

## 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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JULY 21, 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; and prescribing penalties.

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

## ARTICLE I

## Preliminary Provisions

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

15 ~~Section 102. Legislative Findings. The General Assembly~~ <—  
16 ~~finds that:~~

17 ~~(1) The number of suits and claims for damages arising from~~  
18 ~~professional patient care has increased greatly in the past~~

~~several years and the size of judgments and settlements in connection therewith have increased substantially.~~

~~(2) The effects of such suits and the settlements of such claims have caused the insurance industry providing professional liability insurance coverage to substantially increase the cost of such insurance coverage.~~

~~(3) These increased insurance costs are being passed on to patients in the form of higher charges for health care services and facilities.~~

~~(4) The increased costs of providing health care services, the increased incidence of claims and suits against health care providers, and the large size of such claims and judgments, have restricted the availability of an adequate insurance market to provide professional liability insurance and have caused some insurers to threaten withdrawal of such insurance from the market.~~

~~(5) The rising number of suits and claims has contributed to causing health care providers to practice defensively, viewing each patient as a potential adversary in a lawsuit, to the detriment of both the health care provider and the patient. Health care providers for their own protection have often employed excessive diagnostic procedures for their patients, unnecessarily increasing the cost of patient care.~~

~~(6) As a result of the increase of suits and claims and the costs thereof, some health care providers refuse to provide certain health care services which in themselves entail some risk of patient injury.~~

~~(7) Many health care providers cannot obtain professional liability insurance to protect themselves against lawsuits and are thus exposing patients to unreasonable financial risk in the~~

1 ~~event of a health care providers negligence.~~

2 ~~(8) The difficulty and high cost of obtaining professional~~  
3 ~~liability insurance for health care providers discourages young~~  
4 ~~physicians from entering into the practice of medicine in the~~  
5 ~~Commonwealth of Pennsylvania, resulting in the loss of~~  
6 ~~physicians to other states.~~

7 ~~(9) The difficulty and high cost of obtaining professional~~  
8 ~~liability insurance affects medical and hospital services and~~  
9 ~~the cost of such services available in the Commonwealth of~~  
10 ~~Pennsylvania to the detriment of its citizens.~~

11 ~~(10) Some health care providers have been forced to curtail~~  
12 ~~the practice of all or a part of their professions because of~~  
13 ~~the unavailability and high cost of professional liability~~  
14 ~~insurance.~~

15 ~~(11) The cumulative effect of suits and claims is working to~~  
16 ~~the detriment of both the health care providers and the citizens~~  
17 ~~of the Commonwealth.~~

18 Section ~~103~~ 102. Purpose.--~~Due to the conditions stated in~~ <—  
19 ~~section 102, it~~ IT is the purpose of this act to make available <—  
20 professional liability insurance at a reasonable cost, and to  
21 establish a system through which a person who has sustained  
22 injury or death as a result of tort or breach of contract by a  
23 health care provider can obtain a prompt determination and  
24 adjudication of his claim and the determination of fair and  
25 reasonable compensation.

26 Section ~~104~~ 103. Definitions.--As used in this act: <—

27 "Administrator" means the office of Administrator for  
28 Regional Arbitration Panels for Health Care.

29 "Arbitration panel" means Regional Arbitration Panels for  
30 Health Care.

1 "Claims made" means a policy of professional liability  
2 insurance that would limit or restrict the liability of the  
3 insurer under the policy to only those claims made or reported  
4 during the currency of the policy period and would exclude  
5 coverage for claims reported subsequent to the termination even  
6 when such claims resulted from occurrences during the currency  
7 of the policy period.

8 "Commissioner" means the Insurance Commissioner of this  
9 Commonwealth.

10 "Health care provider" means a person, corporation, facility  
11 institution or other entity licensed by the Commonwealth to  
12 provide health care or professional services as a physician,  
13 including a medical doctor and a doctor of osteopathy AND A <—  
14 DOCTOR OF PODIATRY; hospital; nursing home; health maintenance  
15 organization; health care delivery organization for which a  
16 professional liability program is not generally available; or an  
17 officer, employee or agent thereof acting in the course and  
18 scope of his employment.

19 "INFORMED CONSENT" MEANS FOR THE PURPOSES OF THIS ACT AND OF <—  
20 ANY PROCEEDINGS ARISING UNDER THE PROVISIONS OF THIS ACT, THE  
21 CONSENT OF A PATIENT FREELY GIVEN TO THE PERFORMANCE OF HEALTH  
22 CARE SERVICES BY A HEALTH CARE PROVIDER: PROVIDED, THAT PRIOR TO  
23 THE INFORMED CONSENT'S HAVING BEEN GIVEN, THE HEALTH CARE  
24 PROVIDER HAS INFORMED THE PATIENT OF THOSE RISKS, POSSIBLE  
25 CONSEQUENCES, AND ALTERNATIVES TO TREATMENT THAT A REASONABLE  
26 PATIENT WOULD CONSIDER MATERIAL TO HIS DECISION WHETHER OR NOT  
27 TO UNDERGO TREATMENT. NO DOCTOR SHALL BE LIABLE FOR A FAILURE TO  
28 OBTAIN AN INFORMED CONSENT IN THE EVENT OF AN EMERGENCY WHICH  
29 PREVENTS HIS CONSULTING THE PATIENT. NO DOCTOR SHALL BE LIABLE  
30 FOR FAILURE TO OBTAIN AN INFORMED CONSENT IF IT IS ESTABLISHED

1 BY A PREPONDERANCE OF THE EVIDENCE THAT FURNISHING THE  
2 INFORMATION IN QUESTION TO THE PATIENT WOULD HAVE RESULTED IN A  
3 SERIOUSLY ADVERSE EFFECT ON THE THERAPEUTIC PROCESS TO THE  
4 MATERIAL DETRIMENT OF THE PATIENT'S HEALTH.

5 "Licensure Board" means the State Board of Medical Education  
6 and Licensure, the State Board of Osteopathic Examiners, the  
7 Department of Public Welfare and the Department of Health.

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

10 "Professional liability insurance" means insurance against  
11 liability on the part of a health care provider arising out of  
12 any tort or breach of contract causing injury or death occurring  
13 in or resulting from the furnishing of medical services which  
14 were or should have been provided.

## 15 ARTICLE II

### 16 Services Rendered by Non-Health Care Providers

17 Section 201. Any person rendering services normally rendered  
18 by a health care provider who fails to qualify as a health care  
19 provider under this act is subject to liability under the law  
20 without regard to the provisions of this act.

## 21 ARTICLE III

### 22 Administrator for Regional Arbitration Panels for Health Care

23 Section 301. There is established within the Department of  
24 Insurance the office of Administrator for Regional Arbitration  
25 Panels for Health Care to be appointed by the Governor. The  
26 salary of the administrator shall be set by the Executive Board.

27 Section 302. The administrator may be removed by the  
28 Governor for incompetence, neglect of duty, misconduct in  
29 office, or other good cause to be stated in writing in the order  
30 of removal.

1 Section 303. The administrator shall appoint a secretary and  
2 such other employees as are required to administer this act.  
3 Their salaries shall be set by the Executive Board.

4 Section 304. (a) The administration of this act shall be  
5 funded in part from fees charged to each health care provider  
6 practicing in the Commonwealth.

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

9 (c) An annual fee of \$500 shall be charged to each hospital  
10 with 250 or more beds. An annual fee of \$350 shall be charged to  
11 all other hospitals. An annual fee of \$100 shall be charged to  
12 all other health care organizations.

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

17 Section 306. The administrator shall submit to the Governor  
18 and the General Assembly annually, on or before December 1, a  
19 report of the work of the ~~administrators~~ ADMINISTRATOR'S office <—  
20 during the preceding fiscal year.

21 Section 307. The Attorney General, after consultation with  
22 the Insurance Commissioner and the Secretary of Health, shall  
23 adopt and publish such uniform rules and regulations as may be  
24 necessary to carry out the provisions of this act, and SHALL <—  
25 prescribe the means, methods and practices necessary to  
26 effectuate such provisions. SUCH RULES AND REGULATIONS SHALL BE <—  
27 CONSISTENT WITH THE COMMON AND STATUTORY LAW OF THE  
28 COMMONWEALTH, THE PENNSYLVANIA RULES OF CIVIL PROCEDURE, AND THE  
29 PENNSYLVANIA RULES OF EVIDENCE.

30 Section 308. Regional Arbitration Panels for Health Care.--

1 (a) Regional arbitration panels shall be established by the  
2 Governor. THE GOVERNOR IN HIS DISCRETION MAY ESTABLISH MORE THAN <—  
3 ONE ARBITRATION PANEL PER REGION. Regional boundaries shall be  
4 those districts established by the Professional Standards Review  
5 Organization as designated in section 249 F, Professional  
6 Standards Review, Title II, 42 U.S.C. §1301. The regions shall  
7 be modified to the extent that they are modified by that act. If  
8 said act is repealed, the regions shall remain as last  
9 established by said act.

10 (b) Each Regional Arbitration Panel for Health Care shall be  
11 composed of ~~three~~ FIVE members who reside in the Professional <—  
12 Standards Review Organization region, including ~~one physician~~ <—  
13 TWO PHYSICIANS practicing in the Professional Standards Review <—  
14 Organization region, ~~one attorney~~ TWO ATTORNEYS licensed to <—  
15 practice before the Pennsylvania Supreme Court and one layperson  
16 who is not a physician nor engaged in the practice of law.  
17 Arbitration panel members for each region shall be appointed by  
18 the Governor.

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

27 (d) Except as hereinafter provided, each arbitration panel  
28 member shall hold office for ~~three~~ TWO years or until his <—  
29 successor is appointed and assumes office. Initial members shall  
30 hold office ~~for one, two and three years, respectively.~~ AS <—





FOR FILING A CLAIM

Section 401. A patient or his representative, having a claim for ~~compensation or benefits~~ LOSS OR DAMAGES shall file WITH THE ADMINISTRATOR a complaint ~~with the administrator.~~ OR SUCH OTHER FORM, WITH SUCH FEES, AS PRESCRIBED BY THE RULES AND REGULATIONS ADOPTED BY THE ATTORNEY GENERAL. The administrator shall refer the complaint to the appropriate arbitration panel.

Section 402. Upon assignment of a ~~complaint~~ CLAIM to an arbitration panel, said arbitration panel shall ~~review the~~ ~~complaint in accordance with the rules and regulations~~ ~~promulgated by the Attorney General.~~ EXPEDITIOUSLY HEAR AND DETERMINE THE CLAIM IN ACCORDANCE WITH THE RULES AND REGULATIONS ADOPTED BY THE ATTORNEY GENERAL.

ARTICLE V

Procedure Before the Regional Arbitration Panel for Health Care

Section 501. Arbitration panel hearings shall be conducted in the Professional Standards Review Organization region where the cause of action arose, but may, within the discretion of the administrator, be held in any other place.

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

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

Section 504. All briefs or pleadings shall contain a

1 certification that on or before the day of filing, a copy of the  
2 document was served on opposing counsel, or on the adverse party  
3 or parties if there is no counsel of record.

4 Section 505. A majority vote of the full arbitration panel  
5 shall be required to decide all matters before it.

6 Section 506. Except as provided in this act, the arbitration  
7 panel is bound by the common and statutory law of the

8 Commonwealth, ~~and by the Pennsylvania Rules of Civil Procedure,~~ <—

9 AND THE PENNSYLVANIA RULES OF EVIDENCE. <—

10 Section 507. The arbitration panel may, upon the application  
11 of either party or upon its own motion, appoint a disinterested  
12 and qualified expert to make any necessary professional or  
13 expert examination of the claimant or relevant evidentiary  
14 matter and to testify as a witness in respect thereto. Such an  
15 expert witness shall be allowed necessary expenses and a  
16 reasonable fee to be fixed and paid by the arbitration panel.

17 ~~and taxed as costs as the panel deems appropriate.~~ <—

18 Section 508. (a) The arbitration panel is authorized and  
19 empowered to:

20 (1) examine the relevant facts to determine if a case exists  
21 for recovery; ~~pursuant to Article VI;~~ <—

22 (2) ~~ascertain undisputed facts;~~ MAKE FINDINGS OF FACT; <—

23 (3) take depositions and testimony;

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

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

28 (6) subpoena witnesses, and administer oaths;

29 (7) apply to the court of common pleas to enforce the  
30 attendance and testimony of witnesses and the production and

1 examination of books, papers and records;

2 (8) consider and approve offers of settlement and proposals  
3 of adjustment between plaintiffs and defendants;

4 (9) make determinations as to liability and award of  
5 damages; and

6 (10) exercise all other powers and duties conferred upon it  
7 by law.

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

11 Section 509. Appeals from determinations made by the  
12 arbitration panel may be taken to the court of common pleas in  
13 the same manner as appeals in civil actions, ~~except that where~~ <—  
14 ~~the arbitration panel finds the defendant not liable to the~~  
15 ~~plaintiff, the plaintiff may appeal to the court of common pleas~~  
16 ~~only upon payment of all costs, including all arbitrators fees~~  
17 ~~which have previously accrued~~ EXCEPT THAT THE PARTY SEEKING TO <—  
18 FILE AN APPEAL MUST FIRST PAY ALL RECORD COSTS to the  
19 prothonotary of the court in which he seeks to file his appeal.  
20 IF THE COURT OF COMMON PLEAS FINDS AT THE COMPLETION OF THE <—  
21 TRIAL THAT THE BASIS FOR THE APPEAL WAS GROSSLY INSUBSTANTIAL,  
22 THE APPELLANT SHALL BE LIABLE FOR ALL COSTS OF ARBITRATION AND  
23 TRIAL, INCLUDING RECORD COSTS, ARBITRATOR'S COMPENSATION  
24 DISCOVERY COSTS, AND FEES AND EXPENSES OF THE ARBITRATION  
25 PANEL'S EXPERT WITNESSES.

26 Section 510. Where an appeal is taken the decision, ~~and~~ <—  
27 findings AND AWARD, IF ANY, of the arbitration panel shall be <—  
28 admissible as evidence before the court.

29 Section 511. (a) If an appeal is not entered within the  
30 prescribed time, the party in whose favor the award shall be

1 made may request the arbitration panel to transfer the record  
2 and judgment to the court of common pleas in the district where  
3 the plaintiff or defendant resides, for execution. It shall be  
4 the duty of the prothonotary, at the request of the party in  
5 whose favor the award shall have been made, to issue execution,  
6 or such other process as may be necessary and proper, to carry  
7 into effect the judgment entered upon such award, subject to the  
8 provisions of law concerning the stay of execution upon  
9 judgments.

10 (b) After judgment, the plaintiff may proceed upon said  
11 transferred record and judgment for the collection thereof, with  
12 costs, by execution, bill of discovery or attachment, in like  
13 manner as if the same were a judgment of the court to which it  
14 has been transferred.

15 Section 512. In an action brought to recover damages under  
16 this act, no advance payment made by the defendant health care  
17 provider or his professional liability insurer to or for the  
18 plaintiff shall be construed as an admission of liability for  
19 injuries or damages suffered by the plaintiff.

20 Section 513. Any final award in favor of the plaintiff,  
21 shall be reduced to the extent of any advance payment. The  
22 advance payment shall inure to the exclusive benefit of the  
23 defendant or the insurer making the payment.

24 Section 514. In the event that the arbitration panel finds  
25 that the injury or death of the patient was the result in whole  
26 or in part of tort or breach of contract by a health care  
27 provider, AND SUCH DECISION IS NOT OVERTURNED ON APPEAL, the <—  
28 arbitration panel shall report such findings to the licensure  
29 board and the Professional Standards Review Organization. ~~for~~ <—  
30 ~~investigation and disciplinary proceedings.~~ THE APPROPRIATE <—

1 BOARD OF LICENSURE SHALL PROMPTLY INVESTIGATE THE REPORT AND  
2 TAKE SUCH DISCIPLINARY ACTION AS MAY BE APPROPRIATE.

3 ARTICLE VI

4 Awards

5 Section 601. Upon a finding by the arbitration panel that  
6 ~~the defendant was negligent in the conduct of professional~~ <—  
7 ~~service as a health care provider,~~ THE DEFENDANT'S CONDUCT WAS <—  
8 TORTIOUS OR CONSTITUTED A BREACH OF CONTRACT, the plaintiff  
9 shall have the same rights of recovery for damages as are now  
10 provided by law.

11 Section 602. The ~~compensation and benefits~~ LOSS AND DAMAGES <—  
12 awarded under this act shall be reduced by any PUBLIC collateral <—  
13 source of compensation or benefits. ~~public or private.~~ A right <—  
14 of subrogation is not enforceable against any benefit or  
15 compensation awarded under this act or against any health care  
16 provider or its liability insurer.

17 Section 603. In the event the arbitration panel finds that  
18 the injury or damage to the patient was caused in whole or in  
19 part by the wilful or wanton misconduct of any of the  
20 defendants, the panel may award punitive damages against the  
21 defendant.

22 Section 604. ~~When a plaintiff is represented by an attorney~~ <—  
23 ~~in the prosecution of his claim, the arbitration panel, if~~  
24 ~~compensation is awarded, shall fix reasonable attorney's fees~~  
25 ~~and state in the award the amount of the claimant's attorney's~~  
26 ~~fees, which may not exceed 33 1/3% of the award. The fee is~~  
27 ~~binding on the plaintiff, his attorney and all defendants. No~~  
28 ~~additional fee may be charged in a case in which the plaintiff~~  
29 ~~prevails.~~

30 (A) WHEN A PLAINTIFF IS REPRESENTED BY AN ATTORNEY IN THE <—

1 PROSECUTION OF HIS CLAIM THE PLAINTIFF'S ATTORNEY FEES FROM ANY  
2 AWARD MADE FROM THE FIRST \$100,000 MAY NOT EXCEED 30%, FROM THE  
3 SECOND \$100,000 ATTORNEY FEES MAY NOT EXCEED 25%, AND ATTORNEY  
4 FEES MAY NOT EXCEED 20% ON THE BALANCE OF ANY AWARD.

5 (B) A PLAINTIFF HAS THE RIGHT TO ELECT TO PAY FOR THE  
6 ATTORNEY'S SERVICES ON A MUTUALLY SATISFACTORY PER DIEM BASIS.  
7 THE ELECTION, HOWEVER, MUST BE EXERCISED IN WRITTEN FORM AT THE  
8 TIME OF EMPLOYMENT.

9 Section 605. No claim for recovery pursuant to the  
10 provisions of this act may be commenced, unless the action is  
11 filed within the longer period of (i) two years after the breach  
12 of contract or the tort complained of, or, (ii) one year after  
13 the date when the breach of contract, ~~or~~ the tort or the <—  
14 resulting injury was discovered, or in the exercise of  
15 reasonable care, should have been discovered. In no instance  
16 shall a claim be commenced more than seven years after the  
17 breach of contract or the tort complained of. This section  
18 applies to all persons regardless of minority or other legal  
19 disability. ~~The A filing of a complaint with the administrator~~ <—  
20 pursuant to section 401 shall toll the running of the  
21 limitations contained herein.

22 SECTION 606. IN THE ABSENCE OF A SPECIAL CONTRACT IN <—  
23 WRITING, A PHYSICIAN OR SURGEON IS NEITHER A WARRANTOR NOR A  
24 GUARANTOR OF A CURE.

25 ~~ARTICLE VII~~ <—

26 ~~Insurance — Health Care Providers~~

27 ~~Section 701. The administrator may require that every health~~  
28 ~~care provider subject to the terms of this act shall file with~~  
29 ~~the administrator, on a prescribed form, satisfactory, proof of~~  
30 ~~financial responsibility up to \$200,000 per person and \$600,000~~

1 ~~per occurrence.~~

2 ~~Section 702. Every health care provider subject to the~~  
3 ~~provisions of this act, may insure his liability against~~  
4 ~~negligence or upon request furnish to the administrator a cash~~  
5 ~~or surety bond. The submission of a cash or surety bond is~~  
6 ~~subject to the approval of the administrator and is valid only~~  
7 ~~when approved by the administrator. The insurance, cash or~~  
8 ~~surety bond will be in an amount determined by the administrator~~  
9 ~~to be equivalent to that prescribed in section 701. Health care~~  
10 ~~providers may elect to purchase professional liability insurance~~  
11 ~~in an amount exceeding that prescribed in section 701.~~

12 ARTICLE VII

<—

13 MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND

14 SECTION 701. (A) EVERY HEALTH CARE PROVIDER SUBJECT TO THE  
15 PROVISIONS OF THIS ACT SHALL INSURE HIS LIABILITY BY PURCHASING  
16 PROFESSIONAL LIABILITY INSURANCE IN THE AMOUNT OF \$100,000 PER  
17 OCCURRENCE, HEREINAFTER KNOWN AS "BASIC COVERAGE INSURANCE."

18 (B) NO INSURER PROVIDING PROFESSIONAL LIABILITY INSURANCE TO  
19 A HEALTH CARE PROVIDER PURSUANT TO THE PROVISIONS OF SECTION  
20 701(A) SHALL BE LIABLE FOR PAYMENT OF ANY CLAIM AGAINST A HEALTH  
21 CARE PROVIDER FOR ANY LOSS OR DAMAGES AWARDED IN A PROFESSIONAL  
22 LIABILITY ACTION IN EXCESS OF \$100,000 PER OCCURRENCE.

23 (C) THERE IS HEREBY CREATED A CONTINGENCY FUND FOR THE  
24 PURPOSE OF PAYING ALL AWARDS FOR LOSS OR DAMAGES AGAINST A  
25 HEALTH CARE PROVIDER AS A CONSEQUENCE OF ANY MEDICAL MALPRACTICE  
26 ACTION WHICH IS IN EXCESS OF \$100,000. SUCH FUND SHALL BE KNOWN  
27 AS THE "MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND,"  
28 IN THIS ARTICLE VII CALLED THE "FUND."

29 (D) THE FUND SHALL BE FUNDED BY THE LEVYING OF AN ANNUAL  
30 SURCHARGE ON ALL HEALTH CARE PROVIDERS. THE SURCHARGE SHALL BE

1 DETERMINED BY THE COMMISSIONER BASED UPON ACTUARIAL PRINCIPLES  
2 AND SHALL NOT EXCEED 10% OF THE COST TO EACH HEALTH CARE  
3 PROVIDER FOR MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE.  
4 ALL INCOME FROM THE FUND SHALL BE HELD IN TRUST, DEPOSITED IN A  
5 SEGREGATED ACCOUNT, INVESTED AND REINVESTED BY THE COMMISSIONER,  
6 AND SHALL NOT BECOME A PART OF THE GENERAL FUND OF THE  
7 COMMONWEALTH. IF THE TOTAL FUND EXCEEDS THE SUM OF \$15,000,000  
8 AT THE END OF ANY CALENDAR YEAR AFTER THE PAYMENT OF ALL CLAIMS  
9 AND EXPENSES, INCLUDING THE EXPENSES OF OPERATION OF THE OFFICE  
10 OF THE DIRECTOR, THE COMMISSIONER SHALL REDUCE THE SURCHARGE  
11 PROVIDED IN THIS SECTION IN ORDER TO MAINTAIN THE FUND AT AN  
12 APPROXIMATE LEVEL OF \$15,000,000. THE COMMISSIONER SHALL ISSUE  
13 RULES AND REGULATIONS CONSISTENT WITH THIS SECTION REGARDING THE  
14 ESTABLISHMENT OF THE FUND AND THE LEVYING, PAYMENT AND  
15 COLLECTION OF THE SURCHARGES.

16 (E) THE FAILURE OF ANY HEALTH CARE PROVIDER TO COMPLY WITH  
17 ANY OF THE PROVISIONS OF THIS SECTION OR ANY OF THE RULES AND  
18 REGULATIONS ISSUED BY THE COMMISSIONER SHALL RESULT IN THE  
19 SUSPENSION OR REVOCATION OF THE HEALTH CARE PROVIDER'S LICENSE  
20 BY THE LICENSURE BOARD.

21 SECTION 702. (A) THE FUND SHALL BE ADMINISTERED BY A  
22 DIRECTOR WHO SHALL BE APPOINTED BY THE GOVERNOR AND WHOSE SALARY  
23 SHALL BE FIXED BY THE EXECUTIVE BOARD. THE DIRECTOR MAY EMPLOY  
24 AND FIX THE COMPENSATION OF SUCH CLERICAL AND OTHER ASSISTANTS  
25 AS MAY BE DEEMED NECESSARY.

26 (B) THE DIRECTOR SHALL BE PROVIDED WITH ADEQUATE OFFICES IN  
27 WHICH THE RECORDS SHALL BE KEPT AND OFFICIAL BUSINESS SHALL BE  
28 TRANSACTED, AND THE DIRECTOR SHALL ALSO BE PROVIDED WITH  
29 NECESSARY OFFICE FURNITURE AND OTHER SUPPLIES.

30 (C) THE BASIC COVERAGE INSURANCE CARRIER SHALL PROMPTLY



1 NOTIFY THE DIRECTOR OF ANY CASE WHERE IT REASONABLY BELIEVES  
2 THAT THE VALUE OF THE CLAIM EXCEEDS THE BASIC INSURER'S  
3 COVERAGE. FAILURE TO SO NOTIFY THE DIRECTOR SHALL MAKE THE BASIC  
4 COVERAGE INSURANCE CARRIER RESPONSIBLE FOR THE PAYMENT OF THE  
5 ENTIRE AWARD OR VERDICT, PROVIDED THAT THE FUND HAS BEEN  
6 PREJUDICED BY THE FAILURE OF NOTICE.

7 (D) THE BASIC COVERAGE INSURANCE CARRIER SHALL AT ALL TIMES  
8 BE RESPONSIBLE TO PROVIDE A DEFENSE FOR THE INSURED HEALTH CARE  
9 PROVIDER. IN SUCH INSTANCES WHERE THE DIRECTOR HAS BEEN NOTIFIED  
10 IN ACCORDANCE WITH SUBSECTION (C), THE DIRECTOR MAY, AT HIS  
11 OPTION, JOIN IN THE DEFENSE AND BE REPRESENTED BY COUNSEL.

12 (E) IN THE EVENT THAT THE BASIC COVERAGE INSURANCE CARRIER  
13 ENTERS INTO A SETTLEMENT WITH THE CLAIMANT TO THE FULL EXTENT OF  
14 ITS LIABILITY AS PROVIDED ABOVE, IT MAY OBTAIN A RELEASE FROM  
15 THE CLAIMANT TO THE EXTENT OF ITS PAYMENT, WHICH PAYMENT SHALL  
16 HAVE NO EFFECT UPON ANY EXCESS CLAIM AGAINST THE FUND.

17 (F) THE DIRECTOR IS AUTHORIZED TO DEFEND, LITIGATE, SETTLE  
18 AND/OR COMPROMISE ANY CLAIM IN EXCESS OF THE BASIC COVERAGE  
19 HEREINBEFORE PROVIDED.

20 (G) THE DIRECTOR IS HEREBY EMPOWERED TO PURCHASE, ON BEHALF  
21 OF THE FUND, AS MUCH INSURANCE OR RE-INSURANCE AS IS NECESSARY  
22 TO PRESERVE THE FUND.

23 SECTION 703. THE PROVISIONS OF SECTIONS 701 AND 702 OF THIS  
24 ACT SHALL AUTOMATICALLY BE REPEALED ON JANUARY 1, 1978 UNLESS  
25 SUCH SECTIONS ARE REENACTED BY THE GENERAL ASSEMBLY PRIOR TO  
26 SUCH DATE. IN THE EVENT THE GENERAL ASSEMBLY FAILS TO REENACT  
27 SUCH SECTIONS PRIOR TO SUCH DATE, ANY MONEYS REMAINING IN THE  
28 FUND SHALL BE RETURNED TO THE HEALTH CARE PROVIDERS IN  
29 PROPORTION TO THE CONTRIBUTIONS MADE BY SUCH HEALTH CARE  
30 PROVIDERS UNDER SUCH TERMS AND CONDITIONS AS DETERMINED BY RULES

1 AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

2 ARTICLE VIII

3 Availability of Insurance

4 Section 801. The commissioner shall establish and implement  
5 or approve and supervise a plan assuring that professional  
6 liability insurance ~~for any health care provider~~ will be <—  
7 conveniently and expeditiously available, subject only to  
8 payment or provisions for payment of the premium, to each health  
9 care provider who cannot conveniently obtain insurance through  
10 ordinary methods at rates not in excess of those applicable to  
11 similarly situated health care providers under the plan. The  
12 plan may provide reasonable means for the transfer of health  
13 care providers insured thereunder into the ordinary insurance  
14 market, at the same or lower rates pursuant to regulations  
15 established by the Insurance Commissioner. The plan may be  
16 implemented by ~~assignment of applicants among insurers, pooling,~~ <—  
17 ~~any joint insuring and reinsuring arrangement~~ A JOINT <—  
18 UNDERWRITING ASSOCIATION or any other method, that results in  
19 all applicants being conveniently afforded access to the  
20 insurance coverages on reasonable and not unfairly  
21 discriminatory terms.

22 Section 802. All insurers EXCEPT FRATERNAL BENEFIT SOCIETIES <—  
23 admitted to transact the business of insurance in this  
24 Commonwealth writing professional liability and personal injury  
25 liability insurance in this Commonwealth or any other  
26 jurisdiction, other than reinsurers, shall participate in the <—  
27 plan. The plan shall provide for equitable ~~apportionment, among~~ <—  
28 ~~all participating insurers writing such insurance coverage of~~  
29 ~~the financial burdens of insurance provided to applicants under~~  
30 ~~the plan and the costs of operation of the plan.~~ APPORTIONMENT <—

1 OF THE FINANCIAL BURDENS OF INSURANCE PROVIDED TO APPLICANTS  
2 UNDER THE PLAN AND THE COSTS OF OPERATION OF THE PLAN AMONG ALL  
3 PARTICIPATING INSURERS WRITING SUCH INSURANCE COVERAGE.

4 Section 803. Subject to the supervision and approval of the  
5 commissioner, insurers may consult and agree with each other and  
6 with other appropriate persons as to the organization,  
7 administration and operation of the plan and as to rates and  
8 rate modifications for insurance coverages provided under the  
9 plan. Rates and rate modifications adopted or changed for  
10 insurance coverages provided under the plan shall be approved by  
11 the commissioner in accordance with the act of June 11, 1947  
12 (P.L.538, No.246), known as "The Casualty and Surety Rate  
13 Regulatory Act."

14 Section 804. To carry out the objectives of this article,  
15 the commissioner may adopt rules, make orders, enter into  
16 agreements with other governmental or private entities and  
17 individuals and form and operate or authorize the formation and  
18 operation of bureaus and other legal entities.

19 Section 805. The plan ~~must also~~ SHALL assure that there is <—  
20 available through the private sector or otherwise, to all  
21 applicants, adequate premium financing or provision for the  
22 installment payment of premiums subject to customary terms and  
23 conditions.

24 Section 806. The commissioner shall select an insurer to  
25 administer any plan established pursuant to this article. Such  
26 insurer shall be admitted to transact the business of insurance  
27 in this Commonwealth.

28 Section 807. The Insurance Commissioner shall not approve a  
29 policy written on a "claims made" basis by any insurer doing  
30 business in this Commonwealth unless such insurer shall

1 guarantee to the commissioner the continued availability of  
2 suitable liability protection for health care providers  
3 subsequent to the discontinuance of professional practice by the  
4 health care provider or the sooner termination of the insurance  
5 policy by the insurer or the health care provider for so long as  
6 there is a reasonable ~~anticipation of the~~ probability of a claim <—  
7 for injury being discovered but not reported.

8 Section 808. If 25% or more of all physicians in any of  
9 Specialty Board Certified Classes 3, 4 and 5 are denied  
10 professional liability insurance coverage the commissioner, ~~may,~~ <—  
11 after notice in the Pennsylvania Bulletin and public hearings,  
12 MAY declare that the method of providing coverage under sections <—  
13 801 and 802 shall be the sole and exclusive method within this  
14 Commonwealth.

## 15 ARTICLE IX

### 16 Disciplinary Proceedings

17 Section 901. Investigations.--The State Board of Medical  
18 Education and Licensure AND THE STATE BOARD OF OSTEOPATHIC <—  
19 EXAMINERS shall employ such qualified investigators and  
20 attorneys as are necessary to fully implement ~~its~~ THEIR <—  
21 authority to revoke, suspend, limit or otherwise regulate the  
22 licenses of physicians; issue reprimands, fines, require  
23 refresher educational courses, or require licensees to submit to  
24 medical treatment.

25 Section 902. Hearings.--(A) The State Board of Medical <—  
26 Education and Licensure AND THE STATE BOARD OF OSTEOPATHIC <—  
27 EXAMINERS shall appoint, with the approval of the Governor, such  
28 hearing examiners as shall be necessary to conduct hearings in  
29 accordance with the disciplinary authority granted by the act of  
30 July 20, 1974 (P.L.551, No.190), known as the "Medical Practice

1 Act of ~~1974.~~ 1974," AND THE ACT OF MARCH 19, 1909 (P.L.46, <—  
2 NO.29), ENTITLED, AS AMENDED, "AN ACT TO REGULATE THE PRACTICE  
3 OF OSTEOPATHY AND SURGERY IN THE STATE OF PENNSYLVANIA; TO  
4 PROVIDE FOR THE ESTABLISHMENT OF A STATE BOARD OF OSTEOPATHIC  
5 EXAMINERS; TO DEFINE THE POWERS AND DUTIES OF SAID BOARD OF  
6 OSTEOPATHIC EXAMINERS; TO PROVIDE FOR THE EXAMINING AND  
7 LICENSING OF OSTEOPATHIC PHYSICIANS AND SURGEONS IN THIS STATE;  
8 AND TO PROVIDE PENALTIES FOR THE VIOLATION OF THIS ACT." ~~Such~~ <—  
9 ~~hearing examiners shall have the power to issue~~

10 (B) THE STATE BOARD OF MEDICAL EDUCATION AND LICENSURE OR <—  
11 THE STATE BOARD OF OSTEOPATHIC EXAMINERS SHALL HAVE THE POWER TO  
12 ADOPT AND PROMULGATE RULES AND REGULATIONS SETTING FORTH THE  
13 FUNCTIONS, POWERS, STANDARDS AND DUTIES TO BE FOLLOWED BY ANY  
14 HEARING EXAMINERS APPOINTED UNDER THE PROVISIONS OF THIS  
15 SECTION.

16 (C) SUCH HEARING EXAMINERS SHALL HAVE THE POWER TO CONDUCT  
17 HEARINGS IN ACCORDANCE WITH THE REGULATIONS OF THE STATE BOARD  
18 OF MEDICAL EDUCATION AND LICENSURE OR THE STATE BOARD OF  
19 OSTEOPATHIC EXAMINERS, AND TO ISSUE subpoenas requiring the  
20 attendance and testimony of individuals or the production of,  
21 pertinent books, records, documents and papers by persons whom  
22 they believe to have information relevant to any matter pending  
23 before the examiner. Such examiner shall also have the power to  
24 administer oaths.

25 Section 903. Hearing Examiners' Decisions.--The hearing  
26 examiner shall hear evidence submitted and arguments of counsel,  
27 if any, with reasonable dispatch, and shall promptly record his  
28 decision, supported by findings of fact, and a copy thereof  
29 shall immediately be sent to the State Board of Medical  
30 Education and Licensure OR THE STATE BOARD OF OSTEOPATHIC <—

1 EXAMINERS and to counsel of record, or the parties, if not  
2 represented.

3 Section 904. Evidence.--In all hearings proof may be made by  
4 oral testimony or by deposition or interrogatories. Such  
5 depositions shall be taken in the manner and upon the notice  
6 required by the rules for taking depositions in civil cases and  
7 may be introduced into evidence without regard to the  
8 availability of the witness to testify at the time of trial. Any  
9 witness, however, may be subpoenaed by any party to the  
10 controversy to testify pursuant to the rules appropriate to  
11 civil actions and shall be considered to be the witness of the  
12 party who offered the deposition.

13 Section 905. Review of the State Board of Medical Education  
14 and Licensure OR THE STATE BOARD OF OSTEOPATHIC EXAMINERS.--(a) <—  
15 If application for review is made to the State Board of Medical  
16 Education and Licensure OR THE STATE BOARD OF OSTEOPATHIC <—  
17 EXAMINERS within 20 days from the date of any decision made as a  
18 result of a hearing held by a hearing examiner, the State Board  
19 of Medical Education and Licensure OR THE STATE BOARD OF <—  
20 OSTEOPATHIC EXAMINERS shall review the evidence, and if deemed  
21 advisable by the board, hear argument and additional evidence.

22 (b) As soon as practicable, the State Board of Medical  
23 Education and Licensure OR THE STATE BOARD OF OSTEOPATHIC <—  
24 EXAMINERS shall make a decision and shall file the same with its  
25 finding of the facts on which it is based and send a copy  
26 thereof to each of the parties in dispute.

27 Section 906. Appeals.--Decision by the State Board of  
28 Medical Education and Licensure OR THE STATE BOARD OF <—  
29 OSTEOPATHIC EXAMINERS shall be conclusive and binding as to all  
30 questions of fact, but any medical practitioner may, within 30

1 days from the date of such decision appeal to the Commonwealth  
2 Court of Pennsylvania alleging certain errors of law under the  
3 same terms and conditions as cover appeals in actions involving  
4 State agencies.

5 Section 907. Fees.--(A) All fees, charges and fines <—  
6 collected under the provisions of the act of July 20, 1974  
7 (P.L.551, No.190), known as the "Medical Practice Act of 1974"  
8 are hereby specifically appropriated for the exclusive use by  
9 the State Board of Medical Education and Licensure in carrying  
10 out the provisions of that act.

11 (B) ALL FEES, CHARGES AND FINES COLLECTED UNDER THE <—  
12 PROVISIONS OF THE ACT OF MARCH 19, 1909 (P.L.46, NO.29),  
13 ENTITLED, AS AMENDED, "AN ACT TO REGULATE THE PRACTICE OF  
14 OSTEOPATHY AND SURGERY IN THE STATE OF PENNSYLVANIA; TO PROVIDE  
15 FOR THE ESTABLISHMENT OF A STATE BOARD OF OSTEOPATHIC EXAMINERS;  
16 TO DEFINE THE POWERS AND DUTIES OF SAID BOARD OF OSTEOPATHIC  
17 EXAMINERS; TO PROVIDE FOR THE EXAMINING AND LICENSING OF  
18 OSTEOPATHIC PHYSICIANS AND SURGEONS IN THIS STATE; AND TO  
19 PROVIDE PENALTIES FOR THE VIOLATION OF THIS ACT," ARE HEREBY  
20 SPECIFICALLY APPROPRIATED FOR THE EXCLUSIVE USE BY THE STATE  
21 BOARD OF OSTEOPATHIC EXAMINERS IN CARRYING OUT THE PROVISIONS OF  
22 THAT ACT.

23 ~~Section 908. Budget. Before July 1 of each year, the State <—~~  
24 ~~Board of Medical Education and Licensure shall estimate its~~  
25 ~~total expenditures in the administration of the act of July 20,~~  
26 ~~1974 (No.190), known as "The Medical Practice Act of 1974," for~~  
27 ~~the fiscal year beginning that date. Such estimate shall be~~  
28 ~~submitted to the Governor, and to the Appropriations Committees~~  
29 ~~of the House and Senate through their respective chairmen, for~~  
30 ~~their respective approvals of such estimate in the amount~~

1 ~~submitted or such lesser amount as each of them may determine;~~  
2 ~~Provided, That if the Governor or either committee, through its~~  
3 ~~chairman, shall not notify the State in writing of his or its~~  
4 ~~action within 30 days after such submission, the estimate as~~  
5 ~~submitted shall be deemed approved by him or by such committee,~~  
6 ~~as the case may be. The least of the amounts so approved by the~~  
7 ~~three approving authorities shall be the final estimate; and~~  
8 ~~approval of such least amount shall constitute compliance with~~  
9 ~~section 604 of the act of April 9, 1929 (P.L.177, No.175), known~~  
10 ~~as "The Administrative Code of 1929." The State Board of Medical~~  
11 ~~Education and Licensure shall subtract from the final estimate~~  
12 ~~the estimated fees to be collected pursuant to the act of July~~  
13 ~~20, 1974 (No.190), known as the "Medical Practice Act of 1974,"~~  
14 ~~during such fiscal year and the estimated balance of the~~  
15 ~~appropriation, of the previous year, not to lapse but to be~~  
16 ~~carried over into such fiscal year from the preceding one. The~~  
17 ~~remainder so determined, herein called the total assessment,~~  
18 ~~shall be the amount of the appropriation due from the~~  
19 ~~Commonwealth.~~

## 20 ARTICLE X

### 21 General Provisions

22 Section 1001. There shall be no liability on the part of and  
23 no cause of action for libel shall arise against any member  
24 insurer, the State Board of Medical Education and Licensure, THE <—  
25 STATE BOARD OF OSTEOPATHIC EXAMINERS, the Regional Arbitration  
26 Panels, or the commissioner or his representatives for any  
27 action taken by any of them in the performance of their  
28 respective powers and duties under this act.

29 Section 1002. Any termination of a professional liability  
30 insurance policy by cancellation is not effective against the



1 insured covered thereby, unless ~~at least 60 days before the~~ <—  
2 ~~cancellation takes effect,~~ NOTICE OF CANCELLATION SHALL HAVE <—  
3 BEEN GIVEN WITHIN 60 DAYS AFTER THE ISSUANCE OF SUCH CONTRACT OF  
4 INSURANCE AGAINST THE INSURED COVERED THEREUNDER AND NO  
5 CANCELLATION SHALL TAKE EFFECT UNLESS a written notice ~~giving~~ <—  
6 STATING THE REASONS FOR THE CANCELLATION AND the date AND TIME <—  
7 upon which termination becomes effective has been received by  
8 the administrator at his office. Mailing of such notice to the  
9 administrator at his principal office address shall constitute  
10 notice to the administrator.

11 Section 1003. The provisions of this act do not apply to  
12 injuries or death from services rendered or which should have  
13 been rendered by a health care provider which occurred before  
14 the effective date of this act.

15 Section 1004. Every express contract between a patient and  
16 health care provider in existence on the effective date of this  
17 act, containing provisions inconsistent with the terms and  
18 provisions of this act, remains unimpaired, binding and  
19 effective as to all parties until the contract expires or is  
20 rescinded by law or the mutual agreement of the parties.

21 Section 1005. Fines and Penalties.--(a) No health care  
22 provider shall provide any health care or professional services  
23 until such assessments as are levied by the administrator are  
24 paid.

25 (b) Any health care provider licensed by the Commonwealth or  
26 operating under a certificate of authority issued by the  
27 Commonwealth who violates the provisions of subsection (a) shall  
28 upon conviction in a summary proceeding be sentenced to pay a  
29 fine of not less than \$100 nor more than \$1,000 per day for each  
30 day of practice without the necessary receipts, and may be

1 subject to a suspension of his license or certificate of  
2 authority, or both.

3 Section 1006. Joint Committee.--There is hereby created a  
4 committee to consist of the commissioner as chairman, the  
5 Secretary of Health and two members of the Senate, ONE MEMBER OF <—  
6 EACH PARTY, to be appointed by the President pro tempore and two  
7 members OF THE HOUSE OF REPRESENTATIVES, ONE MEMBER OF EACH <—  
8 PARTY, to be appointed by the Speaker of the House of  
9 Representatives. The committee shall study the distribution of  
10 professional liability insurance costs as among the various  
11 ~~losses~~ CLASSES of physicians and health care providers and shall <—  
12 report ~~their~~ ITS findings and recommendations to the General <—  
13 Assembly on or before July 1, 1976. THE COMMITTEE SHALL ALSO <—  
14 STUDY ALL PHASES AND THE FINANCIAL IMPACT OF THE OPERATIONS OF  
15 THE MEDICAL PROFESSIONAL LIABILITY CATASTROPHE LOSS FUND AND  
16 SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE GENERAL  
17 ASSEMBLY ON OR BEFORE JULY 1, 1977.

18 THIS COMMITTEE SHALL ALSO STUDY ACTUAL OR POTENTIAL PROBLEMS  
19 OF CONFLICTS OF INTEREST WHICH EXIST OR MAY EXIST AMONG MEMBERS  
20 OF THE ARBITRATION PANEL WITH EACH OTHER AND WITH OTHER PERSONS  
21 APPEARING BEFORE THE ARBITRATION PANEL OR HAVING THEIR INTERESTS  
22 REPRESENTED BEFORE THE ARBITRATION PANEL. THE COMMITTEE SHALL  
23 PROMULGATE A PROPOSED CODE OF ETHICS WITH SUGGESTED LEGAL  
24 SANCTIONS TO DEAL WITH ANY VIOLATORS OF THE CODE OF ETHICS ON OR  
25 BEFORE JULY 1, 1976.

26 IF THE GENERAL ASSEMBLY, AFTER RECEIVING THE FINDINGS AND  
27 RECOMMENDATIONS OF THE JOINT COMMITTEE, HAS NOT ENACTED  
28 LEGISLATION TO REMEDY THE PROBLEMS OF DISTRIBUTION OF  
29 PROFESSIONAL LIABILITY INSURANCE COSTS AS AMONG THE VARIOUS  
30 PHYSICIANS AND HEALTH CARE PROVIDERS BY JULY 1, 1977, THEN

1 THEREAFTER NO PROFESSIONAL LIABILITY INSURANCE SHALL BE ISSUED,  
2 WRITTEN OR RENEWED THAT PROVIDES FOR DIFFERENT RISK  
3 CLASSIFICATION CATEGORIES AMONG MEDICAL DOCTORS AND DOCTORS OF  
4 OSTEOPATHY.

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

7 Section 1008. Effective Date.--This act shall take effect in  
8 90 days.