

**HOUSE . . . . . No. 1452**

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**The Commonwealth of Massachusetts**

**In the Year Two Thousand Nine**

An Act Relative to Medical Malpractice Claims..

*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 Massachusetts General Laws, as appearing in the 2006  
2 Official Edition, is hereby amended by striking out section 12C and inserting in place thereof the  
3 following section:—

4 “Section 12C. No physician or nurse administering immunization or other protective  
5 programs under public health programs shall be liable in a civil suit for damages as a result of  
6 any act or omission on his part in carrying out his duties. No physician or nurse who is  
7 registered by the Commonwealth in the Massachusetts System for Advance Registration of  
8 Volunteer Health Professionals or its successor entity shall be liable in civil suit for damages for  
9 any act or omission on his part related to his voluntary participation in any disaster preparedness  
10 or response activity.”

11 SECTION 2. Section 60H of chapter 231 of the General Laws, as appearing in the 2006  
12 Official Edition, is hereby amended by striking out, in lines 6, 13 and 14, 21, and 23, in each  
13 instance, the words “five hundred thousand” and inserting in place thereof in each instance the  
14 figures: - “\$250,000.”

15 SECTION 3. Said chapter 231, as so appearing, is hereby amended by adding after  
16 section 60K, the following new sections:

17 Section 60L. In any action for malpractice, error or mistake against a provider of health  
18 care licensed pursuant to section 2 of chapter 112, as most recently amended by Chapter 305 of  
19 the Acts of 2008, including actions pursuant to section 60B of this chapter, an expert witness  
20 shall be board certified in the same specialty as the defendant licensed pursuant to section 2 of  
21 chapter 112, as so appearing.

22 Section 60M. In every action for malpractice, negligence, error, omission, mistake or the  
23 unauthorized rendering of professional services against a provider of health care the court may,  
24 at the request of either party, enter a judgment ordering that money damages or its equivalent for  
25 future damages of the judgment creditor be paid in whole or in part by periodic payments rather  
26 than by a lump-sum payment if the award equals or exceeds \$50,000 in future damages. In  
27 entering a judgment ordering the payment of future damages by periodic payments, the court  
28 shall make a specific finding as to the dollar amount of periodic payments which will  
29 compensate the judgment creditor for such future damages, and court shall require a defendant  
30 who is not adequately insured to post security adequate to assure full payment of such damages  
31 awarded by the judgment. Upon termination of periodic payments of future damages, the court  
32 shall order the return of this security, or so much as remains, to the defendant.

33 (a)(1) The judgment ordering the payment of future damages by periodic payments shall  
34 specify the recipient or recipients of the payments, the dollar amount of the payments, the  
35 interval between payments, and the number of payments or the period of time over which

36 payments shall be made. Such payments shall only be subject to modification in the event of the  
37 death of the judgment creditor.

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

43 (b) Money damages awarded for loss of future earnings shall not be reduced or payments  
44 terminated by reason of the death of the plaintiff, but shall be paid to persons to whom the  
45 plaintiff owed a duty of support, as provided by law, immediately prior to his death, or to whom  
46 the plaintiff assigned, transferred, or bequeathed his right to receive payment. In such cases the  
47 court which rendered the original judgment, may, upon petition of any party in interest, modify  
48 the judgment to award and apportion the unpaid future damages in accordance with this  
49 subdivision.

50 (c) Following the occurrence or expiration of all obligations specified in the periodic  
51 payment judgment, any obligation of the defendant to make future payments shall cease and any  
52 security given, pursuant to this section shall revert to the defendant.

53 Section 60N. In any action for malpractice, error, omission, mistake or the unauthorized  
54 rendering of professional services against a provider of health care, the liability of each  
55 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable  
56 only for the amount of damages allocated to that defendant in direct proportion to that

57 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant  
58 for that amount.