SENATE DOCKET, NO. 438 FILED ON: 1/16/2013

SENATE . . . . . No. 1038

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to encourage quality reviews and reduce costs in health care.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Kennedy	*Second Plymouth and Bristol*

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SENATE . . . . . No. 1038

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 1038) of Thomas P. Kennedy for legislation to encourage quality reviews and reduce costs in health care. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1116* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act to encourage quality reviews and reduce costs in health care.

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

SECTION 1. Chapter 111 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting at the end of section 204 the following :

(f) The provisions of this section shall apply to any committee formed by an individual health care provider, physician group practice, licensed health care facility or any combination thereof to perform the duties or functions of medical peer review as set forth in section one of this chapter, notwithstanding the fact that the formation of the committee is not required by law or regulation or that the individual, group or facility is not solely affiliated with a public hospital or licensed hospital or nursing home or health maintenance organization.

SECTION 2. Chapter 231: Section 60K of the General Laws as appearing in the 2008 Official Edition is hereby amended by its deletion and replacement with the following:

Section 60K. In any action for malpractice, negligence, error, omission, mistake or unauthorized rendering of professional services against a provider of health care, in which a verdict is rendered or a finding made or an order for judgment made for pecuniary damages for personal injuries to the plaintiff or for consequential damages, there shall be added by the clerk of the court to the amount of damages interest thereon, at a rate to be determined as set forth below rather than the rate specified in section 6B of chapter 231, from the date of the commencement of the action even though such interest brings the amount of the verdict or finding beyond the maximum liability imposed by law. For all actions commenced after the

19 effective date of this act, the rate of interest to be applied by the clerk shall be at a rate
20 determined by averaging the weekly 1-year constant maturity Treasury yield, as published by the
21 Board of Governors of the Federal Reserve System for each calendar week from the date the
22 action was commenced to the date of judgment. At no point shall the rate of interest established
23 by this section exceed the rate of interest set forth in said section 6B of chapter 231.

24 SECTION 3. Chapter 231: Section 60 of the General Laws as appearing in the 2008
25 Official Edition is hereby amended at the end therof with the addition of the following new
26 section:

27 Section 60 L: This section is intended to prohibit the filing of claims or causes of action
28 based upon the loss of chance doctrine adopted by the Massachusetts Supreme Judicial Court in
29 the case of Matsuyama v. Birnbaum

30 In an action alleging medical malpractice,

31 In any action for malpractice, negligence, error, omission, mistake or unauthorized
32 rendering of professional services, against a provider of health care, the plaintiff cannot recover
33 for loss of an opportunity to survive or an opportunity to achieve a better result unless the
34 opportunity was greater than 50%. In addition the plaintiff shall have the burden of proving the
35 following:

36 (1) The recognized standard of acceptable professional practice in the profession
37 and the specialty thereof, if any, that the defendant practices in the community in which he
38 practices or in a similar community at the time the alleged injury or wrongful action occurred;

39 (2) That the defendant acted with less than or failed to act with ordinary and
40 reasonable care in accordance with such standard; and

41 (3) As a direct and proximate result of the defendant's negligent act or omission,
42 the plaintiff suffered injuries which would not otherwise have occurred.

43 (4) The plaintiff was a patient of the defendant and had a professional
44 relationship to the defendant which created a duty of care on the defendant’s part or where the
45 plaintiff is a reasonably identifiable victim of the patient of a defendant psychotherapist to
46 whom the patient communicated a serious threat of physical violence against the plaintiff.