

A Bill for an Act Relating to Medical Torts.

Be It Enacted by the Legislature of the State of Hawaii:

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

“§671-1 Definitions. As used in this chapter:

- (1) “Health care provider” means a physician or surgeon licensed under chapter 453, a physician and surgeon licensed under chapter 460, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.
- (2) “Medical tort” means professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient.”

SECTION 2. Section 671-4, Hawaii Revised Statutes, is amended to read as follows:

“§671-4 [“Ad damnum” clause prohibited. (a) No complaint, counterclaim, or cross-claim in an action for medical tort shall specify the amount of damages prayed for but shall contain a prayer for general relief, including a statement that the amount of damages is within the minimum jurisdictional limits of the court in which the action is brought.

(b) **Notice of damages.** (a) In any [such] medical tort action, the party against whom the complaint, counterclaim, or cross-claim is made [may] at any time may request a statement setting forth the nature and amount of the damages sought. The request shall be served upon the complainant, counterclaimant, or cross-claimant who shall serve a responsive statement as to the damages within fifteen days thereafter. In the event a response is not served, the requesting party may petition the court with notice to the other parties, to order the appropriate party to serve a responsive statement.

[(c)] (b) If no request is made for a statement setting forth the nature and amount of damages sought, the complainant, counterclaimant, or cross-claimant, as the case may be, shall give notice to the other of the amount of special and general damages sought to be recovered, either before a default may be taken, or in the event an answer is filed, at least sixty days prior to the date set for trial.”

SECTION 3. Section 671-5, Hawaii Revised Statutes, is amended to read as follows:

“§671-5 Reporting and reviewing medical tort claims. (a) Every self-insured health care provider, and every insurer providing professional liability insurance for a health care provider, shall report to the insurance commissioner the following information about any medical tort claim, known to the self-insured health care provider or insurer, that has been settled, arbitrated, or adjudicated to

final judgment within ten working days following such disposition:

- (1) The name and last known business and residential addresses of each plaintiff and¹ claimant, whether or not each recovered anything;
 - (2) The name and last known business and residential addresses of each health care provider who was claimed or alleged to have committed a medical tort, whether or not each was a named defendant and whether or not any recovery was had against each;
 - (3) The name of the court in which any medical tort action, or any part thereof, was filed and the docket number;
 - (4) A brief description or summary of the facts upon which each claim was based, including the date of occurrence;
 - (5) The name and last known business and residential addresses of each attorney for any party to the settlement, arbitration, or adjudication, and identification of the party represented by each attorney;
 - (6) Funds expended for defense and plaintiff costs;
 - (7) The date and amount of settlement, arbitration award, or judgment in any matter subject to this subsection; and
 - (8) Actual dollar amount of award received by the injured party.
- (b) The insurance commissioner shall forward the name of every health care provider, except a hospital and¹ physician licensed under chapter 453 or an osteopathic physician or² surgeon licensed under chapter 460[.] or a podiatrist licensed under chapter 463E, against whom a settlement is made, an arbitration award is made, or judgment is rendered to the appropriate board of professional registration and examination for review of the fitness of the health care provider to practice the health care provider's profession. The insurance commissioner shall forward the entire report under subsection (a) to the department of commerce and consumer affairs if the person against whom settlement or arbitration award is made or judgment rendered is a physician licensed under chapter 453 or an osteopathic physician and surgeon licensed under chapter 460[.] or a podiatrist licensed under chapter 463E.

(c) A failure on the part of any self-insured health care provider to report as requested by this section shall be grounds for disciplinary action by the board of medical examiners, board of osteopathic examiners, or the state health planning agency, as applicable. A violation by an insurer shall be grounds for suspension of its certificate of authority."

SECTION 4. Section 671-11, Hawaii Revised Statutes, is amended to read as follows:

"§671-11 Medical claim conciliation panels; composition, selection, compensation. (a) There are established medical claim conciliation panels which shall review and render findings and advisory opinions on the issues of liability and damages in medical tort claims against health care providers.

(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician or surgeon licensed to practice under chapter 453 or chapter 460. The chairperson shall be appointed by the director of the department of commerce and consumer affairs from a list of eligible persons approved by the chief justice of the supreme court of Hawaii. The attorney shall be appointed by

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the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician or surgeon shall be appointed by the chairperson and shall be currently licensed and in good standing under chapter 453 or under chapter 460.

The chairperson shall preside at the meetings of the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel shall be compensated at the rate of \$300 per claim which will become payable when the decision of the panel is submitted. At the discretion of the director, the chairperson, panel members, and any consultant called by the panel to appear before the panel, may be compensated at one-half the amount of compensation specified in this section, if the claim is disposed of by any means prior to the hearing by the panel. The chairperson, all panel members, and any consultant called by the panel to appear before the panel also shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on or for the panel. These costs shall be paid by the department of commerce and consumer affairs.

The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department. The chairperson may designate any alternative meeting place or site for the hearing.

The board of medical examiners and board of osteopathic examiners shall each prepare a list of physicians, surgeons, podiatrists, or physicians [and], surgeons[,] and podiatrists, as the case may be, along with their respective specialties. These physicians and surgeons shall be eligible to serve as consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists.”

SECTION 5. Section 671-15, Hawaii Revised Statutes, is amended to read as follows:

“§671-15 Same, decisions. (a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider’s liability insurance carrier authorized to act for such carrier, and the board of osteopathic examiners, as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician or surgeon licensed under chapter 453 or an osteopathic physician and surgeon licensed under chapter 460[.] or a podiatrist licensed under chapter 463E. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: “We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant”; or “We find the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider”.

(b) After a finding of liability, the medical claim conciliation panel shall decide the amount of damages, if any, which should be awarded in the case. The decision as to damages shall include in simple, concise terms a division as to which portion of the damages recommended are attributable to economic losses and which to noneconomic losses; provided the panel may not recommend punitive damages.

(c) The decisions shall be signed by all members of the medical claim conciliation panel; provided that any member of the panel may file a written

concurring or dissenting opinion.

(d) The advisory decision required by this section need not be filed if the claim is settled or otherwise disposed of before the decision is written or filed.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1992.

(Approved April 29, 1992.)

Notes

1. Prior to amendment “or” appeared here.
2. Prior to amendment “and” appeared here.