

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

O'Leary, Robert (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 Relative to Malpractice Reform.

1 SECTION 1. Chapter 233 of the general laws, as appearing in the 2006 official edition, is hereby amended

2 by inserting, after section 79K, the following new section: -

3 Section 79L. (A) As used in this section the following terms shall have the following meanings unless the
4 context clearly indicates otherwise:

5 "Health Care Provider", means any of the following health care professionals licensed pursuant to
6 chapter 112: a physician, podiatrist, physical therapist, occupational therapist, dentist, optometrist,
7 nurse, nurse practitioner, chiropractor, psychologist, independent clinical social worker, speech-
8 language pathologist, audiologist, marriage and family therapist and a mental health counselor. The
9 term shall also include any corporation, professional corporation, partnership, limited liability company,
10 limited liability partnership, authority, or other entity comprised of such health care providers.

11 “Facility”, a hospital, clinic or nursing home licensed pursuant to chapter 111 or a home health agency.
12 The term shall also include any corporation, professional corporation, partnership, limited liability
13 company, limited liability partnership, authority, or other entity comprised of such facilities.

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15 “Unanticipated outcome” means the outcome of a medical treatment or procedure, whether or not
16 resulting from an intentional act, that differs from an intended result of such medical treatment or
17 procedure.

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19 (B) In any claim, complaint or civil action brought by or on behalf of a patient allegedly experiencing an
20 unanticipated outcome of medical care, any and all statements, affirmations, gestures, activities or
21 conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion,
22 mistake, error, or a general sense of concern which are made by a health care provider, facility or an
23 employee or agent of a health care provider or facility, to the patient, a relative of the patient, or a
24 representative of the patient and which relate to the unanticipated outcome shall be inadmissible as
25 evidence in any judicial or administrative proceeding and shall not constitute an admission of liability or
26 an admission against interest.

27 SECTION 2. Chapter 231 of the general laws, as so appearing, is hereby amended, after section 60K by
28 adding the following new section:-

29 Section 60L

30 Section 1. Except as provided in this section a person shall not commence an action against a provider of
31 health care as defined in paragraph 7 of section 60 B of chapter 231 unless the person has given the

32 health care provider written notice under this section of not less than 182 days notice before the action
33 is commenced.

34 Section 2. The notice of intent to file a claim required under section 1 shall be mailed to the last known
35 professional business address or residential address of the health care provider who is the subject of the
36 claim.

37 Section 3. The 182 day notice period in section 1 is shortened to 91 days if all of the following
38 conditions exist:

39 (a) The claimant has previously filed the 182 day notice required in section 1 against another
40 health care provider involved in the claim.

41 (b) The 182 day notice period has expired as to the health care providers described in section
42 1.

43 (c) The claimant has filed a complaint and commenced an action alleging medical malpractice
44 against one or more of the health care providers described in subsection (a).

45 (d) The claimant did not identify and could not have reasonably have identified a health care
46 provider to which notice must be sent under section 1 as a potential party to the action
47 before filing the complaint.

48 Section 4. The notice given to a health care provider under this section shall contain a statement of at
49 least all of the following:

50 (a) The factual basis for the claim.

51 (b) The applicable standard of care alleged by the claimant.

52 (c) The manner in which it is claimed that the applicable standard of care was breached by the
53 health care provider.

- 54 (d) The alleged action that should have been taken to achieve compliance with the alleged
55 standard of care.
- 56 (e) The manner in which it is alleged the breach of the standard of care was the proximate
57 cause_of the injury claimed in the notice.
- 58 (f) The names of all health care providers the claimant is notifying under this section in relation
59 to the claim.

60 Section 5. 56 days after giving notice under this section, the claimant shall allow the health care
61 provider receiving the notice access to all of the medical records related to the claim that are in the
62 claimants control, and shall furnish release for any medical records related to the claim that are not in
63 the claimants control, but of which the claimant has knowledge. This subsection does not restrict a
64 health care provider receiving notice under this section from communicating with other health care
65 providers and acquiring medical records as permitted in section 291f. This subsection does not restrict a
66 patient's right of access to his or her medical records under any other provision of law.

67 Within 154 days after receipt of notice under this section, the health care provider against whom the
68 claim is made shall furnish to the claimant or his or her authorized representative a written response
69 that contains a statement of each of the following:

- 70 (a) The factual basis for the defense to the claim.
- 71 (b) The standard of care that the health care provider claims to be applicable to the action and
72 that the health care provider complied with that standard.
- 73 (c) The manner in which it is claimed by the health care provider that there was compliance
74 with the applicable standard of care.

75 (d) The manner in which the health care provider contends that the alleged negligence of the
76 health care provider was not the proximate cause of the claimant's alleged injury or alleged
77 damage.

78 Section 6. If the claimant does not receive the written response required under Section 5 within the
79 required 154 day time period, the claimant may commence an action alleging medical malpractice upon
80 the expiration of the 154 day period.

81 Section 7. If at any time during the applicable notice period under this section a health care provider
82 receiving notice under this section informs the claimant in writing that the health care provider does not
83 intend to settle the claim s within the applicable notice period, the claimant may commence an action
84 alleging medical malpractice against the health care provider, so long as the claim is not barred by the
85 statue of limitations.

86

PETITION OF:

NAME:

O'Leary, Robert (SEN)

DISTRICT/ADDRESS:

Cape and Islands

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO MALPRACTICE REFORM.

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