

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 626 Session of 2009

INTRODUCED BY GREENLEAF, HUGHES, WAUGH, ERICKSON, O'PAKE,
FOLMER, ORIE, CORMAN, BRUBAKER, BOSCOLA, ALLOWAY AND LEACH,
MARCH 16, 2009

REFERRED TO JUDICIARY, MARCH 16, 2009

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in rules of evidence,
3 providing for expression of empathy.

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

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

8 § 6145. Expression of empathy.

9 (a) General rule.--In a medical professional liability
10 action, an expression of empathy made by a health care provider
11 to a patient prior to the commencement of the action shall be
12 inadmissible, regardless of which party seeks to introduce the
13 statement.

14 (b) Rebuttable inference.--An admission of liability or
15 fault shall create a rebuttable inference of negligence in a
16 medical professional liability action.

17 (c) Definitions.--As used in this section, the following
18 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Expression of empathy." A statement, as construed by the
3 Pennsylvania Rules of Evidence, that specifically expresses
4 concern for the harm which occurred to the patient and which
5 cannot be construed by the finder of fact as an admission of
6 liability or as supporting an inference of responsibility.

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

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

14 "Patient." The person on whose behalf a medical professional
15 liability action has been brought or a person specifically
16 representing the patient in the cause of action brought.

17 Section 2. The addition of 42 Pa.C.S. § 6145 shall apply to
18 actions pending on or commencing after the effective date of
19 this section.

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