

# SENATE . . . . . No. 1768

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act further regulating the admission of evidence of medical and hospital service reports and records..

*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 79G of Chapter 233 of the General Laws, as appearing in the 1998  
2   Official Edition, is hereby amended by adding the following sentence after the first sentence of  
3   said section:- And further provided that an affidavit of such physician or dentist setting forth  
4   sufficient facts to establish competency to render an expert opinion, including but not limited to,  
5   evaluation, training and experience shall be given with the written notice of the intention of such  
6   report.

7           SECTION 2. Section 79G of Chapter 233 of the General Laws, as appearing in the 1998  
8   Official Edition, is hereby amended by adding the following paragraphs after the first paragraph  
9   of said section:-The trial judge or administrative hearing officer shall have the power to rule on  
10   the competency of the physician or dentist to render an opinion on the medical issues material to  
11   the proceeding to the same extent as if such physician or dentist were testifying in person at such  
12   trial or administrative proceeding and to exclude from evidence any medical report where the

13 affidavit of the physician or dentist does not sufficiently establish that person's competency to  
14 render the expert opinions contained in the report.

15         The trial judge or administrative officer shall also have the power to exclude from  
16 evidence any statements as to liability or other inadmissible matters as contained in such medical  
17 reports to the same extent as if the physician or dentist were testifying at the trial of the case.

18         The report of any physician or dentist which is to be offered at trial in the district  
19 or superior courts of Massachusetts shall be subject to the rules of civil procedure with respect to  
20 the identification of expert witnesses. Furthermore, any report of an out-of-state physician or  
21 dentist who is not subject to the subpoena power of the courts of Massachusetts shall not be  
22 admitted if the trial judge determines that the opposing party did not have a reasonable  
23 opportunity to cross-examine said physician or dentist on the report to be offered into evidence.

24         Notwithstanding the above, no report by an out-of-state physician or dentist or a  
25 physician or dentist who is otherwise not subject to a subpoena to testify in person, shall be  
26 admitted unless written notice of the intention to offer such report into evidence shall be given to  
27 the opposing parties at least 90 days prior to the introduction of same into evidence.