CHAPTER 625

S.B. No. 1409

AN ACT

relating to medical liability actions and medical liability insurance; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 41.02, Part 4, Chapter 817, Acts of the 65th Legislature, Regular Session, 1977, as it relates to Parts 2 and 3 of that chapter, not previously repealed by Section 2, Chapter 608, Acts of the 72nd Legislature, Regular Session, 1991, is hereby repealed.

SECTION 2. Section 41.02, Part 4, Chapter 817, Acts of the 65th Legislature, Regular Session, 1977, is amended to read as follows:

Sec. 41.02. *Part 1 of this* [~~This~~] Act expires at midnight on August 31, *2009* [~~1993~~].

SECTION 3. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PROCEDURAL PROVISIONS

Sec. 13.01. AFFIDAVIT OR COST BOND. (a) In a health care liability claim, the plaintiff's attorney or, if the plaintiff is not represented by an attorney, the plaintiff shall, within 90 days after the date the action was commenced, file an affidavit attesting that the attorney or plaintiff has obtained a written opinion from 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, that the acts or omissions of the physician or health care provider were negligent and a proximate cause of the injury, harm, or damages claimed.

(b) A plaintiff or plaintiff's attorney shall be deemed to be in compliance with Subsection (a) of this section if, within 90 days after the date the action was commenced, the plaintiff posts a bond with surety or any other equivalent security approved by the court, including cash in an escrow account, for costs in an amount of $2,000.

(c) If on the expiration of the 90th day after the date the action was commenced or the expiration of the extension period described in Subsection (d) of this section, whichever is later, the plaintiff has failed to post security as described in Subsection (b) of this section or alternatively has failed to file an affidavit as described in Subsection (a) of this section, then the court on the motion of any party or on the court's own motion shall increase the amount of security required by Subsection (b) of this section to an amount not to exceed $4,000. If the plaintiff fails to post the increased security within 30 days after being served with a copy of the court's order or fails to provide an affidavit as provided by Subsection (a) of this section, the court shall on motion unless good cause is shown for such failure dismiss the action without prejudice to its refiling and assess costs of court against plaintiff.

(d) The court on motion of any party and for good cause shown may extend the time for the plaintiff to comply with Subsection (a) or (b) of this section for a period not to exceed 90 days. The time for the plaintiff to comply with Subsection (a) or (b) of this section may also be extended by written agreement of the parties filed with the court.

(e) Discovery concerning the affidavit, including the written opinion and the identity of the physician or health care provider who supplied the opinion, shall not be allowed unless the physician or health care provider who supplied the opinion is designated as an expert witness by the plaintiff.

Sec. 13.02. DISCOVERY PROCEDURES. (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.

SECTION 4. The Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. ARBITRATION AGREEMENTS

Sec. 15.01. ARBITRATION AGREEMENTS. (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 health care 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.

SECTION 5. Section 4.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(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.

SECTION 6. Section 161.032, Health and Safety Code, is amended to read as follows:

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section *and Section 5.06, Medical Practices Act (Article 4495b, Vernon's Texas Civil Statutes), do* [~~does~~] not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, *medical organization, university medical center or health science center,* or extended care facility.

SECTION 7. This Act takes effect immediately except that Sections 3, 4, 5, and 6 take effect on September 1, 1993.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on May 18, 1993: Yeas 31, Nays 0; passed the House on May 25, 1993: Yeas 134, Nays 0, two present not voting.

Approved June 10, 1993.

Effective June 10, 1993, except §§ 3 to 6 effective Sept. 1, 1993.