AN ACT

Amending the act of March 20, 2002 (P.L.154, No.13), entitled
"An act reforming the law on medical professional liability;
providing for patient safety and reporting; establishing the
Patient Safety Authority and the Patient Safety Trust Fund;
abrogating regulations; providing for medical professional
liability informed consent, damages, expert qualifications,
limitations of actions and medical records; establishing the
Interbranch Commission on Venue; providing for medical
professional liability insurance; establishing the Medical
Care Availability and Reduction of Error Fund; providing for
medical professional liability claims; establishing the Joint
Underwriting Association; regulating medical professional
liability insurance; providing for medical licensure
regulation; providing for administration; imposing penalties;
and making repeals," providing for emergency care.

The General Assembly of the Commonwealth of Pennsylvania
hereby enacts as follows:

Section 1. The act of March 20, 2002 (P.L.154, No.13), known
as the Medical Care Availability and Reduction of Error (Mcare)
Act, is amended by adding a section to read:

Section 517. Emergency care.

(a) Qualified immunity.--In a medical professional liability
action arising out of the provision of emergency health care, no
physician or other health care provider shall be held liable for any act or failure to act unless it is proven by clear and convincing evidence that the physician or health care provider's actions or omissions were grossly negligent.

(b) Mitigating circumstances.--In a medical professional liability action arising out of the provision of emergency health care, the trier of the fact shall consider, together with all other relevant matters:

(1) Whether the person providing the care had the patient's pertinent medical history, either from medical records or from a reliable person, including information as to preexisting medical conditions, allergies and medications being taken.

(2) The preexistence of a physician-patient relationship or health care provider-patient relationship.

(3) The circumstances constituting the need for emergency health care.

(4) The circumstances surrounding the delivery of the emergency health care, including, if relevant, factors such as where the care was provided, the demands on the emergency department at the time and the promptness with which it was necessary to make medical decisions and to order and provide care.

(c) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Emergency health care." As follows:

(1) Health care services that are provided to an individual:

   (i) after the onset of a medical or traumatic
condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment of bodily functions or serious dysfunction of any bodily organ or part; or
(ii) pursuant to a mandate under Federal or State law, including the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395 (dd).

(2) The term includes:
(i) The described care in all settings, including prehospital emergency care by a medical command physician, emergency care in a hospital emergency department or obstetrical unit or emergency care in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department.
(ii) All care or treatment, regardless of setting, until the individual is stabilized.
(3) The term does not include care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient or care that is unrelated to the original emergency or mandate.

"Emergency health care provider." Any health care provider providing emergency medical care, including physicians in all specialties.

"Health care service." Any act or treatment that is performed or furnished, or that should have been performed or furnished, by any health care provider for, to or on behalf of a
patient during a patient's medical care, treatment or confinement. The term includes the direction to perform, not perform, furnish or not furnish a health care service.

Section 2. The addition of section 517 of the act shall apply to all medical professional liability actions arising on or after the effective date of this section.

Section 3. This act shall take effect in 60 days.