

By Mr. Guernsey of Williamstown, petition of Sherwood Guernsey and other members of the General Court relative to certain medical malpractice causes of action. Insurance.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO CERTAIN MEDICAL MALPRACTICE CAUSES OF ACTION.

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 112 of the General Laws is hereby
2 amended by inserting after section 2 the following section:

3 Section 2½. The board shall require all physicians applying for
4 renewal of their certificates of registration to disclose all com-
5 plaints relating to the practice of medicine filed against them, in
6 any federal, state, or local tribunal, or professional association or
7 health facility or hospital where said physician has practicing
8 privileges.

9 The board may require a written explanation of any complaint
10 of which it has received notice. If the board determines that such
11 complaint warrants further investigation it may convene a hearing
12 to determine whether any further action should be taken by the
13 board. Such action shall include the levying of civil fines, or
14 limiting, revoking or suspending the physician's license to practice,
15 or levying a surcharge on the physician's license fee pursuant to
16 standards to be developed by the board.

17 Where a judgement for malpractice has been rendered against a
18 physician the clerk of the court shall report such judgement to the
19 board within sixty days which report shall become part of the
20 physician's permanent file.

21 The board shall compile annually a report specifying the
22 number of malpractice judgements which have been filed with the
23 board by category of specialty practice, location of injury, and
24 hospital or health facility, and any action taken by the board.

1 SECTION 2. Section 2 of chapter 229 of the General Laws, as
2 appearing in the 1984 Official Edition, is hereby amended by
3 inserting after the first sentence the following sentence: — In any
4 action for malpractice, error or mistake against a provider of
5 health care where damages are sought because the malpractice,
6 error or mistake caused the death of a person the damages shall be
7 limited to those listed above to the extent that they are not reim-
8 bursed by a collateral source; provided, however, that in no case
9 shall such damages be awarded for conscious suffering of the
10 decedent, nor shall shall damages exceed in total the amount of
11 two hundred thousand dollars.

1 SECTION 3. Chapter 231 of the General Laws is hereby
2 amended by inserting after section 60 E the following four sec-
3 tions: —

4 Section 60F. In any action for malpractice, error or mistake
5 against a provider of health care no attorney or attorneys for a
6 plaintiff shall receive a contingent fee in excess of the following
7 amounts:

8 33 1/3% of the first two hundred fifty thousand dollars of the
9 sum recovered 25% of the next two hundred fifty thousand dollars
10 of the sum recovered 20% of the next five hundred thousand
11 dollars of the sum recovered 15% of any amount in excess of one
12 million dollars of the sum recovered.

13 Such percentage shall be computed on the net sum recovered on
14 such claim or in such action after deducting from the total amount
15 recovered any expenses and disbursement for expert testimony
16 and investigative or other services properly chargeable to the
17 enforcement of the claim or prosecution of the action. In comput-
18 ing the fee, interest upon a judgment shall be deemed part of the
19 amount recovered.

20 In the event that the claimant's or plaintiff's attorney believes in
21 good faith that the fee schedule set forth above will not give him

22 adequate compensation because of extraordinary circumstances,
23 application for greater compensation may be made upon affidavit
24 with written notice and an opportunity to be heard to the claimant
25 or plaintiff. Such application shall be made to a court of compe-
26 tent jurisdiction. If the court finds that extraordinary circumstan-
27 ces render the compensation fixed by the above schedule to be
28 inadequate for the legal services which have been rendered, the
29 court may fix as reasonable compensation a greater amount; in no
30 event, however, shall the court allow a contingent fee in excess of
31 that fixed by the written contingent fee agreement between the
32 parties. "Extraordinary circumstances" may include the nature of
33 the claim or case and the issues presented, the time and labor which
34 were required, the applicant's customary hourly rate, and the
35 experience, reputation and ability of the applicant. The court,
36 after hearing, shall make a written order and, if the application is
37 granted, shall include a statement of the reasons for granting the
38 greater compensation.

39 Every contingent fee agreement subject to this section shall
40 disclose, in a conspicuous manner, the schedule and means of
41 computing the net sum recovered which are set forth above,
42 together with a statement that the attorney or attorneys may not
43 receive compensation in excess thereof except upon order of court.

44 A contingent fee based upon future damages recoverable by the
45 plaintiff in periodic installments shall be paid at the proportionate
46 rate of recovery and at the same time as that received by the
47 plaintiff.

48 Section 60 G. In any action in contract or tort for the recovery
49 of damages based upon injury to or death of a person in which it is
50 alleged that such injury or death resulted from an act or omission
51 of a health care provider, in furnishing or failing to furnish profes-
52 sional services or health care, any recovery for impairment of
53 earning capacity and medical and hospital expenses shall be
54 limited (1) to those elements of loss recognized by law to the extent
55 that the plaintiff has not been or probably will not be compensated
56 by a collateral source for the same and (2) to the cost to the plaintiff
57 or members of his immediate family of maintaining the right to
58 such collateral source benefits while they have been or probably
59 will be provided.

60 For purposes of this section, "collateral source" means any
61 person or entity providing payments to the plaintiff or on his
62 behalf pursuant to:

63 (a) The United States Social Security Act or any federal, state
64 or local income disability act, or any other public programs pro-
65 viding medical expenses, disability payments, or similar benefits
66 but only to the extent that such federal, state or local program is
67 not required or permitted by law to seek reimbursement from the
68 plaintiff for the same;

69 (b) Any health, sickness or income disability insurance or sim-
70 ilar insurance, whether purchased by plaintiff or provided by
71 others, but only to the extent that payment of benefits does not
72 create a lien under section seventy A of chapter one hundred eleven
73 of the General Laws;

74 (c) Any contract or agreement of any group, organization,
75 partnership, or corporation to provide, pay for or reimburse the
76 costs of hospital, medical, dental or other health care services, but
77 only to the extent that payment of the provision of the same does
78 not create a lien under said section seventy A of chapter one
79 hundred eleven; and

80 (d) Any contractual or voluntary wage continuation plan pro-
81 vided by an employer which is intended to provided wages or
82 income during a period of disability.

83 Payment of death benefits by an insurer or a public program
84 shall not be deemed compensation by a collateral source for pur-
85 poses of this section and there shall be no recovery under this
86 section for the cost of procuring or maintaining a contract of
87 insurance paying the same.

88 Section 60H. In any action in contract or tort for the recovery
89 of damages based upon injury to or death of a person in which it is
90 alleged that such injury or death resulted from an act or omission
91 of a health care provider, in furnishing or failing to furnish profes-
92 sional services or health care, the total amount recoverable by all
93 persons from any and all health care providers for non-economic
94 damages with respect to such injury or death shall not exceed
95 \$750,000, exclusive of interest and costs.

96 Nothing in this section shall be deemed to limit recovery for
97 economic damages recognized by law.

98 For purposes of this section, "non-economic damages" includes
99 compensation for pain and suffering, loss of consortium and loss
100 of parental society, whether past or future.

101 Either plaintiff or defendant, in a malpractice action in which an
102 award has been made for damages due to pain and suffering
103 exceeding \$200,000, may elect to pay such award by means of a
104 deferred payment plan. Whereby the first \$100,000. shall be paid
105 when judgment is entered and the remainder shall be paid at the rate
106 of ten per cent per year of the principal amount with interest
107 accruing, and to be paid, at a rate of five per cent per year on the
108 unpaid principal amount. Where the party who has been awarded
109 such judgment has a life expectancy of less than ten years, such
110 deferred payment plan shall be paid in equal installments over the
111 period of the life expectancy with interest accruing at the rate of
112 five per cent.

113 Section 601. In any action for malpractice, error or mistake
114 against a provider of health care where damages for injury to the
115 person are assessed by the trier of fact the verdict shall be itemized
116 so as to reflect the monetary distribution among economic loss and
117 non-economic loss, if any, and further itemized to reflect the
118 distribution of economic loss by category to include: (a) amounts
119 intended to compensate for reasonable expenses which have been
120 incurred, or which will be incurred, for necessary medical, surgical
121 x-ray, dental, or other health or rehabilitative services, drugs and
122 therapy; (b) amounts intended to compensate for lost wages or loss
123 of earning capacity and (c) all other economic losses claimed by the
124 plaintiff or granted to him. Each category of economic loss shall be
125 further itemized into amounts intended to compensate for losses
126 which have been incurred prior to the verdict and amounts
127 intended to compensate for losses which will be incurred in the
128 future.

1 SECTION 4. Notwithstanding the provisions of any general or
2 special law to the contrary, the commissioner of insurance, shall
3 fix and establish provisional premium charges for medical mal-
4 practice insurance coverage at the same rate as charged for policies
5 in effect on or before January first, nineteen hundred and eighty-
6 five. Said rates shall be in effect until June first, nineteen hundred

7 and eighty-six. When the Commissioner shall fix and establish
8 new rates on or after June first, nineteen hundred and eighty-six,
9 the Commissioner shall do so on a region by region basis within
10 the Commonwealth, the boundaries of which regions shall be
11 determined in the sole discretion of the Commissioner.

1 SECTION 5. The second paragraph of section 12 of chapter
2 362 of the acts of 1975 is hereby amended by inserting after the
3 word "malpractice" in line 33, the words: — ; and whether the
4 institution of no fault medical malpractice insurance coverage is
5 warranted.

1 SECTION 6. The fourth paragraph of said section 12 of said
2 chapter 362 is hereby amended by adding the following sentence:
3 — Said commission shall file an interim report on or before May
4 first, nineteen hundred and eighty-six.

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The following is a list of the names of the persons who were present at the meeting of the Board of Directors of the [Company Name] held on the [Date] at [Location].

THE MEMBERS OF THE BOARD OF DIRECTORS

Mr. [Name] President
Mr. [Name] Vice President
Mr. [Name] Secretary
Mr. [Name] Treasurer
Mr. [Name] Director
Mr. [Name] Director
Mr. [Name] Director
Mr. [Name] Director
Mr. [Name] Director

It is hereby certified that the above is a true and correct list of the members of the Board of Directors of the [Company Name] as of the [Date].

