

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 2300** Session of  
2002

INTRODUCED BY SCHRODER, ADOLPH, GODSHALL, BENNINGHOFF,  
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SAYLOR, SEMMEL, COLEMAN AND HERSHEY, JANUARY 29, 2002

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 29, 2002

AN ACT

1 Amending the act of October 15, 1975 (P.L.390, No.111), entitled  
2 "An act relating to medical and health related malpractice  
3 insurance, prescribing the powers and duties of the Insurance  
4 Department; providing for a joint underwriting plan; the  
5 Arbitration Panels for Health Care, compulsory screening of  
6 claims; collateral sources requirement; limitation on  
7 contingent fee compensation; establishing a Catastrophe Loss  
8 Fund; and prescribing penalties," further providing for  
9 definitions, for reduction of awards and for statute of  
10 limitations; and providing for joint and several liability,  
11 for periodic payment of future damages, for contracts  
12 limiting noneconomic damages, for jurisdiction, for change of  
13 venue, for causation, for tax status of awards, for binding  
14 arbitration, for expert witness qualifications, for expert  
15 testimony constituting the practice of medicine, for  
16 frivolous litigation and for prejudgment interest.

17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. The definition of "professional liability  
20 insurance" in section 103 of act of October 15, 1975 (P.L.390,  
21 No.111), known as the Health Care Services Malpractice Act,  
22 amended November 26, 1996 (P.L.776, No.135), is amended and the

1 section is amended by adding definitions to read:

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

3 \* \* \*

4 "Medical professional liability action" means any proceeding  
5 in which a medical professional liability claim is asserted,  
6 including, but not limited to, an action in a court of law or an  
7 arbitration proceeding.

8 "Medical professional liability claim" means any claim  
9 brought by or on behalf of an individual seeking damages for  
10 loss sustained by the individual as a result of an injury or  
11 wrong to the individual or another individual arising from a  
12 health care provider's provision of or failure to provide health  
13 care, including, but not limited to, medical treatment,  
14 diagnosis, or consultation, regardless of the theory of  
15 liability. The potential theories of liability include, but are  
16 not limited to, negligence, lack of informed consent, breach of  
17 contract, misrepresentation or fraud. A medical professional  
18 liability claim also includes a claim seeking to hold a third  
19 party liable for the conduct of a health care provider,  
20 including, but not limited to, a claim asserting vicarious  
21 liability or corporate negligence.

22 \* \* \*

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  
26 resulting from the furnishing of medical services which were or  
27 should have been provided.] claim brought by or on behalf of an  
28 individual seeking damages for loss sustained by the individual  
29 as a result of an injury or wrong to the individual or another  
30 individual arising from a health care provider's provision of or

1 failure to provide health care, including, but not limited to,  
2 medical treatment, diagnosis or consultation, regardless of the  
3 theory of liability. The potential theories of liability  
4 include, but are not limited to, negligence, lack of informed  
5 consent, breach of contract, misrepresentation or fraud. A  
6 medical professional liability claim also includes a claim  
7 seeking to hold a third party liable for the conduct of a health  
8 care provider, including, but not limited to, a claim asserting  
9 vicarious liability or corporate negligence.

10 Section 2. Section 602 of the act is amended to read:

11 Section 602. Reduction of Award by Other Benefits.--[The  
12 loss and damages awarded under this act shall be reduced by any  
13 public collateral source of compensation or benefits. A right of  
14 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.] (a) Except as set forth in  
17 subsection (c), a claimant in a medical professional liability  
18 action shall be precluded from pleading, proving and recovering  
19 damages for any past loss to the extent that the loss is covered  
20 by any private or public benefit or gratuity that the claimant  
21 has received prior to trial or is reasonably expected to receive  
22 in the future.

23 (b) There shall be no right of subrogation or reimbursement  
24 from a claimant's tort recovery with respect to any public or  
25 private benefit covered by subsection (a).

26 (c) The collateral source reduction set forth in subsection  
27 (a) shall not apply to the following:

28 (1) Life insurance, pension or profit-sharing plans or other  
29 deferred compensation plans.

30 (2) Public benefits paid or payable under a program which,

1 under Federal statute, provides a right of reimbursement that  
2 supersedes State law for the amount of benefits paid from a  
3 verdict or settlement and which right of reimbursement  
4 supersedes State law.

5 (d) As used in this section:

6 "Gratuity" includes, but is not limited to, medical services  
7 provided at no charge or for a discounted charge.

8 "Private benefits" include, but are not limited to, benefits  
9 available under a health or disability insurance or other  
10 program or a health maintenance organization, whether offered by  
11 an employer as an employment benefit or individually obtained.  
12 For purposes of this act, benefits payable by a hospital plan  
13 corporation or a professional health service corporation subject  
14 to 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations) or  
15 63 (relating to professional health services plan corporations)  
16 shall be considered health insurance benefits.

17 "Public benefits" means compensation or benefits paid,  
18 payable or required by the Federal Government, a state  
19 government or a local government and any other public programs  
20 providing medical benefits, including, but not limited to,  
21 Social Security and workers' compensation.

22 Section 3. Section 605 of the act, amended November 26, 1996  
23 (P.L.776, No.135), is amended to read:

24 Section 605. Statute of Limitations.--[All claims for  
25 recovery pursuant to this act must be commenced within the  
26 existing applicable statutes of limitation. In the event that  
27 any claim is made against a health care provider subject to the  
28 provisions of Article VII more than four years after the breach  
29 of contract or tort occurred which is filed within the statute  
30 of limitations, such claim shall be defended and paid by the

1 fund if the fund has received a written request for indemnity  
2 and defense within 180 days of the date on which notice of the  
3 claim is given to the health care provider or his insurer. Where  
4 multiple treatments or consultations took place less than four  
5 years before the date on which the health care provider or his  
6 insurer received notice of the claim, the claim shall be deemed,  
7 for purposes of this section, to have occurred less than four  
8 years prior to the date of notice and shall be defended by the  
9 insurer pursuant to section 702(d). If such claim is made after  
10 four years because of the willful concealment by the health care  
11 provider or his insurer, the fund shall have the right of full  
12 indemnity including defense costs from such health care provider  
13 or his insurer. A filing pursuant to section 401 shall toll the  
14 running of the limitations contained herein.]

15 (a) Except as provided in subsection (b) or (c), an action  
16 asserting a medical professional liability claim must be  
17 commenced within two years of the date the injured individual  
18 knew, or should have known by using reasonable diligence, of the  
19 injury and its cause or within four years from the date of the  
20 breach of duty or other event causing the injury, whichever is  
21 earlier.

22 (b) If the injury is, or was, caused by a foreign object  
23 left in the individual's body, the four-year limitation in  
24 subsection (a) shall not apply.

25 (c) If the injured individual is a minor under 14 years of  
26 age, the action must be commenced within four years after the  
27 minor's parent or guardian knew, or should have known by using  
28 reasonable diligence, of the injury and its cause or within four  
29 years from the minor's 14th birthday, whichever is earlier.

30 (d) If the claim is brought under 42 Pa.C.S. § 8301

1 (relating to death action) or 8302 (relating to survival  
2 action), the action must be commenced within the time period set  
3 forth in subsections (a), (b) and (c) or within two years after  
4 the death, whichever is earlier.

5 (e) No cause of action barred prior to the effective date of  
6 this section shall be revived by reason of the enactment of this  
7 section.

8 Section 4. Section 832-A of the act is repealed.

9 Section 5. The act is amended by adding an article to read:

10 ARTICLE VIII-B

11 OTHER PROVISIONS RELATING TO MEDICAL

12 PROFESSIONAL LIABILITY CLAIMS AND ACTIONS

13 Section 801-B. Joint and Several Liability.--Where recovery  
14 is allowed against more than one defendant, each defendant shall  
15 be liable for that proportion of the total dollar amount awarded  
16 as damages in the ratio of the amount of his causal negligence  
17 to the amount of causal negligence attributed to all defendants  
18 against whom recovery is allowed, and each defendant shall be  
19 liable solely for plaintiff's damages in this proportion. In no  
20 case shall the plaintiff recover damages from any defendant in  
21 excess of each defendant's proportional share of total damages.

22 Section 802-B. Periodic Payment of Future Damages.--(a) At  
23 the option of any party to an action asserting a medical  
24 professional liability claim, future damages for economic loss  
25 shall be awarded in periodic payments as provided in this  
26 subsection, except as provided in subsection (b).

27 (1) The trier of the fact shall issue separate findings for  
28 each claimant specifying the amount of:

29 (i) any past damages for:

30 (A) Medical expenses in a lump sum.

1        (B) Loss of work earnings in a lump sum.

2        (C) Other economic losses in a lump sum.

3        (D) Noneconomic losses in a lump sum.

4        (ii) any future damages for:

5        (A) Medical expenses by year.

6        (B) Loss of work earnings by year.

7        (C) Other economic losses by year.

8        (D) Noneconomic loss in a lump sum.

9        (2) The trier of the fact may vary the amount of periodic  
10 payments for medical and other recoverable expenses from year to  
11 year to account for different annual expenditure requirements.

12 For example, the trier of the fact may provide for initial  
13 purchase and replacements of medically necessary equipment in  
14 the years that expenditures will be required.

15        (3) The trier of the fact may incorporate into any future  
16 medical expense award adjustments to account for reasonably  
17 anticipated inflation and medical care innovations, such as new  
18 technology, drugs, and techniques, that will decrease medical  
19 costs, or make a separate finding on the applicable annual  
20 percentage change.

21        (i) The commissioner shall annually establish, by January 1  
22 of each year, a future medical expense adjustment factor that  
23 takes into account reasonably anticipated medical expense  
24 inflation as well as medical care innovations that will decrease  
25 medical costs.

26        (ii) The commissioner may rely on such evidence as the  
27 commissioner reasonably deems appropriate, provided that:

28        (A) The commissioner shall not rely on any price index  
29 unless the commissioner uses a rolling average of the price  
30 index or its substantial equivalent over at least the most

1 recent ten-year period for which data is available.

2 (B) The commissioner shall not rely exclusively on any  
3 inflation price index without consideration of reasonably  
4 anticipated medical care innovations that will decrease medical  
5 costs.

6 (iii) The trier of the fact shall use the future medical  
7 expense adjustment factor established by the commissioner and  
8 currently in effect, unless a party establishes by clear and  
9 convincing evidence that different adjustments are more  
10 appropriate.

11 (4) The trier of the fact may incorporate into any future  
12 earnings loss award adjustments to account for wage inflation  
13 and productivity growth, or make a separate finding on the  
14 applicable annual percentage change.

15 (i) The Secretary of Labor and Industry shall annually  
16 establish, by January 1 of each year, future earnings loss  
17 adjustment factors that take into account wage inflation and  
18 productivity changes. The secretary shall establish separate  
19 factors for different jobs, occupations and professions as  
20 reasonably appropriate.

21 (ii) The secretary may rely on such evidence as the  
22 secretary reasonably deems appropriate, provided that the  
23 secretary shall not rely on wage change data unless the  
24 commissioner uses a rolling average over at least the most  
25 recent ten-year period for which data is available.

26 (iii) The trier of the fact shall use the applicable future  
27 earnings loss adjustment factor established by the Secretary and  
28 currently in effect, unless a party establishes by clear and  
29 convincing evidence that different adjustments are more  
30 appropriate.



1       (5) The trier of the fact may determine that future damages  
2 for medical losses will continue for the duration of the  
3 claimant's life and make a lifetime medical expense award if  
4 such a finding is supported by the evidence. In such a case, the  
5 trier of the fact shall determine the amount of medical expenses  
6 that the claimant will incur annually while living, but shall  
7 not be required to determine the life expectancy of the  
8 claimant.

9       (6) The trier of the fact may award damages for loss of work  
10 earnings for the duration of the claimant's pre-injury work-life  
11 expectancy or until the claimant reaches 65 years of age,  
12 whichever occurs earlier, if such a finding is supported by the  
13 evidence. In such a case, the trier of the fact shall specify  
14 the claimant's pre-injury work-life expectancy.

15       (7) The trier of the fact shall adjust work-loss damages to  
16 account for the inapplicability of Federal, State and local  
17 taxes and Social Security withholding to personal injury awards.

18       (8) Future damages for medical expenses and other economic  
19 loss must be paid in the years that the trier of fact finds they  
20 will accrue. Unless the court orders or approves a different  
21 schedule for payment, the annual amounts due must be paid in 12  
22 equal monthly installments, rounded to the nearest dollar. Each  
23 installment is due and payable on the first day of the month in  
24 which it accrues.

25       (9) Interest does not accrue on a periodic payment before  
26 payment is due. If the payment is not made on or before the due  
27 date, interest accrues as of that date.

28       (10) Liability to a claimant for periodic payments not yet  
29 due for medical expenses terminates upon the claimant's death.

30       (11) Liability to a claimant for loss of earnings shall not

1 terminate at the claimant's death; provided however, that this  
2 section shall not be construed as extending a loss of work  
3 earnings award beyond the time frame permitted under subsection  
4 (a)(6).

5 (12) Each party liable for all or a portion of the judgment  
6 shall provide funding for the awarded periodic payments,  
7 separately or jointly with one or more others, by means of an  
8 annuity contract or other qualified funding plan which is  
9 approved by the court. The commissioner shall publish a list of  
10 insurers designated by the commissioner as qualified to  
11 participate in the funding of periodic-payment judgments.

12 (13) In the event that a claimant defaults on a required  
13 periodic payment due to the insolvency of an insurer  
14 participating in a qualified funding plan, the claimant shall be  
15 entitled to receive the payment from (i) the Medical  
16 Professional Liability Catastrophe Loss Fund, or (ii) if the  
17 fund has ceased operations, the Property and Casualty Insurance  
18 Guaranty Association. The commissioner shall promulgate  
19 regulations for the implementation of this subsection.

20 (14) The court which enters judgment shall retain  
21 jurisdiction to enforce the judgment and to resolve related  
22 disputes.

23 (b) Future damages shall not be awarded in periodic payments  
24 if the claimant objects and stipulates that the claim for future  
25 damages for economic loss, without reduction to present value,  
26 does not exceed \$100,000. In such a case, future damages shall  
27 be reduced to present worth using a discount rate of 4% with no  
28 adjustments for inflation or productivity growth.

29 (c) In the event that the claimant receives a collateral  
30 source payment for an economic loss for which the claimant

1 receives a periodic payment under subsection (a) or a lump-sum  
2 payment under subsection (b), the claimant shall refund that  
3 portion of the periodic payment or lump-sum payment that is  
4 offset by the collateral source payment. For purposes of this  
5 section, a collateral source payment is a payment or other  
6 compensation that would be subject to a collateral source  
7 reduction under section 602 if the payment or other compensation  
8 was made for a past economic loss.

9 (d) At the request of the defendant, the claimant shall  
10 maintain a collateral source benefit in effect or obtain a  
11 collateral source benefit. In such a case, the defendant shall  
12 be required to compensate the claimant for the reasonable costs  
13 incurred by the claimant to the extent that the costs are not  
14 covered by a collateral source. Such costs shall be reimbursed  
15 in the years that the costs accrue in 12 equal monthly payments  
16 payable on the first day of each month, unless the court  
17 requires a different schedule.

18 Section 803-B. Contracts for Limitation of Noneconomic  
19 Damages.--(a) An agreement limiting noneconomic damages that  
20 may be awarded in a medical professional liability action is  
21 consistent with the public policy of this Commonwealth, shall be  
22 valid and legally enforceable, and shall not be deemed to be  
23 unconscionable or otherwise improper.

24 (b) A health care provider shall be permitted to condition  
25 initial or continued acceptance of an individual as a patient on  
26 the individual, or an authorized legal representative of the  
27 individual, consenting to a limitation on noneconomic damages  
28 that may be awarded in a medical professional liability action,  
29 and no health care insurer or other person that contracts or  
30 arranges for the provision of medical services shall prohibit a

1 health care provider from imposing such a condition.

2 (c) An agreement that limits noneconomic damages in a  
3 medical professional liability action involving medical services  
4 rendered to a minor shall not be subject to disaffirmance if the  
5 agreement is signed by the minor's parent, legal guardian or  
6 other legal representative. An agreement that limits noneconomic  
7 damages in a medical professional liability action involving  
8 medical services rendered to an individual who is incompetent  
9 shall not be subject to disaffirmance provided that the  
10 agreement is signed by the individual while competent or a legal  
11 representative for the individual.

12 (d) An agreement that limits noneconomic damages in a  
13 medical professional liability action shall be binding on the  
14 estate of the individual who signed the agreement, or on whose  
15 behalf a legal representative signed the agreement, and on any  
16 other individual whose claim is derivative of the signer  
17 individual's claim.

18 (e) A limitation on noneconomic damages in an agreement  
19 permitted by subsection (a) shall be deemed to apply to the  
20 total noneconomic damages awarded in the action, regardless of  
21 whether all of the defendants are parties to such an agreement,  
22 unless the agreement provides otherwise.

23 (f) An agreement permitted by subsection (a) may extend the  
24 benefit of the limitation on noneconomic damages to any health  
25 care provider or other person reasonably identified by name or  
26 category, including, but not limited to, employees and agents of  
27 a health care provider, a person held vicariously liable for the  
28 conduct of a health care provider and the medical staff of a  
29 health care provider.

30 (g) In the event that a health care provider is required by

1 law to provide medical care to an individual or provides  
2 emergency medical care to an individual, noneconomic damages in  
3 a medical professional liability action arising out of that care  
4 shall be limited to \$250,000. For the purposes of the statutory  
5 limitation on noneconomic damages imposed in this subsection,  
6 the limitation also shall apply to care provided after the legal  
7 obligation or emergency ceases, provided that the individual, or  
8 a known legal representative for the individual, is advised in  
9 writing of the limitation on noneconomic damages within a  
10 reasonable time.

11 (h) Consideration shall not be required for an agreement  
12 permitted by subsection (a), provided that the agreement  
13 provides that the signer agrees to be legally bound.

14 Section 804-B. Jurisdiction.--(a) Except as provided in  
15 subsection (b), a medical professional liability claim shall be  
16 brought only in a county in which the alleged acts or omissions  
17 giving rise to the claim predominately occurred.

18 (b) Except as provided in subsection (c), in an action in  
19 which the plaintiff has established proper jurisdiction in a  
20 court for a medical professional liability claim against a  
21 defendant under subsection (a), the court also has jurisdiction  
22 for all claims against defendants who are alleged to be jointly  
23 or jointly and severally liable with the defendant for whom  
24 jurisdiction has been established.

25 (c) If all of the professional liability claims for which a  
26 court has jurisdiction under subsection (a) are dismissed or  
27 withdrawn prior to the commencement of the trial, the court  
28 shall transfer the action to a court that has jurisdiction  
29 against the remaining defendants under subsection (a) or (b).

30 (d) In the case of a claim asserting vicarious liability,

1 only the acts and omissions supporting the underlying claim  
2 shall be considered for purposes of establishing jurisdiction  
3 under subsection (a). In the case of a claim asserting corporate  
4 liability or a similar theory of liability in which the  
5 defendant is allegedly liable for failure to exercise reasonable  
6 care in the selection or supervision of a health care provider  
7 who allegedly provided deficient health care, only the allegedly  
8 deficient health care of the health care provider shall be  
9 considered for purposes of establishing jurisdiction under  
10 subsection (a).

11 Section 805-B. Change of Venue.--(a) Upon the petition of a  
12 party defendant, a court that has jurisdiction for an action  
13 asserting a medical professional liability claim against any  
14 defendant under section 804-B shall transfer the action to the  
15 court of any other county where the claim could originally have  
16 been brought under section 804-B if the standards in subsection  
17 (b) are satisfied.

18 (b) The court shall grant a request for a change in venue  
19 under subsection (a) if the allegedly deficient medical care of  
20 all the defendants considered together predominately occurred in  
21 the new county or the court otherwise determines that a change  
22 in venue is appropriate. A defendant shall not be required to  
23 establish that the plaintiff's choice of form is oppressive or  
24 vexatious to obtain a change in venue.

25 Section 806-B. Causation.--Causation in a medical  
26 professional liability claim shall be established only if the  
27 conduct which forms the basis for the claim was a substantial  
28 factor in bringing about the injury or wrong which resulted in  
29 the claimant's loss. Proof that the conduct only increased the  
30 risk of harm shall be insufficient to prove causation.

1       Section 807-B. Tax Status of Awards.--If the amount of  
2 damages in a medical malpractice action is submitted to a jury,  
3 the jury shall be informed whether the award is taxable or  
4 nontaxable under Federal and State law.

5       Section 808-B. Binding Arbitration.--(a) An agreement  
6 providing for binding arbitration of a medical professional  
7 liability claim is consistent with the public policy of the  
8 Commonwealth and is valid and enforceable. An agreement which  
9 mandates binding arbitration of a medical professional liability  
10 claim shall not be deemed to be unconscionable or otherwise  
11 improper.

12       (b) A health care provider may condition initial or  
13 continued acceptance of an individual as a patient on the  
14 patient or an authorized legal representative of the patient  
15 consenting to binding arbitration of a medical professional  
16 liability claim; and no health care insurer shall prohibit a  
17 health care provider from imposing such a condition.

18       (c) An agreement that provides for arbitration of a medical  
19 professional liability claim may include terms defining the  
20 conduct of the proceedings and the damage award that may be  
21 rendered, including all of the following:

22       (1) A restriction on recovery of damages for losses paid by  
23 a collateral source notwithstanding any court decision which  
24 might invalidate the application of a provision of this act to  
25 medical professional liability claims generally.

26       (2) A requirement for periodic payment of future damages  
27 notwithstanding any court decision that might invalidate the  
28 application of a provision of this act to medical professional  
29 liability claims generally.

30       (3) A limitation on the recovery of noneconomic damages,

1 including a monetary cap on damages, notwithstanding any court  
2 decision which might invalidate the application of a provision  
3 of this act to medical professional liability claims generally.

4 (4) Time limitations on the filing of claims notwithstanding  
5 any court decision which might invalidate the application of a  
6 provision of this act to medical professional liability claims  
7 generally.

8 (5) Standards for the qualifications of expert witnesses  
9 notwithstanding any court decision which might invalidate the  
10 application of a provision of this act to medical professional  
11 liability claims generally.

12 (d) An agreement which mandates arbitration of a medical  
13 professional liability claim involving medical services rendered  
14 to a minor shall not be subject to disaffirmance if the  
15 agreement is signed by the minor's parent, legal guardian or  
16 legal representative. An agreement which mandates arbitration of  
17 a medical professional liability claim involving medical  
18 services rendered to a patient who is incompetent shall not be  
19 subject to disaffirmance if the agreement is signed by a legal  
20 representative for the patient.

21 (e) An agreement which mandates arbitration of a medical  
22 professional liability claim shall be binding on the estate of  
23 the patient and on any other individual whose claim is  
24 derivative of the patient's claim.

25 (f) A medical professional liability claim pursued in an  
26 arbitration proceeding shall be covered and defended by the  
27 health care provider's professional liability insurer and the  
28 fund to the same extent as if the claim was asserted in a court  
29 of law.

30 (g) A person, corporation or entity not a signatory to an



1 agreement to arbitrate a medical professional liability claim  
2 may join in the arbitration at the request of any party with all  
3 the rights and obligations of the original party. No signatory  
4 may refuse to arbitrate because of the participation of an  
5 additional party. An additional participant shall execute a  
6 written statement to be bound by the arbitration proceedings and  
7 agreement or sign the agreement and shall then be treated as a  
8 party.

9 (h) The employees of a health care provider shall be deemed  
10 to be parties to every agreement providing for arbitration of a  
11 medical professional liability claim which is signed by their  
12 employer. An arbitration agreement shall bar an action at law  
13 against any health care provider based upon the conduct of any  
14 employee.

15 Section 809-B. Expert Witness Qualifications.--Any expert  
16 witness in a medical professional liability action against a  
17 physician must possess sufficient education, training, knowledge  
18 and experience to provide credible, specialized testimony and  
19 must meet the following qualifications, as applicable:

20 (1) An expert witness testifying on a medical matter,  
21 including standard of care, risks and alternatives, causation  
22 and nature and extent of injury, must be:

23 (i) a physician with an unrestricted license to practice in  
24 any state or the District of Columbia; and

25 (ii) engaged in active clinical practice and experience in  
26 the medical matter at issue.

27 (2) An expert witness testifying as to a physician standard  
28 of care must be:

29 (i) substantially familiar with the applicable standard of  
30 care for the specific care at issue as of the time of the

1 alleged malpractice;

2 (ii) in the same subspecialty as the defendant physician or  
3 in a subspecialty which has a substantially similar standard of  
4 care for the specific care at issue; and

5 (iii) if the defendant physician is certified by a licensing  
6 board, board-certified by the same or a similar licensing board.

7 Section 810-B. Expert Testimony Constituting Practice of  
8 Medicine.--(a) Providing expert witness testimony in a medical  
9 professional liability action against a practitioner of a  
10 healing art on a medical matter, including standard of care,  
11 risks and alternatives, causation and nature and extent of  
12 injury, constitutes the practice of medicine and shall subject  
13 the expert witness to the jurisdiction of the appropriate  
14 physician licensing board and disciplinary action if the expert  
15 witness testifies without a sound medical basis or outside the  
16 scope of the expert witness's knowledge, training and  
17 experience.

18 (b) If a physician licensing board determines that  
19 disciplinary action against an expert witness is appropriate  
20 under this section, the board may impose any penalty otherwise  
21 authorized by law against a physician licensed by the board for  
22 unethical or unprofessional conduct; an administrative fine of  
23 \$50,000 per incident against any practitioner of a healing art;  
24 and a restriction, including a prohibition, against any  
25 practitioner of a healing art on future testimony as a physician  
26 expert witness in this Commonwealth.

27 (c) A party to a medical professional liability action that  
28 is dissatisfied with the testimony of an expert witness may file  
29 a complaint with the appropriate physician licensing board. Upon  
30 the filing of a complaint, the board shall investigate the

1 complaint and initiate disciplinary proceedings, if appropriate.  
2 The complainant is entitled to participate as a party in the  
3 board proceedings, including any hearing or appeal.

4 (d) If the expert witness is not licensed by the State Board  
5 of Medicine or the State Board of Osteopathic Medicine, the  
6 State Board of Medicine shall be deemed to be the appropriate  
7 licensing board for purposes of this section.

8 Section 811-B. Frivolous Litigation.--(a) There is  
9 established a separate cause of action for damages arising out  
10 of the filing of a frivolous civil complaint, counterclaim or  
11 joinder complaint by an attorney, the law firm of which the  
12 attorney is a member or by any party who is not represented by  
13 an attorney. The injured party must file this action in the same  
14 court and division where the original action or matter was  
15 filed. This action shall not be collateral to the original  
16 action and shall proceed without reference to its status.

17 (b) An action brought pursuant to this section may be filed  
18 before the challenged proceeding on the civil complaint,  
19 counterclaim or joinder complaint is terminated.

20 (c) The action established under this section is a separate  
21 cause of action than that provided for under 42 Pa.C.S Ch. 83  
22 Subch. E (relating to wrongful use of civil proceedings). A  
23 person may not be precluded from bringing an action pursuant to  
24 42 Pa.C.S. Ch. 83 Subch. E on the sole basis that the person  
25 first brought an action under this section.

26 (d) A complaint, counterclaim or joinder complaint is  
27 frivolous when the party filing the complaint, counterclaim or  
28 joinder complaint has not produced reasonable evidence  
29 establishing facts essential to the allegations set forth in the  
30 complaint, counterclaim or joinder complaint or has not proposed

1 reasonable action to be taken by that party to produce or  
2 present such evidence and one of the following elements is  
3 proven by a preponderance of the evidence:

4 (1) the civil complaint, counterclaim or joinder complaint  
5 is presented primarily for an improper purpose, including, but  
6 not limited to, harassment, interruption of any lawful business  
7 activity, intentional infliction of emotional distress or  
8 unwarranted pecuniary gain; or

9 (2) the claims set forth in the civil complaint,  
10 counterclaim or joinder complaint are not warranted by existing  
11 law or by a reasonable argument for the extension, modification  
12 or reversal of existing law or the establishment of new law.

13 (e) Before filing an action under this section, the  
14 plaintiff in this action must notify the defendant in writing of  
15 the intention to file the action and attach a copy of the  
16 proposed complaint. Each recipient of the proposed complaint  
17 shall have 20 days in which to withdraw or otherwise cure the  
18 civil complaint, counterclaim, or joinder complaint giving rise  
19 to the claim of frivolous litigation.

20 (f) If the civil complaint, counterclaim, or joinder  
21 complaint is withdrawn or otherwise cured, there shall be no  
22 basis for the cause of action, except that the plaintiff shall  
23 be entitled to recover court costs, expenses and reasonable  
24 attorney fees if the plaintiff files a motion for such recovery  
25 within 30 days of a withdrawal.

26 (g) Recovery by an injured party under this section shall  
27 not preclude the injured party from recovering any damages which  
28 the injured party may be entitled to, pursuant to 42 Pa.C.S. Ch.  
29 83 Subch. E and which have not already been recovered pursuant  
30 to this section.

1       (h) When any element set forth in subsection (d) has been  
2 proven by a preponderance of the evidence, the injured party is  
3 entitled to recover the following:

4       (1) The harm normally resulting from any dispossession or  
5 interference with the advantageous use of the injured party's  
6 land, chattels or other things suffered by the injured party  
7 during the course of the proceeding.

8       (2) The harm to the injured party's reputation.

9       (3) The cost of litigation, including, but not limited to,  
10 any reasonable attorney fees.

11       (4) Lost income that the injured party has incurred in  
12 defending himself.

13       (5) Any other pecuniary loss that has resulted from the  
14 proceeding.

15       (6) Any other noneconomic loss caused by the proceedings.

16       (i) Nothing in this section shall be construed to preclude  
17 the court from exercising its inherent supervisory power or from  
18 imposing appropriate nonmonetary or monetary sanctions upon  
19 attorneys, law firms and unrepresented parties who have engaged  
20 in frivolous or bad faith litigation under existing law and  
21 rules of procedure.

22       (j) Absent exceptional circumstances, a law firm shall be  
23 held jointly responsible for a frivolous civil complaint,  
24 counterclaim or joinder complaint filed by attorneys of the  
25 firm.

26       Section 812-B. Prejudgment Interest.--Prejudgment interest  
27 shall not be awarded in a medical professional liability action  
28 except as a sanction for dilatory, obdurate or vexatious conduct  
29 which unduly delayed the action. Prejudgment interest authorized  
30 under this rule shall not exceed the statutory rate of interest

1 or shall be assessed only during the period of undue delay.

2 Section 6. This act shall take effect immediately.