

12-561. Definitions

In this chapter, unless the context otherwise requires:

1. "Licensed health care provider" means both:
 - (a) A person, corporation or institution licensed or certified by the state to provide health care, medical services, nursing services or other health-related services and includes the officers, employees and agents thereof working under the supervision of such person, corporation or institution in providing such health care, medical services, nursing services or other health-related services.
 - (b) A federally licensed, regulated or registered blood bank, blood center or plasma center collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives for use by a licensed health care provider and includes the officers, employees and agents working under the supervision of the blood bank, blood center or plasma center.
2. "Medical malpractice action" or "cause of action for medical malpractice" means an action for injury or death against a licensed health care provider based upon such provider's alleged negligence, misconduct, errors or omissions, or breach of contract in the rendering of health care, medical services, nursing services or other health-related services or for the rendering of such health care, medical services, nursing services or other health-related services, without express or implied consent including an action based upon the alleged negligence, misconduct, errors or omissions or breach of contract in collecting, processing or distributing whole human blood, blood components, plasma, blood fractions or blood derivatives.

12-562. Medical malpractice actions; grounds

- A. A medical malpractice action shall not be brought against a licensed health care provider except upon the grounds set forth in section 12-561.
- B. A medical malpractice action brought against a licensed health care provider shall not be based upon assault and battery.
- C. A medical malpractice action based upon breach of contract for professional services shall not be brought unless such contract is in writing.
- D. A medical malpractice action brought against a physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25 regarding services provided within that person's scope of practice shall not be based on the neglect, abuse or exploitation of a vulnerable adult, except as provided in section 46-455.

12-563. Necessary elements of proof

Both of the following shall be necessary elements of proof that injury resulted from the failure of a health care provider to follow the accepted standard of care:

1. The health care provider failed to exercise that degree of care, skill and learning expected of a reasonable, prudent health care provider in the profession or class to which he belongs within the state acting in the same or similar circumstances.
2. Such failure was a proximate cause of the injury.

12-565. Health care actions; collateral source evidence

- A. In any medical malpractice action against a licensed health care provider, the defendant may introduce evidence of any amount or other benefit which is or will

be payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States social security act, any state or federal workers' compensation act, any disability, health, sickness, life, income-disability or accident insurance that provides health benefits or income-disability coverage and any other contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of income-disability or medical, hospital, dental or other health care services to establish that any cost, expense, or loss claimed by the plaintiff as a result of the injury or death is subject to reimbursement or indemnification from such collateral sources. Where the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount which the plaintiff has paid or contributed to secure his right to any such benefits or that recovery from the defendant is subject to a lien or that a provider of such collateral benefits has a statutory right of recovery against the plaintiff as reimbursement for such benefits or that the provider of such benefits has a right of subrogation to the rights of the plaintiff in the medical malpractice action.

B. Evidence introduced pursuant to this section shall be admissible for the purpose of considering the damages claimed by the plaintiff and shall be accorded such weight as the trier of the facts chooses to give it.

C. Unless otherwise expressly permitted to do so by statute, no provider of collateral benefits, as described in subsection A, shall recover any amount against the plaintiff as reimbursement for such benefits nor shall such provider be subrogated to the rights of the plaintiff.

12-566. Health care actions; complaint; specific amount of damages not to be stated

In any medical malpractice action against a licensed health care provider, no dollar amount or figure shall be included in the complaint, but the complaint may include a statement reciting that the minimum jurisdictional amount established for filing the action is satisfied.

12-568. Review of attorneys' fees in health care actions; guidelines

A. The court shall, at the request of any party in any action under this chapter, determine the reasonableness of each party's attorneys' fees. The court shall take into consideration the following:

1. The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly.
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
3. The fee customarily charged in the locality for similar legal services.
4. The amount involved and the results obtained.
5. The time limitations imposed by the client or by the circumstances.
6. The nature and length of the professional relationship with the client.
7. The experience, reputation and ability of the lawyer or lawyers performing the services.
8. Whether the fee is fixed or contingent.

B. In the event that any party requests a determination of the reasonableness of a party's attorneys' fees pursuant to subsection A, the court shall complete such determination within twenty days of the request.

12-569. Non-admissibility of certain types of evidence relating to professional liability insurance

During the trial of a medical malpractice action against a licensed health care provider or during the course of any hearing or review conducted pursuant to section 12-567, evidence that any party or that any witness testifying in such trial, hearing, or review proceeding has been or is covered by a professional liability insurance policy issued by a health care insurer established pursuant to title 20, chapter 7, article 2 or that such party or witness has a financial interest in the operation of such a health care insurer arising as a result of the ownership of stock, a policy or policies of insurance, notes, including contributed surplus notes, any other evidence of indebtedness, or otherwise, shall not be received in evidence for any purpose.

12-570. Malpractice settlement or award reporting; civil penalty; definition

A. If a medical malpractice action or an action brought under section 46-455 against a nursing care institution is settled or a court enters a monetary judgment:

1. The professional liability insurers shall provide the defendant's health profession regulatory board with all information required to be filed with the national practitioner data bank pursuant to Public Law 99-660. In the case of an action brought under section 46-455 against a nursing care institution, the information shall be provided to the department of health services.

2. The plaintiff's attorney shall provide the defendant's health profession regulatory board, or, in the case of an action brought against a nursing care institution, the department of health services, with the notice described in subsection B of this section, a copy of the complaint and a copy of either the agreed terms of settlement or the judgment. The attorney shall provide this notice and these documents within thirty days after a settlement is reached or a judgment is entered.

B. The notice required by subsection A of this section shall contain the following information:

1. The name and address of each defendant.

2. The name, date of birth and address of each plaintiff.

3. The date and location of the occurrence which created the claim.

4. A statement specifying the nature of the occurrence resulting in the malpractice action.

5. A copy of all expert witness depositions, a transcript of all expert witness court testimony or a written evaluation of the case by an expert witness.

C. The notice required by subsection A of this section is not discoverable and not admissible as evidence.

D. An attorney who does not supply the information required by subsections A and B of this section within thirty days after the notice of settlement or judgment is due under subsection A of this section is subject to a civil penalty of five hundred dollars.

E. A confidentiality clause in a settlement agreement does not apply to the reporting requirements of this section.

F. For the purposes of this section, "health profession regulatory board" has the same meaning prescribed in section 32-3201.

12-571. Qualified immunity; health professionals; nonprofit clinics; previously owned prescription eyeglasses

A. A health professional, as defined in section 32-3201, who provides medical or dental treatment within the scope of the health professional's certificate or license at a nonprofit clinic where neither the professional nor the clinic receives compensation for any treatment provided at the clinic is not liable in a medical malpractice action, unless such health professional was grossly negligent.

B. A health professional who, within the professional's scope of practice, provides previously owned prescription eyeglasses free of charge through a charitable, nonprofit or fraternal organization is not liable for an injury to the recipient if the recipient or the recipient's parent or legal guardian has signed a medical malpractice release form and the injury is not a direct result of the health professional's intentional misconduct or gross negligence. For purposes of this subsection, "medical malpractice release form" means a document that the recipient or the recipient's parent or legal guardian signs before the recipient receives eyeglasses pursuant to this subsection to acknowledge that the eyeglasses were not made specifically for the recipient and to accept full responsibility for the recipient's eye safety.

12-572. Burden of proof for treatment in emergency departments or rendered by on-call providers

A. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence, a health professional as defined in section 32-3201 who provides or who is consulted to provide services to a patient of a licensed hospital in compliance with the emergency medical treatment and labor act (P.L. 99-272; 100 Stat. 164; 42 United States Code section 1395dd) or as a result of a disaster is not liable for any civil or other damages as a result of any act or omission.

B. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence regarding the acts or omissions of a licensed hospital or its agents and employees in cases that are covered by subsection A of this section, the hospital is not liable for any civil or other damages as a result of any act or omission.

12-573. Limited liability for treatment related to delivery of infants; exception; definition

A. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence, a physician licensed to practice pursuant to title 32, chapter 13 or 17 is not liable to the pregnant female patient, the child or children delivered or their families for medical malpractice related to labor or delivery rendered on an emergency basis if the patient was not previously treated for the pregnancy by the physician, by a physician in a group practice with the physician or by a physician, physician assistant or certified nurse midwife with whom the physician has an agreement to attend the labor and delivery of the patient.

B. Unless the elements of proof contained in section 12-563 are established by clear and convincing evidence regarding the acts or omissions of a licensed health

care facility or its employees in cases that are covered by subsection A of this section, the health care facility is not liable to the female patient, the child or children delivered or their families for medical malpractice related to labor or delivery.

C. This section does not apply to treatment that is rendered in connection with labor and delivery if the patient has been seen regularly by or under the direction of a licensed health care provider or a licensed physician from whom the patient's medical information is immediately available to the physicians attending the patient during labor and delivery.

D. For the purposes of this section, "emergency" means when labor has begun or a condition exists requiring the delivery of the child or children.