

(S. B. 1197)
(Conference)

(No. 94-2023)

(Approved August 8, 2023)

AN ACT

To amend Section 7 of Act No. 136-2006, as amended, known as the “Regional Academic Medical Centers of Puerto Rico”; amend subsection (c) of Section 21 of Act No. 139-2008, as amended, known as the “Puerto Rico Board of Medical Examiners Act”; and amend Section 41.050 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” to clarify the public policy of the Commonwealth of Puerto Rico on the immunity applicable to students and physicians enrolled in the internship, residency, and fellowship programs of public and private medical-hospital institutions, including Regional Academic Medical Centers.

STATEMENT OF MOTIVES

Puerto Rico is facing a real physician shortage crisis. Regional Academic Medical Centers were created by virtue of Act No. 136-2006, as amended, known as the “Regional Academic Medical Centers of Puerto Rico.” It was enacted to strengthen and develop an integrated public healthcare system at the primary, secondary, and tertiary levels. Regional Academic Medical Centers formed partnerships and entered into collaboration agreements with different private healthcare institutions to work on the priorities, objectives, and mission established by the Government of Puerto Rico in its public policy. It was established to protect the accreditation of existing education and training programs and prevent the brain drain of healthcare professionals. Over the years, Act No. 136-2006, *supra*, has achieved its objective of keeping and raising the number of teaching physicians collaborating in teaching programs, and of increasing the number of medical residents and residency programs in Puerto Rico. As a result of the collaboration

efforts of private institutions, four (4) additional residency programs and three (3) fellowship programs have been added in the past ten (10) years. Act No. 136-2006, *supra*, helped these programs achieve these objectives and, as a result, from 2006 to the present day, the number of residents and fellows increased from 772 to 962. These numbers are confirmed by the data provided by the Accreditation Council of Medical Education (ACGME).

In the exercise of its constitutional duty, the Judicial Branch recently interpreted the provisions in effect applicable to Regional Academic Medical Centers. Its interpretation is inconsistent with the legislative intent behind the creation of these Centers. Therefore, to clarify the scope of the statute that created the Regional Academic Medical Centers, it is necessary to incorporate language that provides the protection contained in the legislative intent to prevent the chaos that shall result from depriving students, medical residents, and physicians in post-graduate training of governmental immunity as of July 1, 2023. This Legislative Assembly must take immediate action to prevent our medical students in private institutions from being at risk of being sued or bearing the responsibility of a teaching or supervising physician. The failure to take prompt action shall trigger a mass exodus of medical students, which shall further worsen our ability to retain physicians in Puerto Rico.

Furthermore, after privatizing public hospitals, the Department of Health entered into agreements with private hospitals across the island to maintain private education workshops. Internship programs are approved by the Medical Discipline and Licensure Board in accordance with Sections 21(c) and 23 of Act No. 139-2008. Public and private hospitals with internship programs authorized by the Board serve as a basis for the one-year medical training required by Act No. 139, *supra*. Even though private hospitals with internship programs comply with a public policy and

play an important social role, the medical interns, medical staff, and the hospital are not covered by the governmental immunity.

It is worth noting that governmental immunity does not constitute a personal defense for the physician in a claim against him or her, but rather a lack of a cause of action. An individual who enjoys governmental immunity cannot be sued, even if he or she engaged in a negligent act or omission. On the other hand, the limitation of liability is a limit established by the Legislative Assembly to the amount of compensation for negligent acts or omissions. Thus, an individual protected by immunity cannot be named as a defendant and liability limits do not apply to him or her. This Legislative Assembly believes that, with the approval of this measure, we shall be able to halt the mass exodus of Puerto Rican physicians, retain new healthcare professionals, and prevent a public health crisis, and ensure the availability of sufficient education workshops to increase the number of graduate medical education programs in Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 7 of Act No. 136-2006, as amended, known as the “Regional Academic Medical Centers of Puerto Rico,” is hereby amended to read as follows:

“Section 7.- Immunity and Limitation of Liability.

The limitations imposed in Act No. 104 of June 29, 1955, as amended, shall be extended to Regional Academic Medical Centers and the faculty members thereof for the medical procedures performed at said Centers in the exercise of their academic and 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 of action to which a single injured party is entitled. In addition, governmental immunity shall be extended to students and physicians enrolled in the internship, residency, and fellowship

programs of public and private medical-hospital institutions, so that they are not brought into an action before the courts or any forum of competent jurisdiction. This provision constitutes an exemption from liability, for the purpose of extending the absolute immunity granted in civil actions for damages arising out of medical-hospital malpractice to all medical residents rendering services in public and private medical-hospital facilities under a contract entered into with the Department of Health of Puerto Rico, the University of Puerto Rico, or a Graduate Medical Education Program accredited by the Accreditation Council of Medical Education (ACGME). It is hereby provided that, in cases where absolute immunity applies, the physicians enrolled in an internship or residency program shall not be required to maintain their own malpractice policy as provided in Section 41.050 of the Insurance Code of Puerto Rico.”

Section 2.- Section 41.050 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” is hereby amended to read as follows:

“Section 41.050.- Financial Responsibility.

Every healthcare professional and healthcare institution shall annually file proof of financial responsibility in 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 up to 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 for those rate classifications of healthcare professionals engaged in the practice of high risk specialties, upon a hearing where such professionals or institutions or any other interested party shall have the opportunity to appear and state their points of view on the matter at hand and present any information, documents, or studies to support their position. Healthcare professionals who do not practice their profession privately and work exclusively as employees of private healthcare institutions shall

be exempt from this requirement; provided, that they are covered under the latter's proof of financial responsibility. Healthcare professionals who render services exclusively as employees, officials, agents, consultants, or contractors of the Government of the Commonwealth of Puerto Rico, its agencies, instrumentalities, and municipalities, and who do not practice their profession privately shall also be exempt from this requirement. Healthcare institutions owned and operated or administered by the Commonwealth of Puerto Rico, its agencies, instrumentalities, and municipalities shall also be exempt.

The proof of financial responsibility required in the first paragraph of this Section shall be presented at the corresponding Board of Examiners or at the Department of Health, as the case may be, not later than the June 30th of each year and it shall cover the financial responsibility of the healthcare professional or of the healthcare institution, as the case may be for the following year.

No healthcare professional (employee or contractor) shall be named as defendant in a civil action for damages arising out of professional negligence (malpractice) in the performance of his profession, while such professional was acting in accordance with his duties and responsibilities, including teaching, as an employee of the Commonwealth of Puerto Rico, its agencies and instrumentalities, the Comprehensive Cancer Center of the University of Puerto Rico, and the municipalities. Likewise, students and physicians enrolled in an internship or residency program under Act No. 139-2008, as amended, and physicians who are enrolled in the postgraduate training program of a public and private institution, and render services as a medical resident under a contract entered into with the Department of Health of Puerto Rico, the University of Puerto Rico, or a Graduate Medical Education Program accredited by the Accreditation Council of Medical Education (ACGME) shall not be named as defendants. Furthermore, no healthcare professional, whether an employee or contractor, shall be named as defendant, for

performing his profession in accordance with his duties and responsibilities, including teaching, at the San Antonio Hospital in Mayagüez and the Dr. Ramón Emeterio-Betances Medical Center of Mayagüez, its Trauma Center and offices. Healthcare professionals rendering services to patients referred by the State Insurance Fund Corporation (SIFC), as well as in the Trauma and Stabilization Centers so designated under subsection (3) of Section 12 of Act No. 81 of March 14, 1912, as amended, shall not be named either. The same limitations shall apply to students and residents using the operating or emergency rooms, trauma centers, and neonatal or pediatric intensive care units of the Dr. Ramón Emeterio-Betances Medical Center of Mayagüez as a learning environment and university research facility. In these cases, the pediatric and neonatal intensive care specialists and pediatricians, as well as the obstetricians/gynecologists and surgeons, of the Dr. Ramón Emeterio-Betances Medical Center of Mayagüez and the corresponding Trauma Center shall be subject to the limitation of liability established for the Commonwealth under Act No. 104 of June 29, 1955, as amended, under similar circumstances.

The limitation of liability imposed on the Commonwealth of Puerto Rico by Act No. 104 of June 29, 1955, as amended, in similar circumstances, shall apply in the following scenarios:

(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 a civil action for damages;

(ii) To the Medical Sciences Campus of the University of Puerto Rico, when a judgment is rendered against it for acts constituting medical and hospital malpractice by its employees, faculty members, residents, students, or physicians rendering services under contract;

(iii) To the Industrial Hospital and the healthcare professionals working in said institution when a judgment is rendered against them for acts constituting medical and hospital malpractice by its employees or by healthcare professionals who are employees;

(iv) To the State Insurance Fund Corporation (SIFC) and the healthcare professionals rendering services to the patients of said public corporation for acts constituting medical and hospital malpractice by said professionals while rendering services to patients referred by the SIFC.

(v) To the Puerto Rico and the Caribbean Cardiovascular Center as well as the health professionals working in said institution when a judgment is rendered against them for acts constituting medical and hospital malpractice, including those committed by its employees, medical residents, and the medical staff with hospital privileges at the Puerto Rico and the Caribbean Cardiovascular Center, who have teaching or non-teaching duties at said Center;

(vi) To the Center for Diabetes Research, Education, and Medical Services, the students working therein, and the health professionals rendering services in said institution while performing teaching duties or any other duties for said Center as employees or contractors;

(vii) To the Regional Academic Medical Centers of Puerto Rico, its students, and faculty members when a judgment is rendered against them for acts constituting medical and hospital malpractice by its students or faculty members while performing their teaching duties;

(viii) To any medical-hospital institution of the University of Puerto Rico or the Medical Sciences Campus of the University of Puerto Rico, or any other accredited university, or any detailed government employee performing duties at the Centers mentioned in subsections (ii), (iii), (iv), (v), and (vi); and

(ix) To the University of Puerto Rico when a judgment is entered against it for acts or omissions that constitute fault or negligence directly related to the operation of a healthcare institution.

(x) To San Antonio Hospital, whether it is operated or managed by a private institution, when a judgment is rendered against it for acts or omissions that constitute fault or negligence involving professional, medical, and/or hospital malpractice, including acts or omissions committed by its employees and healthcare professionals (whether employees or contractors, including physicians with hospital privileges) while performing the duties and responsibilities of their professions, and while rendering healthcare services at San Antonio Hospital.

(xi) To Trauma and Stabilization Centers designated in accordance with the provisions of subsection (3) of Section 12 of Act No. 81 of March 14, 1912, as amended.”

Section 3.- Subsection (c) of Section 21 of Act No. 139-2008, as amended, known as the “Puerto Rico Board of Medical Examiners Act,” is hereby amended to read as follows:

“Section 21.- Requirements.

a...

b...

c. Candidates shall satisfactorily complete at least one (1) year of progressive post-graduate medical training at an institution which is approved by the Board or by a private nonprofit accrediting body approved by the Board, in the United States of America, Canada, or Puerto Rico.

The limitations imposed by Act No. 104 of June 29, 1955, as amended, shall be extended to medical residents and physicians enrolled in internship programs for the medical procedures performed in said programs in the exercise of their academic and/or 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 of action to which a single injured party is entitled. In addition, immunity shall be extended to physicians enrolled in the internship programs of private medical-hospital institutions, so that they are not brought into an action before the courts or any forum of competent jurisdiction. This provision constitutes an exemption from liability, for the purpose of extending the immunity granted in civil actions for damages arising out of medical-hospital malpractice. It is hereby provided that, in cases where absolute immunity applies, the physicians enrolled in an internship program shall not be required to maintain their own malpractice policy as provided in Section 41.050 of the Insurance Code of Puerto Rico.

d...”

Section 4.- Severability Clause.

If any provision of this Act or the application thereof to any person or circumstance were held to be void, such holding shall not affect any other provisions or applications of this Act which may remain in effect without the provision or application thus held to be void. Thus, the provisions of this Act are severable.

Section 5.- Effectiveness.

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 94-2023 (S. B. 1197) (Conference)** of the **5th Regular Session** of the **19th Legislative Assembly of Puerto Rico:**

AN ACT to amend Section 7 of Act No. 136-2006, as amended, known as the “Regional Academic Medical Centers of Puerto Rico”; amend subsection (c) of Section 21 of Act No. 139-2008, as amended, known as the “Puerto Rico Board of Medical Examiners Act”; and amend Section 41.050 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” to clarify the public policy of the Commonwealth of Puerto Rico on the immunity applicable to students and physicians enrolled in the internship, residency, and fellowship programs of public and private medical-hospital institutions, including Regional Academic Medical Centers.

has been translated from Spanish to English and that the English version is correct.
In San Juan, Puerto Rico, on this 16th day of March, 2024.

Mónica Freire-Florit, Esq.
Director