

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 204 Session of
2003

INTRODUCED BY C. WILLIAMS, KITCHEN, WOZNIAK AND MOWERY,
FEBRUARY 6, 2003

REFERRED TO JUDICIARY, FEBRUARY 6, 2003

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, adding and changing
3 definitions; further providing for the unified judicial
4 system; establishing the appellate division of the Medical
5 Professional Liability Court; providing for transfers between
6 intermediate appellate courts, for lien of judgments for
7 money, for direct appeals to the Supreme Court from courts of
8 common pleas, for allowance of appeals from Superior Court
9 and Commonwealth Court, for appeals to Superior Court from
10 courts of common pleas, for original jurisdiction of the
11 Commonwealth Court, for appeals to the Commonwealth Court
12 from courts of common pleas, for the jurisdiction of the
13 appellate division of the Medical Professional Liability
14 Court and for the organization and jurisdiction of the
15 Medical Professional Liability Court; establishing the
16 Medical Professional Liability Qualifications Commission and
17 prescribing its powers and duties; further providing for
18 selection of judicial officers, for vacancies in judicial
19 offices and for retention election of judicial officers;
20 providing for selection and retention of judges of the
21 Medical Professional Liability Court and for salaries of
22 judges of the Medical Professional Liability Court;
23 establishing the Medical Professional Liability Court Fund
24 and providing for receipts and payments; and further
25 providing for right to appellate review and for appeals
26 generally.

27 The General Assembly of the Commonwealth of Pennsylvania
28 hereby enacts as follows:

29 Section 1. The definition of "appellate court" in section

1 102 of Title 42 of the Pennsylvania Consolidated Statutes is
2 amended and the section is amended by adding definitions to
3 read:

4 § 102. Definitions.

5 Subject to additional definitions contained in subsequent
6 provisions of this title which are applicable to specific
7 provisions of this title, the following words and phrases when
8 used in this title shall have, unless the context clearly
9 indicates otherwise, the meanings given to them in this section:

10 * * *

11 "Appellate court." Includes the Supreme Court, the Superior
12 Court [and], the Commonwealth Court[.] and the appellate
13 division of the Medical Professional Liability Court.

14 "Appellate division." The appellate division of the Medical
15 Professional Liability Court established under section 581
16 (relating to appellate division of Medical Professional
17 Liability Court).

18 * * *

19 "Medical Professional Liability Court." The court
20 established under section 811 (relating to Medical Professional
21 Liability Court).

22 "Medical Professional Liability Court rule." A rule or order
23 promulgated by the Medical Professional Liability Court.

24 * * *

25 "Statewide judges." Judges of the Supreme Court, Superior
26 Court, Commonwealth Court and Medical Professional Liability
27 Court.

28 * * *

29 Section 2. Section 301 of Title 42 is amended to read:

30 § 301. Unified judicial system.

1 The judicial power of the Commonwealth shall be vested in a
2 unified judicial system consisting of the:

3 (1) Supreme Court.

4 (2) Superior Court.

5 (3) Commonwealth Court.

6 (3.1) Medical Professional Liability Court.

7 (4) Courts of common pleas.

8 (5) Community courts.

9 (6) Philadelphia Municipal Court.

10 (7) Pittsburgh Magistrates Court.

11 (8) Traffic Court of Philadelphia.

12 (9) District justices.

13 All courts and district justices and their jurisdiction shall be
14 in this unified judicial system.

15 Section 3. Chapter 5 of Title 42 is amended by adding a
16 subchapter to read:

17 SUBCHAPTER D

18 APPELLATE DIVISION OF THE

19 MEDICAL PROFESSIONAL LIABILITY COURT OF PENNSYLVANIA

20 Sec.

21 581. Appellate division of the Medical Professional Liability
22 Court.

23 582. Powers of appellate division.

24 583. Seat of appellate division.

25 § 581. Appellate division of the Medical Professional Liability
26 Court.

27 (a) General rule.--There shall be an appellate division of
28 the Medical Professional Liability Court which shall consist of
29 the president judge and the other judges in regular active
30 service.

(b) Panels and en banc.--When reviewing orders of the Medical Professional Liability Court, the appellate division shall sit in panels, and no member of the appellate division shall participate as a member of a panel in the judicial review of any order or other action in which the person participated as a matter of original jurisdiction. A decision of a panel may be reviewed by the division en banc.

§ 582. Powers of appellate division.

The appellate division of the Medical Professional Liability Court shall have all powers necessary or appropriate in aid of its jurisdiction which are agreeable to the usages and principles of law.

§ 583. Seat of appellate division.

The regular sessions of the appellate division of the Medical Professional Liability Court shall be held in the cities of Harrisburg, Norristown and Pittsburgh and elsewhere as prescribed by Medical Professional Liability Court rule.

Section 4. Sections 705, 707, 722, 724, 742, 761(a) and 762(b) of Title 42 are amended to read:

§ 705. Transfers [between] among intermediate appellate courts.

The Superior Court [and], the Commonwealth Court and the appellate division of the Medical Professional Liability Court shall have power pursuant to general rules, on their own motion or upon [petition] application of any party, to transfer any appeal to [the other court] another appellate court or division (subject to the restrictions) for consideration and decision with any matter pending in such other court or division involving the same or related questions of fact, law or discretion.

§ 707. Lien of judgments for money.

Any judgment or other order of the Supreme Court, the Superior Court [or], the Commonwealth Court or the appellate division of the Medical Professional Liability Court for the payment of money shall not be a lien upon real property in any county until it is entered of record in the office of the clerk of the court of common pleas of the county where the property is situated, or in the office of the clerk of the branch of the court of common pleas embracing such county, in the same manner as a judgment transferred from the court of common pleas of another county.

§ 722. Direct appeals from courts of common pleas.

(a) General rule.--The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following classes of cases:

- (1) Matters prescribed by general rule.
- (2) The right to public office.
- (3) Matters where the qualifications, tenure or right to serve, or the manner of service, of any member of the judiciary is drawn in question.
- (4) Automatic review of sentences as provided by [42 Pa.C.S. §§] sections 9546(d) (relating to relief and order) and 9711(h) (relating to review of death sentence).
- (5) Supersession of a district attorney by an Attorney General or by a court or where the matter relates to the convening, supervision, administration, operation or discharge of an investigating grand jury or otherwise directly affects such a grand jury or any investigation conducted by it.
- (6) Matters where the right or power of the Commonwealth or any political subdivision to create or issue indebtedness

1 is drawn in direct question.

2 (7) Matters where the court of common pleas has held
3 invalid as repugnant to the Constitution, treaties or laws of
4 the United States, or to the Constitution of this
5 Commonwealth, any treaty or law of the United States or any
6 provision of the Constitution of, or of any statute of, this
7 Commonwealth, or any provision of any home rule charter.

8 (8) Matters where the right to practice law is drawn in
9 direct question.

10 (b) Exception.--The Supreme Court shall not have
11 jurisdiction under subsection (a)(7) of such classes of appeals
12 from the courts of common pleas as are by section 762 (relating
13 to appeals from courts of common pleas) within the exclusive
14 jurisdiction of the appellate division of the Medical
15 Professional Liability Court.

16 § 724. Allowance of appeals from [Superior and Commonwealth
17 Courts] intermediate appellate courts.

18 (a) General rule.--Except as provided by section 9781(f)
19 (relating to limitation on additional appellate review), final
20 orders of the Superior Court and final orders of the
21 Commonwealth Court not appealable under section 723 (relating to
22 appeals from Commonwealth Court) may be reviewed by the Supreme
23 Court upon allowance of appeal by any two justices of the
24 Supreme Court upon petition of any party to the matter.

25 (a.1) Medical Professional Liability Court appeals.--Final
26 orders of the appellate division of the Medical Professional
27 Liability Court may be reviewed by the Supreme Court upon
28 allowance of appeal by any two justices of the Supreme Court
29 upon petition of any party to the matter if the petition is
30 granted within 90 days after it is filed.

1 (a.2) Scope of review.--If the petition shall be granted,
2 the Supreme Court shall have jurisdiction to review the order in
3 the manner provided by section 5105(d)(1) (relating to scope of
4 appeal).

5 (b) Improvident appeals.--If an appeal is improvidently
6 taken to the Supreme Court under section 723 in a case where the
7 proper mode of review is by petition for allowance of appeal
8 under this section, this alone shall not be a ground for
9 dismissal, but the papers whereon the appeal was taken shall be
10 regarded and acted on as a petition for allowance of appeal and
11 as if duly filed at the time the appeal was taken.

12 § 742. Appeals from courts of common pleas.

13 The Superior Court shall have exclusive appellate
14 jurisdiction of all appeals from final orders of the courts of
15 common pleas, regardless of the nature of the controversy or the
16 amount involved, except such classes of appeals as are by any
17 provision of this chapter within the exclusive jurisdiction of
18 the Supreme Court [or], the Commonwealth Court or the appellate
19 division of the Medical Professional Liability Court.

20 § 761. Original jurisdiction.

21 (a) General rule.--The Commonwealth Court shall have
22 original jurisdiction of all civil actions or proceedings:

23 (1) Against the Commonwealth government, including any
24 officer thereof, acting in his official capacity, except:

25 (i) actions or proceedings in the nature of
26 applications for a writ of habeas corpus or post-
27 conviction relief not ancillary to proceedings within the
28 appellate jurisdiction of the court;

29 (ii) eminent domain proceedings;

30 (iii) actions or proceedings conducted pursuant to

Chapter 85 (relating to matters affecting government units);

(iv) actions or proceedings conducted pursuant to the act of May 20, 1937 (P.L.728, No.193), referred to as the Board of Claims Act; [and]

(v) actions or proceedings in the nature of trespass as to which the Commonwealth government formerly enjoyed sovereign or other immunity and actions or proceedings in the nature of assumpsit relating to such actions or proceedings in the nature of trespass[.]; and

(vi) such matters as are by Subchapter C of Chapter 8 (relating to jurisdiction of the Medical Professional Liability Court) within the jurisdiction of the Medical Professional Liability Court.

(2) By the Commonwealth government, including any officer thereof, acting in his official capacity, except:

(i) eminent domain proceedings[.]; and

(ii) such matters as are by section 832 (relating to original jurisdiction) within the jurisdiction of the Medical Professional Liability Court.

(3) [Arising under Article V of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."]

(4) Original jurisdiction of which is vested in the Commonwealth Court by any unrepealed statute hereafter enacted.

* * *

§ 762. Appeals from courts of common pleas.

* * *

(b) Exception.--The Commonwealth Court shall not have

jurisdiction of such classes of appeals from courts of common
pleas as are by [section]:

(1) Section 722 (relating to direct appeals from courts
of common pleas) within the exclusive jurisdiction of the
Supreme Court.

(2) Section 782 (relating to appeals from Medical
Professional Liability Court original hearing matters) within
the exclusive jurisdiction of the appellate division of the
Medical Professional Liability Court.

Section 5. Chapter 7 of Title 42 is amended by adding a
subchapter to read:

SUBCHAPTER E

JURISDICTION OF APPELLATE DIVISION OF

MEDICAL PROFESSIONAL LIABILITY COURT

Sec.

781. Original jurisdiction.

782. Appeals from Medical Professional Liability Court original
hearing matters.

783. Answer of certified questions of law.

784. Certification of questions of law.

§ 781. Original jurisdiction.

The appellate division of the Medical Professional Liability
Court shall have no original jurisdiction, except:

(1) in cases of mandamus and prohibition to:

(i) the judges of the Medical Professional Liability
Court when exercising the original jurisdiction of the
Medical Professional Liability Court; or

(ii) courts of inferior jurisdiction where such
relief is ancillary to matters within the appellate
jurisdiction of the division; and

1 (2) that the division, or any member thereof, shall have
2 full power and authority when and as often as there may be
3 occasion to issue writs of habeas corpus under like
4 conditions returnable to the said court.

5 § 782. Appeals from Medical Professional Liability Court
6 original hearing matters.

7 The appellate division of the Medical Professional Liability
8 Court shall have exclusive appellate jurisdiction of all appeals
9 from final orders of the Medical Professional Liability Court
10 entered by a single member thereof, regardless of the nature of
11 the controversy or the amount involved.

12 § 783. Answer of certified questions of law.

13 (a) General rule.--The appellate division of the Medical
14 Professional Liability Court may answer questions of law
15 certified to it by a United States appellate court or the
16 highest appellate court or the intermediate appellate court of
17 any other state or jurisdiction, when requested by the
18 certifying court, if they are involved in any matter pending
19 before the certifying court questions of law of the Commonwealth
20 within the jurisdiction of the appellate division which may be
21 determinative of the matter in the certifying court and as to
22 which it appears to the certifying court there is no controlling
23 precedent in the decisions of the appellate division.

24 (b) Contents of certification order.--A certification order
25 shall set forth:

26 (1) The questions of law to be answered.

27 (2) A statement of all facts relevant to the questions
28 certified and showing fully the nature of the controversy in
29 which the question arose.

30 (c) Preparation of certification order.--The certification

1 order shall be prepared by the certifying court, signed by the
2 judge presiding over the matter and forwarded to the appellate
3 division of the Medical Professional Liability Court by the
4 clerk of the certifying court under its official seal. The
5 appellate division may require the original or copies of all or
6 of any portion of the record before the certifying court to be
7 filed with the certification order if, in the opinion of the
8 appellate division, the record or portion thereof may be
9 necessary in answering the questions.

10 (d) Costs of certification.--Fees and costs shall be the
11 same as in appeals docketed before the appellate division and
12 shall be equally divided between the parties unless otherwise
13 ordered by the certifying court in its order of certification.

14 (e) Briefs and argument.--Proceedings in the appellate
15 division under this section shall be governed by Medical
16 Professional Liability Court rules, which may provide
17 specifically for the answering and certification of questions of
18 law under this section.

19 (f) Opinion.--The written opinion of the appellate division
20 stating the law governing the questions certified shall be sent
21 by the clerk under the seal of the appellate division of the
22 Medical Professional Liability Court to the certifying court and
23 to the parties. An order adopting a written opinion shall be
24 subject to appeal under section 724(b) (relating to allowance of
25 appeals from intermediate appellate courts).

26 § 784. Certification of questions of law.

27 (a) General rule.--The appellate division of the Medical
28 Professional Liability Court, on its own motion or on the
29 application of any party, may order certification of questions
30 of law to a United States appellate court or to the highest

1 appellate court or the intermediate appellate court of any other
2 state or jurisdiction, when it appears to the appellate division
3 that:

4 (1) there are involved in any matter pending before the
5 appellate division questions of law of the receiving
6 jurisdiction which may be determinative of the matter in the
7 appellate division; and

8 (2) there is not controlling precedent in the decisions
9 of the appellate courts of the receiving jurisdiction.

10 (b) Law of case.--The certification order may contain an
11 undertaking on behalf of the Pennsylvania unified judicial
12 system that the answer to the certified question shall be deemed
13 the law of the case for the purposes of all further proceedings
14 in the courts of this Commonwealth.

15 (c) Procedure.--The procedures for certification from this
16 Commonwealth to the receiving jurisdiction shall be as provided
17 by the laws of the receiving jurisdiction.

18 Section 6. The heading of Article C of Subpart A of Part II
19 of Title 42 is amended to read:

20 ARTICLE C

21 MEDICAL PROFESSIONAL LIABILITY COURT

22 AND COURTS OF COMMON PLEAS

23 Section 7. Article C of Subpart A of Part II of Title 42 is
24 amended by adding a chapter to read:

25 CHAPTER 8

26 ORGANIZATION AND JURISDICTION OF THE

27 MEDICAL PROFESSIONAL LIABILITY COURT

28 OF PENNSYLVANIA

29 Subchapter

30 A. (Reserved)

- B. Organization of the Medical Professional Liability Court
- C. Jurisdiction of the Medical Professional Liability Court
- D. Transitional Provisions

SUBCHAPTER A

(RESERVED)

SUBCHAPTER B

ORGANIZATION OF THE MEDICAL PROFESSIONAL LIABILITY
COURT

Sec.

811. Medical Professional Liability Court.

812. Powers of Medical Professional Liability Court.

813. Seat of court.

814. Lien of judgments for money.

§ 811. Medical Professional Liability Court.

There shall be a Medical Professional Liability Court of
Pennsylvania which shall consist of 18 judges.

§ 812. Powers of Medical Professional Liability Court.

The Medical Professional Liability Court shall have power to
issue, under its judicial seal, every lawful writ and process
necessary or suitable for the exercise of its jurisdiction and
for the enforcement of any order which it may make, including
such writs and process to or to be served or enforced by system
and related personnel as the courts of common pleas are
authorized by law or usage to issue. The court shall also have
all powers of a court of record possessed by the courts of
common pleas.

§ 813. Seat of court.

(a) Central filing.--The Medical Professional Liability
Court shall maintain offices for the receipt of filings at one
or more locations within this Commonwealth as may be prescribed

1 by Medical Professional Liability Court rule.

2 (b) Regular sessions.--The regular sessions of the Medical
3 Professional Liability Court shall be held in the eastern
4 district of Pennsylvania with locations in Norristown and
5 Scranton, middle district of Pennsylvania with locations in
6 Harrisburg and Williamsport and western district of Pennsylvania
7 with locations in Pittsburgh and Erie.

8 (c) Other sessions.--Within the limits of available
9 appropriations, special sessions of the Medical Professional
10 Liability Court may be held at such other places from time to
11 time within this Commonwealth as may be necessary for the
12 convenience of parties or witnesses.

13 (d) Reimbursement.--When regular or other sessions of the
14 Medical Professional Liability Court are held in facilities
15 provided by counties under this section, reimbursement for
16 actual and reasonable expenses shall be made to the counties
17 from the Medical Professional Liability Court Fund.

18 § 814. Lien of judgments for money.

19 Any judgment or other order of the Medical Professional
20 Liability Court for the payment of money shall not be a lien
21 upon real property in any county until it is entered of record
22 in the office of the clerk of the court of common pleas of the
23 county in which the property is situated, or in the office of
24 the clerk of the branch of the court of common pleas embracing
25 such county, in the same manner as a judgment transferred from
26 the court of common pleas of another county.

27 SUBCHAPTER C

28 JURISDICTION OF THE MEDICAL PROFESSIONAL

29 LIABILITY COURT

30 Sec.

1 831. Definitions.

2 832. Original jurisdiction.

3 833. Exclusive jurisdiction.

4 § 831. Definitions.

5 The following words and phrases when used in this subchapter
6 shall have the meanings given to them in this section unless the
7 context clearly indicates otherwise:

8 "Health care provider." An individual or health care
9 facility that is licensed, certified or otherwise authorized to
10 provide health care under the laws of this Commonwealth. The
11 term also includes both of the following:

12 (1) An officer, employee or agent of a health care
13 provider acting within the scope of the person's duties and
14 authority.

15 (2) A legal entity through which one or more health care
16 providers deliver health care, including, but not limited to,
17 a professional corporation, a partnership or limited
18 liability company.

19 "Medical professional liability claim." A claim brought by
20 or on behalf of an individual seeking damages for loss sustained
21 by the individual as a result of an injury or wrong to the
22 individual or another individual arising from a health care
23 provider's provision of or failure to provide health care
24 regardless of the theory of liability. A medical professional
25 liability claim includes, but is not limited to, a claim
26 grounded in negligence, informed consent, breach of contract,
27 misrepresentation or fraud.

28 § 832. Original jurisdiction.

29 The Medical Professional Liability Court shall have original
30 jurisdiction of all civil actions or proceedings against a

1 health care provider for all medical professional liability
2 claims.

3 § 833. Exclusive jurisdiction.

4 Except as provided in section 721 (relating to original
5 jurisdiction), the jurisdiction of the Medical Professional
6 Liability Court under section 832 (relating to original
7 jurisdiction) shall be exclusive.

8 SUBCHAPTER D

9 TRANSITIONAL PROVISIONS

10 Sec.

11 841. Organization of court.

12 842. Existing cases unaffected.

13 843. Rules.

14 844. Procurement of juries.

15 845. Filing fees.

16 846. Expiration review.

17 § 841. Organization of court.

18 (a) General rule.--The Medical Professional Liability Court
19 shall meet and organize in the City of Harrisburg. The court
20 shall procure the necessary supplies, equipment and personnel to
21 commence operation and promulgate any necessary rules of court
22 or operating procedures. When the court is organized and ready
23 for the transaction of business, the president judge of the
24 court shall so certify to the Governor, who shall issue a
25 proclamation stating that the court is organized and ready for
26 the transaction of its judicial business.

27 (b) Initial term of office.--The Governor shall proceed to
28 appoint persons to serve as judges of the court for purposes of
29 organizing its affairs. In order to permit the efficient
30 organization of the court, the date of appointment by the

1 Governor shall be deemed to be the date on which the vacancies
2 in the offices of the initial judges of the court filled by the
3 Governor under this subsection occurred, so that the first
4 election of judges of the court shall not be held until the
5 first municipal election following the initial appointment by
6 the Governor.

7 § 842. Existing cases unaffected.

8 A change in jurisdiction effected by amendments to this title
9 or to any other act shall not affect the jurisdiction of any
10 court over any pending matter, but, in the interest of justice,
11 an existing matter may be transferred to the Medical
12 Professional Liability Court.

13 § 843. Rules.

14 (a) Medical Professional Liability Court.--Prior to the
15 commencement of operations, specific rules shall be adopted that
16 will be applicable to original matters heard in the Medical
17 Professional Liability Court.

18 (b) Appellate division.--Until otherwise provided by Medical
19 Professional Liability Court rule, the Pennsylvania Rules of
20 Appellate Procedure shall be applicable to matters in the
21 appellate division of the Medical Professional Liability Court,
22 and rules of court promulgated by the Medical Professional
23 Liability Court applicable in the appellate division shall be
24 classified under Rule 104 of the Pennsylvania Rules of Appellate
25 Procedure.

26 § 844. Procurement of juries.

27 Until otherwise provided by Medical Professional Liability
28 Court rule, the procedures for the selection, compensation and
29 maintenance of juries for service in the Commonwealth Court
30 shall be applicable to the selection, compensation and

1 maintenance of juries in the Medical Professional Liability
2 Court.

3 § 845. Filing fees.

4 Until otherwise provided by Medical Professional Liability
5 Court rule, the fee bill applicable in the Commonwealth Court
6 shall be applicable in the Medical Professional Liability Court.

7 § 846. Expiration review.

8 (a) Reports to General Assembly.--The following reports
9 shall be submitted within 120 days after the expiration of ten
10 years after entry by the Medical Professional Liability Court of
11 its first final order in any action, proceeding or appeal:

12 (1) The Medical Professional Liability Court shall
13 submit to the General Assembly any recommendations for
14 legislation relating to size, structure or operations of the
15 court.

16 (2) The Attorney General shall submit a report to the
17 General Assembly reviewing and commenting upon the operations
18 of the Medical Professional Liability Court and making any
19 recommendations for legislation relating to size, structure
20 or operations of the court.

21 (b) Request for comments.--Appropriate committees of the
22 General Assembly shall request comments from the organized bar
23 and the general public concerning the size, structure and
24 operations of the Medical Professional Liability Court.

25 Section 8. Chapter 21 of Title 42 is amended by adding a
26 subchapter to read:

27 SUBCHAPTER G

28 MEDICAL PROFESSIONAL LIABILITY COURT

29 QUALIFICATIONS COMMISSION

30 Sec.

1 2161. Medical Professional Liability Court Qualifications
2 Commission.

3 2162. Composition of Medical Professional Liability Court
4 Qualifications Commission.

5 2163. Organization.

6 2164. Powers and duties.

7 § 2161. Medical Professional Liability Court Qualifications
8 Commission.

9 (a) General rule.--The Medical Professional Liability Court
10 Qualifications Commission shall consist of 12 residents of this
11 Commonwealth selected as provided in this subchapter.

12 (b) Seal.--The Medical Professional Liability Court
13 Qualifications Commission shall have a seal engraved with its
14 name and such other inscriptions as may be specified by Medical
15 Professional Liability Court rule. A facsimile or preprinted
16 seal may be used for all purposes in lieu of the original seal.

17 (c) Status.--The Medical Professional Liability Court
18 Qualifications Commission shall not be deemed to be an agency
19 for purposes of 65 Pa.C.S. Ch. 7 (relating to open meetings).

20 § 2162. Composition of Medical Professional Liability Court
21 Qualifications Commission.

22 (a) General rule.--The Medical Professional Liability Court
23 Qualifications Commission shall consist of:

24 (1) Three commissioners appointed by the President pro
25 tempore of the Senate.

26 (2) Three commissioners appointed by the Minority Leader
27 of the Senate.

28 (3) Three commissioners appointed by the Speaker of the
29 House of Representatives.

30 (4) Three commissioners appointed by the Minority Leader

1 of the House of Representatives.

2 (b) Qualifications.--Two of the commissioners appointed
3 under each paragraph of subsection (a) shall be members of the
4 bar of the courts of this Commonwealth. The third commissioner
5 appointed in each case shall be a nonlawyer elector.

6 (c) Terms of office.--Except as provided in subsection (e),
7 each commissioner shall be appointed for a four-year term. A
8 commissioner shall not be appointed for more than two successive
9 full terms. An appointment to fill an unexpired term which has
10 fewer than two years remaining shall not be deemed a full term.
11 A vacancy on the commission shall be filled for the balance of
12 the term by appointment made by the person who at the time is
13 the ranking member in the same chamber of the General Assembly
14 and of the same political party as the person who appointed the
15 vacating member of the commission.

16 (d) Restriction on public or political activities.--During a
17 commissioner's term of service, a commissioner shall not hold:

18 (1) A compensated public office or public appointment.

19 (2) Office in any political party or political
20 organization.

21 (e) Transitional provisions.--

22 (1) The initial Medical Professional Liability Court
23 Qualifications Commission provided for in this section shall
24 come into existence upon the effective date of this chapter.

25 (2) The initial members of the Medical Professional
26 Liability Court Qualifications Commission shall serve as
27 follows:

28 (i) the commissioners appointed by the President pro
29 tempore of the Senate, one each for two, three and four
30 years;

(ii) the commissioners appointed by the Minority Leader of the Senate, one each for two, three and four years;

(iii) the commissioners appointed by the Speaker of the House of Representatives, one each for one, two and three years; and

(iv) the commissioners appointed by the Minority Leader of the House of Representatives, one each for one, two and three years.

§ 2163. Organization.

The Medical Professional Liability Court Qualifications Commission shall elect a presiding officer from among its members and shall establish its own rules of procedure. The Medical Professional Liability Court shall furnish such staff support as may be necessary for the conduct of the business of the commission. The cost and expense of the commission shall be paid out of the Medical Professional Liability Court Fund established under section 3591 (relating to Medical Professional Liability Court Fund).

§ 2164. Powers and duties.

(a) General rule.--The Medical Professional Liability Court Qualifications Commission shall evaluate the qualifications of all of the following:

(1) Applicants seeking election as a judge of the Medical Professional Liability Court who request evaluation of their qualifications pursuant to section 3161(c) (relating to election of judges of the Medical Professional Liability Court).

(2) Applicants seeking appointment by the Governor to a vacancy on the Medical Professional Liability Court pursuant

1 to section 3162 (relating to vacancies in office of judge of
2 the Medical Professional Liability Court).

3 (3) Judges of the Medical Professional Liability Court
4 who seek retention in office pursuant to section 3163
5 (relating to retention of judges of the Medical Professional
6 Liability Court).

7 (b) Rules and regulations.--The commission may adopt such
8 rules and regulations as it deems necessary to discharge its
9 duties.

10 (c) Immunity.--A member of the commission shall not be held
11 to have violated any criminal law or to be civilly liable under
12 any law by reason of the performance by the member of any duty,
13 function or activity authorized or required of the commission if
14 the member has exercised due care in such performance. This
15 subsection shall not apply with respect to any action taken by
16 any individual if the individual, in taking the action, was
17 motivated by malice toward any person affected by the action.

18 Section 9. Sections 3131, 3132 and 3153 of Title 42 are
19 amended by adding subsections to read:

20 § 3131. Selection of judicial officers for regular terms.

21 * * *

22 (f) Medical Professional Liability Court.--The judges of the
23 Medical Professional Liability Court shall be elected in the
24 manner provided in section 3161 (relating to election of judges
25 of the Medical Professional Liability Court).

26 § 3132. Vacancies in office.

27 * * *

28 (e) Medical Professional Liability Court.--Subsections (a)
29 through (d) shall not apply to a vacancy in the office of a
30 judge of the Medical Professional Liability Court. The

provisions of section 3162 (relating to vacancies in office of judge of the Medical Professional Liability Court) shall apply.

§ 3153. Retention elections after regular term.

* * *

(d) Medical Professional Liability Court.--Except as provided in section 3163 (relating to retention of judges of the Medical Professional Liability Court), subsections (a) through (c) shall apply to the judges of the Medical Professional Liability Court.

Section 10. Chapter 31 of Title 42 is amended by adding a subchapter to read:

SUBCHAPTER E

SELECTION AND RETENTION OF JUDGES

OF THE MEDICAL PROFESSIONAL LIABILITY COURT

Sec.

3161. Election of judges of the Medical Professional Liability Court.

3162. Vacancies in office of judge of the Medical Professional Liability Court.

3163. Retention of judges of the Medical Professional Liability Court.

§ 3161. Election of judges of the Medical Professional Liability Court.

(a) General rule.--Judges of the Medical Professional Liability Court shall be elected for a regular term of office at the municipal election next preceding the commencement of their respective regular terms of office by the electors of this Commonwealth.

(b) Special procedures.--The judges of the Medical Professional Liability Court shall be elected as provided in the

act of June 3, 1937 (P.L.1333, No.320), known as the
Pennsylvania Election Code, except that:

(1) The following dates prescribed by the Pennsylvania
Election Code shall not apply:

(i) The date by which the Secretary of the
Commonwealth is to notify the county boards of election
of the offices for which candidates are to be nominated
at the ensuing primary.

(ii) The date by which the county boards of election
are to publish notice of public offices for which
nominations are to be made.

(2) The date before and after which nomination petitions
and nomination papers may be circulated shall be 60 days
prior to the dates that would otherwise apply in the absence
of this section.

(3) Candidates for nomination who desire to have their
qualifications evaluated by the Medical Professional
Liability Court Qualifications Commission shall proceed as
provided in subsection (c). Candidates who do not desire to
have their qualifications evaluated by the commission shall
not be subject to subsection (c) and shall proceed instead in
the manner provided in the Pennsylvania Election Code.

(4) Candidates for nomination shall present a nominating
petition containing valid signatures of at least 1,000
registered and enrolled members of the proper party,
including at least 100 members from each of at least five
counties.

(5) Each person filing a nomination petition or
nomination papers for a candidate shall pay a filing fee, at
the time of filing either with the commission or the

Department of State, as the case may be, of \$200. A nomination petition or nomination papers shall not be accepted or filed unless and until the filing fee is paid in cash or by certified or cashier's check or money order made payable to the Commonwealth of Pennsylvania. All moneys paid on account of filing fees for candidates for nomination for the office of judge of the Medical Professional Liability Court shall be transmitted to the State Treasurer and shall become part of the Medical Professional Liability Court Fund.

(6) (Reserved).

(7) On all official ballots except absentee ballots, the names of all candidates from the same political party for nomination or election shall be rotated from one precinct to another. On absentee ballots the names of those candidates shall be so alternated that each name shall appear, insofar as reasonably possible, substantially an equal number of times at the beginning, at the end and at each intermediate place, if any, of the group of candidates from the same political party.

(c) Evaluation of qualifications.--Candidates who desire to have their qualifications evaluated by the commission shall proceed in the following fashion:

(1) Nomination petitions and nomination papers shall be filed with the commission instead of the Department of State and must be filed with the commission no later than 60 days prior to the date for filing nomination petitions and nomination papers generally.

(2) The affidavit of candidates submitted to the commission shall be in the form prescribed by the Pennsylvania Election Code, with such additional information

1 as may be required by the rules and regulations of the
2 commission.

3 (3) The commission shall evaluate the qualifications of
4 each candidate in accordance with such criteria and measures
5 of qualification as the commission promulgates in regulations
6 and shall assign each candidate a rating of one of the
7 following:

8 (i) Extremely well qualified.

9 (ii) Well qualified.

10 (iii) Qualified.

11 (iv) Unqualified.

12 (4) The commission shall publish in the Pennsylvania
13 Bulletin a report containing the rating assigned to each
14 candidate by the commission. The report of the commission
15 shall be published not later than the date the nomination
16 petition or nomination papers of the candidate would have
17 been due to be filed absent the provisions of this
18 subsection. The report shall include the nomination petition
19 or nomination papers and the affidavit of the candidate.

20 (5) A determination by the commission to report a
21 candidate as unqualified may be challenged in the same manner
22 as a contested nomination of the second class under Article
23 XVII(b) of the Pennsylvania Election Code, except that the
24 petition commencing the proceeding shall be filed by the
25 candidate himself within 20 days after the last day for
26 filing reports of the commission with the Department of
27 State. A determination by the commission to report a
28 candidate as extremely well qualified, well qualified or
29 qualified shall not be subject to challenge.

30 § 3162. Vacancies in office of judge of the Medical

Professional Liability Court.

(a) General rule.--A vacancy in the office of judge of the Medical Professional Liability Court shall be filled by appointment by the Governor in the manner provided in this section.

(b) Advertisement of vacancy.--Whenever a vacancy occurs in the office of judge of the Medical Professional Liability Court, the Medical Professional Liability Court Qualifications Commission shall publicly advertise the vacancy and solicit applications. When it is known that a vacancy will occur in the future on a date certain, the process set forth in this section may begin 90 days prior to that date.

(c) Preparation of list.--From the applications received, the commission shall prepare and submit to the Governor a list of not more than seven persons who are qualified to hold the office of judge of the Medical Professional Liability Court. When more than one vacancy exists, the maximum number of persons who may be included on the list submitted to the Governor shall be increased by two persons for each additional vacancy. The list shall be submitted to the Governor no later than 60 days after the vacancy occurs. Immediately following submission of the list to the Governor, the list shall be filed with the Senate and made public by the commission. The commission shall maintain the confidentiality of the information on the list but disclose the names of applicants whose names do not appear on the list and applicants who have not requested that their names remain confidential.

(d) Vote required for commission endorsement.--The list submitted to the Governor shall contain the names of those persons who receive affirmative votes from eight or more

1 commissioners, except that the number of persons shall not
2 exceed the limitations imposed by subsection (c).

3 (e) Nomination to Senate.--The Governor shall nominate from
4 the list one person for each vacancy with respect to which a
5 list of recommended applicants has been submitted. If the
6 Governor does not nominate, within 30 days of receipt of the
7 list, as many of the persons recommended as there are vacancies
8 to be filled, the first person or persons named on the list in
9 the order determined by the commission who have not been
10 nominated by the Governor, up to the number of vacancies the
11 Governor has failed to make nominations for, shall be deemed
12 nominated.

13 (f) Action by Senate.--Senate action on a nomination to fill
14 a vacancy in the office of judge of the Medical Professional
15 Liability Court shall be in accordance with section 8 of Article
16 IV of the Constitution of Pennsylvania.

17 (g) Substitute nominations.--The Governor may make a
18 substitute nomination from the list within 30 days after
19 receiving notification from the Senate of the rejection of a
20 prior nominee; otherwise, the ranking person on the list who has
21 not been rejected by the Senate shall be deemed nominated as a
22 substitute.

23 (h) Rejection of all candidates.--If all of the persons on a
24 list have been nominated and rejected by the Senate, the Senate
25 shall so notify the commission. The commission shall meet within
26 ten days of receipt of notification by the Senate and publicly
27 select by lot one person from the list. The person selected
28 shall thereupon be deemed appointed and confirmed to the vacant
29 position and shall be so commissioned by the Governor.

30 § 3163. Retention of judges of the Medical Professional

1 Liability Court.

2 At the expiration of the term of office of a judge of the
3 Medical Professional Liability Court, the judge shall be subject
4 to retention in office and retirement as provided in this part
5 except that whenever a judge of the Medical Professional
6 Liability Court files a declaration of candidacy for retention
7 election, the Medical Professional Liability Court
8 Qualifications Commission shall review the judge's judicial
9 performance and shall, on or before the first Monday of April of
10 the year of the retention election, report to the Department of
11 State whether or not in the opinion of the commission the judge
12 is qualified to be retained in office.

13 Section 11. Title 42 is amended by adding a section to read:

14 § 3582. Salaries of judges of Medical Professional Liability
15 Court.

16 (a) Salaries.--The annual salary of the President Judge of
17 the Medical Professional Liability Court shall be \$104,500. The
18 annual salary of each of the other judges of the Medical
19 Professional Liability Court shall be \$104,000.

20 (b) Annual cost-of-living adjustment.--Beginning January 1,
21 2002, and each January 1 thereafter, the annual salaries under
22 this section shall be increased by the percentage change in the
23 Consumer Price Index for All Urban Consumers (CPI-U) for the
24 Pennsylvania, New Jersey, Delaware and Maryland area for the
25 most recent 12-month period for which figures have been
26 officially reported by the Department of Labor, Bureau of Labor
27 Statistics, immediately prior to the date the adjustment is due
28 to take effect. The percentage increase and salary amounts shall
29 be determined prior to the annual effective date of the
30 adjustment by the Supreme Court and shall be published in the

1 Pennsylvania Bulletin by the Court Administrator of Pennsylvania
2 within 20 days of the date the determination is made.

3 Section 12. Chapter 35 of Title 42 is amended by adding a
4 subchapter to read:

5 SUBCHAPTER G

6 MEDICAL PROFESSIONAL LIABILITY COURT FUND

7 Sec.

8 3591. Medical Professional Liability Court Fund.

9 3592. Receipts and other credits.

10 3593. Payments and other debits.

11 § 3591. Medical Professional Liability Court Fund.

12 There shall be established in the State Treasury a special
13 operating fund to be known as the Medical Professional Liability
14 Court Fund. Debits and credits shall be made to that fund under
15 this subchapter. The operating and capital expenses of the
16 Medical Professional Liability Court shall be paid solely from
17 the Medical Professional Liability Court Fund.

18 § 3592. Receipts and other credits.

19 (a) General rule.--There shall be paid or credited to the
20 Medical Professional Liability Court Fund:

21 (1) Amounts appropriated to the Medical Professional
22 Liability Court in the manner provided by law.

23 (2) The following surcharges, which are hereby imposed:

24 (i) A surcharge upon the health care facility
25 licensure application and renewal fees of the Department
26 of Health under section 807(b) of the act of July 19,
27 1979 (P.L.130, No.48), known as the Health Care
28 Facilities Act, in the amount of 10% of each such fee.

29 (ii) A surcharge upon the civil penalties collected
30 by the Department of Health under section 817(b) of the

Health Care Facilities Act, in the amount of 25% of each such fee.

(iii) A surcharge upon the licensing, examination, registration, certificates and other fees of all health care-related professionals of the Bureau of Professional and Occupational Affairs of the Department of State, in the amount of 10% of each such fee.

(3) Amounts received by the Commonwealth on account of the operation of the Medical Professional Liability Court. Fees and charges of the Medical Professional Liability Court shall be fixed by the governing authority of the Medical Professional Liability Court with a view initially to the operation of the Medical Professional Liability Court on a self-sustaining basis to the extent feasible and eventually to the elimination of the surcharges set forth in paragraph (2)(ii) and (iii) and the reduction of the surcharge set forth in paragraph (2)(i).

(b) Money paid into court.--Money paid into court shall not be credited to the Medical Professional Liability Court Fund except to the extent that the amounts constitute an allowance due a public officer upon the amount levied under an execution.

§ 3593. Payments and other debits.

There shall be disbursed from or debited to the Medical Professional Liability Court Fund amounts payable by the Commonwealth on account of the operation of the Medical Professional Liability Court.

Section 13. Sections 5105(b) and 5571(a) of Title 42 are amended to read:

§ 5105. Right to appellate review.

* * *

(b) Successive appeals.--

(1) Except as otherwise provided in this subsection, the rights conferred by subsection (a) are cumulative, so that a litigant may as a matter of right cause a final order of any tribunal in any matter which itself constitutes an appeal to such tribunal, to be further reviewed by the court having jurisdiction of appeals from such tribunal. Except as provided in section 723 (relating to appeals from the Commonwealth Court) there shall be no right of appeal from the Superior Court or the Commonwealth Court to the Supreme Court under this section or otherwise.

(2) There shall be a right of appeal in all cases from the Medical Professional Liability Court to its appellate division, which shall constitute a separate court for the purposes of section 9 of Article V of the Constitution of Pennsylvania, but, except as provided in section 724(b) (relating to allowance of appeals from intermediate appellate courts), there shall be no right of appeal from the Medical Professional Liability Court or the appellate division of the Medical Professional Liability Court to the Supreme Court under this section or otherwise.

* * *

§ 5571. Appeals generally.

(a) General rule.--The time for filing an appeal, a petition for allowance of appeal, a petition for permission to appeal or a petition for review of a quasi-judicial order, in the Supreme Court, the Superior Court [or], the Commonwealth Court or the Medical Professional Liability Court shall be governed by general rules. No other provision of this subchapter shall be applicable to matters subject to this subsection.

1 * * *

2 Section 14. This act shall take effect in 30 days.