25 failures occurring within 2 years prior to the effective date of this  
26 act, and not before; provided, further, that the provisions amended by  
27 section two of this act shall also apply to acts, omissions, or failures  
28 occurring within 2 years and 6 months prior to the effective date of  
29 this act, and not before.