

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Morrissey, Michael (SEN)

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 further regulating the admission of evidence of medical and hospital service reports and records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Morrissey, Michael (SEN)	Norfolk and Plymouth
John Boyle	2 Stonehill Ln. Milton, MA 02186

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00978 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FURTHER REGULATING THE ADMISSION OF EVIDENCE OF MEDICAL AND
HOSPITAL SERVICE REPORTS AND RECORDS.

*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. Section 79G of Chapter 233 of the General Laws, as appearing in the 1998
2 Official Edition, is hereby amended by adding the following sentence after the first sentence of
3 said section:-

4 And further provided that an affidavit of such physician or dentist setting forth sufficient facts to
5 establish competency to render an expert opinion, including but not limited to, evaluation,
6 training and experience shall be given with the written notice of the intention of such report.

7 SECTION 2. Section 79G of Chapter 233 of the General Laws, as appearing in the 1998 Official
8 Edition, is hereby amended by adding the following paragraphs after the first paragraph of said
9 section:-

10 The trial judge or administrative hearing officer shall have the power to rule on the competency
11 of the physician or dentist to render an opinion on the medical issues material to the proceeding
12 to the same extent as if such physician or dentist were testifying in person at such trial or
13 administrative proceeding and to exclude from evidence any medical report where the affidavit
14 of the physician or dentist does not sufficiently establish that person's competency to render the
15 expert opinions contained in the report.

16 The trial judge or administrative officer shall also have the power to exclude from evidence any
17 statements as to liability or other inadmissible matters as contained in such medical reports to the
18 same extent as if the physician or dentist were testifying at the trial of the case.

19 The report of any physician or dentist which is to be offered at trial in the district or
20 superior courts of Massachusetts shall be subject to the rules of civil procedure with respect to
21 the identification of expert witnesses. Furthermore, any report of an out-of-state physician or
22 dentist who is not subject to the subpoena power of the courts of Massachusetts shall not be
23 admitted if the trial judge determines that the opposing party did not have a reasonable
24 opportunity to cross-examine said physician or dentist on the report to be offered into evidence.

25 Notwithstanding the above, no report by an out-of-state physician or dentist or a
26 physician or dentist who is otherwise not subject to a subpoena to testify in person, shall be
27 admitted unless written notice of the intention to offer such report into evidence shall be given to
28 the opposing parties at least 90 days prior to the introduction of same into evidence.