

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1197 Session of  
2003

INTRODUCED BY LEACH, THOMAS, MANN, CAPPELLI, BARD, BUNT,  
FRANKEL, MELIO, WASHINGTON AND YOUNGBLOOD, APRIL 16, 2003

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, APRIL 16, 2003

AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled  
2 "An act reforming the law on medical professional liability;  
3 providing for patient safety and reporting; establishing the  
4 Patient Safety Authority and the Patient Safety Trust Fund;  
5 abrogating regulations; providing for medical professional  
6 liability informed consent, damages, expert qualifications,  
7 limitations of actions and medical records; establishing the  
8 Interbranch Commission on Venue; providing for medical  
9 professional liability insurance; establishing the Medical  
10 Care Availability and Reduction of Error Fund; providing for  
11 medical professional liability claims; establishing the Joint  
12 Underwriting Association; regulating medical professional  
13 liability insurance; providing for medical licensure  
14 regulation; providing for administration; imposing penalties;  
15 and making repeals," providing for the Medical Professional  
16 Liability Discipline Board; further providing for the  
17 definition of "licensure board," for reporting, for  
18 confidentiality of records of licensure boards and for  
19 licensure board-imposed civil penalty; and providing for  
20 Medical Professional Liability Disciplinary Board-imposed  
21 license suspension.

22 The General Assembly of the Commonwealth of Pennsylvania  
23 hereby enacts as follows:

24 Section 1. Section 746(a) of the act of March 20, 2002  
25 (P.L.154, No.13), known as the Medical Care Availability and  
26 Reduction of Error (Mcare) Act, is amended to read:

27 Section 746. Mandatory reporting.

1 (a) General provisions.--Each medical professional liability  
2 insurer and each self-insured health care provider, including  
3 the fund established by this chapter, which makes payment in  
4 settlement or in partial settlement of or in satisfaction of a  
5 judgment in a medical professional liability action or claim  
6 shall provide to the appropriate licensure board and the Medical  
7 Professional Liability Disciplinary Board a true and correct  
8 copy of the report required to be filed with the Federal  
9 Government by section 421 of the Health Care Quality Improvement  
10 Act of 1986 (Public Law 99-660, 42 U.S.C. § 11131). The copy of  
11 the report required by this section shall be filed  
12 simultaneously with the report required by section 421 of the  
13 Health Care Quality Improvement Act of 1986. The department  
14 shall monitor and enforce compliance with this section. The  
15 Bureau of Professional and Occupational Affairs [and], the  
16 licensure boards and the Medical Professional Liability  
17 Disciplinary Board shall have access to information pertaining  
18 to compliance.

19 \* \* \*

20 Section 2. The definition of "licensure board" in section  
21 902 of the act is amended to read:

22 Section 902. Definitions.

23 The following words and phrases when used in this chapter  
24 shall have the meanings given to them in this section unless the  
25 context clearly indicates otherwise:

26 "Licensure board." [Either] The term shall mean either of  
27 the following:

28 (1) In connection with medical professional liability  
29 claims only, the Medical Professional Liability Discipline  
30 Board.

1        (2) In connection with any matter other than a medical  
2        professional liability claim, either or both of the  
3        following, depending on the licensure of the affected  
4        individual:

5                [(1)] (i) The State Board of Medicine.

6                [(2)] (ii) The State Board of Osteopathic Medicine.

7        \* \* \*

8        Section 3. The act is amended by adding a section to read:  
9        Section 902.1. Medical Professional Liability Disciplinary  
10        Board.

11        (a) Establishment.--The Medical Professional Liability  
12        Disciplinary Board is established and shall consist of seven  
13        members appointed by the Governor who shall be medical or  
14        osteopathic doctors with unrestricted licenses to practice  
15        medicine and surgery in this Commonwealth and who have some type  
16        of board certification from the State Board of Medicine or the  
17        State Board of Osteopathic Medicine, with the advice and consent  
18        of a majority of the members elected to the Senate.

19        (b) Duty.--The duty of the Medical Professional Liability  
20        Disciplinary Board shall be to discipline, in connection with  
21        medical professional liability claims only, medical doctors  
22        licensed to practice medicine by the State Board of Medicine or  
23        osteopathic doctors licensed to practice osteopathic medicine by  
24        the State Board of Osteopathic Medicine.

25        (c) Terms of office.--The term of each member of the Medical  
26        Professional Liability Disciplinary Board shall be four years or  
27        until his or her successor has been appointed and qualified, but  
28        not longer than six months beyond the four-year period. In the  
29        event that any of the members die or resign or otherwise become  
30        disqualified during his or her term, a successor shall be

1 appointed in the same way and shall hold office for the  
2 unexpired term. No member shall be eligible for appointment to  
3 serve more than two consecutive terms.

4 (d) Quorum.--A majority of the members of the Medical  
5 Professional Liability Disciplinary Board serving in accordance  
6 with law shall constitute a quorum for purposes of conducting  
7 the business of the Medical Professional Liability Disciplinary  
8 Board. A member may not be counted as part of a quorum or vote  
9 on any issue unless he or she is physically in attendance at the  
10 meeting.

11 (e) Chairman.--The Medical Professional Liability  
12 Disciplinary Board shall select annually a chairman from among  
13 its members.

14 (f) Compensation.--Each member of the Medical Professional  
15 Liability Disciplinary Board shall receive \$60 per diem when  
16 actually attending to the work of the Medical Professional  
17 Liability Disciplinary Board. Members shall also receive the  
18 amount of reasonable travel, hotel and other necessary expenses  
19 incurred in the performance of their duties in accordance with  
20 Commonwealth regulations.

21 (g) Sunset.--The Medical Professional Liability Disciplinary  
22 Board is subject to evaluation, review and termination in the  
23 manner provided for in the act of December 22, 1981 (P.L.508,  
24 No.142), known as the Sunset Act.

25 (h) Attendance at meetings.--A member of the Medical  
26 Professional Liability Disciplinary Board who fails to attend  
27 three consecutive meetings shall forfeit his or her seat unless  
28 the chairman, upon written request from the member, finds that  
29 the member should be excused from a meeting because of illness  
30 or the death of a family member.

1     (i) Meetings.--The Medical Professional Liability  
2 Disciplinary Board shall meet at least once every two months and  
3 at such additional times as may be necessary to conduct the  
4 business of the Medical Professional Liability Disciplinary  
5 Board.

6     (j) Executive secretary.--The Medical Professional Liability  
7 Disciplinary Board, with the approval of the Governor, shall  
8 appoint and fix the compensation of an executive secretary who  
9 shall be responsible for the day-to-day operation of the Medical  
10 Professional Liability Disciplinary Board and administration of  
11 Medical Professional Liability Disciplinary Board activities.

12     Section 4. Sections 903, 907 and 908 of the act are amended  
13 to read:

14     Section 903. Reporting.

15     A physician shall report to the State Board of Medicine [or],  
16 the State Board of Osteopathic Medicine or the Medical  
17 Professional Liability Disciplinary Board, as appropriate,  
18 within 60 days of the occurrence of any of the following:

19         (1) Notice of a complaint in a medical professional  
20 liability action that is filed against the physician. The  
21 physician shall provide the docket number of the case, where  
22 the case is filed and a description of the allegations in the  
23 complaint.

24         (2) Information regarding disciplinary action taken  
25 against the physician by a health care licensing authority of  
26 another state.

27         (3) Information regarding sentencing of the physician  
28 for an offense as provided in section 15 of the act of  
29 October 5, 1978 (P.L.1109, No.261), known as the Osteopathic  
30 Medical Practice Act, or section 41 of the act of December

20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985.

(4) Information regarding an arrest of the physician for any of the following offenses in this Commonwealth or another state:

(i) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

(ii) 18 Pa.C.S. § 2702 (relating to aggravated assault); or

(iii) 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

(iv) A violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

Section 907. Confidentiality of records of licensure boards.

(a) General rule.--All documents, materials or information utilized solely for an investigation undertaken [by the State Board of Medicine or State Board of Osteopathic Medicine] a licensure board or concerning a complaint filed with [the State Board of Medicine or State Board of Osteopathic Medicine] a licensure board shall be confidential and privileged. No person who has investigated or has access to or custody of documents, materials or information which are confidential and privileged under this subsection shall be required to testify in any judicial or administrative proceeding without the written consent of [the State Board of Medicine or State Board of Osteopathic Medicine] a licensure board. This subsection shall not preclude or limit introduction of the contents of an investigative file or related witness testimony in a hearing or proceeding held before [the State Board of Medicine or State

1 Board of Osteopathic Medicine] a licensure board. This  
2 subsection shall not apply to letters to a licensee that  
3 disclose the final outcome of an investigation or to final  
4 adjudications or orders issued by the licensure board.

5 (b) Certain disclosure permitted.--Except as provided in  
6 subsection (a), this section shall not prevent disclosure of any  
7 documents, materials or information pertaining to the status of  
8 a license, permit or certificate issued or prepared by the State  
9 Board of Medicine or State Board of Osteopathic Medicine or  
10 relating to a public disciplinary proceeding or hearing  
11 conducted by the State Board of Medicine, State Board of  
12 Osteopathic Medicine or the Medical Professional Liability  
13 Disciplinary Board.

14 Section 908. Licensure board-imposed civil penalty.

15 In addition to any other civil remedy or criminal penalty  
16 provided for in this act, the act of December 20, 1985 (P.L.457,  
17 No.112), known as the Medical Practice Act of 1985, or the act  
18 of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic  
19 Medical Practice Act, the [State Board of Medicine and the State  
20 Board of Osteopathic Medicine] appropriate licensure board, by a  
21 vote of the majority of the maximum number of the authorized  
22 membership of each board as provided by law or by a vote of the  
23 majority of the duly qualified and confirmed membership or a  
24 minimum of five members, whichever is greater, may levy a civil  
25 penalty of up to \$10,000 on any current licensee who violates  
26 any provision of this act, the Medical Practice Act of 1985 or  
27 the Osteopathic Medical Practice Act or on any person who  
28 practices medicine or osteopathic medicine without being  
29 properly licensed to do so under the Medical Practice Act of  
30 1985 or the Osteopathic Medical Practice Act. The appropriate

1 licensure boards shall levy this penalty only after affording  
2 the accused party the opportunity for a hearing as provided in 2  
3 Pa.C.S. (relating to administrative law and procedure).

4 Section 5. The act is amended by adding a section to read:

5 Section 908.1. Medical Professional Liability Disciplinary  
6 Board-imposed license suspension.

7 (a) Reporting requirement.--Each entity which makes a  
8 payment under an insurance policy, self-insurance, or otherwise,  
9 for the benefit of a physician in settlement of or in  
10 satisfaction in whole or in part of a claim or judgment against  
11 a physician for medical professional liability shall report  
12 within 48 hours of making the payment the information required  
13 under 45 CFR § 60.7 (relating to reporting medical malpractice  
14 payments) to the Medical Professional Liability Disciplinary  
15 Board.

16 (b) Physician license suspension.--In addition to any  
17 authority of the State Board of Medicine and the State Board of  
18 Osteopathic Medicine to suspend the license of a physician under  
19 this act, the act of December 20, 1985 (P.L.457, No.112), known  
20 as the Medical Practice Act of 1985, or the act of October 5,  
21 1978 (P.L.1109, No.261), known as the Osteopathic Medical  
22 Practice Act, the Medical Professional Liability Disciplinary  
23 Board shall have the power and duty to suspend immediately the  
24 license of any physician who has three paid medical professional  
25 liability claims within the immediately preceding seven years.  
26 The period of suspension shall be no less than 60 days, which  
27 period may be extended by the Medical Professional Liability  
28 Disciplinary Board. Upon suspension or a physician's license,  
29 the Medical Professional Liability Disciplinary Board must  
30 commence immediately an investigation of the physician for the



1 purpose of imposing additional disciplinary sanctions or  
2 corrective measures as warranted.

3 (c) Procedure.--All actions of the Medical Professional  
4 Liability Disciplinary Board under this section shall be taken  
5 subject to the right of notice, hearing, adjudication and appeal  
6 therefrom in accordance with the provisions of 2 Pa.C.S.  
7 (relating to administrative law and procedure).

8 (d) Nonapplicability.--This section shall not apply to  
9 physicians exempt under section 711(j).

10 (e) Definition.--As used in this section, the term "paid  
11 medical professional liability claims" includes, but is not  
12 limited to, an indemnity payment and money paid as a result of a  
13 settlement or judgment in a medical professional liability  
14 action against a physician.

15 Section 6. This act shall take effect in 60 days.