

SENATE COMMITTEE AMENDMENTS

2016 Regular Session

Amendments proposed by Senate Committee on Health and Welfare to Original Senate Bill No. 36 by Senator Gatti

1 AMENDMENT NO. 1

2 On page 1, line 2, after "40:1231.1(A)(13)," delete the remainder of the line and insert
3 "1231.2(B)(2), and 1231.8(A)(1)(b), (G), and (N)(6), relative to"

4 AMENDMENT NO. 2

5 On page 1, line 7, after "40:1231.1(A)(13)," delete the remainder of the line and insert
6 "1231.2(B)(2), and 1231.8(A)(1)(b), (G), and (N)(6) are hereby amended"

7 AMENDMENT NO. 3

8 On page 2, line 3, after "patient." delete the remainder of the line and delete lines 4 through
9 29 and on page 3, delete lines 1 through 9 and insert the following:

10 **"It shall also be considered "malpractice" if a health care provider misrepresents his**
11 **education, training or experience in a particular specialty of medicine or with a**
12 **particular surgery or procedure.**

13		*	*	*
14	§1231.2. Limitation of recovery			
15		*	*	*
16	B.	*	*	*

17 (2) **(a)** A health care provider qualified under this Part is not liable for an amount in
18 excess of one hundred thousand dollars plus interest thereon accruing after April 1, 1991,
19 and costs specifically provided for by this Paragraph for all malpractice claims because of
20 injuries to or death of any one patient. The sole cost for which a health care provider
21 qualified under this Part may be assessed by a trial court shall be limited to the cost incurred
22 prior to the rendering of a final judgment against the health care provider, not as a nominal
23 defendant, after a trial on a malpractice claim, including but not limited to, costs assessed
24 pursuant to Code of Civil Procedure Article 970 in any instance where the board was not the
25 offeror or offeree of the proposed settlement amount. The health care provider shall not be
26 assessed costs in any action in which the fund intervenes or the health care provider is a
27 nominal defendant after there has been a settlement between the health care provider and the
28 claimant.

29 **(b) Any health care provider qualified under this Part who is found to have**
30 **misrepresented his education, training or experience in a particular specialty of**
31 **medicine or with a particular surgery or procedure shall be liable for all sums awarded**
32 **above the limitation of recovery provided for in Paragraph (B)(1) of this Section**
33 **without limitation.**

34 **(c) Any health care provider who negligently or knowingly grants privileges to,**
35 **advertises for or profits from another health care provider's misrepresentation of his**
36 **education, training or experience in a particular specialty of medicine or with a**
37 **particular surgery or procedure shall be solidarily liable with the health care provider**
38 **for all sums awarded above the limitation of recovery provided for in Paragraph (B)(1)**
39 **of this Section without limitation.**

40		*	*	*
41	§1231.8. Medical review panel			
42	A.(1)	*	*	*

43 (b) A request for review of a malpractice claim or a malpractice complaint shall
44 contain, at a minimum, all of the following:

- 45 (i) A request for the formation of a medical review panel.
- 46 (ii) The name of only one patient for whom, or on whose behalf, the request for
47 review is being filed; however, if the claim involves the care of a pregnant mother and her
48 unborn child, then naming the mother as the patient shall be sufficient.

- 1 (iii) The names of the claimants.
- 2 (iv) The names of the defendant health care providers.
- 3 (v) The dates of the alleged malpractice.
- 4 (vi) A brief description of the alleged malpractice as to each named defendant health
- 5 care provider.
- 6 (vii) A brief description of the alleged injuries.

7 **(viii) If applicable, an allegation that the defendant health care provider**
 8 **misrepresented his education, training or experience in a particular specialty of**
 9 **medicine or with a particular surgery or procedure.**

10 * * *

11 G. The panel shall have the sole duty to express its expert opinion as to whether or
 12 not the evidence supports the conclusion that the defendant or defendants acted or failed to
 13 act within the appropriate standards of care. After reviewing all evidence and after any
 14 examination of the panel by counsel representing either party, the panel shall, within thirty
 15 days, render one or more of the following expert opinions, which shall be in writing and
 16 signed by the panelists, together with written reasons for their conclusions:

17 (1) The evidence supports the conclusion that the defendant or defendants failed to
 18 comply with the appropriate standard of care as charged in the complaint.

19 (2) The evidence does not support the conclusion that the defendant or defendants
 20 failed to meet the applicable standard of care as charged in the complaint.

21 **(3) When the claimant makes an allegation of misrepresentation pursuant to**
 22 **Item (A)(1)(b)(viii) of this Section, the evidence does or does not support the conclusion**
 23 **that the defendant misrepresented his education, training or experience in a particular**
 24 **specialty of medicine or with a particular surgery or procedure.**

25 ~~(3)~~ (4) That there is a material issue of fact, not requiring expert opinion, bearing on
 26 liability for consideration by the court.

27 ~~(4)~~ (5) When Paragraph (1) or (3) of this Subsection is **are** answered in the
 28 affirmative, that the conduct complained of was or was not a factor of the resultant damages.
 29 If such conduct was a factor, whether the plaintiff suffered: (a) any disability and the extent
 30 and duration of the disability, and (b) any permanent impairment and the percentage of the
 31 impairment.

32 * * *

33 N.

34 * * *

35 (6) The panel shall have the sole duty to express its expert opinion as to whether or
 36 not the evidence supports the conclusion that the defendant or defendants acted or failed to
 37 act within the appropriate standards of care. After reviewing all evidence and after any
 38 examination of the panel by counsel representing either party, the panel shall, within thirty
 39 days, but in no event later than twelve months of the date of notification of the selection of
 40 the attorney chairman pursuant to Paragraph (1) of Subsection C of this Section, render one
 41 or more of the following expert opinions, which shall be in writing and signed by the
 42 panelists, together with written reasons for their conclusions:

43 (a) The evidence supports the conclusion that the defendant or defendants failed to
 44 comply with the appropriate standard of care as charged in the complaint.

45 (b) The evidence does not support the conclusion that the defendant or defendants
 46 failed to meet the applicable standard of care as charged in the complaint.

47 **(c) When the claimant makes an allegation of misrepresentation pursuant to**
 48 **Item (A)(1)(b)(viii) of this Section, the evidence does or does not support the conclusion**
 49 **that the defendant misrepresented his education, training or experience in a particular**
 50 **specialty of medicine or with a particular surgery or procedure.**

51 ~~(c)~~ (d) That there is a material issue of fact, not requiring expert opinion, bearing on
 52 liability for consideration by the court.

53 * * *