

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 208 Session of 2009

INTRODUCED BY VANCE, SCARNATI, M. WHITE, BROWNE, EARLL, ORIE,
PICCOLA, RAFFERTY, ALLOWAY, BAKER, BOSCOLA, BRUBAKER, CORMAN,
DINNIMAN, EICHELBERGER, FOLMER, KITCHEN, LEACH, McILHINNEY,
O'PAKE, PIPPY, ROBBINS, SMUCKER, STOUT, VOGEL, WARD, WAUGH,
D. WHITE, WONDERLING AND YAW, FEBRUARY 19, 2009

REFERRED TO JUDICIARY, FEBRUARY 19, 2009

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in rules of evidence,
3 providing for benevolent gesture or admission by health care
4 provider or assisted living residence or personal care home.

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

7 Section 1. Title 42 of the Pennsylvania Consolidated
8 Statutes is amended by adding a section to read:

9 § 6145. Benevolent gesture or admission by health care provider
10 or assisted living residence or personal care home.

11 (a) Admissibility.--In any liability action, any benevolent
12 gesture or admission of fault made prior to the commencement of
13 a medical professional liability action by:

14 (1) a health care provider or an officer, employee or
15 agent thereof to a patient or resident or the patient's or
16 resident's relative or representative regarding the patient's
17 or resident's discomfort, pain, suffering, injury or death,

1 regardless of the cause, including, but not limited to, the
2 unanticipated outcome of any treatment, consultation, care or
3 service or omission of treatment, consultation, care or
4 service provided by the health care provider, assisted living
5 residence or personal care home, its employees, agents or
6 contractors, prior to the commencement of a medical
7 professional liability action, liability action or mediation
8 shall be inadmissible as evidence of liability or as evidence
9 of an admission against interest; or

10 (2) an assisted living residence or personal care home
11 or an officer, employee or agent thereof, to a patient or
12 resident or the patient's or resident's relative or
13 representative regarding the patient's or resident's
14 discomfort, pain, suffering, injury or death, regardless of
15 the cause, including, but not limited to, the unanticipated
16 outcome of any treatment, consultation, care or service or
17 omission of treatment, consultation, care or service provided
18 by the health care provider, assisted living residence or
19 personal care home, its employees, agents or contractors,
20 prior to the commencement of a medical professional liability
21 action, liability action or mediation shall be inadmissible
22 as evidence of liability or as evidence of an admission
23 against interest.

24 (b) Definitions.--As used in this section, the following
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "Assisted living residence." As defined under section 1001
28 of the act of June 13, 1967 (P.L.31, No.21), known as the Public
29 Welfare Code.

30 "Benevolent gesture." Any and all action, conduct, statement

or gesture that conveys a sense of apology, condolence,
explanation, compassion or commiseration emanating from humane
impulses.

"Health care provider." As defined under section 103 of the
act of March 20, 2002 (P.L.154, No.13), known as the Medical
Care Availability and Reduction of Error (Mcare) Act.

"Medical professional liability action." As defined under
section 103 of the act of March 20, 2002 (P.L.154, No.13), known
as the Medical Care Availability and Reduction of Error (Mcare)
Act.

"Personal care home." As defined under section 1001 of the
act of June 13, 1967 (P.L.31, No.21), known as the Public
Welfare Code.

"Relative." A patient's spouse, parent, stepparent,
grandparent, child, stepchild, grandchild, brother, sister,
half-brother, half-sister, spouse's parents or any person who
has a family-type relationship with a patient.

"Representative." A legal guardian, attorney, an agent
designated to make medical decisions under a power of attorney
over health care matters or a health care representative who is
authorized to make health care decisions for a principal under
applicable law or a surrogate designated in an advance directive
for health care or any person recognized in law or custom as a
patient's agent.

"Unanticipated outcome." An outcome of a medical treatment
or procedure, care or service that differs from the expected or
anticipated result.

Section 2. This act shall take effect in 60 days.