

SENATE No. 1755

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Reforming the Medical Malpractice System..

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.

2 Chapter 231 of the General Laws is hereby amended by adding the following new
3 section:

4 Section 60L. In any action for malpractice, error, omission, mistake or the unauthorized
5 rendering of professional services against a provider of health care, the liability of each
6 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
7 only for the amount of damages allocated to that defendant in direct proportion to that
8 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
9 for that amount.

10 SECTION 2.

11 Chapter 231, Section 60G of the Massachusetts General Laws as appearing in the 2006
12 Official Edition is hereby amended by the insertion of the words ", or which will be incurred,"

13 after the word "judgment" in line 11, and by the insertion of the words "or is anticipated to be"
14 after the word "was" in line 11.

15 SECTION 3.

16 Section 60B of Chapter 231 of the General Laws is hereby amended by striking the fifth
17 paragraph in its entirety and replacing it with the following text:

18 "Each such action for malpractice shall be heard by said tribunal within fifteen days after
19 the defendant's answer has been filed. Substantial evidence shall mean such evidence as a
20 reasonable person might accept as adequate to support a conclusion. Admissible evidence shall
21 include, but not be limited to, hospital and medical records, nurses' notes, x-rays and other
22 records kept in the usual course of the practice of the health care provider without the necessity
23 for other identification or authentication, statements of fact or opinion on a subject contained in a
24 published treatise, periodical, book or pamphlet or statements by experts who (1) hold a non-
25 restricted license from a state licensing board recognized by the Federation of State Medical
26 Boards; (2) are currently board certified by a specialty board approved by the American Board of
27 Medical Specialties or of the Advisory Board of Osteopathic Specialists from the major areas of
28 clinical services as the defendant physician; and (3) actively practice in the same specialty as the
29 defendant physician, without the necessity of such experts appearing at said hearing. Statements
30 by said experts shall be admissible at trial and said experts shall be required to testify at trial.
31 The tribunal may upon the application of either party or upon its own decision summon or
32 subpoena any such records or individuals to substantiate or clarify any evidence which has been
33 presented before it and may appoint an impartial and qualified physician or surgeon or other
34 related professional person or expert to conduct any necessary professional or expert

35 examination of the claimant or relevant evidentiary matter and to report or to testify as a witness
36 thereto. Such a witness shall be allowed traveling expenses and a reasonable fee to be fixed by
37 the tribunal which shall be assessed as costs. The testimony of said witness and the decision of
38 the tribunal shall be admissible as evidence at a trial.”

39 SECTION 4.

40 Section 60B of chapter 231 is hereby amended by adding at the end of the sixth
41 paragraph, the following:-

42 “The tribunal, where it determines the circumstances of the case may be resolved more
43 appropriately, may also refer any case to mediation or arbitration.

44 SECTION 5.

45 Chapter 231 of the General Laws is hereby amended by adding the following new
46 section:

47 Section 60K. In any action for malpractice, error or mistake against a provider of health
48 licensed pursuant to section 2 of Chapter 112, including actions pursuant to section 60B of this
49 Chapter, expert witnesses are those who (1) hold a non-restricted license from a state licensing
50 board recognized by the Federation of State Medical Boards; (2) are currently board certified by
51 a specialty board approved by the American Board of Medical Specialties or of the Advisory
52 Board of Osteopathic Specialists from the major areas of clinical services as the defendant
53 physician, and (3) actively practice in the same specialty as the defendant physician.