HOUSE DOCKET, NO. 1541 FILED ON: 1/15/2015

HOUSE . . . . . No. 1309

The Commonwealth of Massachusetts

PRESENTED BY:

William C. Galvin

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 adoption of the accompanying bill:

An Act relative to patient care access.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William C. Galvin	*6th Norfolk*
Louis L. Kafka	*8th Norfolk*

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HOUSE . . . . . No. 1309

By Mr. Galvin of Canton, a petition (accompanied by bill, House, No. 1309) of William C. Galvin and Louis L. Kafka relative to patient safety, medical error reporting and medical malpractice. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1339* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to patient care access.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Section 5 of Chapter 112 as appearing in the 2010 official edition is hereby amended on line 140 after the word "occasions" the following: For purposes of this subsection, the offering of expert testimony in any action for malpractice, negligence, error, omission, mistake, or unauthorized rendering of professional services against a physician licensed pursuant to section 2 of Chapter 112 of the general laws, shall constitute the practice of medicine.

Section 2. Chapter 175 of the Massachusetts General Laws is hereby amended by the addition of the following new section:

Section 193 V: Every insurer or risk management organization which provides insurance to a physician licensed under Chapter 112 of the Massachusetts General Laws shall make an

10 annual report to the Betsy Lehman Center for Patient Safety and Medical Error Reduction
11 established by Chapter 177 of the Acts of 2001. Said report shall list the top ten categories of
12 losses, claims or actions for damage for personal injuries alleged to have been caused by error,
13 omission or negligence in the performance by physicians of medical services the company
14 incurred during the previous calendar year. Said report shall also identify the top ten defendant
15 specialties as to cost and frequency of cases in the prior year. Where applicable, organizations
16 shall include reports outlining losses and claims for non-physician health care providers as well.
17 Reports shall include completed cases and settlements only and shall include no information
18 identifying providers or patients. Reports shall be provided to the center at its request under
19 annual timelines and reporting requirements established by the center with the input of the
20 advisory committee established in Chapter 12C Section 15 (c). The Center shall use this
21 information in the development of evidence-based best practices to reduce medical errors and
22 enhance patient safety as required by Chapter 12C Section 15 (e) (1) to increase awareness of
23 error prevention strategies through public and professional education as required by Chapter 12C
24 Section 15 (e) (4).

25 Section 3. Section 60G (a) of Chapter 231 of the General Laws as appearing in 2010
26 official addition is amended by striking in lines 10 and 11 the following: "prior to the judgment"
27 and adding in lines 12 and 27 after the word "compensated" the following: , replaceable,
28 compensable or indemnifiable.

29 Section 4. Chapter 231 of the General Laws, as most recently amended by Chapter 224
30 of the Acts of 2012, is hereby amended by adding after section 60L, the following new sections:

31 Section 60M. In any action for malpractice, error or mistake against a provider of health
32 licensed pursuant to section 2 of Chapter 112, including actions pursuant to section 60B of this
33 Chapter, an expert witness shall be board certified in the same specialty as the defendant licensed
34 pursuant to section 2 of Chapter 112.

35 Section 60N. In every action for malpractice, negligence, error, omission, mistake or the
36 unauthorized rendering of professional services against a provider of health care where the court
37 shall, at the request of either party, (a) Enter a judgment ordering that money damages or its
38 equivalent for future damages of the judgment creditor be paid in whole or in part by periodic
39 payments rather than by a lump-sum payment if the award equals or exceeds fifty thousand
40 dollars ($50,000) in future damages. In entering a judgment ordering of the payment of future
41 damages by periodic payments, the court shall make a specific finding as to the dollar amount of
42 periodic payments which will compensate the judgment creditor for such future damages, the
43 court shall require the defendant who is not adequately insured to post security adequate to
44 assure full payment of such damages awarded by the judgment. Upon termination of periodic
45 payments of future damages, the court shall order the return of this security, or so much as
46 remains, to the defendant.

47 (b)(1) The judgment ordering the payment of future damages by periodic payments shall
48 specify the recipient or recipients of the payments, the dollar amount of the payments, the
49 interval between payments, and the number of payments or the period of time over which
50 payments shall be made. Such payments shall only be subject to modification in the event of the
51 death of the judgment creditor.

52 (2) In the event that the court finds that the defendant has exhibited a continuing pattern
53 of failing to make the payments, as specified in paragraph (1), the court shall find the defendant
54 in contempt of court and, in addition to the required periodic payments, shall order the defendant
55 to pay the plaintiff all damages caused by the failure to make such periodic payments, including
56 court costs and attorney's fees.

57 (c) However, money damages awarded for loss of future earnings shall not be reduced
58 or payments terminated by reason of the death of the plaintiff, but shall be paid to persons to
59 whom the plaintiff owed a duty of support, as provided by law, immediately prior to his death.
60 In such cases the court which rendered the original judgment, may, upon petition of any party in
61 interest, modify the judgment to award and apportion the unpaid future damages in accordance
62 with this subdivision.

63 (d) Following the occurrence or expiration of all obligations specified in the periodic
64 payment judgment, any obligation of the defendant to make future payments shall cease and any
65 security given, pursuant to section (a) shall revert to the defendant.

66 Section 60O. In any action for malpractice, error, omission, mistake or the unauthorized
67 rendering of professional services against a provider of health care, the liability of each
68 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
69 only for the amount of damages allocated to that defendant in direct proportion to that
70 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
71 for that amount.