

By Mr. Rauschenbach, a petition (accompanied by bill, Senate, No. 852) of Henri S. Rauschenbach for legislation relative to standards for malpractice actions. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO STANDARDS FOR MALPRACTICE ACTIONS.

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 1. Chapter 231 of the General Laws as appearing
2 in the 1990 Official Edition is hereby amended by inserting therein
3 the following new section: —

4 Section 60K. In an action in contract or tort for the recovery
5 of damages based upon an injury to or death of a person in which
6 it is alleged that such injury or death resulted from an act or
7 omission in the furnishing or failure to furnish professional
8 services by a physician holding himself out as a specialist, no
9 person shall be competent to give testimony on the standard of
10 care applicable or any deviation therefrom unless such person
11 (1) is a diplomate of the appropriate specialty board recognized
12 by the American Medical Association or, in the case of osteo-
13 pathic specialties, the American Osteopathic Association or
14 (2) has devoted at least three-quarter of his professional time to
15 active clinical practice of the appropriate speciality in the United
16 States for the three years immediately preceding the commence-
17 ment of the action or (3) has devoted a substantial portion of his
18 professional time both to active clinical practice of the appropriate
19 speciality and to instruction at a medical school accredited by the
20 liaison committee on medical education.

21 Nothing in this section shall be deemed to limit the discretion
22 of the trial judge to find a person incompetent to testify as an
23 expert on any other ground.

1 SECTION 2. Chapter 231, Section 60G of the Massachusetts
2 General Laws as appearing in the 1990 Official Edition is hereby
3 amended by the insertion of the words “, or which will be
4 incurred,” after the word “judgement” in line 11, and by the
5 inserting of the words “or is anticipated to be” after the word “was”
6 in line 12.

1 SECTION 3. Chapter 231, Section 60F of the Massachusetts
2 General Laws as appearing in the 1990 Official Edition is hereby
3 amended by inserting after the word “compensation” in line 66
4 “and shall itemize the amounts both before and after reduction
5 to present value.”

6 Said Section 60F is further amended by the addition after line 66
7 of the following paragraphs: —

8 Where the findings of fact or special verdict set forth total future
9 damages in excess of \$100,000 prior to reduction to present value,
10 and upon request of any party and demonstration that the liable
11 defendant or defendants can assume full payment of all damages
12 plus interest and costs, the court shall order the entry of judgement
13 providing for periodic payment of future damages without
14 reduction to present value.

15 Such order for entry of judgement shall specify the plaintiff who
16 is to receive the payments, the dollar amounts of the payments,
17 the intervals between payments, and the number of payments or
18 period of time over which payments shall be made for future non-
19 economic damages, impairment of earning capacity, and medical
20 and hospital expenses. Such judgements shall be subject to
21 modification only to the extent specified in this section.

22 In the event of the death of a plaintiff receiving periodic
23 payments prior to full satisfaction of the judgement, and upon
24 motion of any real party in interest, the court shall modify the
25 judgement by deducting from the remaining balance thereof the
26 amount representing unpaid damages for future non-economic
27 losses and for future medical and hospital expenses, and the estate
28 of the deceased plaintiff shall have no claim for such amounts.

29 Such order for entry of judgement shall also provide that pre-
30 judgement interest is to be calculated on the past damages plus
31 future damages as reduced to present value by the finder of fact.

1 SECTION 4. Chapter 231, Section 60H of the Massachusetts
2 General Laws as appearing in the 1990 Official Edition is amended
3 by the deletion of the entire current section and the insertion of
4 the following: —

5 Section 60H. In any action for malpractice, negligence, error,
6 omission, mistake or the unauthorized rendering of professional
7 services against a provider of health care, the court shall instruct
8 the jury that in the event they find the defendant liable, they shall
9 not award the plaintiff more than two hundred fifty thousand
10 dollars as compensation for non-economic damages. In any such
11 action which is tried without a jury, the court shall not award the
12 plaintiff more than two hundred fifty thousand dollars as
13 compensation for non-economic damages. If two or more
14 plaintiffs have received verdicts or findings of such damages in
15 a total amount, for all plaintiffs claiming damage from a single
16 occurrence, transaction, act of malpractice, or injury which
17 exceeds two hundred fifty thousand dollars, the amount of such
18 damages recoverable by each plaintiff will be reduced to a
19 percentage of two hundred fifty thousand dollars proportionate
20 to that plaintiff's share of the total amount of such damages for
21 all plaintiffs. Such limit shall apply regardless of the number of
22 persons liable jointly or severally for the said damages.

23 For purposes of this section, "non-economic damages" include
24 compensation for pain and suffering, embarrassment, loss of
25 companionship and other items of general damages, whether past
26 or future.

1 SECTION 5. If any provision of this act or the application of
2 such provision to any person or circumstance shall be invalid, the
3 validity of the remainder of this act and the applicability of such
4 provision to other persons or circumstances shall not be affected
5 thereby.

1 SECTION 6. The provisions of this act shall apply to all
2 actions for which the cause of action has accrued on or after the
3 effective date of this act.

