

HOUSE No. 1519

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to causation in professional liability.

PETITION OF:

NAME:

Elizabeth A. Malia

DISTRICT/ADDRESS:

11th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CAUSATION IN PROFESSIONAL LIABILITY.

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. Section 60K of Chapter 231 of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by inserting after the end thereof the following new section:

3 Section 60L:

4 In any action for malpractice, negligence, error, omission, mistake or unauthorized rendering of
5 professional services, against a provider of health care, the plaintiff shall have the burden of proving the
6 following:

7 (1) The recognized standard of acceptable professional practice in the profession and the specialty
8 thereof, if any, that the defendant practices in the community in which he practices or in a similar
9 community at the time the alleged injury or wrongful action occurred;

10 (2) That the defendant acted with less than or failed to act with ordinary and reasonable care in
11 accordance with such standard; and

12 (3) As a direct and proximate result of the defendant's negligent act or omission, the plaintiff suffered
13 injuries which would not otherwise have occurred.

14 (4) The plaintiff was a patient of the defendant and had a professional relationship to the defendant
15 which created a duty of care on the defendant's part or where the plaintiff is a reasonably identifiable
16 victim of the patient of a defendant psychotherapist to whom the patient communicated a serious threat of
17 physical violence against the plaintiff.