

By Ms. Clapprod of Sharon, petition of Marjorie A. Clapprod relative to the periodic payment of damages in certain actions involving health care providers under the medical malpractice law. Insurance.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO PERIODIC PAYMENT OF DAMAGES IN CERTAIN ACTIONS INVOLVING HEALTH CARE PROVIDERS.

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 232 of the General Laws, is hereby
2 amended by inserting herein the following new section:

3 Section In an action in contract or tort for the recovery of
4 damages based upon injury to or death of a person in which it is
5 alleged that such injury or death resulted from an act or omission of
6 a health care provider, as defined in section sixty B of chapter two
7 hundred thirty-one, in furnishing or failing to furnish professional
8 services or health care, the court in a nonjury trial shall make
9 findings of fact or the jury in a jury trial shall return a special verdict
10 which shall identify:

11 (1) Any amounts intended to compensate each plaintiff for non-
12 economic damages;

13 (2) Any amounts intended to compensate a plaintiff for impair-
14 ment of earning capacity; and

15 (3) Any amounts intended to compensate a plaintiff for medical
16 and hospital expenses.

17 Such findings of fact or special verdict shall further contain as an
18 itemized sum for each of the above categories of damages the
19 amount intended to compensate for past and future losses. Where
20 future damages are awarded, the itemization shall include the
21 amounts both before and after reduction to present value and the
22 finder of fact also shall set forth the period of time over which such
23 amounts are intended to provide compensation.

24 When the findings of fact or special verdict set forth total future

25 damages in excess of \$100,000.00 prior to reduction to present
26 value, and upon request of any party and demonstration that the
27 liable defendant or defendants can assure full payment of all dam-
28 ages plus interest and costs, the court shall order the entry of
29 judgement providing for periodic payment of future damages with-
30 out reduction to present value.

31 Such order for entry of judgment shall specify the plaintiff who
32 is to receive the payments, the dollar amounts of the payments, the
33 intervals between payments, and the number of payments or period
34 of time over which payments shall be made for future non-
35 economic damages, impairment of earning capacity; and medical
36 and hospital expenses. Such judgment shall be subject to modifica-
37 tion only to the extent specified in this section.

38 In the event of the death of a plaintiff receiving periodic pay-
39 ments prior to full satisfaction of the judgment, and upon motion of
40 any real party in interest, the court shall modify the judgment by
41 deducting from the remaining balance thereof the amount repre-
42 senting unpaid damages for future non-economic losses and for
43 future medical and hospital expenses, and the estate of the deceased
44 plaintiff shall have no claim for such amounts.

45 Such order for entry of judgment shall also provide that pre-
46 judgment interests is to be calculated on the past damages plus
47 future damages as reduced to present value by the finder of fact.

1 SECTION 2. If any provision of this act or the application of
2 such provision to any person or circumstance shall be held invalid,
3 the 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 3. The provisions hereof shall apply to all actions
2 commenced on or after the effective date of this act.