

(H.B. 2963)
(Conference)

(No. 260)

(Approved December 5, 2006)

AN ACT

To amend Section 41.050 of Act No. 77 of June 19, 1957, as amended, known as the “Puerto Rico Insurance Code,” in order to include every health services professional who renders medical services as employee, contractor or consultant at the Mayagüez Medical Center, the Ramón Emeterio Betances Hospital, within the limits of civil liability for medical-hospital malpractice to which the Commonwealth of Puerto Rico is subject; and for other purposes.

STATEMENT OF MOTIVES

Several efforts have been made in past years to establish a trauma unit in the facilities of the Ramón Emeterio Betances Medical Center in the Municipality of Mayagüez for the purpose of ensuring that the residents of the western area of the Island may benefit from the services of a hospital institution able to attend to all types of emergencies that may arise in that area without having to be transferred to the Río Piedras Medical Center.

According to reports from the Automobile Accident Compensation Administration (ACAA, Spanish acronym), every trip to transfer a patient on Aero-Med to the Río Piedras Medical Center, where only these services are provided, has, at present, an approximate cost of five thousand (5,000) dollars. In view of this situation it is imperative that our citizens of the western region be provided with better services and given more opportunities for obtaining the necessary treatment within the required time.

As is generally known, a few minutes delay may be responsible for the death of a human being.

Because there is only one trauma unit on the Island, a backup is created and the flow of patients that may be attended by the personnel of said unit with the necessary promptitude is affected. The Río Piedras Medical Center could provide more and better services if the western region were to have the facilities needed to treat trauma cases. Our Island is in urgent need of having a trauma unit established in addition to the one at the Río Piedras Medical Center so as to be able to handle the cases treated and attended to by the personnel of such a unit with the haste they require.

In order to ensure the prompt establishment of the Trauma Center at the Mayagüez Medical Center, it is urgent that public policies that will guarantee the incorporation and availability of new health professionals be established. Puerto Rico is undergoing a general crisis due to high number of medical malpractice cases registered at the courts with serious effects to the availability of specialists in our hospital institutions and the flight of health professional to other states. Although we acknowledge the fact that this is a general crisis which requires a carefully thought study process and a comprehensive scheme that would do justice to the victims of medical malpractice while at the same time preventing the filing of frivolous cases that would impose an unreasonable burden upon the insurance premiums of these professionals we, within the discretion of the government as to its public policy, acknowledge the pressing need for establishing a special measure for controlling medical malpractice cases at the Mayagüez Medical Center.

Section 41.050 of the “Puerto Rico Insurance Code,” is amended through this measure for the purpose of exempting every employee,

contractor or consultant of the Commonwealth of Puerto Rico, who is a defendant in a civil action for damages because of culpability or negligence arising from malpractice incurred in the practice of his/her profession while said health services professional acts in compliance of his/her duties and functions at the Mayagüez Medical Center, Hospital Dr. Ramón Emeterio Betances. Act No. 104 of June 29, 1955, better known as the “Act on Claims and Suits Against the Commonwealth,” to include the contractors and consultants of the Mayagüez Medical Center, Hospital Dr. Ramón Emeterio Betances, as juridical persons authorized to being sued.

This bill establishes one of the cornerstones needed to promote the establishment of a Trauma Center at the Mayagüez Medical Center, Hospital Dr. Ramón Emeterio Betances, thus attracting the availability and incorporation of new medical professionals into this Medical Center, while at the same time doing justice to the victims of malpractice.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-Section 41.050 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Every health services professional and health care institution shall annually file evidence of his/her or its financial responsibility for the amount of one hundred thousand (100,000) dollars per incident or up to an aggregate of three hundred thousand (300,000) dollars per year. The Commissioner may require limits for a maximum of five hundred thousand (500,000) dollars per medical incident and an aggregate of one million (1,000,000) dollars per year in the case of health care institutions and of those rate classifications of health services professional dedicated to the practice of high risk specialties, after the holding of public hearings where such professionals or institutions or any other interested party shall have the

opportunity of appearing and expressing their points of view on the matter at hand and of presenting any information, documents or studies to sustain their position. Those health services professionals who do not practice their profession privately and who work exclusively as employees of private health care institutions shall be exempt from this obligation, provided they are covered by the evidence of financial responsibility of the latter. Those health services professionals who render services exclusively as employees or contractors of the Commonwealth of Puerto Rico, its dependencies, instrumentalities and municipalities and who do not practice their profession privately shall also be exempt from this obligation. The health care institutions that belong to and are operated or administered by the Commonwealth of Puerto Rico, its dependencies, instrumentalities and municipalities, shall also be exempt.

The evidence of financial responsibility demanded in the first paragraph of this Section shall be presented at the corresponding board of examiners or at the Department of Health, as the case may be, not later than the 30th of June of each year and it shall cover the financial responsibility of the health services professional or of the health care institution, as the case may be for the following year.

No health services professional may be included as defendant in a civil action for damages because of culpability or negligence arising from malpractice incurred in the practice of his/her profession while said health services professional acts in compliance of his/her duties and functions as employee of the Commonwealth of Puerto Rico, its dependencies and instrumentalities, the Comprehensive Cancer Center of the University of Puerto Rico and the municipalities, or contractor thereof, while acting in compliance of his/her duties and functions in the areas of obstetrics,

orthopedics, general surgery or trauma in a medical-hospital facility property of the Commonwealth of Puerto Rico, its dependencies, instrumentalities and/or municipalities, regardless of whether said facility is being administered or operated by a private entity.

No employee, contractor or consultant, or any contract of affiliation with any campus of the medical schools, members of their faculty, students and residents who use the physical facilities as a workshop for university teaching and research of the Commonwealth of Puerto Rico, may be included as defendant in a civil action for damages because of culpability or negligence arising from malpractice incurred in the practice of his/her profession while said health services professional acts in compliance of his/her duties and functions for the Mayagüez Medical Center, Hospital Dr. Ramón Emeterio Betances and its dependencies.

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Section 2.-Section 2 of Act No. 104 of June 29, 1955, as amended, is hereby amended to read as follows:

“Section 2.- Claims and suits against the Commonwealth – Authorization.

Authorization is hereby granted to sue the Commonwealth of Puerto Rico before the Court of First Instance of Puerto Rico for the causes set forth in the following actions:

- (a) Actions for damages to persons or property up to the sum of seventy-five thousand (75,000) dollars caused by a culpable or negligent act or omission of any officer, agent or employee of the Commonwealth or of any other person acting in an official capacity within the scope of his/her duty, office or employment; or actions for damages for alleged acts of malpractice to the health professionals who work in the areas of obstetrics,

orthopedics, general surgery or trauma exclusively at public health institutions of the Commonwealth of Puerto Rico, its dependencies, instrumentalities and/or municipalities, regardless of whether said institutions are being administered or operated by a private entity. Actions for damages to the person or the property for up to the sum of seventy-five thousand (75,000) dollars caused by a culpable or negligent act or omission of any officer, agent, employee, contractor or consultant or any other person acting in an official capacity and within the scope of his/her duty, office or employment of the Mayagüez Medical Center, Hospital Dr. Ramón Emeterio Betances; or actions for damages for alleged acts of malpractice are also authorized. When because of said act or omission damages are caused to more than one person or when there are several causes of action to which a single prejudiced party is entitled, the compensation for all damages caused by said act or omission may not exceed the sum of one hundred and fifty thousand (150,000) dollars. If according to the conclusions of the court it should arise that the sum of the damages caused to each of the persons exceeds one hundred and fifty thousand (150,000) dollars, the court shall proceed to distribute said sum prorated among the plaintiffs, taking as bases the damages suffered by each one. When an action is filed against the Commonwealth for damages to the person or to the property, the court shall order, through the publication of edicts in a newspaper of general circulation, that all persons that may have a common interest be notified that they must appear before the court on the date set forth in the edicts so as to jointly proceed to distribute the amount of one hundred and fifty thousand (150,000) dollars among the plaintiffs, as provided in this Act.

(b) ...”

Section 3.-This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 260 (H.B. 2963) (Conference) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend Section 41.050 of Act No. 77 of June 19, 1957, as amended, known as the “Puerto Rico Insurance Code,” in order to include every health services professional who renders medical services as employee, contractor or consultant at the Mayagüez Medical Center, the Ramón Emeterio Betances Hospital, within the limits of civil liability for medical-hospital malpractice to which the Commonwealth of Puerto Rico is subject; and for other purposes,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 26th of February of 2007.

Francisco J. Domenech
Director