

By: Representatives Flaggs, Guice

To: Judiciary A

HOUSE BILL NO. 1211

1 AN ACT RELATING TO MEDICAL PROFESSIONAL LIABILITY; TO CREATE
 2 SECTION 11-1-58, MISSISSIPPI CODE OF 1972, TO MAKE LEGISLATIVE
 3 DECLARATIONS WITH RESPECT TO MALPRACTICE ACTIONS AGAINST HEALTH
 4 CARE PROVIDERS; TO AMEND SECTION 11-1-59, MISSISSIPPI CODE OF
 5 1972, TO LIMIT DAMAGES IN MALPRACTICE ACTIONS; TO DEFINE CERTAIN
 6 TERMS; TO PROVIDE THE PROCEDURE FOR THE AWARD OF PUNITIVE DAMAGES
 7 IN MEDICAL MALPRACTICE ACTIONS; TO AMEND SECTION 11-1-65,
 8 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
 9 ACT; TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF 1972, TO
 10 CONFORM DAMAGE LIMITATIONS TO WRONGFUL DEATH ACTIONS; TO AMEND
 11 SECTION 13-1-21, MISSISSIPPI CODE OF 1972, TO CLARIFY PRIVILEGED
 12 COMMUNICATIONS IN MEDICAL MALPRACTICE ACTIONS; AND FOR RELATED
 13 PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

15 **SECTION 1.** The following shall be codified as Section
 16 11-1-58, Mississippi Code of 1972:

17 11-1-58. The Legislature of the State of Mississippi finds
 18 and determines as a matter of public policy and does hereby
 19 declare: (a) that the citizens of this state are entitled to the
 20 best medical care and facilities available and that health care
 21 providers, as defined in Section 11-1-59, offer an essential and
 22 basic service which requires that the public policy of this state
 23 encourage and facilitate the provision of such service to our
 24 citizens; (b) that the possibility of injury or death from
 25 negligent conduct commands that protection of the public served by
 26 health care providers be recognized as an important state
 27 interest; (c) that our system of litigation is an essential
 28 component of this state interest in providing adequate and
 29 reasonable compensation to those persons who suffer from injury or
 30 death as a result of negligence of one or more health care
 31 providers; (d) that it is the duty and responsibility of the
 32 Legislature to balance the rights of our individual citizens to



33 adequate and reasonable compensation with the broad public
34 interest in the provision of services by health care providers;
35 (e) that the purpose of Section 11-1-59 is to provide for a
36 resolution of the matters which the Legislature has determined is
37 necessary to achieve the balance of rights as set forth herein;
38 and (f) that the provisions of Sections 11-1-59 and 11-1-61 are
39 reasonable and necessary in order to preserve the availability and
40 continuity of adequate health care in this state.

41 **SECTION 2.** Section 11-1-59, Mississippi Code of 1972, is
42 amended as follows:

43 11-1-59. (1) For purposes of this section the following
44 definitions shall apply:

45 (a) "Actual medical expenses" means monies paid to
46 and/or legally obligated to be paid to a health care provider by
47 the claimant, Medicaid, Medicare and/or other third-party payors.

48 (b) "Claimant" means a party, including a plaintiff,
49 counterclaimant, cross-claimant, or third-party plaintiff, seeking
50 recovery of damages.

51 (c) "Defendant" means a party, including a
52 counterdefendant, cross-defendant, or third-party defendant from
53 whom a claimant seeks relief with respect to damages.

54 (d) "Economic damages" means compensatory damages for
55 pecuniary loss including, but not limited to, actual medical
56 expenses, future medical expenses and loss of wages; the term does
57 not include damages for physical pain and suffering and mental
58 anguish, loss of consortium, disfigurement, physical impairment,
59 loss of enjoyment of life, loss of companionship and society or
60 any other nonpecuniary loss.

61 (e) "Future damages" includes damages for future
62 medical treatment, care or custody, loss of future earnings, or
63 loss of bodily function.

64 (f) "Health care provider" means a physician, dentist,
65 hospital, nursing home, ambulatory surgical facility, clinic,



66 nurse, pharmacist, podiatrist, optometrist, chiropractor, and
67 employee of any such individual or facility, any other individual
68 or facility licensed, certified or otherwise authorized or
69 permitted by law to provide health care in the ordinary course of
70 business or practice of a profession, or any employee of any such
71 other individual or facility.

72 (g) "Malpractice action" means a cause of action,
73 including those alleging a lack of informed consent or wrongful
74 death as set forth in Section 11-7-13, based on a negligent or
75 intentional act or omission by a health care provider in the
76 rendering of professional services or based on a contract with a
77 health care provider to provide professional services, which act
78 or omission is the proximate cause or proximate contributing cause
79 of an injury or wrongful death.

80 (h) "Noneconomic damages" means compensatory damages
81 for nonpecuniary loss including, but not limited to, physical pain
82 and suffering and mental anguish, loss of consortium,
83 disfigurement, physical impairment, loss of enjoyment of life and
84 loss of companionship and society.

85 (i) "Periodic payments" means the payment of money or
86 delivery of other property to the judgment creditor at regular
87 intervals.

88 (j) "Punitive damages" means any damages awarded as a
89 penalty or by way of punishment.

90 (2) Notwithstanding any other statute or law that may
91 otherwise apply, this section shall apply to all malpractice
92 actions for damages for injury or wrongful death against any
93 health care provider.

94 (3) In any malpractice action at law against a health care
95 provider to recover damages based upon a professional negligence
96 theory, the complaint or counterclaim shall not specify the amount
97 of damages claimed, but shall only state that the damages claimed
98 are within the jurisdictional limits of the court to which the



99 pleadings are addressed and whether or not the amount of such
100 damages is Seventy-five Thousand Dollars (\$75,000.00) or more, or
101 such other minimum amount as shall be necessary to invoke federal
102 jurisdiction if the action is brought in federal court.

103 (4) In any such malpractice action against a health care
104 provider, even when such malpractice action is joined with other
105 causes of action and/or includes one or more nonhealth care
106 provider defendants, economic and noneconomic damages shall be
107 limited as follows:

108 (a) A claimant may recover economic damages for medical
109 expenses only to the extent of the claimant's actual medical
110 expenses and his or her future medical expenses as shown to a
111 reasonable degree of medical probability.

112 (b) Noneconomic damages may not be recovered if the
113 claimant receives no recovery for economic damages.

114 (c) As limited by paragraph (b) above, a claimant may
115 recover noneconomic damages as shown to a reasonable degree of
116 medical probability which shall not exceed the lessor of (i) the
117 amount of the recovery for economic damages or (ii) Five Hundred
118 Thousand Dollars (\$500,000.00).

119 (5) In any such malpractice action against a health care
120 provider, even when such malpractice action is joined with other
121 causes of action and/or includes one or more nonhealth care
122 provider defendants, in which punitive damages are sought:

123 (a) Punitive damages may not be awarded if the claimant
124 does not provide by clear and convincing evidence that the
125 defendant against whom punitive damages are sought:

126 (i) Acted with actual malice, gross negligence
127 which evidences a willful, wanton or reckless disregard for the
128 safety of others, or

129 (ii) Committed actual fraud which proximately
130 caused injury or death of the patient.



131 (b) In any malpractice action in which the claimant
132 seeks an award of punitive damages, the trier of fact shall first
133 determine whether compensatory damages are to be awarded and in
134 what amount before addressing any issues related to punitive
135 damages.

136 (c) If, but only if, an award of compensatory damages
137 has been made against a defendant, the court may promptly commence
138 an evidentiary hearing before the same trier of fact to determine
139 whether punitive damages may be considered.

140 (d) After such evidentiary hearing, the court shall
141 determine whether the issue of punitive damages may be submitted
142 to the trier of fact; and, if so, the trier of fact shall
143 determine whether to award punitive damages and in what amount.

144 (e) In situations involving an award of punitive
145 damages, the fact finder, in determining the amount of punitive
146 damages, shall consider, to the extent relevant, the following:

147 (i) The defendant's financial condition and net
148 worth;

149 (ii) The nature and reprehensibility of the
150 defendant's wrongdoing, such impact of the defendant's conduct on
151 the plaintiff or the relationship of the defendant to the
152 plaintiff;

153 (iii) The defendant's awareness of the amount of
154 harm being caused and the defendant's motivation in causing such
155 harm;

156 (iv) The duration of the defendant's misconduct;
157 and

158 (v) Any other circumstances shown by the evidence
159 that bear on determining a proper amount of punitive damages. The
160 trier of fact shall be instructed that the primary purpose of
161 punitive damages is to punish the wrongdoer and deter similar
162 misconduct in the future by the defendant and others while the
163 purpose of compensatory damages is to make the plaintiff whole.



164 (f) (i) Before judgment for an award of punitive
165 damages the trial court shall ascertain that the award is
166 reasonable in its amount and rationally related to the purpose to
167 punish what occurred giving rise to the award and to deter its
168 repetition by the defendant and others.

169 (ii) In determining whether the award is
170 excessive, the court shall take into consideration the following
171 factors:

172 1. Whether there is a reasonable relationship
173 between the punitive damage award and the harm likely to result
174 from the defendant's conduct as well as the harm that actually
175 occurred;

176 2. The degree of reprehensibility of the
177 defendant's conduct, the duration of that conduct, the defendant's
178 awareness, any concealment and the existence and frequency of
179 similar past conduct;

180 3. The financial condition and net worth of
181 the defendant; and

182 4. In mitigation, the imposition of criminal
183 sections on the defendant for his or its conduct and the existence
184 of other civil awards against the defendant for the same conduct.

185 (g) Under no circumstances shall a punitive damage
186 award in a malpractice action against a health care provider, even
187 when such malpractice action is joined with other causes of action
188 and/or includes one or more nonhealth care provider defendants,
189 exceed an amount equal to the greater of:

190 (i) 1. Two (2) times the amount of economic
191 damages; plus

192 2. An amount equal to any noneconomic damages
193 awarded by the jury, not to exceed Five Hundred Thousand Dollars
194 (\$500,000.00); or

195 (ii) Five Hundred Thousand Dollars (\$500,000.00).



196 (h) Because punitive damages are awarded by a jury
197 against a defendant as a penalty and by way of punishment and not
198 by way of making a claimant whole, monies paid by such penalized
199 defendant, after the deduction of attorney's fees in the amount of
200 twenty-five percent (25%) of the punitive damage award, shall be
201 paid directly to the state's Emergency Medical Services Operating
202 Fund, created pursuant to Section 41-59-61.

203 (6) (a) In any malpractice action, the court shall, at the
204 request of either party, enter a judgment ordering that money
205 damages or its equivalent for future damages of the judgment
206 creditor be paid in whole or in part by periodic payments rather
207 than by a lump-sum payment if the award equals or exceeds Five
208 Hundred Thousand Dollars (\$500,000.00) in future damages. In
209 entering a judgment ordering the payment of future damages by
210 periodic payments, the court shall make a specific finding as to
211 the dollar amount of periodic payments which will compensate the
212 judgment creditor for such future damages. As a condition to
213 authorizing periodic payments of future damages, the court shall
214 require the judgment debtor who is not adequately insured to post
215 security adequate to assure full payment of such damages awarded
216 by the judgment. Upon termination of periodic payments of future
217 damages, the court shall order the return of this security, or so
218 much as remains, to the judgment creditor.

219 (b) (i) The judgment ordering the payment of future
220 damages by periodic payments shall specify the recipient or
221 recipients of the payments, the dollar amount of the payments, the
222 interval between payments, and the number of payments or the
223 period of time over which payments shall be made. Such payments
224 shall only be subject to modification in the event of the death of
225 the judgment creditor.

226 (ii) In the event that the court finds that the
227 judgment debtor has exhibited a continuing pattern of failing to
228 make payments as specified in paragraph (5) (a) the court shall



229 find the judgment debtor in contempt of court and, in addition to
230 the required periodic payments, shall order the judgment debtor to
231 pay the judgment creditor all damages caused by the failure to
232 make such periodic payments, including court costs and attorney's
233 fees.

234 (iii) However, money damages awarded for loss of
235 future earnings shall not be reduced or payments terminated by
236 reason of the death of the judgment creditor, but shall be paid to
237 persons to whom the judgment creditor owed a duty of support, as
238 provided by law, immediately prior to his or her death. In such
239 cases the court which rendered the original judgment, may, upon
240 petition of any party in interest, modify the judgment to award
241 and apportion the unpaid future damages in accordance with this
242 subdivision.

243 (iv) Following the occurrence or expiration of all
244 obligations specified in the periodic payment judgment, any
245 obligation of the judgment debtor to make further payments shall
246 cease and any security given, pursuant to subsection (5)(a) shall
247 revert to the judgment debtor.

248 **SECTION 3.** Section 11-1-65, Mississippi Code of 1972, is
249 amended as follows:

250 11-1-65. (1) Except as otherwise provided in Section
251 11-1-59, in any action in which punitive damages are sought:

252 (a) Punitive damages may not be awarded if the claimant
253 does not prove by clear and convincing evidence that the defendant
254 against whom punitive damages are sought acted with actual malice,
255 gross negligence which evidences a willful, wanton or reckless
256 disregard for the safety of others, or committed actual fraud.

257 (b) In any action in which the claimant seeks an award
258 of punitive damages, the trier of fact shall first determine
259 whether compensatory damages are to be awarded and in what amount,
260 before addressing any issues related to punitive damages.



261 (c) If, but only if, an award of compensatory damages
262 has been made against a party, the court shall promptly commence
263 an evidentiary hearing before the same trier of fact to determine
264 whether punitive damages may be considered.

265 (d) The court shall determine whether the issue of
266 punitive damages may be submitted to the trier of fact; and, if
267 so, the trier of fact shall determine whether to award punitive
268 damages and in what amount.

269 (e) In all cases involving an award of punitive
270 damages, the fact finder, in determining the amount of punitive
271 damages, shall consider, to the extent relevant, the following:
272 the defendant's financial condition and net worth; the nature and
273 reprehensibility of the defendant's wrongdoing, for example, the
274 impact of the defendant's conduct on the plaintiff, or the
275 relationship of the defendant to the plaintiff; the defendant's
276 awareness of the amount of harm being caused and the defendant's
277 motivation in causing such harm; the duration of the defendant's
278 misconduct and whether the defendant attempted to conceal such
279 misconduct; and any other circumstances shown by the evidence that
280 bear on determining a proper amount of punitive damages. The
281 trier of fact shall be instructed that the primary purpose of
282 punitive damages is to punish the wrongdoer and deter similar
283 misconduct in the future by the defendant and others while the
284 purpose of compensatory damages is to make the plaintiff whole.

285 (f) (i) Before entering judgment for an award of
286 punitive damages the trial court shall ascertain that the award is
287 reasonable in its amount and rationally related to the purpose to
288 punish what occurred giving rise to the award and to deter its
289 repetition by the defendant and others.

290 (ii) In determining whether the award is
291 excessive, the court shall take into consideration the following
292 factors:



293 1. Whether there is a reasonable relationship
294 between the punitive damage award and the harm likely to result
295 from the defendant's conduct as well as the harm that actually
296 occurred;

297 2. The degree of reprehensibility of the
298 defendant's conduct, the duration of that conduct, the defendant's
299 awareness, any concealment, and the existence and frequency of
300 similar past conduct;

301 3. The financial condition and net worth of
302 the defendant; and

303 4. In mitigation, the imposition of criminal
304 sanctions on the defendant for its conduct and the existence of
305 other civil awards against the defendant for the same conduct.

306 (g) The seller of a product other than the manufacturer
307 shall not be liable for punitive damages unless the seller
308 exercised substantial control over that aspect of the design,
309 testing, manufacture, packaging or labeling of the product that
310 caused the harm for which recovery of damages is sought; the
311 seller altered or modified the product, and the alteration or
312 modification was a substantial factor in causing the harm for
313 which recovery of damages is sought; the seller had actual
314 knowledge of the defective condition of the product at the time he
315 supplied same; or the seller made an express factual
316 representation about the aspect of the product which caused the
317 harm for which recovery of damages is sought.

318 (2) The provisions of Section 11-1-65 shall not apply to:

319 (a) Contracts;

320 (b) Libel and slander; or

321 (c) Causes of action for persons and property arising
322 out of asbestos.

323 **SECTION 4.** Section 11-7-13, Mississippi Code of 1972, is
324 amended as follows:



325 11-7-13. Whenever the death of any person shall be caused by
326 any real, wrongful or negligent act or omission, or by such unsafe
327 machinery, way or appliances as would, if death had not ensued,
328 have entitled the party injured or damaged thereby to maintain an
329 action and recover damages in respect thereof, or whenever the
330 death of any person shall be caused by the breach of any warranty,
331 express or implied, of the purity or fitness of any foods, drugs,
332 medicines, beverages, tobacco or any and all other articles or
333 commodities intended for human consumption, as would, had the
334 death not ensued, have entitled the person injured or made ill or
335 damaged thereby, to maintain an action and recover damages in
336 respect thereof, and such deceased person shall have left a widow
337 or children or both, or husband or father or mother, or sister, or
338 brother, the person or corporation, or both that would have been
339 liable if death had not ensued, and the representatives of such
340 person shall be liable for damages, notwithstanding the death, and
341 the fact that death was instantaneous shall in no case affect the
342 right of recovery. The action for such damages may be brought in
343 the name of the personal representative of the deceased person for
344 the benefit of all persons entitled under the law to recover, or
345 by widow for the death of her husband, or by the husband for the
346 death of the wife, or by the parent for the death of a child, or
347 in the name of a child, or in the name of a child for the death of
348 a parent, or by a brother for the death of a sister, or by a
349 sister for the death of a brother, or by a sister for the death of
350 a sister, or a brother for the death of a brother, or all parties
351 interested may join in the suit, and there shall be but one (1)
352 suit for the same death which shall ensue for the benefit of all
353 parties concerned, but the determination of such suit shall not
354 bar another action unless it be decided on its merits. In such
355 action the party or parties suing shall recover such damages
356 allowable by law as the jury may determine to be just, taking into
357 consideration all the damages of every kind to the decedent and



358 all damages of every kind to any and all parties interested in the
359 suit.

360 This section shall apply to all personal injuries of servants
361 and employees received in the service or business of the master or
362 employer, where such injuries result in death, and to all deaths
363 caused by breach of warranty, either express or implied, of the
364 purity and fitness of foods, drugs, medicines, beverages, tobacco
365 or other articles or commodities intended for human consumption.

366 Any person entitled to bring a wrongful death action may
367 assert or maintain a claim for any breach of expressed warranty or
368 for any breach of implied warranty. A wrongful death action may
369 be maintained or asserted for strict liability in tort or for any
370 cause of action known to the law for which any person,
371 corporation, legal representative or entity would be liable for
372 damages if death had not ensued.

373 In an action brought pursuant to the provisions of this
374 section by the widow, husband, child, father, mother, sister or
375 brother of the deceased, or by all interested parties, such party
376 or parties may recover as damages, as such damages are limited by
377 Section 11-1-59 with respect to a malpractice action brought
378 against a health care provider, property damages and funeral,
379 medical or other related expenses incurred by or for the deceased
380 as a result of such wrongful or negligent act or omission or
381 breach of warranty, whether an estate has been opened or not. Any
382 amount, but only such an amount, as may be recovered for property
383 damage, funeral, medical or other related expenses shall be
384 subject only to the payment of the debts or liabilities of the
385 deceased for property damages, funeral, medical or other related
386 expenses. All other damages recovered under the provisions of
387 this section shall not be subject to the payment of the debts or
388 liabilities of the deceased, except as hereinafter provided, and
389 such damages shall be distributed as follows:



390 Damages for the injury and death of a married man shall be
391 equally distributed to his wife and children, and if he has no
392 children all shall go to his wife; damages for the injury and
393 death of a married woman shall be equally distributed to the
394 husband and children, and if she has no children all shall go to
395 the husband; and if the deceased has no husband or wife, the
396 damages shall be equally distributed to the children; if the
397 deceased has no husband, nor wife, nor children, the damages shall
398 be distributed equally to the father, mother, brothers and
399 sisters, or such of them as the deceased may have living at his or
400 her death. If the deceased have neither husband, nor wife, nor
401 children, nor father, nor mother, nor sister, nor brother, then
402 the damages shall go to the legal representative, subject to debts
403 and general distribution, and the fact that the deceased was
404 instantly killed shall not affect the right of the legal
405 representative to recover. All references in this section to
406 children shall include descendants of a deceased child, such
407 descendants to take the share of the deceased child by
408 representation. There shall not be, in any case, a distinction
409 between the kindred of the whole and half blood of equal degree.
410 The provisions of this section shall apply to illegitimate
411 children on account of the death of the mother and to the mother
412 on account of the death of an illegitimate child or children, and
413 they shall have all the benefits, rights and remedies conferred by
414 this section on legitimates. The provisions of this section shall
415 apply to illegitimate children on account of the death of the
416 natural father and to the natural father on account of the death
417 of the illegitimate child or children, and they shall have all the
418 benefits, rights and remedies conferred by this section on
419 legitimates, if the survivor has or establishes the right to
420 inherit from the deceased under Section 91-1-15.

421 Any rights which a blood parent or parents may have under
422 this section are hereby conferred upon and vested in an adopting



423 parent or adopting parents surviving their deceased adopted child,
424 just as if the child were theirs by the full blood and had been
425 born to the adopting parents in lawful wedlock.

426 **SECTION 5.** Section 13-1-21, Mississippi Code of 1972, is
427 amended as follows:

428 13-1-21. (1) The Legislature of the State of Mississippi
429 finds and affirms the importance of the privilege that exists
430 between a patient and the patient's health care providers which
431 protects medical facts and communications from disclosure to third
432 parties. The Legislature further finds and determines as a matter
433 of public policy and does hereby declare: (a) that health care
434 providers have a fundamental right to defend themselves when a
435 claim is made by a patient alleging negligence in the provision of
436 health care services; (b) that prior or other medical history,
437 examinations and treatment, however remote in time, can and often
438 do affect the medical decisions and care made the subject of a
439 malpractice claim against a health care provider, as well as the
440 relative merit of the claim itself; (c) that courts and lawyers in
441 this state, who generally are not trained in medicine or other
442 health services, are not qualified to determine the extent to
443 which prior or other medical history, examination or treatment
444 affect the medical decisions and care made the subject of the
445 malpractice claim against a health care provider, and that such
446 determinations should rest with medical professionals as does the
447 applicable standard of care in the courts of this state; (d) that
448 to protect the interest of both health care providers and patient
449 claimants, all information about prior and other medical history,
450 examination and treatment of the patient claimant shall be equally
451 available to the patient claimant and to the health care providers
452 and their respective representatives so that the information can
453 be evaluated by health care professionals to determine its
454 relevance to the medical decisions and care made the subject of a
455 malpractice claim against a health care provider; and (e) that the



456 provisions of this statute are reasonable and necessary in order
457 to preserve the availability and continuity of adequate health
458 care in this state.

459 (2) All terms used in this section shall have the same
460 meaning as those terms defined in Section 11-1-59.

461 (3) Subject to the provisions of this section, all
462 communications made to a health care provider by a patient under
463 his charge or by one seeking professional advice are hereby
464 declared to be privileged, and such party shall not be required to
465 disclose the same in any legal proceeding except at the instance
466 of the patient or, in case of the death of the patient, at the
467 instance of his personal representative or legal heirs in case
468 there be no personal representative, or except, if the validity of
469 the will of the decedent is in question, at the instance of the
470 personal representative or any of the legal heirs or any
471 contestant or proponent of the will.

472 (4) Waiver of the medical privilege of patients regarding
473 the release of medical information to health care personnel, the
474 State Board of Health or local health departments, made to comply
475 with Sections 41-3-15, 41-23-1 and 41-23-2 and related rules,
476 shall be implied. The medical privilege likewise shall be waived
477 to allow any physician, osteopath, dentist, hospital, nurse,
478 pharmacist, podiatrist, optometrist or chiropractor to report to
479 the State Department of Health necessary information regarding any
480 person afflicted with any communicable disease or infected with
481 the causative agent thereof who neglects or refuses to comply with
482 accepted protective measures to prevent the transmission of the
483 communicable disease.

484 (5) Willful violations of the provisions of this section
485 shall constitute a misdemeanor and shall be punishable as provided
486 for by law. Any health care provider shall be civilly liable for
487 damages for any willful or reckless and wanton acts or omissions
488 constituting such violations.



489 (6) In any action commenced or claim made after April 1,
490 2002, against a health care provider for professional services
491 rendered or which should have been rendered, * * * the filing of
492 such an action shall constitute an express waiver of the medical
493 privilege allowing any health care provider otherwise covered by
494 the medical privilege to meet with, provide, discuss and disclose,
495 upon written request, all medical information and documentation
496 held by that individual or entity to the representative of the
497 patient making the claim and/or to the representative or attorney
498 of the person or entity against whom the claim is made with or
499 without the consent or presence of the patient or his
500 representative.

501 (7) In any disciplinary action commencing on or after July
502 1, 1987, against a * * * physician * * * or a podiatrist pursuant
503 to the provisions of Sections 73-25-1 through 73-25-39, 73-25-51
504 through 73-25-67, 73-25-81 through 73-25-95 and 73-27-1 through
505 73-27-19, waiver of the medical privilege of a patient to the
506 extent of any information other than that which would identify the
507 patient shall be implied.

508 (8) The provisions of this section, including the
509 confidentiality and waiver provisions above, shall be deemed part
510 of the substantive law of this state enacted by the Legislature
511 for the purposes stated in subsection (1) of this section.

512 **SECTION 6.** The provisions of this act shall apply only to
513 personal injury and wrongful death actions against physicians,
514 dentists, hospitals, nursing homes, ambulatory surgical
515 facilities, clinics, nurses, pharmacists, podiatrists,
516 optometrists, chiropractors, any employee of any such individual
517 or facility, any other individuals or facilities licensed,
518 certified or otherwise authorized or permitted by law to provide
519 health care in the ordinary course of business or practice of a
520 profession, or any employee of any other such individual or
521 facility which are based on causes of action arising out of



522 alleged negligent acts or omissions occurring on or after April 1,
523 2002.

524 **SECTION 7.** In the event any provision or portion of this act
525 shall be declared unconstitutional, the remainder of this act
526 shall remain in effect in the same manner as if the
527 unconstitutional provision or portion were not a part of this act.

528 **SECTION 8.** This act shall take effect and be in force from
529 and after its passage.

