

SENATE NO. 953

AN ACT REFORMING MEDICAL MALPRACTICE SYSTEM

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

1 SECTION 1.

2 Joint and Several Liability

3 Chapter 231 of the General Laws is hereby amended by adding the following new section:

4 Section 60L. In any action for malpractice, error, omission, mistake or the unauthorized rendering
5 of professional services against a provider of health care, the liability of each defendant for
6 damages shall be several only and shall not be joint. Each defendant shall be liable only for the
7 amount of damages allocated to that defendant in direct proportion to that defendant's percentage of
8 fault, and a separate judgment shall be rendered against that defendant for that amount.

9 SECTION 2. Collateral Source

10 Chapter 231, Section 60G of the Massachusetts General Laws as appearing in the 2002 Official
11 Edition is hereby amended by the insertion of the words ", or which will be incurred," after the
12 word "judgment" in line 11, and by the insertion of the words "or is anticipated to be" after the word
13 "was" in line 11.

14 SECTION 3. Expert Witnesses

15 Section 60B of Chapter 231 of the General Laws is hereby amended by striking the fifth paragraph
16 in its entirety and replacing it with the following text:

17 “Each such action for malpractice shall be heard by said tribunal within fifteen days after the
18 defendant's answer has been filed. Substantial evidence shall mean such evidence as a reasonable
19 person might accept as adequate to support a conclusion. Admissible evidence shall include, but not
20 be limited to, hospital and medical records, nurses' notes, x-rays and other records kept in the usual
21 course of the practice of the health care provider without the necessity for other identification or
22 authentication, statements of fact or opinion on a subject contained in a published treatise,
23 periodical, book or pamphlet or statements by experts who (1) hold a non-restricted license from a
24 state licensing board recognized by the Federation of State Medical Boards; (2) are currently board
25 certified by a specialty board approved by the American Board of Medical Specialties or of the
26 Advisory Board of Osteopathic Specialists from the major areas of clinical services as the defendant
27 physician; and (3) actively practice in the same specialty as the defendant physician, without the
28 necessity of such experts appearing at said hearing. Statements by said experts shall be admissible
29 at trial and said experts shall be required to testify at trial. The tribunal may upon the application of
30 either party or upon its own decision summon or subpoena any such records or individuals to
31 substantiate or clarify any evidence which has been presented before it and may appoint an
32 impartial and qualified physician or surgeon or other related professional person or expert to
33 conduct any necessary professional or expert examination of the claimant or relevant evidentiary
34 matter and to report or to testify as a witness thereto. Such a witness shall be allowed traveling
35 expenses and a reasonable fee to be fixed by the tribunal which shall be assessed as costs. The
36 testimony of said witness and the decision of the tribunal shall be admissible as evidence at a trial.”

37 SECTION 4. Expert Witnesses

38 Chapter 231 of the General Laws is hereby amended by adding the following new section:

39 Section 60K. In any action for malpractice, error or mistake against a provider of health licensed
40 pursuant to section 2 of Chapter 112, including actions pursuant to section 60B of this Chapter,
41 expert witnesses are those who (1) hold a non-restricted license from a state licensing board
42 recognized by the Federation of State Medical Boards; (2) are currently board certified by a
43 specialty board approved by the American Board of Medical Specialties or of the Advisory Board
44 of Osteopathic Specialists from the major areas of clinical services as the defendant physician, and
45 (3) actively practice in the same specialty as the defendant physician

46 SECTION 5. Accountability for Nurse Staffing

47 Chapter 111 of the general laws, as appearing in the 2002 official edition, is hereby amended by
48 adding after Section 56 the following section:

49 Section 56A

50 a) Definitions: As used in this section, the following words shall, unless the context clearly
51 indicates otherwise, have the following meanings:

52 “Hospital”, any acute care hospital, a public hospital owned by the Commonwealth, a chronic
53 disease hospital, and an acute inpatient rehabilitation hospital licensed pursuant to section 51 of
54 chapter 111, as well as the teaching hospital of the University of Massachusetts Medical School.

55 “Nurse Staffing Plan”, a written plan developed by the hospital that describes the methodology used
56 to assign the appropriate number and mix of staff for each unit on each shift, to address patient
57 nursing needs in hospital inpatient units, special care units, and emergency departments.

58 b) Within 6 months of the effective date of this act, hospitals shall develop and implement a written
59 nurse staffing plan based on the following requirements:

60 (1) Addresses patient nursing needs in each hospital and that covers all inpatient, special care
61 unit, and emergency department services provided by said hospital;

62 (2) Sets forth a mechanism to solicit input from direct care givers, including nurses and other
63 members of the patient support team, in determining the nurse staffing plan;

64 (3) Takes into consideration relevant factors in each hospital including, but not limited to, the
65 number of patients in a unit; intensity of care required; skill and experience of care givers
66 including registered nurses, licensed practical nurses, and other ancillary personnel consistent
67 with the level of authority and responsibility delegated to him or her under state licensure;
68 transfers; geography of a unit; and the availability of technological support; and

69 (4) Addresses appropriate measures and actions to be taken by the hospital when there is
70 significant variation from the plan.

71 c) Hospital nurse staffing plans shall be reviewed and updated by the hospital when necessary to
72 reflect any significant changes in services.

73 d) The hospital shall, upon request, show a copy of the nurse staffing plan to a patient.

74 e) The hospital shall include a description of a nurse staffing effectiveness process used to monitor
75 and improve nursing care, pursuant to the requirements of the Joint Commission on Accreditation
76 of Healthcare Organizations.

77 f) Pursuant to the provisions of subsection (b) of this section, the nurse staffing plan shall be
78 approved on an annual basis by the Hospital Governing Board.

79 g) Nurse staffing plans shall be filed with the department not later than July 1, 2009 and annually
80 thereafter should the nursing staffing plans significantly change from the originally filed plans. The

81 department may randomly audit hospital compliance with the hospital nurse staffing plan, and shall
82 work with any hospital found out of compliance with said plan to meet the provisions of this
83 section.

84 h) The department, in consultation with hospitals, shall promulgate rules and regulations consistent
85 with this section.

86 i) Failure to submit a plan as provided by this section shall be punishable by a fine the schedule of
87 which shall be established by the department of public health by regulation. Said regulations shall
88 include an adequate notice period to the hospital affording the opportunity for corrective actions.
89 Any fines collected under this subsection shall be collected and distributed to the Betsy Lehman
90 Center, created by Section 7 of chapter 177 of the Acts of 2001.

91 SECTION 6 : Evaluation of Nursing Care Quality

92 Hospitals shall establish a process to collect, monitor, evaluate, and utilize in their quality
93 improvement programs, three evidence-based nurse-sensitive performance measures. Said
94 measures shall be selected by each hospital from the nationally recognized nurse-sensitive
95 performance measures endorsed by the Joint Commission on Accreditation of Healthcare
96 Organizations or the National Quality Forum. Hospitals shall provide in a uniform format an
97 annual report to the Betsy Lehman Center for Patient Safety and Medical Error Reduction on the
98 performance measures and their use in a manner developed by said Center in consultation with
99 representatives from hospitals. Said Center, in consultation with hospitals, shall further report to
100 the public and to hospitals aggregated industry trends and best practices.

101 SECTION 7. Limitation on High Risk Surgeries

102 Notwithstanding any special or general law or regulation to the contrary, any health care facility
103 that performs high risk surgeries, including but not limited to, pancreatic surgery, esophageal

104 surgery, open heart surgery, percutaneous coronary interventions (such as angioplasty), and
105 abdominal aortic aneurysm repair shall meet the following criteria: pancreatic resection (surgery to
106 remove the pancreas) – not less than 11 surgeries per year; esophagectomies – not less than 13
107 surgeries per year and have risk-adjusted mortality rates not less than 5.9% below nation average;
108 open heart surgery – not less than 450 surgeries shall be performed annually and have risk-adjusted
109 mortality rates below the national average; abdominal aortic aneurysm – not less than 50 procedures
110 annually providing however, that at least eighty percent of eligible patients shall receive beta-
111 blockers before surgery. The public health council is authorized to adjust these criteria or to add
112 additional procedures and criteria provided there is evidence-based data to support such actions and
113 subject to the review and approval of Betsy Lehman Center for Patient Safety and Medical Error
114 Reduction for Patient Safety. The department of public health shall not grant licenses to health care
115 facilities that cannot meet the criteria established pursuant to this section and shall, within five years
116 of the effective date of this act, rescind any license granted previously to any health care facility
117 that is unable to achieve the standards set forth herein or as subsequently amended by the public
118 health council, unless the health care facility voluntarily agrees to waive in writing the applicability
119 of the limitation of tort liability authorized by section 85K of chapter 231 of the general laws. In
120 the event that the governing board of the health care facility has waived applicability of said
121 section, liability in any cause of action shall not exceed the sum of one million dollars exclusive of
122 interest and costs.

123 SECTION 8. Protection against liability for physician apology to patient

124 (1) For the purposes of any civil action against a person licensed by the Board of Registration in
125 Medicine, any expression of regret or apology made by or on behalf of the person, including an

126 expression of regret or apology that is made in writing, orally or by conduct, does not constitute an
127 admission of liability for any purpose.

128 (2) A person who is licensed by the Board of Registration in Medicine, or any other person who
129 makes an expression of regret or apology on behalf of a person who is licensed by the Board of
130 Medical Examiners, may not be examined by deposition or otherwise in any civil or administrative
131 proceeding, including any arbitration or mediation proceeding, with respect to an expression of
132 regret or apology made by or on behalf of the person, including expressions of regret or apology
133 that are made in writing, orally or by conduct.

134 (3) Except as provided in subsection (2) of this section, section 8 of this Act applies to all
135 expressions of regret or apology, whether made before, on or after the effective date of this Act.
136 Section 8 of this Act does not apply to any civil action in which a judgment was entered in the
137 register of a court before the effective date of this Act. Section 8 of this Act does not apply to any
138 administrative proceeding in which a final order was entered before the effective date of this Act.

139 SECTION 9. Medical Malpractice Reinsurance Fund

140 (1) There is hereby established within the Division of Insurance a Medical Professional Liability
141 Reinsurance Program for medical professional liability insurance policies issued by authorized
142 insurers in the calendar years 2009, 2010, 2011 and 2012 to doctors of medicine licensed pursuant
143 to the provisions of section 2 of chapter 112 who:

144 (a) Hold an active, unrestricted license to practice medicine; and

145 (b) Have an in-force policy of medical professional liability insurance with an authorized insurer
146 with minimum limits of coverage of \$1 million per occurrence and \$1 million aggregate.

147 (2) The reinsurance program established in accordance with this section must be carried out in
148 accordance with the plan approved under section 2 of this Act.

149 (3) The coverage provided under the reinsurance program shall be priced by the Commissioner of
150 the Division of Insurance, in accordance with rate standards or percentage reductions determined by
151 the Director of the Department of Consumer Affairs and Business Regulation after consultation
152 with such actuaries as may be deemed appropriate, at rates that will significantly reduce premiums
153 for doctors to whom this section applies so as to make the medical professional liability insurance
154 reasonably affordable.

155 (4)(a) The Medical Professional Liability Reinsurance Program may provide coverage as
156 authorized in this section on such terms and conditions as the Commissioner of Insurance
157 determines to be reasonable, subject to the requirements and other terms of the plan approved under
158 section 2 of this Act.

159 (b) Notwithstanding paragraph (a) of this subsection, the Commissioner of Insurance must make
160 all reasonable efforts consistent with the goals of sections 1 to 7, 10 to 12 and 14 of this Act to
161 transfer any assumed reinsurance liability.

162 (5) The Commissioner of Insurance is not required to provide coverage for risks under this section
163 that exceed the amount the director is authorized to credit against assessments in section 7 of this
164 Act, but the Medical Professional Liability Reinsurance Program is liable for all risks that it covers
165 under this section.

166 (6) The Commissioner of Insurance shall submit to the Director of the Department of Consumer
167 Affairs and Business Regulation and to the Board of Registration in Medicine a plan for carrying
168 out the provisions of section 1 of this Act. The director and the board shall approve the plan
169 following a determination that the plan:

170 (a) Satisfies the purposes of sections 1 to 7 of this Act.

171 (b) Obligates the Medical Professional Liability Reinsurance Program to carry out the reinsurance
172 program established under section 1 of this Act by any appropriate coverage, which may consist of
173 financial reinsurance, on an insurer-to-insurer basis.

174 (c) Provides administrative management for the reinsurance program.

175 (d) Is financially sound.

176 (e) Facilitates payments from the Medical Professional Liability Reinsurance Fund established by
177 section 5 of this Act and is otherwise fair and reasonable to the participating primary insurers and
178 their insured.

179 (f) Establishes appropriate underwriting and rating standards.

180 (g) Minimizes transactional and claim costs for the Medical Professional Liability Reinsurance
181 Program and for primary users.

182 (h) Is appropriate in relation to the insurance market in this Commonwealth.

183 (i) Effectively reduces premiums for medical professional liability insurance for doctors eligible
184 for coverage under the plan.

185 (2)(a) The plan approved under this section must provide, to the extent funds are available from
186 the credit provided in section 7 of this Act for the annual assessment owed by the Medical
187 Professional Liability Reinsurance Program, for a reduction in premiums as provided in this
188 subsection for medical professional liability insurance for eligible doctors of medicine. The
189 reduction of premium shall be:

190 (A) Up to 80 percent for doctors specializing in obstetrics;

191 (B) Up to 60 percent for doctors specializing in family or
192 general practice who provide obstetrical services; and

193 (C) Up to 40 percent for all other eligible doctors.

194 (b) If the funds available to provide premium reductions are insufficient to provide the maximum
195 reduction, the plan shall provide for proportional reductions to all eligible doctors.

196 (c) Premium reductions shall be a percentage of the actual premium charged for medical
197 professional liability insurance in the market of authorized insurers for limits purchased of up to \$1
198 million per occurrence and \$3 million annual aggregate.

199 (d) Premium reductions shall be effective beginning with the first premium payment in each
200 calendar year under the reinsurance program.

201 (3) The plan adopted under this section may not obligate the Medical Professional Liability
202 Reinsurance Program to provide coverage under section 1 of this Act at a cost to the Program that
203 exceeds an average of \$10 million for each policy year for the four years for which the coverage is
204 provided. The cost to the Medical Professional Liability Reinsurance Program shall be the
205 actuarially determined costs of the reinsurance program.

206 (4)(a) The Medical Professional Liability Reinsurance Program shall submit the plan required
207 under this section to the director and the board not later than September 30, 2005.

208 (b) The director and the board shall approve, disapprove or require changes to the plan as promptly
209 as reasonably possible in order to enable the Medical Professional Liability Reinsurance Program to
210 have the plan operational by January 1, 2006. The plan may be
211 implemented only after joint approval by the director and the board.

212 (7) For the purposes of the reinsurance program for medical professional liability insurance
213 established under section __ of this Act, the Medical Professional Liability Program is subject as a
214 domestic insurer to all relevant provisions of the general laws.

215 (2) The Medical Professional Liability Reinsurance Program is an authorized assuming insurer
216 with respect to reinsurance for medical professional liability insurance for the purposes of the
217 general laws.

218 (8) In addition to the purposes and functions for which the Medical Professional Liability
219 Reinsurance Program Fund is created, the program is also created for the purpose of carrying out
220 the reinsurance program for medical professional liability insurance established under section 1 of
221 this Act.

222 (9) (1) The Medical Professional Liability Reinsurance Program Fund is established separate and
223 distinct from the General Fund and shall be held by the State Treasurer. The Medical Professional
224 Liability Reinsurance Program Fund is established for the purpose of providing coverage under the
225 reinsurance program established under section 1 of this Act. Interest earned by the Medical
226 Professional Liability Reinsurance Program Fund shall be credited to the fund.

227 (2) The Medical Professional Liability Reinsurance Program Fund shall provide the resources
228 necessary to support and fund coverage provided by the Program as authorized under section 1 of
229 this Act.

230 (3) All moneys received by the Medical Professional Liability Reinsurance Program for payment
231 to the Medical Professional Liability Reinsurance Fund shall be deposited to and shall become part
232 of the Medical Professional Liability Reinsurance Fund.

233 (4) All payments authorized to be made by the Medical Professional Liability Reinsurance
234 Program for coverage under the reinsurance program established under section 1 of this Act shall be
235 made from the Medical Professional Liability Reinsurance Fund.

236 (5) Any excess or residual moneys remaining in the Medical Professional Liability Reinsurance
237 Fund after the Medical Professional Liability Reinsurance Program has made all payments for

238 which the Program is obligated under section 1 of this Act, other than moneys that are owed to the
239 Program, shall be transferred to the Board of Registration in Medicine for the operation of programs
240 of the Board.

241 (10) (a) If an insurer obtains coverage with the Medical Professional Liability Reinsurance Program
242 for medical professional liability insurance issued by the insurer to a doctor to whom section 1 of
243 this Act applies, the insurer shall reduce the premium charged to the doctor in a manner that fully
244 recognizes savings made available by coverage offered under section 1 of this Act.

245 (b) An insurer to which subsection (1) of this section applies shall demonstrate the difference in its
246 rates for medical professional liability insurance for purposes of subsection (1) of this section in its
247 filing of rates with the Commissioner of Insurance.

248 (11) (a) When the Medical Professional Liability Reinsurance Program provides coverage through
249 the reinsurance program established under section 1 of this Act, the Commissioner of Insurance
250 shall credit the purchase price or the amount of the payment, net of any income, to the annual
251 assessment owing by the Medical Professional Liability Reinsurance Program to the Division of
252 Insurance. The amount the Commissioner credits under this subsection may not exceed an average
253 of \$10 million for each policy year for the four years that coverage is provided under section 1 of
254 this Act.

255 (b) The Commissioner shall establish by rule the accounting procedures and requirements by which
256 the credit is determined for the assessment.

257 (12) Notwithstanding any general or special law to the contrary, the Medical Professional Liability
258 Reinsurance Program may transfer funds from the Industrial Accident Fund to the Medical
259 Professional Liability Reinsurance Fund for the purposes of sections 1 to 7 and 10 to 12 of this Act.

260 (13) (a) The Industrial Accident Fund is continued. This fund shall be held by the State Treasurer
261 and by the State Treasurer deposited in such banks as are authorized to receive deposits of general
262 funds of the state.

263 (b) All moneys received by the Medical Professional Liability Reinsurance Program for workers'
264 compensation purposes under this chapter, shall be paid forthwith to the State Treasurer and shall
265 become a part of the Industrial Accident Fund. However, any assessments collected for the
266 Commissioner of the Division of Insurance under this chapter and deposited in the Industrial
267 Accident Fund may thereafter be transferred to
268 the Commissioner and deposited in the General Fund.

269 (c) All payments authorized to be made by the Medical Professional Liability Reinsurance Program
270 for workers' compensation purposes by this chapter, including all salaries, clerk hire and all other
271 expenses, shall be made from the Industrial Accident Fund.

272 14. (1) There is created the Professional Panel for Analysis of Medical Professional Liability
273 Insurance consisting of six members appointed as follows:

274 (a) The President of the Senate shall appoint two members, one of whom must have professional
275 expertise in gathering, evaluating or applying research data.

276 (b) The Speaker of the House of Representatives shall appoint two members, one of whom must
277 have professional expertise in gathering, evaluating or applying research data.

278 (c) The Governor shall appoint two members, one of whom must have professional expertise in
279 gathering, evaluating or applying research data.

280 (2) Members of the panel may not have a financial or professional affiliation with:

281 (a) Medical care providers;

282 (b) Insurers providing professional liability insurance; or

283 (c) Personal injury litigation.

284 (3) The panel shall:

285 (a) Advise the Medical Professional Liability Reinsurance Program on its selection of the
286 consulting firm required under section 11 of this Act;

287 (b) Establish a work plan to be carried out by the consulting firm;

288 (c) Review and approve the work product of the consulting firm; and

289 (d) Evaluate the data reported by the consulting firm and make findings incorporating the data.

290 The findings shall be included in the report required under subsection (10) of this section.

291 (4) The panel is subject to the provisions of Open Meeting Law.

292 (5) The panel shall use the services of permanent legislative staff to the greatest extent practicable.

293 (6) All agencies of state government, as defined in General Laws are directed to assist the panel in
294 the performance of its duties and, to the extent permitted by laws relating to
295 confidentiality, to furnish such information and advice as the members of the panel consider
296 necessary to perform their duties.

297 (7) A majority of the members of the panel constitutes a quorum for the transaction of business.

298 (8) Official action by the panel requires the approval of a majority of the members of the panel.

299 (9) The panel shall elect one of its members to serve as chairperson.

300 (10) The panel shall submit a report to the Governor, the President of the Senate, the Speaker of
301 the House, the Senate and House Chairs of the Committees on Ways and Means, the Senate and
302 House Chairs of the Committee on Insurance, and to the Senate and House Chairs of the Committee
303 on Health Care, no later than December 1, 2005, and annually thereafter on December 1st of each
304 year.

305 (11) Members of the panel who are not entitled to compensation for their work as members of said
306 panel, but may be reimbursed for actual and necessary travel and other expenses incurred by them
307 in the performance of their official duties, in the manner and amounts provided for by law. Claims
308 for expenses shall be paid out of funds in the Medical Professional Liability Reinsurance Fund
309 established under section 5 of this Act.

310 (12) The panel may seek public and private funds to assist in the work of the panel.

311 15. (a) The Medical Professional Liability Reinsurance Program shall select a consulting firm to
312 perform services required under this section. The firm selected must be a regional or national
313 consulting firm with at least 10 accredited casualty actuaries on staff and must possess
314 demonstrated accounting, financial and research capabilities. The firm must also have experience in
315 the casualty insurance industry and particularly in the field of medical professional liability
316 insurance.

317 (b) Under the direction of the Professional Panel for Analysis of Medical Professional Liability
318 Insurance created under section 10 of this Act, the consulting firm shall gather, analyze and
319 evaluate data on the availability, costs and transaction of medical professional liability insurance
320 that consider Massachusetts market trends on premiums and losses, other factors affecting the
321 competitiveness of the Massachusetts market and regulatory options for minimizing cyclical trends.

322 (c) The costs of the services of the consulting firm selected under subsection (1) of this section shall
323 be paid by the Medical Professional Liability Reinsurance Program from the amount available for
324 credit to the annual assessment owing by the Medical Professional Liability Reinsurance Fund
325 under section 7 of this Act. The cost of services may not exceed two percent of the maximum
326 average amount that may be credited to the Medical Professional Liability Reinsurance Program for
327 one year under section 7 of this Act.

328 16. Betsy Lehman Center for Patient Safety and Medical Error Reduction for Patient Safety and the
329 Prevention of Medical Error, and the Board of Registration in Medicine shall make
330 recommendations to the Governor and to the General Court concerning methods to attract and
331 retain doctors in underserved areas of the state.

332 17. (a) The Industrial Accident Fund is continued. This fund shall be held by the State Treasurer
333 and by the State Treasurer deposited in such banks as are authorized to receive deposits of general
334 funds of the state.

335 (b) All moneys received by the Medical Professional Liability Reinsurance Program, for workers'
336 compensation purposes, under this chapter, shall be paid forthwith to the State Treasurer and shall
337 become a part of the Industrial Accident Fund. However, any assessments collected for the Medical
338 Professional Liability Reinsurance Program under this chapter and deposited in the Industrial
339 Accident Fund may thereafter be transferred to the Medical Professional Liability Reinsurance
340 Program and deposited in the Medical Professional Liability Reinsurance Program Fund.

341 (c) All payments authorized to be made by the Medical Professional Liability Reinsurance Program,
342 for workers' compensation purposes, by this chapter, including all salaries, clerk hire and all other
343 expenses, shall be made from the Industrial Accident Fund.

344 18. (a) The Medical Professional Liability Reinsurance Program shall continue paying reinsurance
345 claims incurred or made prior to January 1, 2009, from the Medical Professional Liability
346 Reinsurance Program Fund until the Medical Professional Liability Reinsurance Program has
347 extinguished its liabilities for reinsurance issued under section 1 of this Act by payment of claims or
348 by purchase of reinsurance. Purchase of reinsurance under this subsection shall be subject to
349 approval by the Commissioner of Insurance.

350 (b) Sections 1 to 8 and 10 to 12 of this Act are repealed effective January 2, 2016.

351 (c) The provisions of section 13 of this Act become operative January 2, 2016.

352 19. (a) The Commissioner of Insurance shall annually report in the manner provided by General
353 Laws to the General Court on the performance of the program established under section 1 of this
354 Act.

355 (b) The Medical Professional Liability Reinsurance Corporation shall provide all data and other
356 information required by the commissioner to prepare the reports required under this section.

357 SECTION 10. Patient Education

358 For purposes of this section, a postoperative complication shall be defined as any negative outcome
359 as perceived either by the surgeon or by the patient. It may occur intraoperatively, in the immediate
360 postoperative period, or later on, as the effects of tissue remodeling and scarring become apparent
361 in an unacceptable aesthetic or functional result. These processes are largely interrelated, and they
362 represent a complex interplay of factors along a continuous spectrum.

363 SECTION 11. Any health care facility that provides surgery and every physician who is certified as
364 a surgeon shall take every appropriate measure to avert postoperative complications. Complications
365 must be anticipated, and preventive actions must be taken in every surgical case. Patient education
366 and close follow-up care are requisite and both the facility and the physician is required to provide
367 patient education for postoperative recovery and shall document that the patient as received and
368 understood the information that is conveyed.

369 SECTION 12. Professional Liability Insurance Rate Reduction

370 Notwithstanding any other general or special law to the contrary no medical malpractice insurer
371 may use any rate or change any premium unless it has filed such schedule or alternative method
372 with the commissioner of insurance and the commissioner of insurance has approved such schedule
373 or alternative method.

374 SECTION 13. Mediation

375 Section 60B of chapter 231 is hereby amended by adding at the end of the sixth paragraph, the
376 following:--

377 “The tribunal, where it determines the circumstances of the case may be resolved more
378 appropriately, may also refer any case to mediation or arbitration.