STATE OF NEW YORK

1970

2019-2020 Regular Sessions

IN ASSEMBLY

January 18, 2019

Introduced by M. of A. ZEBROWSKI, MOSLEY, RIVERA, OTIS, ABINANTI, RAIA, MONTESANO -- Multi-Sponsored by -- M. of A. ARROYO, BRAUNSTEIN, COOK -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to lengthening the period of time for the filing of medical malpractice cases based upon allegations of reckless use of a syringe, needle or other sharp

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

Section 1. Section 214-a of the civil practice law and rules, as amended by chapter 1 of the laws of 2018, is amended to read as follows:

§ 214-a. Action for medical, dental or podiatric malpractice to be commenced within two years and six months; exceptions. **1.** An action for medical, dental or podiatric malpractice must be commenced within two years and six months of the act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure; provided, however, that: (a) where the action is based upon the discovery of a foreign object in the body of the patient, the action may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such discovery, whichever is earlier; and (b) where the action is based upon the alleged negligent failure to diagnose cancer or a malignant tumor, whether by act or omission, the action may be commenced within two years and six months of the later of either (i) when the person knows or reasonably should have known of such alleged negligent act or omission and knows or reasonably should have known that such alleged negligent act or omission has caused injury, provided, that such action shall be commenced no later than seven years from such alleged negligent act or omission, or (ii) the date of the last treatment where there is continuous treatment for such injury, illness or condition**; and (c) where the**

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

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action is based upon the infection of the patient with a communicable disease through the reckless conduct of a health care provider including, but not limited to, the reuse of a syringe, needle or other sharp, the action shall be commenced within two years and six months of the date upon which a patient: (i) is informed by the department of health that he or she may have been exposed to a communicable disease by the reckless conduct of a health care provider; or (ii) otherwise becomes aware of such facts as would lead a reasonable person to believe that he or she had been so exposed.

2. For the purpose of this section the term "continuous treatment" shall not include examinations undertaken at the request of the patient for the sole purpose of ascertaining the state of the patient's condition. For the purpose of this section the term "foreign object" shall not include a chemical compound, fixation device or prosthetic aid or device.

§ 2. This act shall take effect immediately.