SENATE DOCKET, NO. 749 FILED ON: 1/20/2011

SENATE . . . . . No. 432

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

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:
Thomas P. Kennedy	

SENATE DOCKET, NO. 749 FILED ON: 1/20/2011

SENATE . . . . . No. 432

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 432) of Thomas P. Kennedy for legislation relative to patient care access. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *480* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2004 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 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 6A Section 16 E (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 6A Section 16 E (e) 1 to increase awareness of
23 error prevention strategies through public and professional education as required by Chapter 6A
24 Section 16 E (e) 4.

25 SECTION 3. Section 60G of Chapter 231 of the General Laws as appearing in 2000
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 is hereby amended by adding after
30 section 60J, the following new section:

31 Section 60K. 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 5. Chapter 231 of the General Laws is hereby amended by adding after
36 section 60K, the following new section:

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

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

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

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

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

68 SECTION 6. Said chapter 231 is hereby amended by inserting after section 60L the
69 following section:—

70 Section 60M. In any action for malpractice, negligence, error, omission, mistake or
71 unauthorized rendering of professional services against a provider of health care, in which a
72 verdict is rendered or a finding made or an order for judgment made for pecuniary damages for
73 personal injuries to the plaintiff or for consequential damages, there shall be added by the clerk
74 of the court to the amount of damages interest thereon, at a rate to be determined as set forth
75 below rather than the rate specified in section 6B of chapter 231, from the date of the

76 commencement of the action even though such interest brings the amount of the verdict or
77 finding beyond the maximum liability imposed by law. For all judgments entered after the
78 effective date of this act, the rate of interest to be applied by the clerk shall be at a rate equal to
79 the weekly average 1-year constant maturity Treasury yield, as published by the Board of
80 Governors of the Federal Reserve System for the calendar week preceding the date of judgment.
81 At no point shall the rate of interest established by this section exceed the rate of interest set forth
82 in said section 6B of chapter 231.

83 SECTION 7. Chapter 231 of the General Laws is hereby amended by adding the
84 following section:

85 Section 60N. In any action for malpractice, error, omission, mistake or the unauthorized
86 rendering of professional services against a provider of health care, the liability of each
87 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
88 only for the amount of damages allocated to that defendant in direct proportion to that
89 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
90 for that amount.