



General Assembly

January Session, 2003

Raised Bill No. 6456

LCO No. 3232

Referred to Committee on Public Health

Introduced by:
(PH)

AN ACT CONCERNING MEDICAL MALPRACTICE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) (a) In any civil action
2 arising out of a medical malpractice claim, the parties shall appear
3 before the court within one hundred twenty days of the filing of the
4 complaint in superior court, unless such one-hundred-twenty-day
5 period is waived by either party or extended by the court for good
6 cause shown. The hearing before the court shall be for the purpose of
7 determining liability only. The court shall be confined to the rules of
8 evidence, except that written reports of expert witnesses shall be
9 admissible in evidence and matters involving chain of custody shall be
10 exempt from such rules.

11 (b) After reviewing the evidence presented pursuant to subsection
12 (a) of this section, the court may make one of the following decisions:
13 (1) The plaintiff's claim has no merit, and the case may be dismissed;
14 (2) there was ordinary negligence on the part of one or more
15 defendants, and the case shall be referred to the Department of Public
16 Health for a hearing on damages by an arbitration panel as provided in
17 subsection (c) of this section; or (3) there was gross negligence on the

18 part of one or more defendants, and the case may be set for trial on the
19 issue of damages only. For purposes of this subsection, gross
20 negligence means wanton misconduct or incompetence.

21 (c) (1) The Department of Public Health shall immediately submit
22 claims referred to it under subsection (b) of this section to arbitration to
23 be conducted by a qualified provider of arbitration services. The cost
24 of arbitration shall be borne equally by the parties.

25 (2) The decision of the arbitration panel shall be subject to judicial
26 review upon the filing by a party to the arbitration, no later than thirty
27 days following the date of receipt of a final decision, of a motion to
28 vacate or modify such decision in the superior court for the judicial
29 district in which the claim was originally filed. The superior court,
30 after hearing, may vacate or modify the decision if substantial rights of
31 a party have been prejudiced because such decision is: (A) In violation
32 of constitutional or statutory provisions; (B) made upon unlawful
33 procedure; (C) affected by other error of law; (D) clearly erroneous in
34 view of the reliable, probative and substantial evidence on the whole
35 record; or (E) arbitrary or capricious or characterized by abuse of
36 discretion or clearly unwarranted exercise of discretion.

37 Sec. 2. Subsection (b) of section 52-572h of the general statutes is
38 repealed and the following is substituted in lieu thereof (*Effective*
39 *October 1, 2003*):

40 (b) (1) In causes of action based on negligence, contributory
41 negligence shall not bar recovery in an action by any person or the
42 person's legal representative to recover damages resulting from
43 personal injury, wrongful death or damage to property if the
44 negligence was not greater than the combined negligence of the person
45 or persons against whom recovery is sought including settled or
46 released persons under subsection (n) of this section. The economic or
47 noneconomic damages allowed shall be diminished in the proportion
48 of the percentage of negligence attributable to the person recovering
49 which percentage shall be determined pursuant to subsection (f) of this

50 section.

51 (2) In any action for malpractice against a provider of health care
52 where such action involves joint tortfeasors, the trier of fact shall
53 determine the percentage of fault for each joint tortfeasor, including
54 named parties and absent tortfeasors, without regard to whether the
55 joint tortfeasor is immune from damages. For noneconomic damages, a
56 defendant's liability shall be several only. Fault allocated under this
57 subdivision to an immune tortfeasor or a tortfeasor whose liability is
58 limited by law shall not be reallocated to any other tortfeasor. For
59 purposes of this subsection, a provider of health care means (A) a
60 person licensed to provide health care services under chapters 370 to
61 373, inclusive, 384a to 384c, inclusive, or 400j, (B) an institution as
62 defined in section 19a-490, or (C) an entity that may be liable for such
63 provider's acts or omissions.

64 Sec. 3. Section 38a-395 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective October 1, 2003*):

66 The Insurance Commissioner [may] shall require all insurance
67 companies writing medical malpractice insurance in this state to
68 submit, in such manner and at such times as he specifies, such
69 information as he deems necessary to establish a data base on medical
70 malpractice, including information on all incidents of medical
71 malpractice, all settlements, all awards, other information relative to
72 procedures and specialties involved and any other information
73 relating to risk management.

74 Sec. 4. (*Effective October 1, 2003*) The Insurance Commissioner shall
75 determine the number of physicians licensed by and practicing in the
76 state of Connecticut who are unable to obtain medical malpractice
77 insurance, and the commissioner shall report, in accordance with
78 section 11-4a of the general statutes, such information and any other
79 information that the commissioner determines impacts the medical
80 profession, to the joint standing committees of the General Assembly
81 having cognizance of matters relating to public health and insurance

82 not later than January 5, 2004. The commissioner shall include in such
83 report any recommendations concerning the establishment of an
84 actuarially sound joint underwriting medical malpractice association
85 for the purpose of making necessary medical malpractice insurance
86 available for physicians, registered nurses and all other persons who
87 are licensed to practice in a hospital, nursing facility or other health
88 care institution.

89 Sec. 5. (NEW) (*Effective October 1, 2003*) (a) A hospital, as defined in
90 section 19a-490 of the general statutes, may be held vicariously liable
91 for the acts of another health care provider through principles of
92 agency only if the evidence shows that (1) a reasonably prudent person
93 in the patient's position would be justified in the belief that the care in
94 question was being rendered by the hospital or its agents, or (2) the
95 care in question was advertised or otherwise represented to the patient
96 as care being rendered by the hospital or its agents.

97 (b) Evidence that a physician holds staff privileges at a hospital shall
98 be insufficient to establish vicarious liability through principles of
99 agency unless the claimant meets the requirements of subsection (a) of
100 this section.

101 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) On and after October 1,
102 2003, upon settlement of a malpractice claim containing a
103 confidentiality agreement, or upon a court order sealing the settlement
104 and related records for purposes of confidentiality, the agreement of
105 order shall not be operable against the licensure board to obtain copies
106 of medical records of the patient on whose behalf the action is
107 commenced. Prior to obtaining medical records under this section, the
108 licensure board shall obtain the consent of the patient or the patient's
109 legal representative.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>

Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>

Statement of Purpose:

To assure that medical care is available in this state through a comprehensive and high-quality health care system, with access to a full spectrum of hospital services and to highly-trained physicians in all specialties, and, in order to maintain this system, to assure that medical malpractice insurance is obtainable at an affordable and reasonable cost.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]