

By Mr LoPresti, a petition (accompanied by bill, Senate, No. 1006) of Michael LoPresti, Jr., and J. Michael Roberts for legislation to improve and expedite the screening of medical malpractice claims by establishing a summary judgment procedure. The Judiciary.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

### AN ACT TO IMPROVE AND EXPEDITE THE SCREENING OF MEDICAL MALPRACTICE CLAIMS BY ESTABLISHING A SUMMARY JUDGMENT PROCEDURE.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Section 60B of Chapter 231 is repealed and the following  
2 substituted therefor: —

3 §60B. Tribunal for Screening of Medical Malpractice Claims;  
4 Evidence Considered; Subpoena Power; Witnesses; Bond Re-  
5 quirements; Provider of Health Care Defined.

6 1. Every action for malpractice, error or mistake against a  
7 provider of health care shall be heard by a justice of the supe-  
8 rior court, at which hearing the plaintiff shall present a writ-  
9 ten offer of proof in the form of affidavits filed within 60 days  
10 after defendant's answer has been filed. The justice shall de-  
11 termine if the evidence presented if properly substantiated is  
12 sufficient to raise a legitimate question of liability appropri-  
13 ate for judicial inquiry or whether the plaintiff's case is  
14 merely an unfortunate medical result.

15 2. For the purposes of this section, a provider of health  
16 care shall mean a person, corporation, facility or institution  
17 licensed by the commonwealth to provide health care or pro-  
18 fessional services as a physician, hospital, clinic or nursing  
19 home, dentist, registered or licensed nurse, optometrist, podi-  
20 atrist, chiropractor, physical therapist or psychologist, or an  
21 officer, employee or agent thereof acting in the course and  
22 scope of his employment.

23 3. Each such action for malpractice shall be heard by said  
24 justice within ninety days after the defendant's answer has

25 been filed. Substantial evidence shall mean such evidence as  
26 a reasonable person might accept as adequate to support a  
27 conclusion. Admissible evidence shall include, but not be lim-  
28 ited to, hospital and medical records, nurses' notes, x-rays and  
29 other records kept in the usual course of the practice of the  
30 health care provider without the necessity for other identifi-  
31 cation or authentication, statements of fact or opinion on a  
32 subject contained in a published treatise, periodical, book or  
33 pamphlet or statement by experts without the necessity of  
34 such experts appearing at said hearing.

35 4. The justice shall make a ruling or finding as to whether  
36 the evidence presented if properly substantiated and viewed  
37 in the light most favorable to the plaintiff would be sufficient  
38 to raise a legitimate question of liability appropriate for judi-  
39 cial inquiry or whether the plaintiff's case is merely an un-  
40 fortunate medical result. In the event the ruling or finding is  
41 one of an unfortunate medical result, the action shall be dis-  
42 missed with prejudice.

43 5. For good cause shown, on motion and affidavit, the jus-  
44 tice may grant a reasonable delay in the hearing date and the  
45 time within which affidavits and other supporting documents  
46 may be filed.

47 6. Unless otherwise ordered by the court, all discovery shall  
48 be stayed until these proceedings have been concluded.

49 7. A special master or clerk-magistrate or assistant clerk-  
50 magistrate may exercise the authority of the justice herein  
51 and shall recommend to the justice the ruling or finding to be  
52 made by such justice. Such ruling or finding shall not be ad-  
53 missible at a trial. Such delegation or authority may be made  
54 by the administrative justice of the superior court or by any  
55 justice with his approval. The ruling or judgment, if any,  
56 shall be entered by order of a justice and not otherwise, and  
57 only after notice and hearing.