

Alabama's Current Medical Professional Liability Tort Reform Statutes:

How Past Efforts Have Brought Us to a Stronger Present

Alabama physicians enjoy some of the strongest tort reform statutes in the United States. In 1987 the Alabama Legislature passed the Medical Liability Act, which reformed professional liability claims against healthcare providers. The constitutionality of several provisions of the Act has been tested before the Alabama Supreme Court, but most sections of the 1987 statute remain on the books.

The remaining sections of the Act help ensure fairness in the adjudication of professional liability claims and a level playing field each day:

- *Specific pleading*—requires plaintiff's counsel to plead with specificity each and every act or omission. From day one, you know what the claim involves.
- *Expert witness qualifications*—requires plaintiff's physician experts to be "similarly situated." If the defendant is board-certified and practicing within a certain specialty, the plaintiff's experts also must be board-certified and practicing in the same specialty.
- *Abolishment of the collateral source rule*—juries now are aware of monies paid by other parties on behalf of the plaintiff (e.g., health insurance for medical expenses). Further, if there is a verdict for the defendant, the plaintiff won't be required to pay back any of that money.
- *Suit in county*—requires that the defendant physician be sued in the county where the medical incident occurred. If treatment took place in multiple counties, the case must be filed where the patient resided at the time of the incident (no "venue shopping"). Defendant physicians generally stand trial in the communities where they are known and respected.
- *Substantial evidence rule*—requires there must be substantial evidence of wrongdoing to take a case to trial, helping discourage "nuisance suits." The previous evidence standard, known as the "scintilla rule," was much lower.
- *Witness' insurance carrier*—the plaintiff is precluded from proving the fact that the witness and defendant share the same carrier, which is important since most Alabama physicians are insured by ProAssurance.

Tort reform continues to work in Alabama; thanks are owed to those who made that happen. The remaining reforms help make the adjudication process of medical professional liability claims fairer for today's practicing physicians in the vast majority of cases.



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