

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1367 Session of
1975

INTRODUCED BY MESSRS. FINEMAN, A. K. HUTCHINSON, IRVIS,
MANDERINO, SHANE, BERSON, O'KEEFE, DeMEDIO, MORRIS, MILLIRON,
GEORGE, COLE, STAPLETON, BRUNNER, ENGLEHART, SCHMITT,
RAPPAPORT, GILLESPIE, REED, GARZIA, WOJDAK, MRS. TOLL,
MESSRS. ROMANELLI, PETRARCA, SALOOM, BLACKWELL,
KOLTER, ZORD, CESSAR AND FISHER, JUNE 3, 1975

SENATOR MELLOW, INSURANCE, IN SENATE, RE-REPORTED AS AMENDED,
SEPTEMBER 23, 1975

AN ACT

1 Relating to medical and health related malpractice insurance,
2 prescribing the powers and duties of the Insurance
3 Department; providing for a joint underwriting plan; the
4 ~~Regional~~ Arbitration Panels for Health Care, compulsory <—
5 screening of claims; collateral sources requirement;
6 ~~limitation of Statute of Limitations;~~ limitation on <—
7 contingent fee compensation; establishing ~~the Patients'~~ <—
8 ~~Compensation Fund;~~ A CATASTROPHE LOSS FUND; and prescribing <—
9 penalties.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 ARTICLE I

13 Preliminary Provisions

14 Section 101. Short Title.--This act shall be known and may
15 be cited as the "Health Care Services Malpractice Act."

16 Section 102. Purpose.--It is the purpose of this act to make
17 available professional liability insurance at a reasonable cost,
18 and to establish a system through which a person who has

1 sustained injury or death as a result of tort or breach of
2 contract by a health care provider can obtain a prompt
3 determination and adjudication of his claim and the
4 determination of fair and reasonable compensation.

5 Section 103. Definitions.--As used in this act:

6 "Administrator" means the office of Administrator for
7 ~~Regional~~ Arbitration Panels for Health Care. <—

8 "Arbitration panel" means ~~Regional~~ Arbitration Panels for <—
9 Health Care.

10 "Claims made" means a policy of professional liability
11 insurance that would limit or restrict the liability of the
12 insurer under the policy to only those claims made or reported
13 during the currency of the policy period and would exclude
14 coverage for claims reported subsequent to the termination even
15 when such claims resulted from occurrences during the currency
16 of the policy period.

17 "Commissioner" means the Insurance Commissioner of this
18 Commonwealth.

19 "Health care provider" means a person, corporation, facility
20 institution or other entity licensed OR APPROVED by the <—
21 Commonwealth to provide health care or professional services as
22 a physician, including a medical doctor and a doctor of
23 osteopathy and a doctor of podiatry; hospital; nursing home;
24 health maintenance organization; ~~health care delivery~~ <—
25 ~~organization for which a professional liability program is not~~
26 ~~generally available~~; or an officer, employee or agent thereof OF <—
27 ANY OF THEM acting in the course and scope of his employment.

28 "Informed consent" means for the purposes of this act and of
29 any proceedings arising under the provisions of this act, the
30 consent of a patient ~~freely given~~ to the performance of health <—

1 care services by a ~~health care provider~~ PHYSICIAN OR PODIATRIST: <—
2 Provided, That prior to the ~~informed consent's~~ CONSENT having <—
3 been given, the ~~health care provider~~ PHYSICIAN OR PODIATRIST has <—
4 informed the patient of THE NATURE OF THE PROPOSED PROCEDURE OR <—
5 TREATMENT AND OF those risks, ~~possible consequences,~~ and <—
6 alternatives to treatment OR DIAGNOSIS that a reasonable patient <—
7 would consider material to ~~his~~ THE decision whether or not to <—
8 undergo treatment OR DIAGNOSIS. No ~~doctor~~ PHYSICIAN OR <—
9 PODIATRIST shall be liable for a failure to obtain an informed
10 consent in the event of an emergency which prevents ~~his~~ <—
11 consulting the patient. No ~~doctor~~ PHYSICIAN OR PODIATRIST shall <—
12 be liable for failure to obtain an informed consent if it is
13 established by a preponderance of the evidence that furnishing
14 the information in question to the patient would have resulted
15 in a seriously adverse effect on THE PATIENT OR ON the <—
16 therapeutic process to the material detriment of the patient's
17 health.

18 "Licensure Board" means the State Board of Medical Education
19 and Licensure, the State Board of Osteopathic Examiners, the
20 Department of Public Welfare and the Department of Health.

21 "Patient" means a natural person who receives or should have
22 received health care from a licensed health care provider.

23 "Professional liability insurance" means insurance against
24 liability on the part of a health care provider arising out of
25 any tort or breach of contract causing injury or death occurring
26 in or resulting from the furnishing of medical services which
27 were or should have been provided.

28 ARTICLE II

29 Services Rendered by Non-health Care Providers

30 Section 201. Any person rendering services normally rendered

1 by a health care provider who fails to qualify as a health care
2 provider under this act is subject to liability under the law
3 without regard to the provisions of this act.

4 ARTICLE III

5 Administrator for ~~Regional~~ Arbitration Panels for Health Care <—

6 Section 301. There is established within the Department of
7 ~~Insurance~~ JUSTICE the office of Administrator for ~~Regional~~ <—
8 Arbitration Panels for Health Care to be appointed by the
9 Governor. The salary of the administrator shall be set by the
10 Executive Board.

11 Section 302. The administrator may be removed by the
12 Governor for incompetence, neglect of duty, misconduct in
13 office, or other good cause to be stated in writing in the order
14 of removal.

15 Section 303. The administrator shall appoint a secretary and
16 such other employees as are required to administer this act.
17 ~~Their salaries shall be set by the Executive Board.~~ <—

18 Section 304. (a) The administration of this act shall be
19 funded in part from fees charged to each health care provider
20 practicing in the Commonwealth AND PAYABLE TO THE ADMINISTRATOR. <—

21 (b) Physicians practicing in the Commonwealth shall be
22 charged \$50 annually.

23 (c) An annual fee of \$500 shall be charged to each hospital
24 with 250 or more beds. An annual fee of \$350 shall be charged to
25 all other hospitals. An annual fee of \$100 shall be charged to
26 all other health care organizations.

27 Section 305. The administrator shall prepare, print and
28 furnish upon request and free of charge, such blank forms and
29 literature as he considers necessary to facilitate and promote
30 the efficient administration of this act.

1 Section 306. The administrator shall submit to the Governor
2 and the General Assembly annually, on or before December 1, a
3 report of the work of the administrator's office during the
4 preceding fiscal year.

5 Section 307. ~~The Attorney General, after consultation with~~ <—
6 ~~the Insurance Commissioner and the Secretary of Health,~~
7 ADMINISTRATOR shall adopt and publish such uniform rules and <—
8 regulations as may be necessary to carry out the provisions of
9 this act, and shall prescribe the means, methods and practices
10 necessary to effectuate such provisions. Such rules and
11 regulations shall be consistent with the common and statutory
12 law of the Commonwealth, the Pennsylvania Rules of Civil
13 Procedure, and the Pennsylvania rules of evidence. SUCH RULES <—
14 AND REGULATIONS, AFTER CONSULTATION WITH THE SECRETARY OF
15 HEALTH, MAY INCLUDE PROVISIONS FOR THE USE OF FORMS WHICH
16 PROVIDE FOR THE DISCLOSURE OF THE NATURE OF THE PROPOSED
17 TREATMENT OR DIAGNOSIS, RISKS OF THE PROPOSED TREATMENT OR
18 DIAGNOSIS, AND ALTERNATE METHODS OF TREATMENT OR DIAGNOSIS.

19 Section 308. ~~Regional~~ Arbitration Panels for Health Care.-- <—
20 ~~(a) Regional arbitration panels shall be established by the~~ <—
21 ~~Governor. The Governor in his discretion may establish more than~~
22 ~~one arbitration panel per region. Regional boundaries shall be~~
23 ~~those districts established by the Professional Standards Review~~
24 ~~Organization as designated in section 249 F, Professional~~
25 ~~Standards Review, Title II, 42 U.S.C. §1301. The regions shall~~
26 ~~be modified to the extent that they are modified by that act. If~~
27 ~~said act is repealed, the regions shall remain as last~~
28 ~~established by said act.~~

29 ~~(b) Each Regional Arbitration Panel for Health Care shall be~~
30 ~~composed of five members who reside in the Professional~~

~~Standards Review Organization region, including two physicians practicing in the Professional Standards Review Organization region, two attorneys licensed to practice before the Pennsylvania Supreme Court and one layperson who is not a physician nor engaged in the practice of law. Arbitration panel members for each region shall be appointed by the Governor.~~

~~(c) The Governor shall appoint two alternates for each category of arbitration panel member who shall serve on the arbitration panel in the event that an arbitration panel member must be absent or has a conflict of interest in a particular case. In the event that the alternates have a conflict of interest in a particular case, the remaining arbitration panel members shall choose a substitute to sit for that case.~~

~~(d) Except as hereinafter provided, each arbitration panel member shall hold office for two years or until his successor is appointed and assumes office. Initial members shall hold office as follows: one physician member and one attorney member shall serve for one year, one physician member and one attorney member shall serve for two years, and the lay person shall serve for two years.~~

(A) THE ADMINISTRATOR SHALL ESTABLISH A SEPARATE ARBITRATION PANEL FOR EACH CLAIM; AND AFTER EACH PANEL RENDERS ITS DECISION ON THE CLAIM IT SHALL BE DISBANDED.

(B) EACH ARBITRATION PANEL SHALL BE COMPOSED OF FIVE MEMBERS INCLUDING TWO HEALTH CARE PROVIDERS, ONE ATTORNEY WHO SHALL ACT AS CHAIRMAN AND SHALL DETERMINE QUESTIONS OF LAW AND TWO LAY PERSONS WHO ARE NOT HEALTH CARE PROVIDERS NOR LICENSED TO PRACTICE LAW. WHERE A CLAIM INVOLVES A HOSPITAL ONLY, A HOSPITAL ADMINISTRATOR MAY BE CHOSEN AS ONE OF THE HEALTH CARE PROVIDER PANEL MEMBERS.

1 (C) ARBITRATION PANEL CANDIDATES SHALL BE SELECTED FROM A
2 POOL OF CANDIDATES GENERATED BY THE ADMINISTRATOR. THE RULES AND
3 REGULATIONS PROMULGATED BY THE ADMINISTRATOR PERTAINING TO THE
4 SELECTION OF ARBITRATORS SHALL PROVIDE THAT THE ADMINISTRATOR
5 SHALL SEND SIMULTANEOUSLY TO EACH PARTY AN IDENTICAL LIST OF
6 FIVE ARBITRATION PANEL CANDIDATES IN EACH OF THE THREE
7 CATEGORIES TOGETHER WITH A BRIEF BIOGRAPHICAL STATEMENT ON EACH
8 CANDIDATE. A PARTY MAY STRIKE FROM THE LIST ANY TWO NAMES WHICH
9 ARE UNACCEPTABLE IN EACH CATEGORY. ANY MUTUALLY AGREEABLE
10 CANDIDATE MAY BE INVITED BY THE ADMINISTRATOR TO SERVE. WHERE
11 INSUFFICIENT MUTUALLY AGREEABLE CANDIDATES ARE SELECTED FOR ANY
12 CATEGORY A SECOND LIST OF THAT CATEGORY SHALL BE SENT BY THE
13 ADMINISTRATOR. IF A COMPLETE ARBITRATION PANEL IS NOT SELECTED
14 BY MUTUAL AGREEMENT OF THE PARTIES THE ADMINISTRATOR SHALL
15 APPOINT THE REMAINDER OF THE ARBITRATION PANEL. ANY APPOINTMENT
16 BY THE ADMINISTRATOR SHALL BE SUBJECT TO CHALLENGE BY ANY PARTY
17 FOR CAUSE. A REQUEST TO STRIKE AN ARBITRATOR FOR CAUSE SHALL BE
18 DETERMINED BY THE ADMINISTRATOR. THE PARTIES SHALL NOT BE
19 RESTRICTED TO THE ARBITRATION PANEL CANDIDATES SUBMITTED FOR
20 CONSIDERATION; BUT, IF ALL PARTIES MUTUALLY AGREE UPON AN
21 ARBITRATION PANELIST WITHIN A DESIGNATED CATEGORY, THE PANELIST
22 SHALL BE INVITED TO SERVE.

23 ~~(e)~~ (D) The attorney and physician members of each <—
24 arbitration panel shall be OR HAVE BEEN practicing members of <—
25 their respective professions.

26 ~~(f)~~ (E) Arbitration panel members shall be paid on a per <—
27 diem or salary basis as fixed by the Executive Board plus actual
28 and necessary expenses incurred in the performance of their
29 official duties. The administrator shall provide for all other
30 necessary expenses of the arbitration panels.

1 ~~(g) Each arbitration panel shall select its own chairperson.~~ <—

2 ~~(h) A member of an arbitration panel may be removed by the~~
3 ~~Governor for incompetence, neglect of duty, misconduct in~~
4 ~~office, or other good cause to be stated in writing in the order~~
5 ~~of removal. Any member of an arbitration panel so removed shall~~
6 ~~have the right to appeal his removal to courts of law.~~

7 ~~(i) (F) No member shall participate in a case in which he~~ <—
8 ~~may have an interest. The chairperson shall appoint a temporary~~ <—
9 ~~alternate from the same category of arbitration panel member for~~
10 ~~such case. If the chairperson has an interest in the case, the~~
11 ~~alternate shall be chosen by the remaining arbitration panel~~
12 ~~members.~~

13 Section 309. The arbitration panel shall have original
14 exclusive jurisdiction to hear and decide any claim for loss or
15 damages brought by a patient or his representative.

16 ARTICLE IV

17 Procedure For Filing a Claim

18 Section 401. A patient or his representative, having a claim
19 for loss or damages shall file with the administrator a
20 complaint or such other form, with such fees, as prescribed by
21 the rules and regulations adopted by the ~~Attorney General~~ <—
22 ADMINISTRATOR. The administrator shall refer the complaint to <—
23 the appropriate arbitration panel. THE FILING OF THE COMPLAINT <—
24 WITH THE ADMINISTRATOR SHALL TOLL THE STATUTE OF LIMITATIONS.

25 Section 402. Upon assignment of a claim to an arbitration
26 panel, said arbitration panel shall expeditiously hear and
27 determine the claim in accordance with the rules and regulations
28 adopted by the ~~Attorney General~~ ADMINISTRATOR. <—

29 ARTICLE V

30 Procedure Before the ~~Regional~~ Arbitration Panel for Health Care <—

1 Section 501. Arbitration panel hearings shall be conducted
2 in the ~~Professional Standards Review Organization region~~ COUNTY <—
3 where the cause of action arose, but may, within the discretion
4 of the administrator, be held in any other place.

5 Section 502. The arbitration panel, at any time, upon a
6 proper showing or on its own motion, may order, with appropriate
7 notice, that any additional party be joined when it deems the
8 presence of that party necessary and proper to a just
9 determination of the claim.

10 Section 503. Service of complaints and notice of all
11 hearings and proceedings before the arbitration panel, unless
12 otherwise directed, shall be made personally or given by
13 certified mail, and proof of the mailing of notice shall be
14 prima facie evidence of service.

15 Section 504. All briefs or pleadings shall contain a
16 certification that on or before the day of filing, a copy of the
17 document was served on opposing counsel, or on the adverse party
18 or parties if there is no counsel of record.

19 Section 505. A majority vote of the full arbitration panel
20 shall be required to decide all matters EXCEPT QUESTIONS OF LAW <—
21 before it.

22 Section 506. Except as provided in this act, the arbitration
23 panel is bound by the common and statutory law of the
24 Commonwealth, the Pennsylvania Rules of Civil Procedure, and the
25 Pennsylvania rules of evidence.

26 Section 507. The arbitration panel may, upon the application
27 of either party or upon its own motion, appoint a disinterested
28 and qualified expert to make any necessary professional or
29 expert examination of the claimant or relevant evidentiary
30 matter and to testify as a witness in respect thereto. Such an

1 expert witness shall be allowed necessary expenses and a
2 reasonable fee to be fixed and paid by the arbitration panel.

3 Section 508. (a) The arbitration panel is authorized and
4 empowered to:

5 (1) examine the relevant facts to determine if a case exists
6 for recovery;

7 (2) make findings of fact;

8 (3) take depositions and testimony;

9 (4) assure both parties full access to the facts;

10 (5) make available to the parties the norms, standards and
11 criteria employed by health care providers in the Professional
12 Standards Review Organization region;

13 (6) subpoena witnesses, and administer oaths;

14 (7) apply to the court of common pleas to enforce the
15 attendance and testimony of witnesses and the production and
16 examination of books, papers and records;

17 (8) consider and approve offers of settlement and proposals
18 of adjustment between plaintiffs and defendants;

19 (9) make determinations as to liability and award of
20 damages; and

21 (10) exercise all other powers and duties conferred upon it
22 by law.

23 (b) A copy of the arbitration panel's decision shall be sent
24 to each party at the same time it is submitted to the
25 administrator.

26 Section 509. Appeals from determinations made by the
27 arbitration panel ~~may be taken to~~ SHALL BE A TRIAL DE NOVO IN <—
28 the court of common pleas OR UNITED STATES DISTRICT COURT in the <—
29 ~~same manner as appeals in civil actions,~~ ACCORDANCE WITH THE <—
30 RULES REGARDING APPEALS IN COMPULSORY CIVIL ARBITRATION AND THE

1 PENNSYLVANIA RULES OF CIVIL PROCEDURE OR THE FEDERAL RULES OF
2 CIVIL PROCEDURE, except that the party seeking to file an appeal
3 must first pay all record costs to the prothonotary of the court
4 in which he seeks to file his appeal. If the court of common
5 pleas finds at the completion of the trial that the basis for
6 the appeal was ~~grossly insubstantial~~, WITHOUT JUSTIFICATION, <—
7 THEN the appellant shall be liable for all costs of arbitration
8 and trial, including record costs, arbitrator's compensation
9 discovery costs, and fees and expenses of the arbitration
10 panel's expert witnesses.

11 Section 510. Where an appeal is taken the decision, AND <—
12 findings ~~and award~~, OF FACT, if any, of the arbitration panel <—
13 shall be admissible as evidence before the court; PROVIDED, <—
14 HOWEVER, THAT ANY AWARD OF DAMAGES SHALL NOT BE ADMISSIBLE AS
15 EVIDENCE.

16 Section 511. (a) If an appeal is not entered within the
17 prescribed time, the party in whose favor the award shall be
18 made may request the arbitration panel to transfer the record
19 and judgment to the court of common pleas in the district where
20 the plaintiff or defendant resides, for execution. It shall be
21 the duty of the prothonotary, at the request of the party in
22 whose favor the award shall have been made, to issue execution,
23 or such other process as may be necessary and proper, to carry
24 into effect the judgment entered upon such award, subject to the
25 provisions of law concerning the stay of execution upon
26 judgments.

27 (b) After judgment, the plaintiff may proceed upon said
28 transferred record and judgment for the collection thereof, with
29 costs, by execution, bill of discovery or attachment, in like
30 manner as if the same were a judgment of the court to which it

1 has been transferred.

2 Section 512. In an action brought to recover damages under
3 this act, no advance payment made by the defendant health care
4 provider or his professional liability insurer to or for the
5 plaintiff shall be construed as an admission of liability for
6 injuries or damages suffered by the plaintiff.

7 Section 513. Any final award in favor of the plaintiff,
8 shall be reduced to the extent of any advance payment. The
9 advance payment shall inure to the exclusive benefit of the
10 defendant or the insurer making the payment.

11 Section 514. In the event that the arbitration panel finds
12 that the injury or death of the patient was the result in whole
13 or in part of tort or breach of contract by a health care
14 provider, and such decision is not overturned on appeal, the
15 arbitration panel shall report such findings to the licensure
16 board and the Professional Standards Review Organization. The
17 appropriate board of licensure shall promptly investigate the
18 report and take such disciplinary action as may be appropriate.

19 ARTICLE VI

20 Awards

21 Section 601. Upon a finding by the arbitration panel that
22 the defendant's conduct was tortious or constituted a breach of
23 contract, the plaintiff shall have the same rights of recovery
24 for damages as are now provided by law.

25 Section 602. The loss and damages awarded under this act
26 shall be reduced by any public collateral source of compensation
27 or benefits. A right of subrogation is not enforceable against
28 any benefit or compensation awarded under this act or against
29 any health care provider or its liability insurer.

30 Section 603. In the event the arbitration panel finds that

1 the injury or damage to the patient was caused in whole or in
2 part by the wilful or wanton misconduct of any of the
3 defendants, the panel may award SUCH punitive damages against
4 the defendant AS MAY BE AWARDED AT LAW.

<—

<—

5 Section 604. (a) When a plaintiff is represented by an
6 attorney in the prosecution of his claim the plaintiff's
7 attorney fees from any award made from the first \$100,000 may
8 not exceed 30%, from the second \$100,000 attorney fees may not
9 exceed 25%, and attorney fees may not exceed 20% on the balance
10 of any award.

11 (b) A plaintiff has the right to elect to pay for the
12 attorney's services on a mutually satisfactory per diem basis.
13 The election, however, must be exercised in written form at the
14 time of employment.

15 Section 605. ~~No claim for recovery pursuant to the~~
16 ~~provisions of this act may be commenced, unless the action is~~
17 ~~filed within the longer period of (i) two years after the breach~~
18 ~~of contract or the tort complained of, or, (ii) one year after~~
19 ~~the date when the breach of contract, the tort or the resulting~~
20 ~~injury was discovered, or in the exercise of reasonable care,~~
21 ~~should have been discovered. In no instance shall a claim be~~
22 ~~commenced more than seven years after the breach of contract or~~
23 ~~the tort complained of. This section applies to all persons~~
24 ~~regardless of minority or other legal disability.~~ ALL CLAIMS FOR
25 RECOVERY PURSUANT TO THIS ACT MUST BE COMMENCED WITHIN THE
26 EXISTING APPLICABLE STATUTES OF LIMITATION.

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27 IN THE EVENT THAT ANY CLAIM IS FILED MORE THAN FOUR YEARS
28 AFTER THE BREACH OF CONTRACT OR TORT OCCURRED, SUCH CLAIM SHALL
29 BE PAID BY THE MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS
30 FUND ESTABLISHED PURSUANT TO SECTION 701. IF SUCH CLAIM IS MADE

1 AFTER FOUR YEARS BECAUSE OF THE WILFULL CONCEALMENT OF THE
2 HEALTH CARE PROVIDER, THE FUND SHALL HAVE THE RIGHT OF INDEMNITY
3 FROM SUCH HEALTH CARE PROVIDER. A filing pursuant to section 401
4 shall toll the running of the limitations contained herein.

5 Section 606. In the absence of a special contract in
6 writing, a ~~physician or surgeon~~ HEALTH CARE PROVIDER is neither <—
7 a warrantor nor a guarantor of a cure.

8 ARTICLE VII

9 Medical Professional Liability Catastrophe Loss Fund

10 Section 701. (a) Every health care provider subject to the
11 provisions of this act EXCEPT HOSPITALS, NURSING HOMES, OR <—
12 HEALTH MAINTENANCE ORGANIZATIONS shall insure his liability by
13 purchasing professional liability insurance in the amount of
14 \$100,000 per occurrence AND \$300,000 PER ANNUAL AGGREGATE, <—
15 hereinafter known as "basic coverage insurance." GENERAL AND <—
16 SPECIAL HOSPITALS MAY MAINTAIN PROFESSIONAL LIABILITY INSURANCE
17 IN THE AMOUNT OF \$1,000,000. UPON CERTIFICATION BY THE
18 ADMINISTRATOR, OF THE AFOREMENTIONED AMOUNT OF INSURANCE
19 MAINTAINED BY ALL GENERAL AND SPECIAL HOSPITALS, ALL SUCH
20 HOSPITALS SHALL BE EXEMPT FROM THE PROVISIONS OF THIS ARTICLE.

21 (b) No insurer providing professional liability insurance to
22 a health care provider pursuant to the provisions of section
23 701(a) shall be liable for payment of any claim against a health
24 care provider for any loss or damages awarded in a professional
25 liability action in excess of \$100,000 per occurrence AND <—
26 \$300,000 PER ANNUAL AGGREGATE.

27 (c) There is hereby created a contingency fund for the
28 purpose of paying all awards for loss or damages against a
29 health care provider as a consequence of any medical malpractice
30 action which is in excess of \$100,000. Such fund shall be known

1 as the "Medical Professional Liability Catastrophe Loss Fund,"
2 in this Article VII called the "fund." THE LIMIT OF LIABILITY OF <—
3 THE FUND SHALL BE \$1,000,000 FOR EACH OCCURRENCE AND \$3,000,000
4 PER ANNUAL AGGREGATE.

5 (d) The fund shall be funded by the levying of an annual
6 surcharge on all health care providers. The surcharge shall be
7 determined by the ~~commissioner~~ DIRECTOR APPOINTED PURSUANT TO <—
8 SECTION 702 based upon actuarial principles and SUBJECT TO THE <—
9 PRIOR APPROVAL OF THE COMMISSIONER. THE SURCHARGE shall not
10 exceed 10% of the cost to each health care provider for
11 maintenance of professional liability insurance OR \$100, <—
12 WHICHEVER IS GREATER. All THE FUND AND ALL income from the fund <—
13 shall be held in trust, deposited in a segregated account,
14 invested and reinvested by the ~~commissioner~~ DIRECTOR, and shall <—
15 not become a part of the General Fund of the Commonwealth. If
16 the total fund exceeds the sum of \$15,000,000 at the end of any
17 calendar year after the payment of all claims and expenses,
18 including the expenses of operation of the office of the
19 director, the ~~commissioner~~ DIRECTOR shall reduce the surcharge <—
20 provided in this section in order to maintain the fund at an
21 approximate level of \$15,000,000. ALL CLAIMS SHALL BE COMPUTED <—
22 ON DECEMBER 31 OF THE YEAR IN WHICH THE CLAIM BECOMES FINAL. ALL
23 SUCH CLAIMS SHALL BE PAID WITHIN TWO WEEKS THEREAFTER. IF THE
24 FUND WOULD BE EXHAUSTED BY THE PAYMENT IN FULL OF ALL CLAIMS
25 ALLOWED DURING ANY CALENDAR YEAR, THEN THE AMOUNT PAID TO EACH
26 CLAIMANT SHALL BE PRORATED. ANY AMOUNTS DUE AND UNPAID SHALL BE
27 PAID IN THE FOLLOWING CALENDAR YEAR. THE ANNUAL SURCHARGE ON
28 HEALTH CARE PROVIDERS AND ANY INCOME REALIZED BY INVESTMENT OR
29 REINVESTMENT SHALL CONSTITUTE THE SOLE AND EXCLUSIVE SOURCES OF
30 FUNDING FOR THE FUND. NO CLAIMS OR EXPENSES AGAINST THE FUND

1 SHALL BE DEEMED TO CONSTITUTE A DEBT OF THE COMMONWEALTH OR A
2 CHARGE AGAINST THE GENERAL FUND OF THE COMMONWEALTH. The
3 commissioner shall issue rules and regulations consistent with
4 this section regarding the establishment of the fund and the
5 levying, payment and collection of the surcharges.

6 (e) The failure of any health care provider to comply with
7 any of the provisions of this section or any of the rules and
8 regulations issued by the ~~commissioner~~ DIRECTOR shall result in <—
9 the suspension or revocation of the health care provider's
10 license by the licensure board.

11 Section 702. (a) The Fund shall be administered by a
12 director who shall be appointed by the Governor and whose salary
13 shall be fixed by the Executive Board. The director may employ
14 and fix the compensation of such clerical and other assistants
15 as may be deemed necessary.

16 (b) The director shall be provided with adequate offices in
17 which the records shall be kept and official business shall be
18 transacted, and the director shall also be provided with
19 necessary office furniture and other supplies.

20 (c) The basic coverage insurance carrier shall promptly
21 notify the director of any case where it reasonably believes
22 that the value of the claim exceeds the basic insurer's coverage
23 OR FALLS UNDER SECTION 605. Failure to so notify the director <—
24 shall make the basic coverage insurance carrier responsible for
25 the payment of the entire award or verdict, provided that the
26 fund has been prejudiced by the failure of notice.

27 (d) The basic coverage insurance carrier shall at all times
28 be responsible to provide a defense for the insured health care
29 provider. In such instances where the director has been notified
30 in accordance with subsection (c), the director may, at his

1 option, join in the defense and be represented by counsel.

2 (e) In the event that the basic coverage insurance carrier
3 enters into a settlement with the claimant to the full extent of
4 its liability as provided above, it may obtain a release from
5 the claimant to the extent of its payment, which payment shall
6 have no effect upon any excess claim against the Fund.

7 (f) The director is authorized to defend, litigate, settle
8 and/or compromise any claim in excess of the basic coverage
9 hereinbefore provided.

10 (g) The director is hereby empowered to purchase, on behalf
11 of the fund, as much insurance or re-insurance as is necessary
12 to preserve the fund.

13 (H) NOTHING IN THIS ACT SHALL PRECLUDE THE DIRECTOR FROM <—
14 ADJUSTING OR PAYING FOR THE ADJUSTMENT OF CLAIMS.

15 ~~Section 703. The provisions of sections 701 and 702 of this <—~~
16 ~~act shall automatically be repealed on January 1, 1978 unless~~
17 ~~such sections are reenacted by the General Assembly prior to~~
18 ~~such date. In the event the General Assembly fails to reenact~~
19 ~~such sections prior to such date, any moneys remaining in the~~
20 ~~Fund shall be returned to the health care providers in~~
21 ~~proportion to the contributions made by such health care~~
22 ~~providers under such terms and conditions as determined by rules~~
23 ~~and regulations promulgated by the commissioner.~~

24 SECTION 703. IF AFTER COLLECTION OF THE SECOND ANNUAL <—
25 SURCHARGE, AND FOLLOWING THE COLLECTION OF ANY SUBSEQUENT ANNUAL
26 SURCHARGE, THE FUND IS REDUCED BELOW \$7,500,000, THE DIRECTOR
27 SHALL CERTIFY SUCH FACTS TO THE GOVERNOR AND THE GENERAL
28 ASSEMBLY. IF UPON THE EXPIRATION OF 60 DAYS, BUT IN NO EVENT
29 LESS THAN 15 LEGISLATIVE DAYS, FOLLOWING SUCH CERTIFICATION, NO
30 REMEDIAL ACTION IS TAKEN BY THE GENERAL ASSEMBLY, AND ENACTED

1 INTO LAW, THE LIABILITY OF THE FUND FOR CLAIMS ARISING FROM
2 OCCURRENCES AFTER SUCH PERIOD SHALL CEASE.

3 IN SUCH CASE, THE FUND WILL CONTINUE TO FUNCTION UNTIL ALL OF
4 ITS LIABILITY FOR CLAIMS HAS BEEN SATISFIED. THE DIRECTOR IS
5 AUTHORIZED TO CONTINUE TO COLLECT A SURCHARGE ANNUALLY WITHOUT
6 LIMIT, TO THE EXTENT NECESSARY TO SATISFY THE OBLIGATIONS OF THE
7 FUND. SUCH SURCHARGE MUST BE FILED WITH AND APPROVED BY THE
8 COMMISSIONER PRIOR TO USE.

9 ANY MONEYS REMAINING IN THE FUND FOLLOWING THE SATISFACTION
10 OF ALL ITS LIABILITIES SHALL BE RETURNED TO THE HEALTH CARE
11 PROVIDERS UNDER SUCH TERMS AND CONDITIONS AS DETERMINED BY A
12 PLAN PREPARED BY THE DIRECTOR AND APPROVED BY THE COMMISSIONER.

13 SECTION 704. DETERMINATION OF THE ADEQUACY OF THE SURCHARGE
14 IS TO BE BASED ON THE REASONABLY ANTICIPATED PAYMENT OF CLAIMS
15 AND OTHER EXPENSES OF THE FUND DURING THE PERIOD FOR WHICH THE
16 SURCHARGE IS MADE. THE SURCHARGE SHALL BE ASSESSED AGAINST EACH
17 HEALTH CARE PROVIDER QUALIFYING AS SUCH AT THE TIME THE
18 SURCHARGE IS MADE.

19 ARTICLE VIII

20 Availability of Insurance

21 Section 801. The commissioner shall establish and implement
22 or approve and supervise a plan assuring that professional
23 liability insurance will be conveniently and expeditiously
24 available, subject only to payment or provisions for payment of
25 the premium, to ~~each health care provider~~ THOSE PROVIDERS who
26 cannot conveniently obtain insurance through ordinary methods at
27 rates not in excess of those applicable to similarly situated
28 health care providers under the plan. The plan may provide
29 reasonable means for the transfer of health care providers
30 insured thereunder into the ordinary insurance market, at the

<—

1 same or lower rates pursuant to regulations established by the
2 Insurance Commissioner. The plan may be implemented by a joint
3 underwriting association ~~or any other method~~ that results in all <—
4 applicants being conveniently afforded access to the insurance
5 coverages on reasonable and not unfairly discriminatory terms.

6 Section 802. ~~All insurers except fraternal benefit societies~~ <—
7 ~~admitted to transact the business of insurance in this~~
8 ~~Commonwealth writing professional liability and personal injury~~
9 ~~liability insurance in this Commonwealth or any other~~
10 ~~jurisdiction, other than reinsurers, shall participate in the~~ <—
11 ~~plan.~~ THE PLAN SHALL CONSIST OF ALL INSURERS AUTHORIZED TO WRITE <—
12 INSURANCE PURSUANT TO SECTION 202(C)(4) AND (11) OF THE ACT OF
13 MAY 17, 1921 (P.L.682, NO.284), KNOWN AS "THE INSURANCE COMPANY
14 LAW OF 1921." The plan shall provide for equitable apportionment
15 of the financial burdens of insurance provided to applicants
16 under the plan and the costs of operation of the plan among all
17 participating insurers writing such insurance coverage.

18 Section 803. Subject to the supervision and approval of the
19 commissioner, insurers may consult and agree with each other and
20 with other appropriate persons as to the organization,
21 administration and operation of the plan and as to rates and
22 rate modifications for insurance coverages provided under the
23 plan. Rates and rate modifications adopted or changed for
24 insurance coverages provided under the plan shall be approved by
25 the commissioner in accordance with the act of June 11, 1947
26 (P.L.538, No.246), known as "The Casualty and Surety Rate
27 Regulatory Act."

28 Section 804. To carry out the objectives of this article,
29 the commissioner may adopt rules, make orders, enter into
30 agreements with other governmental or private entities and

1 individuals and form and operate or authorize the formation and
2 operation of bureaus and other legal entities.

3 Section 805. The plan shall assure that there is available
4 through the private sector or otherwise, to all applicants,
5 adequate premium financing or provision for the installment
6 payment of premiums subject to customary terms and conditions.

7 Section 806. The commissioner ~~shall~~ MAY select an insurer to <—
8 administer any plan established pursuant to this article. Such
9 insurer shall be admitted to transact the business of insurance
10 in this Commonwealth.

11 Section 807. The Insurance Commissioner shall not approve a
12 policy written on a "claims made" basis by any insurer doing
13 business in this Commonwealth unless such insurer shall
14 guarantee to the commissioner the continued availability of
15 suitable liability protection for health care providers
16 subsequent to the discontinuance of professional practice by the
17 health care provider or the sooner termination of the insurance
18 policy by the insurer or the health care provider for so long as
19 there is a reasonable probability of a claim for injury ~~being~~ <—
20 ~~discovered but not reported.~~ FOR WHICH THE HEALTH CARE PROVIDER <—
21 MAY BE HELD LIABLE.

22 Section 808. If ~~25%~~ THE PRIVATE INSURANCE MARKET UNFAIRLY <—
23 DISCRIMINATES AGAINST HIGHER RISK PHYSICIANS BY DENYING
24 PROFESSIONAL LIABILITY INSURANCE COVERAGE TO 50% or more of all
25 physicians in ~~any of Specialty Board Certified Classes 3, 4 and~~ <—
26 ~~5 are denied professional liability insurance coverage~~ INSURANCE <—
27 RATING CLASSES 3, 4 OR 5, OR THEIR EQUIVALENTS the commissioner,
28 after notice in the Pennsylvania Bulletin and public hearings,
29 ~~may declare that the method of providing coverage under sections~~ <—
30 ~~801 and 802 shall be the sole and exclusive method within this~~

1 ~~Commonwealth.~~ MAY DECLARE THAT THE PLAN ESTABLISHED UNDER THIS
2 ARTICLE SHALL BE THE SOLE AND EXCLUSIVE SOURCE OF PROFESSIONAL
3 LIABILITY INSURANCE FOR HEALTH CARE PROVIDERS WITHIN THIS
4 COMMONWEALTH. THE COMMISSIONER MAY DISSOLVE THE PLAN IF HE
5 DETERMINES THAT IT IS NO LONGER NECESSARY AND THAT AN ADEQUATE
6 MARKET WILL BE MAINTAINED FOR PROFESSIONAL LIABILITY INSURANCE
7 FOR HEALTH CARE PROVIDERS BY THE PRIVATE INSURANCE MARKET. THE
8 COMMISSIONER MAY REESTABLISH THE PLAN IF HE SHALL FIND THAT THE
9 PRIVATE INDUSTRY HAS FAILED TO PROVIDE AN ADEQUATE MARKET FOR
10 PROFESSIONAL LIABILITY INSURANCE AND MAY DECLARE IT THE SOLE AND
11 EXCLUSIVE SOURCE OF SUCH INSURANCE UNDER THE PROCEDURE SET FORTH
12 IN THIS SECTION.

13 SECTION 809. THE PLAN SHALL REPORT TO THE COMMISSIONER
14 ANNUALLY ON A DATE AND, ON A FORM PRESCRIBED BY THE COMMISSIONER
15 THE TOTAL AMOUNT OF PREMIUM DOLLARS COLLECTED, THE TOTAL AMOUNT
16 OF CLAIMS PAID AND EXPENSES INCURRED THEREWITH, THE TOTAL AMOUNT
17 OF RESERVE SET ASIDE FOR FUTURE CLAIMS, THE NATURE AND SUBSTANCE
18 OF EACH CLAIM, THE DATE AND PLACE IN WHICH EACH CLAIM AROSE, THE
19 AMOUNTS PAID, IF ANY, AND THE DISPOSITION OF EACH CLAIM
20 (JUDGMENT OF ARBITRATION PANEL, JUDGMENT OF COURT, SETTLEMENT OR
21 OTHERWISE), AND SUCH ADDITIONAL INFORMATION AS THE COMMISSIONER
22 SHALL REQUIRE.

23 SECTION 810. THE PLAN SHALL CONDUCT STUDIES AND REVIEW
24 MEMBER RECORDS FOR THE PURPOSE OF DETERMINING THE CAUSES OF
25 PATIENT COMPENSATION CLAIMS AND MAKE RECOMMENDATIONS FOR
26 LEGISLATIVE, REGULATORY AND OTHER CHANGES NECESSARY TO REDUCE
27 THE FREQUENCY AND SEVERITY OF SUCH CLAIMS.

28 ARTICLE IX
29 Disciplinary Proceedings

30 Section 901. Investigations.--The State Board of Medical

1 Education and Licensure, ~~and~~ the State Board of Osteopathic <—
2 Examiners AND THE STATE BOARD OF PODIATRY EXAMINERS shall employ <—
3 such qualified investigators and attorneys as are necessary to
4 fully implement their authority to revoke, suspend, limit or
5 otherwise regulate the licenses of physicians; issue reprimands,
6 fines, require refresher educational courses, or require
7 licensees to submit to medical treatment.

8 Section 902. Hearings.--(a) The State Board of Medical
9 Education and Licensure, ~~and~~ the State Board of Osteopathic <—
10 Examiners AND THE STATE BOARD OF PODIATRY EXAMINERS shall <—
11 appoint, with the approval of the Governor, such hearing
12 examiners as shall be necessary to conduct hearings in
13 accordance with the disciplinary authority granted by the act of
14 July 20, 1974 (P.L.551, No.190), known as the "Medical Practice
15 Act of 1974," and the act of March 19, 1909 (P.L.46, No.29),
16 entitled, as amended, "An act to regulate the practice of
17 osteopathy and surgery in the State of Pennsylvania; to provide
18 for the establishment of a State Board of Osteopathic Examiners;
19 to define the powers and duties of said Board of Osteopathic
20 Examiners; to provide for the examining and licensing of
21 osteopathic physicians and surgeons in this State; and to
22 provide penalties for the violation of this act."

23 (b) The State Board of Medical Education and Licensure or
24 the State Board of Osteopathic Examiners shall have the power to
25 adopt and promulgate rules and regulations setting forth the
26 functions, powers, standards and duties to be followed by any
27 hearing examiners appointed under the provisions of this
28 section.

29 (c) Such hearing examiners shall have the power to conduct
30 hearings in accordance with the regulations of the State Board

1 of Medical Education and Licensure or the State Board of
2 Osteopathic Examiners, and to issue subpoenas requiring the
3 attendance and testimony of individuals or the production of,
4 pertinent books, records, documents and papers by persons whom
5 they believe to have information relevant to any matter pending
6 before the examiner. Such examiner shall also have the power to
7 administer oaths.

8 Section 903. Hearing Examiners' Decisions.--The hearing
9 examiner shall hear evidence submitted and arguments of counsel,
10 if any, with reasonable dispatch, and shall promptly record his
11 decision, supported by findings of fact, and a copy thereof
12 shall immediately be sent to the State Board of Medical
13 Education and Licensure or the State Board of Osteopathic
14 Examiners and to counsel of record, or the parties, if not
15 represented.

16 Section 904. Evidence.--In all hearings proof may be made by
17 oral testimony or by deposition or interrogatories. Such
18 depositions shall be taken in the manner and upon the notice
19 required by the rules for taking depositions in civil cases and
20 may be introduced into evidence without regard to the
21 availability of the witness to testify at the time of trial. Any
22 witness, however, may be subpoenaed by any party to the
23 controversy to testify pursuant to the rules appropriate to
24 civil actions and shall be considered to be the witness of the
25 party who offered the deposition.

26 Section 905. Review of the State Board of Medical Education
27 and Licensure, ~~or~~ the State Board of Osteopathic Examiners OR <—
28 THE STATE BOARD OF PODIATRY EXAMINERS.--(a) If application for
29 review is made to the State Board of Medical Education and
30 Licensure, ~~or~~ the State Board of Osteopathic Examiners OR THE <—

1 STATE BOARD OF PODIATRY EXAMINERS within 20 days from the date
2 of any decision made as a result of a hearing held by a hearing
3 examiner, the State Board of Medical Education and Licensure, ~~or~~ <—
4 the State Board of Osteopathic Examiners OR THE STATE BOARD OF <—
5 PODIATRY EXAMINERS shall review the evidence, and if deemed
6 advisable by the board, hear argument and additional evidence.

7 (b) As soon as practicable, the State Board of Medical
8 Education and Licensure or the State Board of Osteopathic
9 Examiners shall make a decision and shall file the same with its
10 finding of the facts on which it is based and send a copy
11 thereof to each of the parties in dispute.

12 Section 906. Appeals.--Decision by the State Board of
13 Medical Education and Licensure, ~~or~~ the State Board of <—
14 Osteopathic Examiners OR THE STATE BOARD OF PODIATRY EXAMINERS <—
15 shall be conclusive and binding as to all questions of fact, but
16 any medical practitioner may, within 30 days from the date of
17 such decision appeal to the Commonwealth Court of Pennsylvania
18 alleging certain errors of law under the same terms and
19 conditions as cover appeals in actions involving State agencies.

20 Section 907. Fees.--(a) All fees, charges and fines
21 collected under the provisions of the act of July 20, 1974
22 (P.L.551, No.190), known as the "Medical Practice Act of 1974"
23 are hereby specifically appropriated for the exclusive use by
24 the State Board of Medical Education and Licensure in carrying
25 out the provisions of that act.

26 (b) All fees, charges and fines collected under the
27 provisions of the act of March 19, 1909 (P.L.46, No.29),
28 entitled, as amended, "An act to regulate the practice of
29 osteopathy and surgery in the State of Pennsylvania; to provide
30 for the establishment of a State Board of Osteopathic Examiners;

1 to define the powers and duties of said Board of Osteopathic
2 Examiners; to provide for the examining and licensing of
3 osteopathic physicians and surgeons in this State; and to
4 provide penalties for the violation of this act," are hereby
5 specifically appropriated for the exclusive use by the State
6 Board of Osteopathic Examiners in carrying out the provisions of
7 that act.

8 ARTICLE X

9 General Provisions

10 Section 1001. There shall be no liability on the part of and
11 no cause of action for libel OR SLANDER shall arise against any <—
12 member insurer, the State Board of Medical Education and
13 Licensure, the State Board of Osteopathic Examiners, THE STATE <—
14 BOARD OF PODIATRY EXAMINERS the ~~Regional~~ Arbitration Panels, THE <—
15 ADMINISTRATOR or the commissioner or his representatives for any
16 action taken by any of them in the performance of their
17 respective powers and duties under this act.

18 Section 1002. Any termination of a professional liability
19 insurance policy by cancellation is not effective against the
20 insured covered thereby, unless notice of cancellation shall
21 have been given within 60 days after the issuance of such
22 contract of insurance against the insured covered thereunder and
23 no cancellation shall take effect unless a written notice
24 stating the reasons for the cancellation and the date and time
25 upon which termination becomes effective has been received by
26 the administrator at his office. Mailing of such notice to the
27 administrator at his principal office address shall constitute
28 notice to the administrator.

29 Section 1003. The provisions of this act do not apply to
30 injuries or death from services rendered or which should have

1 been rendered by a health care provider which occurred before
2 the effective date of this act.

3 Section 1004. Every express contract between a patient and
4 health care provider in existence on the effective date of this
5 act, containing provisions inconsistent with the terms and
6 provisions of this act, remains unimpaired, binding and
7 effective as to all parties until the contract expires or is
8 rescinded by law or the mutual agreement of the parties.

9 Section 1005. Fines and Penalties.--(a) No health care
10 provider shall provide any health care or professional services
11 until such assessments as are levied by the administrator are
12 paid.

13 (b) Any health care provider licensed by the Commonwealth or
14 operating under a certificate of authority issued by the
15 Commonwealth who violates the provisions of subsection (a) shall
16 upon conviction in a summary proceeding be sentenced to pay a
17 fine of not less than \$100 nor more than \$1,000 per day for each
18 day of practice ~~without the necessary receipts,~~ WHILE IN <—
19 VIOLATION, and may be subject to a suspension of his license or
20 certificate of authority, or both.

21 Section 1006. Joint Committee.--There is hereby created a
22 committee to consist of the commissioner as chairman, the
23 Secretary of Health and two members of the Senate, one member of
24 each party, to be appointed by the President pro tempore and two
25 members of the House of Representatives, one member of each
26 party, to be appointed by the Speaker of the House of
27 Representatives. The committee shall study the distribution of
28 professional liability insurance costs as among the various
29 classes of physicians and health care providers and shall report
30 its findings and recommendations to the General Assembly on or

1 before ~~July 1, 1976~~ WITHIN ONE YEAR OF THE EFFECTIVE DATE OF <—
2 THIS ACT. The committee shall also study all phases and the
3 financial impact of the operations of the Medical Professional
4 Liability Catastrophe Loss Fund and shall report its findings
5 and recommendations to the General Assembly on or before July 1,
6 1977.

7 This committee shall also study actual or potential problems
8 of conflicts of interest which exist or may exist among members
9 of the arbitration panel with each other and with other persons
10 appearing before the arbitration panel or having their interests
11 represented before the arbitration panel. The committee shall
12 promulgate a proposed Code of Ethics with suggested legal
13 sanctions to deal with any violators of the Code of Ethics on or
14 before July 1, 1976.

15 If the General Assembly, after receiving the findings and
16 recommendations of the joint committee, has not enacted
17 legislation to remedy the problems of distribution of
18 professional liability insurance costs as among the various
19 physicians and health care providers by ~~July 1, 1977~~ JANUARY 1, <—
20 1979, then thereafter no professional liability insurance shall
21 be issued, written or renewed that provides for different risk
22 classification categories among medical doctors and doctors of
23 osteopathy.

24 Section 1007. Repealer.--All acts and parts of acts are
25 repealed in so far as they are inconsistent with this act.

26 Section 1008. Effective Date.--This act shall take effect in
27 90 days.