

(S. B. 306)  
(Conference)

**(No. 103)**

(Approved June 27, 2011)

## **AN ACT**

To amend Article 41.050 of the “Insurance Code of Puerto Rico,” Act No. 77 of June 19, 1957, as amended; and to amend subsection (a) of Section 2 of Act No. 104 of June 29, 1955, as amended; and to amend Section 7 of Act No. 136 of July 27, 2006, in order to include officials, agents, and consultants of the Government of Puerto Rico who are not in the private practice of a health profession within practitioners that are not required to present proof of their financial responsibility; to provide coverage to the Mayagüez Medical Center, Dr. Ramón Emeterio Betances Hospital, the Trauma and Stabilization Centers, the Regional Academic Medical Centers of Puerto Rico, the Puerto Rico Cardiovascular Center, the Center for Diabetes Research, Education and Medical Services, and the Puerto Rico Industrial Hospital under the limits of civil liability for medical and hospital malpractice set for the Commonwealth of Puerto Rico; and to clarify the scope of immunity granted to the Regional Academic Medical Centers of Puerto Rico.

### **STATEMENT OF MOTIVES**

The implementation of the Health Reform and the transformation of our public healthcare system gave rise to new challenges as to available learning venues for students of the various health professions, especially for medical and nursing students, just to mention the two most affected groups. This issue has, in turn, seriously affected accredited internship and residency programs in Puerto Rico, due to the decline in the number of learning practice venues and patients needed to fulfill requirements such as clinical experience, outpatient service hours, and other type of clinical services involving contact with patients in order to keep their accreditation. This situation also affects the training of students

pursuing other health professions. In the worst-case scenario, if we fail to take action to correct this issue, we may foresee a shortage of health professionals in the future to care for the health of the Puerto Rican people due to all these circumstances.

In order to redress this situation, Act No. 136 was approved on July 27, 2006, whereby the “Regional Academic Medical Centers of Puerto Rico” were created to secure practicing venues for the education of healthcare professionals in Puerto Rico, especially for medical education, thus stimulating the development of medical teaching, clinical, epidemiological, and socio-medical research, and health sciences services, as well as for other purposes.

The creation of these Centers and their successful operation shall depend to a great extent on covering these Centers under the civil liability limits for medical and hospital malpractice set for the Government of Puerto Rico. Even though the Act that created the Regional Academic Medical Centers of Puerto Rico provides for these to be covered under the limits of accountability of the Commonwealth in lawsuits for medical and hospital malpractice, the extent of such immunity remains unclear with regards to the physicians and students working in these Centers. For this reason, this Legislative Assembly believes it necessary to clarify that those covered under the limits applicable to the Commonwealth, besides the Regional Academic Medical Centers themselves, shall be students, residents, and health professionals working in these Centers in a teaching capacity. It is also necessary to clarify that the legislative intent is to extend coverage to these Centers and to students, residents, and health professionals working in a teaching capacity under the limits set for the Commonwealth in lawsuits for actions involving medical and hospital malpractice, as these limits were extended to the University of Puerto Rico by virtue of Act No. 98 of August 24, 1994, as amended. The measure is not about including Regional Academic Medical Centers on the list of entities for which the

Commonwealth shall be held accountable under Act No. 104 of June 29, 1955, as amended. We reiterate that it is necessary to limit the liability of these Centers in recognition of the important endeavor that they are carrying out for the benefit of the People of Puerto Rico.

On the other hand, Act No. 51 of June 30, 1986, as amended, created the Puerto Rico and Caribbean Cardiovascular Center Corporation. Pursuant to said Act, the Puerto Rico and Caribbean Cardiovascular Center is responsible for drawing up or enforce the public policy on the planning, organization, operation, and administration of cardiovascular services to be rendered in Puerto Rico. The Cardiovascular Center provides services of the highest quality in healthcare through prevention, diagnosis, treatment, and rehabilitation of cardiovascular conditions in the most cost-effective manner, which yields ascertainable benefits for our community. Pursuant to the responsibility conferred onto the Cardiovascular Center under Act No. 51, *supra*, this entity shall promote an adequate environment for the education and training of health professionals and foster research and development in a manner consistent with the ongoing betterment of quality in healthcare services. As a matter of fact, the Puerto Rico and Caribbean Cardiovascular Center provides medical attention to the most critical cardiovascular conditions in all of Puerto Rico. Like the Puerto Rico and Caribbean Cardiovascular Center, the Center for Diabetes Research, Education and Medical Services was created through Act No. 166 of August 12, 2000, as amended, to foster the formation of new health professionals specialized in the field of Endocrinology, high risk Obstetrics, Odontology, Nutrition and others, by promoting educational and research activities. Furthermore, the Center for Diabetes Research, Education and Medical Services provides essential services to the population by making these accessible, thus fulfilling a public purpose of major import. In view of the foregoing, this Legislative Assembly deems it convenient, in

aiming to promote educational activity within these institutions and to secure the availability of the best healthcare professionals to tend to patients in the Puerto Rico and Caribbean Cardiovascular Center, to extend the coverage of the limits on liability imposed by Act No. 104 of June 29, 1955, as amended, to hold the Government of Puerto Rico accountable under similar circumstances, to the healthcare professionals serving in this institution in a teaching capacity. These limits are also extended to cover the Center for Diabetes Research, Education and Medical Services, the students, and the healthcare professionals working as employees or contractors, while they discharge their functions in this Center, including in a teaching or researching capacity.

Likewise, this legislation extends the liability limits imposed by Act No. 104 of June 29, 1955, as amended, to hold the Government of Puerto Rico accountable under similar circumstances, to cover the Puerto Rico Industrial Hospital, as well as the healthcare professionals working in said institution as employees or contractors, while in the discharge of their institutional functions. After commencing operations on June 6, 1967, with a license to house 265 beds at a cost of \$6,059,461, the Puerto Rico Industrial Hospital became the first hospital institution in Puerto Rico to have an in-house Department of Physical Medicine and Rehabilitation. This government institution was created to provide services such as hospitalization and medical/surgical and rehabilitative treatment to workers afflicted by work-related accidents or occupational illnesses, as part of the benefits offered by the State Insurance Fund Corporation (SIFC). The Puerto Rico Industrial Hospital also offers care for patients with the most severe burn injuries in all of Puerto Rico. This is, therefore, one of the most important medical hospital institutions in our Island, which provides very much needed services. For such reason, this Legislative Assembly deems it necessary to approve this legislation, in order to guarantee that healthcare professionals shall be available to serve in such a

major hospital institution. We also believe it convenient to extend such limits to cover the Mayagüez Medical Center, Dr. Ramón Emeterio Betances Hospital, its Trauma Center, and its dependencies, which are of great importance in addressing health emergencies and in offering other learning venues for the development of medical teaching practitioners in the western region of Puerto Rico, as well as any such Trauma and Stabilization Centers as may be duly designated under Act No. 544 of September 30, 2010.

As with the Regional Medical Education Centers of Puerto Rico, we hereby clarify that the legislative intent is to extend the same limits under which the Commonwealth would be held accountable in lawsuits for actions that constitute medical and hospital malpractice under similar circumstances, to cover the Puerto Rico and Caribbean Cardiovascular Center, the Center for Diabetes Research, Education and Medical Services, Mayagüez Medical Center, Dr. Ramón Emeterio Betances Hospital, the Trauma and Stabilization Centers of Puerto Rico, the Puerto Rico Industrial Hospital, and the healthcare professionals serving in said institutions under such circumstances as described in this Act, and not to include these institutions or the healthcare professionals serving therein on the list of entities for which the Commonwealth is to be held accountable under Act No. 104 of June 29, 1955, as amended.

On the other hand, the Insurance Code of Puerto Rico requires that any healthcare professional who intends to practice his/her profession must present proof of financial responsibility. Such healthcare professionals not engaged in the private practice are exempted from presenting such proof, insofar as the healthcare center for which they work furnishes the proof required by law. Furthermore, healthcare professionals serving as employees or contractors in the Government of Puerto Rico, its agencies, instrumentalities, and municipalities are expressly exempted from presenting the abovementioned proof, provided, that they do not

engage in the private practice of their profession. However, officials, agents, and consultants, pursuant to the provisions set forth by the law, are required to submit such proof, under the same conditions and requirements set for employees and contractors.

For all of the foregoing, this Legislative Assembly believes it necessary to amend the Insurance Code of Puerto Rico, in order to exempt the officials, agents, and consultants of the Government of Puerto Rico who do not engage in the private practice from presenting proof of their financial responsibility.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.—Section 41.050 of the “Insurance Code of Puerto Rico,” Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Section 4105[sic].—Financial Responsibility.—

Every health service professional and healthcare institution shall annually file proof of his/her or its financial responsibility for the amount of one hundred thousand dollars (\$100,000) per incident or up to an aggregate of three hundred thousand dollars (\$300,000) per year. The Commissioner may require limits for a maximum of five hundred thousand dollars (\$500,000) per medical incident and an aggregate of one million dollars (\$1,000,000) per year in the case of healthcare institutions and of those rate classifications of healthcare service professionals engaged in the practice of high risk specialties, after the holding of public hearings where such professionals or institutions or any other interested party shall have the opportunity of appearing and expressing their points of view on the matter at hand and of presenting any information, documents, or studies to sustain their position. Those health service professionals who do not practice their profession privately and who work exclusively as employees of private healthcare institutions shall be exempted from this requirement, provided they are covered by the proof of financial responsibility of the latter. Those health service professionals who render

services exclusively as employees, officials, agents, consultants or contractors of the Government of Puerto Rico, its agencies, instrumentalities and municipalities and who do not practice their profession privately shall also be exempted from this requirement. Healthcare institutions belonging to and operated or administered by the Commonwealth of Puerto Rico, its agencies, instrumentalities and municipalities, shall also be exempted.

...

No healthcare professional (employee or contractor) may be included as defendant in a civil action for damages because of culpability or negligence arising from malpractice committed in the practice of his/her profession while said healthcare professional acts in compliance with his/her duties and functions, including teaching duties, in the Mayagüez Medical Center—Dr. Ramón Emeterio Betances Hospital—its Trauma Center and its dependencies, as well as those Trauma and Stabilization Centers so designated under Act No. 544 of September 30, 2010. The same limits shall apply to students and residents using the facilities of the Mayagüez Medical Center as university level learning and research venues. In these cases, the Mayagüez Medical Center—Dr. Ramón Emeterio Betances Hospital—and the corresponding Trauma Center shall be subject to the responsibility limits set forth by Act No. 104 of June 29, 1955, as amended, for the Commonwealth under similar circumstances.

The responsibility limits established in this Chapter shall apply to every healthcare professional intervening in the diagnosis and treatment of Trauma and Stabilization Center patients, from the time of their admission to their discharge, in a duly designated Trauma and Stabilization Center as provided in the regulations adopted in accordance with Act No. 544 of September 30, 2010, whether or not such entity is administered or operated by a private entity.

...”

The responsibility limits imposed by Act No. 104 of June 29, 1955, as amended, on the Commonwealth of Puerto Rico under similar circumstances shall apply in the following cases:

- (i) To the University of Puerto Rico, the Puerto Rico and the Caribbean Cardiovascular Center, the Center for Diabetes Research, Education, and Medical Services, and the Industrial Hospital of Puerto Rico in any civil action in which damages are claimed;
- (ii) To the Medical Sciences Campus of the University of Puerto Rico, in any case in which a judgment is pronounced for medical and hospital malpractice committed by its employees, faculty members, residents, students, or physicians rendering services under contract;
- (iii) To the Industrial Hospital and healthcare professionals working in said institution in any case in which a judgment is pronounced for actions that constitute medical-hospital malpractice committed by its employees or healthcare professionals who are employees or render services under contract;
- (iv) To the Puerto Rico and the Caribbean Cardiovascular Center and the healthcare professionals working in said institution in any case in which a judgment is pronounced for actions that constitute medical malpractice committed by its employees or healthcare professionals providing services therein while carrying out their teaching duties;
- (v) To the Center for Diabetes Research, Education, and Medical Services, the students working therein, and the healthcare professionals rendering services in said institution while carrying out their teaching or other duties for said Center as its employees or contractors;

- (vi) To the Regional Academic Medical Centers of Puerto Rico, its students, and faculty members in any case in which a judgment is pronounced for actions that constitute medical-hospital malpractice committed by its students or faculty members while carrying out their teaching duties;
- (vii) To any student or resident of the Medical Sciences Campus of the University of Puerto Rico or any other duly accredited university or any other government employee assigned to and carrying out functions in the Centers mentioned in subsections (ii), (iii), (iv), and (v); and
- (viii) To the University of Puerto Rico in any case in which a judgment is pronounced for culpable or negligent actions or omissions constituting fault or negligence directly related to the operation of a healthcare institution.

...”

Section 2.—Subsection (a) of Section 2 of Act No. 104 of June 29, 1955, as amended, is hereby amended to read as follows:

“Section 2.—Claims and Suits Against the Commonwealth; Authorization.—

Authorization is hereby granted to sue the Commonwealth of Puerto Rico before the Court of First Instance of Puerto Rico for the causes set forth in the following actions:

Actions for damages to persons or property up to the sum of seventy-five thousand dollars (\$75,000) caused by a culpable or negligent action or omission of any official, agent or employee of the Commonwealth or of any other person acting in an official capacity within the scope of his/her duty, office or employment; or actions for damages for alleged actions of medical and hospital malpractice of the healthcare professionals working in the areas of obstetrics, orthopedics, general surgery or trauma exclusively at public health institutions of the Commonwealth of Puerto Rico, its agencies, instrumentalities and/or

municipalities, regardless of whether said institutions are being administered or operated by a private entity. When because of said action or omission damages are caused to more than one person or when there are several causes of action to which a single injured party is entitled, the compensation for all damages caused by said action or omission may not exceed the sum of one hundred and fifty thousand dollars (\$150,000). If the Court determines that the sum of the damages caused to each of the persons exceeds one hundred and fifty thousand dollars (\$150,000), the Court shall proceed to distribute said sum prorated among the plaintiffs, taking as basis the damages suffered by each one. When an action is filed against the Commonwealth for damages to the person or to the property, the Court shall order, through the publication of edicts in a newspaper of general circulation, that all persons that may have a common interest be notified that they must appear before the Court on the date set forth in the edicts so as to jointly proceed to distribute the amount of one hundred and fifty thousand dollars (\$150,000) among the plaintiffs, as provided in this Act.”

Section 3.—Section 7 of Act No. 136 of July 27, 2006, is hereby amended to read as follows:

“Section 7.—Immunity.—

The limits imposed in Act No. 104 of June 29, 1955, as amended, shall be extended to the Regional Academic Medical Centers, the students, physicians in postgraduate training and the faculty members thereof, for the medical procedures practiced in said Centers in the exercise of their teaching duties. Said limitation establishes a maximum of \$75,000 for damages suffered by a person and up to \$150,000 when the damages were suffered by more than one person or when there are several causes for action to which a single injured party is entitled. The stipulations in the fifth paragraph of Section 41.050 of the Insurance Code of Puerto Rico shall also be extended to the consortium.”

Section 4.—This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 103 (S. B. 306) (Conference)** of the **5<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend Article 41.050 of the “Insurance Code of Puerto Rico,” Act No. 77 of June 19, 1957, as amended; and to amend subsection (a) of Section 2 of Act No. 104 of June 29, 1955, as amended; and to amend Section 7 of Act No. 136 of July 27, 2006, in order to include officials, agents, and consultants of the Government of Puerto Rico who are not in the private practice of a health profession within practitioners that are not required, etc.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 30<sup>th</sup> day of September, 2011.

María del Mar Ortiz Rivera, Esq.  
Director