

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Medical Malpractice Claims.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradley H. Jones, Jr.	20th Middlesex
George N. Peterson, Jr.	9th Worcester
Viriato Manuel deMacedo	1st Plymouth
Elizabeth Poirier	14th Bristol

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO MEDICAL MALPRACTICE CLAIMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the Massachusetts General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by striking out section 12C and inserting in place thereof the
3 following section:—

4 “Section 12C. No physician or nurse administering immunization or other protective programs
5 under public health programs shall be liable in a civil suit for damages as a result of any act or
6 omission on his part in carrying out his duties. No physician or nurse who is registered by the
7 Commonwealth in the Massachusetts System for Advance Registration of Volunteer Health
8 Professionals or its successor entity shall be liable in civil suit for damages for any act or
9 omission on his part related to his voluntary participation in any disaster preparedness or
10 response activity.”

11

12 SECTION 2. Section 60H of chapter 231 of the General Laws, as appearing in the 2006 Official
13 Edition, is hereby amended by striking out, in lines 6, 13 and 14, 21, and 23, in each instance, the
14 words “five hundred thousand” and inserting in place thereof in each instance the figures: -
15 “\$250,000.”

16 SECTION 3. Said chapter 231, as so appearing, is hereby amended by adding after section 60K,
17 the following new sections:

18 Section 60L. In any action for malpractice, error or mistake against a provider of health care
19 licensed pursuant to section 2 of chapter 112, as most recently amended by Chapter 305 of the
20 Acts of 2008, including actions pursuant to section 60B of this chapter, an expert witness shall be
21 board certified in the same specialty as the defendant licensed pursuant to section 2 of chapter
22 112, as so appearing.

23 Section 60M. In every action for malpractice, negligence, error, omission, mistake or the
24 unauthorized rendering of professional services against a provider of health care the court may,
25 at the request of either party, enter a judgment ordering that money damages or its equivalent for
26 future damages of the judgment creditor be paid in whole or in part by periodic payments rather
27 than by a lump-sum payment if the award equals or exceeds \$50,000 in future damages. In
28 entering a judgment ordering the payment of future damages by periodic payments, the court
29 shall make a specific finding as to the dollar amount of periodic payments which will
30 compensate the judgment creditor for such future damages, and court shall require a defendant
31 who is not adequately insured to post security adequate to assure full payment of such damages
32 awarded by the judgment. Upon termination of periodic payments of future damages, the court
33 shall order the return of this security, or so much as remains, to the defendant.

34 (a)(1) The judgment ordering the payment of future damages by periodic payments shall specify
35 the recipient or recipients of the payments, the dollar amount of the payments, the interval
36 between payments, and the number of payments or the period of time over which payments shall
37 be made. Such payments shall only be subject to modification in the event of the death of the
38 judgment creditor.

39 (2) In the event that the court finds that the defendant has exhibited a continuing pattern of
40 failing to make the payments as specified in paragraph (1), the court shall find the defendant in
41 contempt of court and, in addition to the required periodic payments, shall order the defendant to
42 pay the plaintiff all damages caused by the failure to make such periodic payments, including
43 court costs and attorney's fees.

44 (b) Money damages awarded for loss of future earnings shall not be reduced or payments
45 terminated by reason of the death of the plaintiff, but shall be paid to persons to whom the
46 plaintiff owed a duty of support, as provided by law, immediately prior to his death, or to whom
47 the plaintiff assigned, transferred, or bequeathed his right to receive payment. In such cases the
48 court which rendered the original judgment, may, upon petition of any party in interest, modify
49 the judgment to award and apportion the unpaid future damages in accordance with this
50 subdivision.

51 (c) Following the occurrence or expiration of all obligations specified in the periodic payment
52 judgment, any obligation of the defendant to make future payments shall cease and any security
53 given, pursuant to this section shall revert to the defendant.

54 Section 60N. In any action for malpractice, error, omission, mistake or the unauthorized
55 rendering of professional services against a provider of health care, the liability of each
56 defendant for damages shall be several only and shall not be joint. Each defendant shall be liable
57 only for the amount of damages allocated to that defendant in direct proportion to that
58 defendant's percentage of fault, and a separate judgment shall be rendered against that defendant
59 for that amount.