
A BILL FOR AN ACT

RELATING TO MEDICAL TORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 671, part II, Hawaii Revised Statutes,
2 is amended by adding a new section to be appropriately
3 designated and to read as follows:

4 "§671- Sanctions for failing to prevail in subsequent
5 litigation. (a) After the verdict or the court's decision in
6 subsequent litigation under section 671-16, the court may impose
7 sanctions against the nonprevailing party whose rejection of the
8 medical claim conciliation panel's decision resulted in the
9 trial. A party's rejection of the panel's decision shall be
10 deemed to have resulted in the trial regardless of whether both
11 parties rejected the decision.

12 (b) The sanctions available to the court are as follows:

13 (1) Reasonable costs and fees other than attorneys' fees
14 actually incurred by the prevailing party but not
15 otherwise taxable under the law, including ~~but not~~
16 ~~limited to~~ expert witness fees, travel costs, and
17 deposition costs;

18 (2) Costs of jurors; and



1 (3) Attorneys' fees not to exceed \$15,000.

2 (c) Sanctions imposed against a plaintiff shall be
3 deducted from any judgment rendered at trial. If the plaintiff
4 does not receive a judgment in the plaintiff's favor, or the
5 judgment is insufficient to pay the sanctions, the plaintiff
6 shall pay the amount of the deficiency. Sanctions imposed
7 against a defendant shall be added to any judgment rendered at
8 trial.

9 (d) In determining sanctions, if any, the court shall
10 consider all the facts and circumstances of the case and the
11 intent and purpose of this part."

12 SECTION 2. Section 671-1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§671-1 Definitions.** As used in this chapter[+], unless
15 the context otherwise requires:

16 [~~1~~] "Health care provider" means a physician or surgeon
17 licensed under chapter 453, [~~a physician and surgeon licensed~~
18 ~~under chapter 460,~~] a podiatrist licensed under chapter 463E, a
19 health care facility as defined in section 323D-2, and the
20 employees of any of them. Health care provider shall not mean
21 any nursing institution or nursing service conducted by and for



1 those who rely upon treatment by spiritual means through prayer
2 alone, or employees of such institution or service.

3 [~~2~~] "Medical tort" means professional negligence, the
4 rendering of professional service without informed consent, or
5 an error or omission in professional practice, by a health care
6 provider, which proximately causes death, injury, or other
7 damage to a patient.

8 "Panel" means the medical claim conciliation panel.

9 "Prevailing party" means the party to a medical claim
10 conciliation panel hearing, who in subsequent litigation under
11 section 671-16 resulting from a rejection of the panel's
12 decision is:

13 (1) The plaintiff, if the judgment exclusive of any
14 punitive damages increases the panel's award by thirty
15 per cent or more; or

16 (2) The defendant, if the judgment exclusive of any
17 punitive damages fails to improve upon the panel's
18 award by thirty per cent or more."

19 SECTION 3. Section 671-16, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§671-16 Subsequent litigation; excluded evidence.** The
22 claimant may institute litigation based upon the claim in an



1 appropriate court only after a party to a medical claim
 2 conciliation panel hearing rejects the decision of the panel, or
 3 after the twelve-month period under section 671-18 has expired.
 4 A party's rejection of the panel's decision shall be recorded
 5 with the panel before litigation may be instituted.

6 No statement made in the course of the hearing of the
 7 medical claim conciliation panel shall be admissible in evidence
 8 either as an admission, to impeach the credibility of a witness,
 9 or for any other purpose in any trial of the action; provided
 10 that such statements may be admissible for the [~~purpose~~]
 11 purposes of [~~section~~] sections 671-19[~~, hereof.~~] and 671- .

12 No decision, conclusion, finding, or recommendation of the
 13 medical claim conciliation panel on the issue of liability or on
 14 the issue of damages shall be admitted into evidence in any
 15 subsequent trial, nor shall any party to the medical claim
 16 conciliation panel hearing, or the counsel or other
 17 representative of such party, refer or comment thereon in an
 18 opening statement, an argument, or at any other time, to the
 19 court or jury; provided that such decision, conclusion, finding,
 20 or recommendation may be admissible for the [~~purpose~~] purposes
 21 of [~~section~~] sections 671-19[~~, hereof.~~] and 671- ."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on July 1, 2020.



Report Title:

Medical Torts; Medical Claim Conciliation Panel

Description:

In medical tort litigation authorizes the court to impose sanctions on a party whose rejection of the Medical Claim Conciliation Panel's decision resulted in the trial and who at trial fails to improve on the panel's award by increasing or decreasing it by at least 30 percent. (HB310 HD1)

