
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 subsequent litigation. A party's rejection of the panel's
10 decision shall be deemed to have resulted in the subsequent
11 litigation regardless of whether both parties rejected the
12 decision.

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

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

18 (2) Costs of jurors; and



1 (3) Attorney's 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 [~~+~~] "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 "Nonprevailing party" means the party to a medical claim
9 conciliation panel hearing, who in subsequent litigation under
10 section 671-16 resulting from a rejection of the panel's
11 decision is:

12 (1) The plaintiff, if the judgment, exclusive of any
13 punitive damages, does not increase the panel's award
14 by thirty per cent or more; or

15 (2) The defendant, if the judgment, exclusive of any
16 punitive damages, increases the panel's award by
17 thirty per cent or more.

18 "Panel" means the medical claim conciliation panel."

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 nonprevailing party whose rejection of the Medical Claim Conciliation Panel's decision resulted in the subsequent litigation. (HB310 HD2)

