

LETTER 2C.

Sample Notice of Intent to File Medical Malpractice Claim

[DATE]

VIA CERTIFIED MAIL/RRR AND FIRST CLASS MAIL

[Health Care Provider]
[Address]

Re: Notice of Intent to File Lawsuit Pursuant to M.G.L. c. 231 § 60L

Dear _____:

Please be advised that I represent _____, who was a patient of yours beginning on [Date]. I am providing notice herein of my client's claims against you arising out of _____.

This is a formal legal notice pursuant to Massachusetts General Laws Chapter 231, Section 60L. The referenced statute, Section 60L(g), requires that you respond within 150 days of receipt of this notice. I am further requesting that you immediately provide this notice to your insurance company and lawyer.

Factual Summary

[Factual Summary]

Applicable Standard of Care and Violations

All relevant medical records have been reviewed by a board-certified _____, who has determined that your care and treatment did not comply with the applicable standard of care, resulting in _____. Specifically, after a careful review of [Records/Tests/Results], it appears that _____. The specifics of your failure to comply with the standard of care are set forth in the attached letter by Dr. _____, a board-certified specialist in _____. According to Dr. _____'s review, the standard of care at the time required that _____.

Medical Records

Please note that under Massachusetts General Laws c. 231, § 60L, you may have access to all of the medical records relating to this claim that are within our control, as well as those about which we have knowledge. This includes records in our possession, as well as others which can be obtained with signed releases.

Your Obligations

As stated previously, you have 150 days after receipt of this notice to provide a written response to this claim. Your response must include:

- (1) the factual basis for the defense, if any, to the claim;
- (2) the standard of care that the health care provider claims to be applicable to the action;
- (3) the manner in which it is claimed by the health care provider that there was or was not compliance with the applicable standard of care; and
- (4) the manner in which the health care provider contends that the alleged negligence of the health care provider was or was not a proximate cause of the claimant's alleged injury or alleged damage.

Additionally, pursuant to M.G.L. c. 233, § 79L, the law requires that:

In situations where a patient suffers an unanticipated outcome with significant medical complications resulting from the provider's mistake, the health care provider, facility or an employee or agent of a health care provider or facility **shall fully inform** the patient and, when appropriate, the patient's family, about said unanticipated outcome. (Emphasis added.)

Thus, the law imposes a mandatory requirement to fully inform the patient of everything that happened in this matter.

Finally, another purpose of M.G.L. c. 233, § 79L, should you be so inclined, is to facilitate apologies, admissions of mistake or error, statements of regret, and expressions of sympathy and compassion by health care providers in circumstances with an unanticipated outcome. The law provides that such statements, when not contradicted under oath, are inadmissible in court.

If I do not receive a copy of your written response within the required 150 day time period, I intend to file a lawsuit against you, on behalf of my client. I look forward to your response.

Very truly yours,

[Attorney Name], Esq.

[Firm Name]

[Address]

Commentary

Summary of Section 60L Letter Requirements

- Send the letter 182 days (six months) prior to filing suit, unless a provider cannot reasonably be identified.
- The letter's contents must include
 - the facts,
 - the standard of care,
 - the breach of the standard of care,
 - what the provider *should* have done,
 - the causation, and
 - the names of other providers that will be notified.
- Within fifty-six days of sending the Section 60L letter, the claimant must give the provider access to all medical records related to the claim.
- The provider must send a written response to the Section 60L letter to the claimant within 150 days of receipt of the notice.

Purpose of Section 60L Letter

The requirement of transmitting this letter prior to filing a claim for medical malpractice was initiated in 2012, so case law dealing with case-specific details and exceptions has not yet come to light.

The general purpose of this new requirement has been cited as encouraging more detailed disclosures by both the claimant and the health care provider so that cases can be more thoroughly analyzed prior to suit to encourage settlement. Due to the requirement that the claimant describe the standard of care for the medical procedure and how it was breached by a provider, the claimant is, in effect, required to consult an expert prior to sending this letter to the provider. The increased likelihood of consulting an expert for an honest view of the claim's potential prior to engaging in a lawsuit, in addition to the 182-day "cooling off" period, is intended by the legislature to ensure that only legitimate and carefully considered claims are likely to proceed to trial. See Roberts Carroll Feldstein & Peirce Attorneys At Law, "Massachusetts Legislature Reforms Medical Malpractice Legislation to Promote Apologies" (2012), at <http://www.rcfp.com/assets/Bulletin/Mass-Legislation-Apologies.pdf>.

Relevant Case Law

In a 2016 Appeals Court decision, the court concluded that dismissal without prejudice was not the appropriate remedy for a failure by the plaintiff to provide notice to the defendant of her intent to sue, as required by G.L. c. 231, § 60L, since "less draconian" remedies were available and should have been consid-

ered by the Superior Court. *Arsenault v. Bhattacharya*, 89 Mass. App. Ct. 804 (2016).