STATE OF NEW YORK

5038

2021-2022 Regular Sessions

IN SENATE

February 22, 2021

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

AN ACT to amend the civil practice law and rules and the public health law, in relation to the time to commence certain malpractice actions

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. **(a)** 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~~].

(b) (1) Notwithstanding subdivision (a) of this section, an action for medical, dental or podiatric malpractice need not 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, if the defendant is a hospital as defined in subdivision ten of section twenty-eight hundred one of the public health law, and has failed to file an incident report as required by section twenty-eight hundred five-l of such law in connection with the incident that is the subject of the malpractice action. In such case, the action may be commenced within one year of the date of the required filing.

(2) Notwithstanding subdivision (a) of this section, an action for medical, dental or podiatric malpractice need not 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

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

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or failure, where such action is against a hospital as defined in subdivision ten of section twenty-eight hundred one of the public health law, regardless of whether such action is otherwise barred by subdivision (a) of this section against any individual licensed under title eight of the education law, where either such individual or such hospital has failed to file an incident report as required by section twenty-eight hundred five-l of the public health law in connection with the incident that is the subject of the malpractice action. In such case, the action may be commenced within one year of the date of the required filing.

(c) 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)~~] (d) 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. 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. Subdivisions 3, 4, 5, 6 and 7 of section 2805-l of the public health law are renumbered subdivisions 4, 5, 6, 7 and 8 and a new subdivision 3 is added to read as follows:

3. Notwithstanding any other provision of law, copies of any reports submitted to the department under this section shall also simultaneously be submitted to:

(a) the patient or patients who are affected in such a manner as to trigger the reporting requirements as set forth in paragraphs (a) through (g) of subdivision two of this section;

(b) in the event the patient is deceased or incapacitated, such reports shall be submitted with the patient's or estate's legal representative; and

(c) the person, family or otherwise, who has been identified in the hospital's records as the person designated by the patient for notification or consultation in the event of the patient's incapacity or death.

§ 3. The public health law is amended by adding two new sections 2828 and 2829 to read as follows:

§ 2828. Liability of hospitals for infections; private right of action. Any person, who in the course of a treatment, procedure or delivery of health care service, by any hospital as defined in subdivision ten of section twenty-eight hundred one of this article, is subjected to a hospital acquired infection as defined by paragraph (a) of subdivision one of section twenty-eight hundred nineteen of this article, may bring a cause of action for any injuries suffered as a result of such infection, pursuant to the statute of limitations set forth in section two hundred fourteen-a of the civil practice law and rules.

§ 2829. Strict liability for medication errors; private right of action. Every hospital, as defined in subdivision ten of section twenty-eight hundred one of this article, is strictly liable for any injuries suffered to any patient as a result of an error in providing medication to said patient in the course of a treatment, procedure or delivery of health care service.

§ 4. This act shall take effect immediately.