

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1497 Session of 2010

INTRODUCED BY RAFFERTY AND BROWNE, NOVEMBER 8, 2010

REFERRED TO JUDICIARY, NOVEMBER 8, 2010

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
30 102 of Title 42 of the Pennsylvania Consolidated Statutes is

1 amended and the section is amended by adding definitions to
2 read:

3 § 102. Definitions.

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

9 * * *

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

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

17 * * *

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

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

23 * * *

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

27 * * *

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

29 § 301. Unified judicial system.

30 The judicial power of the Commonwealth shall be vested in a

1 unified judicial system consisting of the:

2 (1) Supreme Court.

3 (2) Superior Court.

4 (3) Commonwealth Court.

5 (3.1) Medical Professional Liability Court.

6 (4) Courts of common pleas.

7 (5) Community courts.

8 (6) Philadelphia Municipal Court.

9 (7) Pittsburgh Magistrates Court.

10 (8) Traffic Court of Philadelphia.

11 (9) Magisterial district judges.

12 All courts and magisterial district judges and their
13 jurisdiction shall be in this unified judicial system.

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

16 SUBCHAPTER D

17 APPELLATE DIVISION OF THE

18 MEDICAL PROFESSIONAL LIABILITY COURT OF PENNSYLVANIA

19 Sec.

20 § 581. Appellate division of the Medical Professional Liability
21 Court.

22 582. Powers of appellate division.

23 583. Seat of appellate division.

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

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

30 (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

1 division of the Medical Professional Liability Court for the
2 payment of money shall not be a lien upon real property in any
3 county until it is entered of record in the office of the clerk
4 of the court of common pleas of the county where the property is
5 situated, or in the office of the clerk of the branch of the
6 court of common pleas embracing such county, in the same manner
7 as a judgment transferred from the court of common pleas of
8 another county.

9 § 722. Direct appeals from courts of common pleas.

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

13 (1) Matters prescribed by general rule.

14 (2) The right to public office.

15 (3) Matters where the qualifications, tenure or right to
16 serve, or the manner of service, of any member of the
17 judiciary is drawn in question.

18 (4) Automatic review of sentences as provided by [42
19 Pa.C.S. §§] sections 9546(d) (relating to relief and order)
20 and 9711(h) (relating to review of death sentence).

21 (5) Supersession of a district attorney by an Attorney
22 General or by a court or where the matter relates to the
23 convening, supervision, administration, operation or
24 discharge of an investigating grand jury or otherwise
25 directly affects such a grand jury or any investigation
26 conducted by it.

27 (6) Matters where the right or power of the Commonwealth
28 or any political subdivision to create or issue indebtedness
29 is drawn in direct question.

30 (7) Matters where the court of common pleas has held

1 invalid as repugnant to the Constitution, treaties or laws of
2 the United States, or to the Constitution of this
3 Commonwealth, any treaty or law of the United States or any
4 provision of the Constitution of, or of any statute of, this
5 Commonwealth, or any provision of any home rule charter.

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

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

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

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

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

29 (a.2) Scope of review.--If the petition shall be granted,
30 the Supreme Court shall have jurisdiction to review the order in

1 the manner provided by section 5105(d)(1) (relating to scope of
2 appeal).

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

10 § 742. Appeals from courts of common pleas.

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

18 § 761. Original jurisdiction.

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

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

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

27 (ii) eminent domain proceedings;

28 (iii) actions or proceedings conducted pursuant to
29 Chapter 85 (relating to matters affecting government
30 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] 62 Pa.C.S. Ch. 17, Subch. C (relating to board of claims);

(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

(2) that the division, or any member thereof, shall have

1 full power and authority when and as often as there may be
2 occasion to issue writs of habeas corpus under like
3 conditions returnable to the said court.

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

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

11 § 783. Answer of certified questions of law.

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

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

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

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

29 (c) Preparation of certification order.--The certification
30 order shall be prepared by the certifying court, signed by the

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

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

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

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

25 § 784. Certification of questions of law.

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

1 state or jurisdiction, when it appears to the appellate division
2 that:

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

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

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

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

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

19 ARTICLE C

20 MEDICAL PROFESSIONAL LIABILITY COURT

21 AND COURTS OF COMMON PLEAS

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

24 CHAPTER 8

25 ORGANIZATION AND JURISDICTION OF THE

26 MEDICAL PROFESSIONAL LIABILITY COURT

27 OF PENNSYLVANIA

28 Subchapter

29 A. (Reserved)

30 B. Organization of the Medical Professional Liability Court

1 C. Jurisdiction of the Medical Professional Liability Court

2 D. Transitional Provisions

3 SUBCHAPTER A

4 (RESERVED)

5 SUBCHAPTER B

6 ORGANIZATION OF THE MEDICAL PROFESSIONAL

7 LIABILITY COURT

8 Sec.

9 811. Medical Professional Liability Court.

10 812. Powers of Medical Professional Liability Court.

11 813. Seat of court.

12 814. Lien of judgments for money.

13 § 811. Medical Professional Liability Court.

14 There is established a Medical Professional Liability Court
15 of Pennsylvania which shall consist of 18 judges.

16 § 812. Powers of Medical Professional Liability Court.

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

26 § 813. Seat of court.

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

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

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

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

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

26 SUBCHAPTER C

27 JURISDICTION OF THE MEDICAL PROFESSIONAL

28 LIABILITY COURT

29 Sec.

30 831. Definitions.

1 832. Original jurisdiction.

2 833. Exclusive jurisdiction.

3 § 831. Definitions.

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

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

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

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

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

27 § 832. Original jurisdiction.

28 The Medical Professional Liability Court shall have original
29 jurisdiction of all civil actions or proceedings against a
30 health care provider for all medical professional liability

1 claims.

2 § 833. Exclusive jurisdiction.

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

7 SUBCHAPTER D

8 TRANSITIONAL PROVISIONS

9 Sec.

10 841. Organization of court.

11 842. Existing cases unaffected.

12 843. Rules.

13 844. Procurement of juries.

14 845. Filing fees.

15 846. Expiration review.

16 § 841. Organization of court.

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

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

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

6 § 842. Existing cases unaffected.

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

12 § 843. Rules.

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

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

25 § 844. Procurement of juries.

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

1 Court.

2 § 845. Filing fees.

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

6 § 846. Expiration review.

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

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

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

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

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

26 SUBCHAPTER G

27 MEDICAL PROFESSIONAL LIABILITY COURT

28 QUALIFICATIONS COMMISSION

29 Sec.

30 § 2161. Medical Professional Liability Court Qualifications

1 Commission.

2 § 2162. Composition of Medical Professional Liability Court

3 Qualifications Commission.

4 2163. Organization.

5 2164. Powers and duties.

6 § 2161. Medical Professional Liability Court Qualifications

7 Commission.

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

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

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

19 § 2162. Composition of Medical Professional Liability Court

20 Qualifications Commission.

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

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

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

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

29 (4) Three commissioners appointed by the Minority Leader
30 of the House of Representatives.

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

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

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

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

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

20 (e) Transitional provisions.--

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

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

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

30 (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 to section 3162 (relating to vacancies in office of judge of

1 the Medical Professional Liability Court).

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

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

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

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

19 § 3131. Selection of judicial officers for regular terms.

20 * * *

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

25 § 3132. Vacancies in office.

26 * * *

27 (e) Medical Professional Liability Court.--Subsections (a)
28 through (d) shall not apply to a vacancy in the office of a
29 judge of the Medical Professional Liability Court. The
30 provisions of section 3162 (relating to vacancies in office of

1 judge of the Medical Professional Liability Court) shall apply.

2 § 3153. Retention elections after regular term.

3 * * *

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

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

11 SUBCHAPTER E

12 SELECTION AND RETENTION OF JUDGES

13 OF THE MEDICAL PROFESSIONAL LIABILITY COURT

14 Sec.

15 § 3161. Election of judges of the Medical Professional
16 Liability Court.

17 § 3162. Vacancies in office of judge of the Medical
18 Professional Liability Court.

19 § 3163. Retention of judges of the Medical Professional
20 Liability Court.

21 § 3161. Election of judges of the Medical Professional
22 Liability Court.

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

28 (b) Special procedures.--The judges of the Medical
29 Professional Liability Court shall be elected as provided in the
30 act of June 3, 1937 (P.L.1333, No.320), known as the

1 Pennsylvania Election Code, except that:

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

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

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

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

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

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

27 (5) Each person filing a nomination petition or
28 nomination papers for a candidate shall pay a filing fee, at
29 the time of filing either with the commission or the
30 Department of State, as the case may be, of \$200. A

1 nomination petition or nomination papers shall not be
2 accepted or filed unless and until the filing fee is paid in
3 cash or by certified or cashier's check or money order made
4 payable to the Commonwealth of Pennsylvania. All moneys paid
5 on account of filing fees for candidates for nomination for
6 the office of judge of the Medical Professional Liability
7 Court shall be transmitted to the State Treasurer and shall
8 become part of the Medical Professional Liability Court Fund.

9 (6) (Reserved).

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

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

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

27 (2) The affidavit of candidates submitted to the
28 commission shall be in the form prescribed by the
29 Pennsylvania Election Code, with such additional information
30 as may be required by the rules and regulations of the

1 commission.

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

7 (i) Extremely well qualified.

8 (ii) Well qualified.

9 (iii) Qualified.

10 (iv) Unqualified.

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

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

29 § 3162. Vacancies in office of judge of the Medical
30 Professional Liability Court.

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

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

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

27 (d) Vote required for commission endorsement.--The list
28 submitted to the Governor shall contain the names of those
29 persons who receive affirmative votes from eight or more
30 commissioners, except that the number of persons shall not

1 exceed the limitations imposed by subsection (c).

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

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

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

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

29 § 3163. Retention of judges of the Medical Professional
30 Liability Court.

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

12 Section 11. Title 42 is amended by adding a section to read:
13 § 3582. Salaries of judges of Medical Professional Liability
14 Court.

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

19 (b) Annual cost-of-living adjustment.--Beginning January 1
20 of the year which is five years after the effective date of this
21 section 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

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

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

SUBCHAPTER G

MEDICAL PROFESSIONAL LIABILITY COURT FUND

Sec.

3591. Medical Professional Liability Court Fund.

3592. Receipts and other credits.

3593. Payments and other debits.

§ 3591. Medical Professional Liability Court Fund.

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

§ 3592. Receipts and other credits.

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

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

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

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

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

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

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

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

18 (b) Money paid into court.--Money paid into court shall not
19 be credited to the Medical Professional Liability Court Fund
20 except to the extent that the amounts constitute an allowance
21 due a public officer upon the amount levied under an execution.
22 § 3593. Payments and other debits.

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

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

29 § 5105. Right to appellate review.

30 * * *

1 (b) Successive appeals.--

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

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

22 * * *

23 § 5571. Appeals generally.

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

1 * * *

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