

(S.B. 917)

**(No. 141)**

(Approved July 18, 1998)

**AN ACT**

To add a Section 8A to Act No. 66 of June 2, 1978, as amended, known as the "Medical Services Administration of Puerto Rico Act" in order to provide that the Medical Services Administration of Puerto Rico (ASEM, Spanish acronym) be subject to the same limits of civil liability for medical malpractice to which the University of Puerto Rico and the Commonwealth of Puerto Rico are subject.

**STATEMENT OF MOTIVES**

The Medical Services Administration of Puerto Rico (ASEM, Spanish acronym), a public instrumentality attached to the Department of Health, provides highly complex services of a tertiary and supra tertiary nature through its centralized Trauma, Emergency Room and Operating Room facilities to the patients of the Medical Center of Puerto Rico.

To supplement these services ASEM avails itself of the financial resources provided, by agencies and entities such as Department of Health of the Commonwealth of Puerto Rico, the Municipality of San Juan and the University of Puerto Rico, through the Medical Sciences Campus, among others. All these agencies and entities are protected by statutory provisions which limit their civil liability in cases of medical malpractice.

The moneys to operate and administer ASEM proceed mainly from agencies and entities to whom statutory limits have been fixed with regard to

the compensable amount in civil suits for medical malpractice damages. Paradoxically, the medical and paramedical personnel of ASEM interacts on a daily basis with unlimited liability 24 hours a day, seven days a week, with the personnel of these agencies or entities in the aforementioned centralized services and attending to the same patients.

Thus, when a claim for alleged acts of medical malpractice arises, the entities most often sued (the Commonwealth of Puerto Rico, the Municipality of San Juan and the Medical Sciences Campus of the University of Puerto Rico), are protected by legislation which establishes limits on the compensable amount, while ASEM is not, thus becoming a "preferred" respondent when sued, since the latter may then provide deep pocket compensation in order to fulfill the compensatory objective of the claimants.

This situation obviously places ASEM at risk and at a disadvantage and constitutes a contradiction of the public policy which underlies the statutes that establish limits to the compensable amount since ASEM functions to fulfill a public purpose. Its services are essential and in many cases exclusive, such as the Trauma Center (the only one in Puerto Rico) and the Hyperbaric Medical Chamber.

The unlimited financial exposure of ASEM is an escape valve for claimants with regard to the funds of the protected entities. This is due to the fact that the centralized services operated and administered by ASEM are paid with the public funds of the participating entities of the Puerto Rico Medical Center, with the Commonwealth of Puerto Rico, through the Department of Health, and the Municipality of San Juan being the two entities with the highest use of services. That is to say, the Commonwealth of Puerto Rico and the Municipality of San Juan have statutory limits

regarding their civil liability, but in the rendering of those services which entail a higher risk and complexity, those which are rendered through ASEM at the Medical Center, indirectly answer without limits.

The intention of this legislative measure is to place ASEM on equal terms with the Medical Sciences Campus of the University of Puerto Rico, the Municipality of San Juan and the Commonwealth of Puerto Rico, thus preventing this instrumentality from continuing to be the deep pocket to pay the claims which, because of the statutory limits in effect, the claimants are unable to request from said entities.

At present ASEM's unlimited exposure to medical malpractice claims significantly contributes to deplete the resources it has available to finance the services it renders. These resources could be devoted to continue to improve those services.

Thus, it is equitable: fair, desirable and meritorious for the public interest to extend to the Medical Services Administration of Puerto Rico (ASEM, Spanish acronym), the same liability limits for damages resulting from medical malpractice faults or negligence which are presently enjoyed by the University of Puerto Rico, the Commonwealth of Puerto Rico and the municipalities.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Act No. 66 of June 22, 1978, as amended, is hereby amended to add a new Section 8A to read as follows:

"Section 8A.

No health services professional shall be included as defendant in a civil action claiming damages for medical malpractice faults or negligence caused in the practice of his/her profession as long as said health services professional acts in the performance of his/her duties and functions as an

employee of the Medical Services Administration of Puerto Rico. In all civil suits in which claims for damages are brought against the Medical Services Administration of Puerto Rico, in all cases in which a judgment is rendered for acts constituting medical malpractice committed by employees or officials of the Medical Services Administration of Puerto Rico, or by physicians who render services under contract to the Medical Services Administration of Puerto Rico in the performance of their institutional duties; or when judgment is rendered for acts which constitute faults or negligence directly related to the operation of a health care institution under the Medical Services Administration of Puerto Rico, the Medical Services Administration of Puerto Rico, shall be subject to the limits of liability and conditions imposed by Act No. 104 of June 29, 1955, as amended, when compelling liability from the Commonwealth of Puerto Rico in similar circumstances.”

Section 2.- This Act shall take effect immediately after its approval.

August 5, 1999

Luis G. Hidalgo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 141 (S.B. 917) of the 3rd Session of the 13th Legislature of Puerto Rico, entitled:

**AN ACT** to add a Section 8A to Act No. 66 of June 2, 1978, as amended, known as the "Medical Services Administration of Puerto Rico Act" in order to provide that the Medical Services Administration of Puerto Rico (ASEM, Spanish acronym) be subject to the same limits of civil liability for medical malpractice to which the University of Puerto Rico and the Commonwealth of Puerto Rico are subject,

and finds the same are complete, true and correct versions of each other.

Luis G. Hidalgo