

By Mr. Dempsey of Haverhill, petition of Brian S. Dempsey relative to the standards for medical malpractice actions. The Judiciary.

**The Commonwealth of Massachusetts**

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

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 in  
2 the 1992 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 of  
5 damages based upon an injury to or death of a person in which it  
6 is alleged that such injury or death resulted from an act or omis-  
7 sion in the furnishing or failure to furnish professional services by  
8 a physician holding himself out as a specialist, no person shall be  
9 competent to give testimony on the standard of care applicable or  
10 any deviation therefrom unless such person (1) is a diplomate of  
11 the appropriate specialty board recognized by the American  
12 Medical Association or, in the case of osteopathic specialties, the  
13 American Osteopathic Association or (2) has devoted at least  
14 three-quarters of his professional time to active clinical practice of  
15 the appropriate specialty in the United States for the three years  
16 immediately preceding the commencement of the action or (3) has  
17 devoted a substantial portion of his professional time both to  
18 active clinical practice of the appropriate specialty and to instruc-  
19 tion at a medical school accredited by the liaison committee on  
20 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 1992 Official Edition is hereby  
3 amended by the insertion of the words “, or which will be  
4 incurred,” after the word “judgment” in line 11, and by the inser-  
5 tion of the words “or is anticipated to be” after the word “was” in  
6 line 12.

1 SECTION 3. Chapter 231, Section 60F of the Massachusetts  
2 General Laws as appearing in the 1992 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 to  
5 present value.”

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

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

15 Such order for entry of judgment 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 judgments shall be subject to modifi-  
21 cation only to the extent specified in this section.

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

29 Such order for entry of judgment shall also provide that pre-  
30 judgment 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 1992 Official Edition is  
3 amended by the deletion of the entire current section and the  
4 insertion of 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 dol-  
10 lars 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 compen-  
13 sation for non-economic damages. If two or more plaintiffs have  
14 received verdicts or findings of such damages in a total amount,  
15 of all plaintiffs claiming damage from a single occurrence, trans-  
16 action, act of malpractice, or injury which exceeds two hundred  
17 fifty thousand dollars, the amount of such damages recoverable by  
18 each plaintiff will be reduced to a percentage of two hundred fifty  
19 thousand dollars proportionate to that plaintiff's share of the total  
20 amount of damages for all plaintiffs. Such limit shall apply  
21 regardless of the number of persons liable jointly or severally for  
22 the said damages.

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

1 SECTION 5. If any provision of this act or the application of  
2 such provision to any person or circumstances 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.

