

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED**  
**CIVIL STATUTES**  
**TITLE 71--HEALTH--PUBLIC**  
**CHAPTER TWENTY-ONE--MEDICAL LIABILITY AND INSURANCE IMPROVEMENT**

Current through End of 1999 Reg. Sess.

**Art. 4590i. Medical Liability and Insurance Improvement Act**

**SUBCHAPTER A. GENERAL PROVISIONS**

Short Title

Sec. 1.01. This part may be cited as the Medical Liability and Insurance Improvement Act of Texas.

Findings and Purposes

Sec. 1.02. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1972 inordinately;

(2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period of time;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in the State of Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen in price,

with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims; and defensive medicine has resulted in increasing cost to patients, private insurers, and the state and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals;

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, may or may not have an effect on the rates charged by insurers for medical professional liability insurance;

(13) these facts have been verified by the Medical Professional Liability Study Commission, which was created by the 64th Legislature. [FN1] For further amplification of these facts the legislature adopts the findings of the report of the commission.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this Act to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health

care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and assure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

#### Definitions

Sec. 1.03. (a) In this part:

(1) "Court" means any federal or state court.

(2) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(3) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, pharmacist, or nursing home, or an officer, employee, or agent thereof acting in the course and scope of his employment.

(4) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed

departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(5) "Hospital" means a duly licensed public or private institution as defined in Chapter 241, Health and Safety Code, or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

(6) "Medical care" means any act defined as practicing medicine in Article 4510, Revised Civil Statutes of Texas, 1925, as amended, performed or furnished, or which should have been performed, by one licensed to practice medicine in Texas for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(7) "Pharmacist" means one licensed under Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), who, for the purposes of this Act, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this part, not otherwise defined in this part, shall have such meaning as is consistent with the common law.

#### **SUBCHAPTER B. ADDITIONAL DISCIPLINARY POWERS [REPEALED]**

Secs. 2.01 to 2.15. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.

#### **SUBCHAPTER C. DISTRICT REVIEW COMMITTEES [REPEALED]**

Secs. 3.01 to 3.09. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.

#### **SUBCHAPTER D. NOTICE**

## Notice

Sec. 4.01. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this Act have been met.

(c) Notice given as provided in this Act shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within 10 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization executed by the claimant herein shall be considered compliance by the claimant with this section.

(e) For the purposes of this section, and notwithstanding Section 5.08, Medical Practices Act (Article 4495b, Vernon's Texas Civil Statutes), or any other law, a request for the medical records of a deceased person or a person who is incompetent shall be deemed to be valid if accompanied by an authorization signed by a parent, spouse, or adult child of the deceased or incompetent person.

## **SUBCHAPTER E. AD DAMNUM CLAUSE**

### Pleadings not to State Damage Amount; Special Exception; Exclusion from Section

Sec. 5.01. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event, the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from

mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

## **SUBCHAPTER F. INFORMED CONSENT**

### Definition

Sec. 6.01. In this subchapter, "panel" means the Texas Medical Disclosure Panel.

### Theory of Recovery

Sec. 6.02. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

### Texas Medical Disclosure Panel

Sec. 6.03. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in the Medical Liability and Insurance Improvement Act of Texas, as amended (Article 4590i, Vernon's Texas Civil Statutes), shall be exercised solely by the panel and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the panel shall be selected by the Commissioner of Health.

(d) The commissioner shall select members of the panel according to the following schedule:

(1) one attorney and two physicians to serve a term of two years, which term shall begin on September 1, 1979, and expire on August 31, 1981, or until a successor is qualified;

(2) one attorney and two physicians to serve a term of four years, which terms shall begin September 1, 1979, and expire August 31, 1983, or until a successor is qualified;

(3) one attorney and two physicians to serve a term of six years, which term shall begin September 1, 1979, and expire on August 31, 1985, or until a successor is qualified.

Thereafter, at the expiration of the term of each member of the panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the panel present at each such meeting may be removed by the commissioner at the request of the panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice-chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice-chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

#### Duties of Panel

Sec. 6.04. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and for those treatments and procedures that do require disclosure shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) of this section together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.

#### Duty of Physician or Health Care Provider

Sec. 6.05. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the panel's list requiring disclosure, the physician or health care provider shall disclose to the patient, or person authorized to consent for the patient, the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 6.06 of this subchapter.

#### Manner of Disclosure

Sec. 6.06. Consent to medical care that appears on the panel's list requiring disclosure shall be considered effective under this subchapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the panel under Section 6.04 of this subchapter.

#### Effect of Disclosure

Sec. 6.07. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 6.05 of this subchapter and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Sections 6.05 and 6.06 of this subchapter have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 6.05 and 6.06 of this subchapter shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 6.05 and 6.06 of this subchapter, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

#### Informed Consent for Hysterectomies

Sec. 6.08. (a) The panel shall develop and prepare written materials to inform a patient or person

authorized to consent for a patient of the risks and hazards of a hysterectomy.

(b) The materials shall be available in English, Spanish, and any other language the panel considers appropriate. The information must be presented in a manner understandable to a layperson.

(c) The materials must include:

(1) a notice that a decision made at any time to refuse to undergo a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect the patient's right to future care or treatment;

(2) the name of the person providing and explaining the materials;

(3) a statement that the patient or person authorized to consent for the patient understands that the hysterectomy is permanent and nonreversible and that the patient will not be able to become pregnant or bear children if she undergoes a hysterectomy;

(4) a statement that the patient has the right to seek a consultation from a second physician;

(5) a statement that the patient or person authorized to consent for the patient has been informed that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina and that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina;

(6) a description of the risks and hazards involved in the performance of the procedure; and

(7) a written statement to be signed by the patient or person authorized to consent for the patient indicating that the materials have been provided and explained to the patient or person authorized to consent for the patient and that the patient or person authorized to consent for the patient understands the nature and consequences of a hysterectomy.

(d) The physician or health care provider shall obtain informed consent under this section and Section 6.05 of this Act from the patient or person authorized to consent for the patient before performing a hysterectomy unless the hysterectomy is performed in a life-threatening situation in which the physician determines obtaining informed consent is not

reasonably possible. If obtaining informed consent is not reasonably possible, the physician or health care provider shall include in the patient's medical records a written statement signed by the physician certifying the nature of the emergency.

(e) The panel may not prescribe materials under this section without first consulting with the Texas State Board of Medical Examiners.

## **SUBCHAPTER G. RES IPSA LOQUITUR**

### **Application of Res Ipsa Loquitur**

Sec. 7.01. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of the effective date of this subchapter.

### **Jury Instruction Authorized in Certain Cases**

Sec. 7.02. (a) In a jury trial involving a health care liability claim against a physician or hospital for injury to or death of a patient in which the court determines that the following instruction is reasonably applicable to the facts, the court shall provide the following instruction in the court's charge to the jury:

"A finding of negligence may not be based solely on evidence of a bad result to the patient in question, but such a bad result may be considered by you, along with other evidence, in determining the issue of negligence; you shall be the sole judges of the weight, if any, to be given to any such evidence."

(b) Nothing in Subsection (a) of this section shall affect the existing law regarding the applicability or nonapplicability of the doctrine of res ipsa loquitur to a health care liability claim.

(c) The determination of whether the instruction authorized by Subsection (a) of this section is reasonably applicable to the facts shall be made by the trial court in its sole discretion, and such determination by the trial court shall be reviewable by an appellate court only for an abuse of such discretion.

## **SUBCHAPTER H. [BLANK]**

## **SUBCHAPTER I. ADVANCE PAYMENTS**

Secs. 9.01, 9.02. Repealed by Texas Rules of Evidence, eff. Sept. 1, 1983 (Acts 1939, 46th Leg., p. 201, § 1); Texas Rules of Criminal Evidence, eff. Sept. 1, 1986 [Acts 1985, 69th Leg., ch. 685, § 9(b)].

### **Adjustments for Advance Payments**

Sec. 9.03. The advance payment shall inure to the exclusive benefit of the defendant or his or its carrier making the advance payment, and in the event the advance payment exceeds the pro rata liability of the defendant or the carrier making the payment, the trial judge shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay under this subchapter, exclusive of costs.

### **Certain Advance Payments Exempt from Repayment**

Sec. 9.04. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

## **SUBCHAPTER J. STATUTE OF LIMITATIONS**

### **Limitation on Health Care Liability Claims**

Sec. 10.01. Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

### **Causes of Action Covered by Other Law**

Sec. 10.02. Causes of action accruing between the effective date of this Act and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

## **SUBCHAPTER K. LIABILITY LIMITS**

### **Definition**

Sec. 11.01. In this subchapter, "consumer price index" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of

goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

#### Limit on Civil Liability

Sec. 11.02. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for damages of the physician or health care provider shall be limited to an amount not to exceed \$500,000.

(b) Subsection (a) of this section does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(c) This section shall not limit the liability of any insurer where facts exist that would enable a party to invoke the common law theory of recovery commonly known in Texas as the "Stowers Doctrine."

(d) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors: Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law.

#### Alternative Partial Limit on Civil Liability

Sec. 11.03. In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:

In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of the physician or health care provider for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed \$150,000.

#### Adjustment of Liability Limits

Sec. 11.04. When there is an increase or decrease in

the consumer price index with respect to the amount of that index on the effective date of this subchapter each of the liability limits prescribed in Section 11.02(a) or in Section 11.03 of this subchapter, as applicable, shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limits are awarded by final judgment or settlement.

#### Subchapter's Application Prevails over Certain Other Laws

Sec. 11.05. The provisions of this subchapter shall apply notwithstanding the provisions contained in Article 4671, Revised Civil Statutes of Texas, 1925, as amended, and the provisions of Article 5525, Revised Civil Statutes of Texas, 1925, as amended.

### **SUBCHAPTER L. MISCELLANEOUS PROVISIONS**

#### Exception From Certain Laws

Sec. 12.01. (a) Notwithstanding any other law, no provisions of Sections 17.41-17.63, Business & Commerce Code, shall apply to physicians or health care providers as defined in Section 1.03(3) of this Act, with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) This section shall not apply to pharmacists.

### **SUBCHAPTER M. PROCEDURAL PROVISIONS**

#### Cost Bond, Deposit, and Expert Report

Sec. 13.01. (a) In a health care liability claim, a claimant shall, not later than the 90th day after the date the claim is filed:

(1) file a separate cost bond in the amount of \$5,000 for each physician or health care provider named by the claimant in the action;

(2) place cash in an escrow account in the amount of \$5,000 for each physician or health care provider named in the action; or

(3) file an expert report for each physician or health

care provider with respect to whom a cost bond has not been filed and cash in lieu of the bond has not been deposited under Subdivision (1) or (2) of this subsection.

(b) If, as to a defendant physician or health care provider, an expert report, cost bond, or cash in lieu of bond has not been filed or deposited within the period specified by Subsection (a) or (h) of this section, the court, on the motion of the affected physician or health care provider, shall enter an order that:

(1) requires the filing of a \$7,500 cost bond with respect to the physician or health care provider not later than the 21st day after the date of the order; and

(2) provides that if the claimant fails to comply with the order, the action shall be dismissed for want of prosecution with respect to the physician or health care provider, subject to reinstatement in accordance with the applicable rules of civil procedure and Subsection (c) of this section.

(c) Before a claim that has been dismissed under Subsection (b)(2) of this section may be reinstated, the claimant must pay the costs of court incurred by the defendant before the dismissal and file a \$7,500 cost bond for each defendant physician or health care provider.

(d) Not later than the later of the 180th day after the date on which a health care liability claim is filed or the last day of any extended period established under Subsection (f) or (h) of this section, the claimant shall, for each physician or health care provider against whom a claim is asserted:

(1) furnish to counsel for each physician or health care provider one or more expert reports, with a curriculum vitae of each expert listed in the report; or

(2) voluntarily nonsuit the action against the physician or health care provider.

(e) If a claimant has failed, for any defendant physician or health care provider, to comply with Subsection (d) of this section within the time required, the court shall, on the motion of the affected physician or health care provider, enter an order awarding as sanctions against the claimant or the claimant's attorney:

(1) the reasonable attorney's fees and costs of court incurred by that defendant;

(2) the forfeiture of any cost bond respecting the claimant's claim against that defendant to the extent necessary to pay the award; and

(3) the dismissal of the action of the claimant against that defendant with prejudice to the claim's refiling.

(f) The court may, for good cause shown after motion and hearing, extend any time period specified in Subsection (d) of this section for an additional 30 days. Only one extension may be granted under this subsection.

(g) Notwithstanding any other provision of this section, if a claimant has failed to comply with a deadline established by Subsection (d) of this section and after hearing the court finds that the failure of the claimant or the claimant's attorney was not intentional or the result of conscious indifference but was the result of an accident or mistake, the court shall grant a grace period of 30 days to permit the claimant to comply with that subsection. A motion by a claimant for relief under this subsection shall be considered timely if it is filed before any hearing on a motion by a defendant under Subsection (e) of this section.

(h) The affected parties may agree to extend any time period specified in Subsection (a) or (d) of this section. An agreement under this subsection is binding and shall be honored by the court if signed by the affected parties or their counsel and filed with the court.

(i) Notwithstanding any other provision of this section, a claimant may satisfy any requirement of this section for filing an expert report by filing reports of separate experts regarding different physicians or health care providers or regarding different issues arising from the conduct of a physician or health care provider, such as issues of liability and causation. Nothing in this section shall be construed to mean that a single expert must address all liability and causation issues with respect to all physicians or health care providers or with respect to both liability and causation issues for a physician or health care provider.

(j) Nothing in this section shall be construed to require the filing of an expert report regarding any issue other than an issue relating to liability or causation.

(k) Notwithstanding any other law, an expert report filed under this section:

(1) is not admissible in evidence by a defendant;

(2) shall not be used in a deposition, trial, or other proceeding; and

(3) shall not be referred to by a defendant during the course of the action for any purpose.

(l) A court shall grant a motion challenging the adequacy of an expert report only if it appears to the court, after hearing, that the report does not represent a good faith effort to comply with the definition of an expert report in Subsection (r)(6) of this section.

(m) On the claimant's compliance with the requirements of Subsection (d) of this section:

(1) any cost bond filed or cash deposited in an escrow account by the claimant under this section shall be released;

(2) the claimant, the claimant's counsel, and any surety have no liability on the cost bond or cash deposit; and

(3) an execution shall not be issued on the cost bond or cash deposit.

(n) If a claimant nonsuits a health care liability claim against a physician or health care provider before filing a cost bond and seeks to refile the same or a similar health care liability claim against the physician or health care provider, the claimant shall file a \$7,500 cost bond for each previously nonsuited physician or health care provider at the time of the filing of the health care liability claim. If the claimant fails to file the \$7,500 cost bond for each physician or health care provider, on motion and hearing the court shall order the filing of the cost bond and the claimant shall pay the movant reasonable attorney's fees incurred in obtaining relief under this subsection.

(o) Notwithstanding any other provision of this section, a claimant who is proceeding without an attorney and who is unable to afford a cost bond or cash deposit may, in lieu of a cost bond or cash deposit, file an affidavit in the same form required for an affidavit in lieu of security for costs under the Texas Rules of Civil Procedure.

(p) In the event of a conflict between this section and another law, including a rule of procedure or court rule, this section controls to the extent of the conflict.

(q) Notwithstanding the provisions of Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this section. The district courts and statutory county courts in a county may not adopt local rules in conflict with this section.

(r) In this section:

(1) "Affected parties" means the claimant and the physician or health care provider who are directly affected by an act or agreement required or permitted by this section and does not include other parties to an action who are not directly affected by that particular act or agreement.

(2) "Claim" means a health care liability claim.

(3) "Claimant" means a party who files a pleading asserting a claim. All plaintiffs claiming to have sustained damages as the result of the bodily injury or death of a single person are considered to be a single claimant.

(4) "Defendant" means a physician or health care provider against whom a health care liability claim is asserted. The term includes a third-party defendant, cross-defendant, or counterdefendant.

(5) "Expert" means:

(A) with respect to a person giving opinion testimony regarding whether a physician departed from accepted standards of medical care, an expert qualified to testify under the requirements of Section 14.01(a) of this Act; or

(B) with respect to a person giving opinion testimony about a nonphysician health care provider, an expert who has knowledge of accepted standards of care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim.

(6) "Expert report" means a written report by an expert that provides a fair summary of the expert's opinions as of the date of the report regarding applicable standards of care, the manner in which the care rendered by the physician or health care provider failed to meet the standards, and the causal relationship between that failure and the injury, harm, or damages claimed.

#### Discovery Procedures

Sec. 13.02. (a) In every health care liability claim the

plaintiff shall within 45 days after the date of filing of the original petition serve on the defendant's attorney or, if no attorney has appeared for the defendant, on the defendant full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the appropriate standard set of requests for production of documents and things promulgated in accordance with Subsection (c) of this section.

(b) Every physician or health care provider who is a defendant in a health care liability claim shall within 45 days after the date on which an answer to the petition was due serve on the plaintiff's attorney or, if the plaintiff is not represented by an attorney, on the plaintiff full and complete answers to the appropriate standard set of interrogatories and complete responses to the standard set of requests for production of documents and things promulgated pursuant to Subsection (c) of this section.

(c) The chief justice of the Supreme Court of Texas shall within 30 days after the effective date of this Act appoint as members of the Health Care Liability Discovery Panel three persons from a list of attorneys to be submitted by a statewide association of attorneys whose members include persons who customarily represent patients in health care liability actions and three persons from a list of attorneys to be submitted by a statewide association of attorneys whose members include persons who customarily represent defendants in health care liability actions. Members of the Health Care Liability Discovery Panel serve without compensation. On or before the 1st day of November, 1993, the Health Care Liability Discovery Panel shall promulgate standard sets of interrogatories and requests for production of documents and things appropriate for each of the categories of plaintiffs and defendants usually involved in health care liability claims. In preparing standard sets of interrogatories the Health Care Liability Discovery Panel shall not be restricted in number by any limit imposed under the Texas Rules of Civil Procedure.

(d) The Supreme Court of Texas shall review the standard sets of interrogatories and requests for production of documents and things promulgated by the Health Care Liability Discovery Panel and shall, no later than January 1, 1994, approve them in their entirety, disapprove them in their entirety, or approve them with modifications. If the supreme court disapproves such standard sets of interrogatories and requests for production of documents and things in their entirety, then such standard sets shall be null and

void and of no effect, and the Health Care Liability Discovery Panel shall be disbanded. If the supreme court approves such standard sets of interrogatories and requests for production of documents and things with modifications, then the Health Care Liability Discovery Panel shall either approve or disapprove of such standard sets of interrogatories and requests for production of documents and things as modified by the supreme court by a vote of at least five of the six members of the panel. If the modifications made by the supreme court fail to obtain the necessary vote for approval by the panel, then such standard sets of interrogatories and requests for production of documents and things shall be null and void and of no effect and the panel shall be disbanded. If the panel approves the modified standard sets of interrogatories and requests for production of documents and things, then the supreme court shall proceed to publish the standard sets in accordance with Subsection (e) of this section.

(e) As soon as practical after the approval of such standard sets of interrogatories and requests for production of documents and things by the Health Care Liability Discovery Panel and the Supreme Court of Texas, and in any event no later than February 1, 1994, the supreme court shall publish such standard sets. Notwithstanding any other law, the supreme court shall not be required to publish such standard sets of interrogatories and requests for production of documents and things for public comment. Beginning on April 1, 1994, all plaintiffs and all physicians or health care providers who are defendants in a health care liability claim in which the plaintiff's original petition is filed on or after that date shall file full and complete answers and responses in accordance with Subsections (a) and (b) of this section.

(f) Nothing in this section shall limit or impede the Supreme Court of Texas in exercising its rulemaking authority pursuant to Sections 22.003 and 22.004, Government Code.

(g) Except on motion and for good cause shown, no objection may be asserted regarding any standard interrogatory or request for production of documents and things, but no response shall be required where a particular interrogatory or request is clearly inapplicable under the circumstances of the case.

(h) Failure to file full and complete answers and responses to standard interrogatories and requests for production of documents and things in accordance with Subsections (a) and (b) of this section or the

making of a groundless objection under Subsection (g) of this section shall be grounds for sanctions by the court in accordance with the Texas Rules of Civil Procedure on motion of any party.

(i) The time limits imposed under Subsections (a) and (b) of this section may be extended by the court on the motion of a responding party for good cause shown and shall be extended if agreed in writing between the responding party and all opposing parties. In no event shall an extension be for a period of more than an additional 30 days.

(j) If a party is added by an amended pleading, intervention, or otherwise, the new party shall file full and complete answers to the appropriate standard set of interrogatories and full and complete responses to the standard set of requests for production of documents and things no later than 45 days after the date of filing of the pleading by which the party first appeared in the action.

(k) If information or documents required to provide full and complete answers and responses as required by this section are not in the possession of the responding party or attorney when the answers or responses are filed, the party shall supplement the answers and responses in accordance with the Texas Rules of Civil Procedure.

(l) Nothing in this section shall preclude any party from taking additional non-duplicative discovery of any other party. The standard sets of interrogatories provided for in this section shall not constitute, as to each plaintiff and each physician or health care provider who is a defendant, the first of the two sets of interrogatories permitted under the Texas Rules of Civil Procedure.

(m) Notwithstanding any other provisions of this section, if a court of this state has, prior to the effective date of this section, signed an order in tort litigation in which cases have been consolidated for discovery providing for standard sets of interrogatories and requests for production of documents and things, compliance with such an order shall be deemed to be compliance with the requirements of this section.

## **SUBCHAPTER N. EXPERT WITNESSES**

### **Qualification of Expert Witness in Suit Against Physician**

Sec. 14.01. (a) In a suit involving a health care

liability claim against a physician for injury to or death of a patient, a person may qualify as an expert witness on the issue of whether the physician departed from accepted standards of medical care only if the person is a physician who:

(1) is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose;

(2) has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

(3) is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of medical care.

(b) For the purpose of this section, "practicing medicine" or "medical practice" includes, but is not limited to, training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

(c) In determining whether a witness is qualified on the basis of training or experience, the court shall consider whether, at the time the claim arose or at the time the testimony is given, the witness:

(1) is board certified or has other substantial training or experience in an area of medical practice relevant to the claim; and

(2) is actively practicing medicine in rendering medical care services relevant to the claim.

(d) The court shall apply the criteria specified in Subsections (a), (b), and (c) of this section in determining whether an expert is qualified to offer expert testimony on the issue of whether the physician departed from accepted standards of medical care, but may depart from those criteria if, under the circumstances, the court determines that there is a good reason to admit the expert's testimony. The court shall state on the record the reason for admitting the testimony if the court departs from the criteria.

(e) A pretrial objection to the qualifications of a witness under this section must be made not later than the later of the 21st day after the date the objecting party receives a copy of the witness's curriculum vitae or the date of the witness's deposition. If circumstances arise after the date on which the

objection must be made that could not have been reasonably anticipated by a party before that date and that the party believes in good faith provide a basis for an objection to a witness's qualifications, and if an objection was not made previously, this subsection does not prevent the party from making an objection as soon as practicable under the circumstances. The court shall conduct a hearing to determine whether the witness is qualified as soon as practicable after the filing of an objection and, if possible, before trial. If the objecting party is unable to object in time for the hearing to be conducted before the trial, the hearing shall be conducted outside the presence of the jury. This subsection does not prevent a party from examining or cross-examining a witness at trial about the witness's qualifications.

(f) This section does not prevent a physician who is a defendant from qualifying as an expert.

(g) In this section, "physician" means a person who is:

(1) licensed to practice medicine in the United States; or

(2) a graduate of a medical school accredited by the Liaison Committee on Medical Education or the American Osteopathic Association.

#### **SUBCHAPTER O. ARBITRATION AGREEMENTS**

##### Arbitration Agreements

Sec. 15.01. (a) No physician, professional association of physicians, or other health care provider shall request or require a patient or prospective patient to execute an agreement to arbitrate a health care liability claim unless the form of agreement delivered to the patient contains a written notice in 10- point boldface type clearly and conspicuously stating:

UNDER TEXAS LAW, THIS AGREEMENT IS INVALID AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS, INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN ATTORNEY.

(b) A violation of this section by a physician or

professional association of physicians constitutes a violation of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), and shall be subject to the enforcement provisions and sanctions contained in Subchapter D of that Act.

(c) A violation of this section by a healthcare provider other than a physician shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or commerce within the meaning of Section 17.46 of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), and shall be subject to an enforcement action by the consumer protection division pursuant to said Act and subject to the penalties and remedies contained in Section 17.47 of that Act, notwithstanding Section 12.01 of this Act or any other law.

(d) Notwithstanding any other provision of this section, a person who is found to be in violation of this section for the first time shall be subject only to injunctive relief or other appropriate order requiring the person to cease and desist from such violation, and not to any other penalty or sanction.

#### **SUBCHAPTER P. PREJUDGMENT INTEREST**

##### Application of Other Law

Sec. 16.01. Notwithstanding Articles 1E.101, 1E.102, and 1E.104-1E.108, Title 79, Revised Statutes, prejudgment interest in a health care liability claim shall be awarded in accordance with this subchapter.

##### Computation of Prejudgment Interest

Sec. 16.02. (a) In a health care liability claim, prejudgment interest may not be charged with respect to a defendant physician or health care provider who has settled the claim before the 181st day after the date notice of the claim was first mailed to the physician or health care provider.

(b) In a health care liability claim that is not settled within the period specified by Subsection (a) of this section, the judgment must include prejudgment interest on past damages found by the trier of fact, but shall not include prejudgment interest on future damages found by the trier of fact.

(c) Prejudgment interest allowed under this subchapter shall be computed in accordance with Article 1E.103, Title 79, Revised Statutes, for a

period beginning on the date of injury and ending on the date before the date the judgment is signed.

(d) In this section:

(1) "Past damages" means damages awarded to compensate the claimant for loss the claimant will incur for a period beginning on the date of injury and ending on the date before the date of judgment.

(2) "Future damages" means damages awarded to compensate the claimant for loss the claimant will incur after the date of judgment.