

SENATE No. 1081

By Mr. LoPresti, a petition (accompanied by bill, Senate, No. 1081) of Michael LoPresti, Jr., 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-four.

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1 Section 60B of Chapter 231 is repealed and the following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 appropriate
13 for judicial inquiry or whether the plaintiff's case is merely an
14 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 justices 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 of 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, shall
56 be entered by order of a justice and not otherwise, and only
57 after notice and hearing.