

BILL TEXT:

STATE OF NEW YORK

8756

2005-2006 Regular Sessions

IN ASSEMBLY

June 8, 2005

Introduced by COMMITTEE ON RULES -- (at request of M. of A. N. Rivera, Nolan, Lifton) -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to the statute of limitations for actions for medical, dental or podiatric malpractice

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

1 Section 1. Section 214-a of the civil practice law and rules, as
2 amended by chapter 485 of the laws of 1986, is amended to read as
3 follows:
4 § 214-a. Action for medical, dental or podiatric malpractice to be
5 commenced within two years and six months; exceptions. An action for
6 medical, dental or podiatric malpractice must be commenced within two
7 years and six months of the act, omission or failure complained of or
8 last treatment where there is continuous treatment for the same illness,
9 injury or condition which gave rise to the said act, omission or fail-
10 ure; provided, however, that where the action is based upon the discov-
11 ery of a foreign object in the body of the patient, the action may be
12 commenced within one year of the date of such discovery or of the date
13 of discovery of facts which would reasonably lead to such discovery,
14 whichever is earlier. Where the action is based on the discovery of an
15 illness, injury or condition the existence of which should have been
16 detected, but due to the act, omission or failure of a health care prac-
17 titioner such illness, injury or condition was not detected in clinical
18 diagnostic laboratory or radiological tests actually performed, or if
19 the results of such clinical diagnostic laboratory or radiological tests
20 actually performed were not accurately reported or communicated, the
21 action may be commenced within one year of the date of such discovery or
22 of the date of discovery of facts which would reasonably lead to such
23 discovery, whichever is earlier. For the purpose of this section the
24 term "continuous treatment" shall not include examinations undertaken at

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

LBD13107-01-5

A. 8756

2

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

5 § 2. Every cause of action for an injury or death based on the discov-
6 ery of an illness, injury or condition the existence of which should
7 have been detected, but due to the act, omission or failure of a health
8 care practitioner such illness, injury or condition was not detected in
9 clinical diagnostic laboratory or radiological tests actually performed,
10 which is or would be barred prior to the effective date of this act,
11 because the applicable period of limitation has expired is hereby
12 revived and extended, and any action thereon may be commenced and prose-
13 cuted provided such action is commenced not later than one year after
14 the effective date of this act.

15 § 3. This act shall take effect immediately.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A8756

SPONSOR: Rules (Rivera N)

TITLE OF BILL: An act to amend the civil practice law and rules, in
relation to the statute of limitations for actions for medical, dental
or podiatric malpractice

PURPOSE: Extends the statute of limitations for malpractice actions
related to the discovery of a condition which should have been discov-
ered.

SUMMARY OF PROVISIONS: Section 214-a is amended to include language
which stipulates that when a malpractice action is based on the failure
to detect or report an illness, injury or condition, the action may be
commenced within one year of the date of discovery of said illness,
injury or condition.

JUSTIFICATION: Under current law, the statute of limitations for malp-
ractice claims is two and a half years after the occurrence of malprac-
tice. However, in the case of undiagnosed, or undisclosed conditions,
patients may not discover any evidence of malpractice until long after
it originally occurred. This amendment simply provides a patient a
reasonable amount of time, after the discovery of malpractice, to
proceed with legal action.

LEGISLATIVE HISTORY:

None.

FISCAL IMPLICATIONS:

EFFECTIVE DATE:

Immediate.
