

HOUSE No. 1389

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 passage of the accompanying bill:

An Act relative to patient care access.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William C. Galvin	6th Norfolk
Thomas P. Kennedy	Second Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 985 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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:

1 Section 1. Section 5 of Chapter 112 as appearing in the 2004 official edition is hereby amended on line
2 140 after the word “occasions” the following: For purposes of this subsection, the offering of expert
3 testimony in any action for malpractice, negligence, error, omission, mistake, or unauthorized rendering
4 of professional services against a physician licensed pursuant to section 2 of Chapter 112 of the general
5 laws, shall constitute the practice of medicine.

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

8 Section 193 V: Every insurer or risk management organization which provides insurance to a physician
9 licensed under Chapter 112 of the Massachusetts General Laws shall make an annual report to the Betsy
10 Lehman Center for Patient Safety and Medical Error Reduction established by Chapter 177 of the Acts of
11 2001. Said report shall list the top ten categories of losses, claims or actions for damage for personal
12 injuries alleged to have been caused by error, omission or negligence in the performance by physicians of
13 medical services the company incurred during the previous calendar year. Said report shall also identify
14 the top ten defendant specialties as to cost and frequency of cases in the prior year. Where applicable,

15 organizations shall include reports outlining losses and claims for non-physician health care providers as
16 well. Reports shall include completed cases and settlements only and shall include no information
17 identifying providers or patients. Reports shall be provided to the center at its request under annual
18 timelines and reporting requirements established by the center with the input of the advisory committee
19 established in Chapter 6A Section 16 E (C). The Center shall use this information in the development of
20 evidence-based best practices to reduce medical errors and enhance patient safety as required by Chapter
21 6A Section 16 E (e) 1 to increase awareness of error prevention strategies through public and professional
22 education as required by Chapter 6A Section 16 E (e) 4.

23 Section 3. Section 60G of Chapter 231 of the General Laws as appearing in 2000 official addition is
24 amended by striking in lines 10 and 11 the following: “prior to the judgment” and adding in lines 12 and
25 27 after the word “compensated” the following: , replaceable, compensable or indemnifiable,.

26 Section 4. Chapter 231 of the General Laws is hereby amended by adding after section 60J, the
27 following new section:

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

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

34 Section 60L. In every action for malpractice, negligence, error, omission, mistake or the unauthorized
35 rendering of professional services against a provider of health care where the court shall, at the request of
36 either party, (a) Enter a judgment ordering that money damages or its equivalent for future damages of the
37 judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if
38 the award equals or exceeds fifty thousand dollars (\$50,000) in future damages. In entering a judgment

39 ordering of the payment of future damages by periodic payments, the court shall make a specific finding
40 as to the dollar amount of periodic payments which will compensate the judgment creditor for such future
41 damages, the court shall require the defendant who is not adequately insured to post security adequate to
42 assure full payment of such damages awarded by the judgment. Upon termination of periodic payments
43 of future damages, the court shall order the return of this security, or so much as remains, to the
44 defendant.

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

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

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

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

61 Section 6. Said chapter 231 is hereby amended by inserting after section 60L the following section:—

62 Section 60M. In any action for malpractice, negligence, error, omission, mistake or unauthorized
63 rendering of professional services against a provider of health care, in which a verdict is rendered or a
64 finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or
65 for consequential damages, there shall be added by the clerk of the court to the amount of damages
66 interest thereon, at a rate to be determined as set forth below rather than the rate specified in section 6B of
67 chapter 231, from the date of the commencement of the action even though such interest brings the
68 amount of the verdict or finding beyond the maximum liability imposed by law. For all judgments entered
69 after the effective date of this act, the rate of interest to be applied by the clerk shall be at a rate equal to
70 the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of
71 the Federal Reserve System for the calendar week preceding the date of judgment. At no point shall the
72 rate of interest established by this section exceed the rate of interest set forth in said section 6B of chapter
73 231.

74 Section 7. Chapter 231 of the General Laws is hereby amended by adding the following section:

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