

The Survey of New York Practice Table of Contents

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THE SURVEY OF NEW YORK PRACTICE

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INTRODUCTION*

This edition of *The Survey* treats a wide variety of recent cases decided by courts throughout the state. For example, in *Simcuski v. Saeli*, one of eight Court of Appeals decisions examined, it was held that a physician who fraudulently conceals his malpractice from his patient may be estopped from raising the statute of limitations as a defense. Significantly, the Court also determined that a physician's fraudulent misrepresentations as to cure can be the basis of a cause of action in fraud. In the area of criminal procedure, the decision in *People v. Payton* will allow the prosecution to introduce evidence obtained as a result of a warrantless arrest inside the defendant's home. A closely divided Court found that, when based on probable cause, such arrests do not violate the fourth amendment.

Also discussed in this issue of *The Survey* is the continuing controversy surrounding the doctrine of *Seider v. Roth*. Special at-

* The following abbreviations will be used uniformly throughout *The Survey*:

New York Civil Practice Law and Rules (McKinney)	CPLR
New York Civil Practice Act	CPA
New York Criminal Procedure Law (McKinney)	CPL
New York Code of Criminal Procedure	CCP
New York Code of Rules and Regulations	NYCRR
New York Rules of Civil Practice	RCP
New York City Civil Court Act (McKinney)	CCA
Uniform District Court Act (McKinney)	UDCA
Uniform Justice Court Act (McKinney)	UJCA
Uniform City Court Act (McKinney)	UCCA
Real Property Actions and Proceedings Law (McKinney)	RPAPL
Domestic Relations Law (McKinney)	DRL
Estates, Powers and Trusts Laws (McKinney)	EPTL
WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE (1977)	WK&M
<i>The Biannual Survey of New York Practice</i>	<i>The Biannual Survey</i>
<i>The Quarterly Survey of New York Practice</i>	<i>The Quarterly Survey</i>
<i>The Survey of New York Practice</i>	<i>The Survey</i>

Extremely valuable in understanding the CPLR are the five reports of the Advisory Committee on Practice and Procedure. They are contained in the following legislative documents and will be cited as follows:

1957 N.Y. LEG. DOC. NO. 6(b)	FIRST REP.
1958 N.Y. LEG. DOC. NO. 13	SECOND REP.
1959 N.Y. LEG. DOC. NO. 17	THIRD REP.
1960 N.Y. LEG. DOC. NO. 120	FOURTH REP.
1961 FINAL REPORT OF THE ADVISORY COMMITTEE ON PRACTICE AND PROCEDURE	FINAL REP.

Also valuable are the two joint reports of the Senate Finance and Assembly Ways and Means Committee:

1961 N.Y. LEG. DOC. NO. 15	FIFTH REP.
1962 N.Y. LEG. DOC. NO. 8	SIXTH REP.

tention is paid to the various approaches which have been taken by the appellate courts in New York in assessing *Seider's* viability in light of *Shaffer v. Heitner*. These and other cases have been chosen to aid the practitioner in his quest to stay abreast of developments in state practice. It is hoped that *The Survey's* treatment of noteworthy cases will accomplish this basic goal.

ARTICLE 2—LIMITATIONS OF TIME

CPLR 214-a: *Physician who fraudulently concealed his malpractice from patient held estopped from raising statute of limitations as a defense*

Traditionally, a cause of action for medical malpractice has been held to accrue at the time the negligent treatment is given.¹ Although the injury may not be discovered for several years following treatment, New York, with limited exceptions,² has refused to adopt as a general principle that such a cause of action accrues at the time the malpractice is discovered.³ Recently, however, in *Simcuski v. Saeli*,⁴ the Court of Appeals, without disturbing the general accrual rule, held that a physician may be estopped from pleading the statute of limitations if his intentional concealment of malpractice led his patient to delay commencement of a lawsuit.⁵ In addition, the Court held that a plaintiff who has foregone remedial treatment as a result of the doctor's misrepresentations may maintain a separate action for fraud.⁶

The plaintiff in *Simcuski* was injured as a result of surgery performed in October 1970 to remove a node from her neck.⁷ According to the allegations contained in the complaint, the surgeon attempted to conceal his negligence by directing the plaintiff to a

¹ See *Davis v. City of New York*, 38 N.Y.2d 257, 342 N.E.2d 516, 379 N.Y.S.2d 721 (1975) (per curiam); *Flanagan v. Mount Eden Gen. Hosp.*, 24 N.Y.2d 427, 248 N.E.2d 871, 301 N.Y.S.2d 23 (1969); *Dobbins v. Clifford*, 39 App. Div. 2d 1, 330 N.Y.S.2d 743 (4th Dep't 1972).

² See notes 25-26 *infra*.

³ See, e.g., *Davis v. City of New York*, 38 N.Y.2d 257, 342 N.E.2d 516, 379 N.Y.S.2d 721 (1975) (per curiam); *Schiffman v. Hospital for Joint Diseases*, 36 App. Div. 2d 31, 319 N.Y.S.2d 674 (2d Dep't 1971); *Budoff v. Kessler*, 284 App. Div. 1049, 135 N.Y.S.2d 717 (2d Dep't 1954) (per curiam).

⁴ 44 N.Y.2d 442, 377 N.E.2d 713, 406 N.Y.S.2d 259 (1978), *rev'g* 57 App. Div. 2d 711, 395 N.Y.S.2d 776 (4th Dep't 1977).

⁵ 44 N.Y.2d at 446, 377 N.E.2d at 715, 406 N.Y.S.2d at 261.

⁶ *Id.* at 451-52, 377 N.E.2d at 718, 406 N.Y.S.2d at 264.

⁷ *Id.* at 447, 377 N.E.2d at 715, 406 N.Y.S.2d at 261. In the course of the operation, nerves in the plaintiff's neck and branches of her cervical plexus were injured, allegedly as a result of the defendant's negligence.