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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 815 Session of  
2021

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INTRODUCED BY MUTH, COLLETT, PHILLIPS-HILL, STREET, SANTARSIERO,  
CAPPELLETTI, TARTAGLIONE, BREWSTER, COSTA, SCHWANK, KANE,  
HAYWOOD AND COMMITTA, JULY 27, 2021

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REFERRED TO HEALTH AND HUMAN SERVICES, JULY 27, 2021

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AN ACT

1 Amending the act of March 20, 2002 (P.L.154, No.13), entitled  
2 "An act reforming the law on medical professional liability;  
3 providing for patient safety and reporting; establishing the  
4 Patient Safety Authority and the Patient Safety Trust Fund;  
5 abrogating regulations; providing for medical professional  
6 liability informed consent, damages, expert qualifications,  
7 limitations of actions and medical records; establishing the  
8 Interbranch Commission on Venue; providing for medical  
9 professional liability insurance; establishing the Medical  
10 Care Availability and Reduction of Error Fund; providing for  
11 medical professional liability claims; establishing the Joint  
12 Underwriting Association; regulating medical professional  
13 liability insurance; providing for medical licensure  
14 regulation; providing for administration; imposing penalties;  
15 and making repeals," in medical professional liability,  
16 providing for informed consent in pelvic, rectal and prostate  
17 examinations.

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

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

23 Section 504.1. Informed consent in pelvic, rectal and prostate  
24 examinations.

25 (a) General rule.--A health care provider, including a

1 student participating in a course of professional instruction or  
2 clinical training program, may not knowingly perform any of the  
3 following examinations on a patient who is anesthetized or  
4 unconscious in a facility that provides health care services  
5 unless the patient or the patient's authorized representative  
6 provides specific informed consent, in verbal and written form,  
7 prior to the examination:

8       (1) Pelvic examinations.

9       (2) Rectal examinations.

10       (3) Prostate examinations.

11       (b) Exceptions.--Subsection (a) does not apply if:

12           (1) the examination is within the scope of care ordered  
13 for the patient;

14           (2) sexual assault is suspected, in which case evidence  
15 may be collected if the patient is not capable of informed  
16 consent due to a longer-term medical condition or if evidence  
17 will be lost and the patient's representative gives consent;  
18 or

19           (3) the examination is necessary in the case of a  
20 medical emergency for the purpose of diagnosis or treatment  
21 and the patient is incapable of providing informed consent.

22       (c) Liability.--A person aggrieved by a violation of this  
23 section may bring a civil action in a court of common pleas of  
24 requisite jurisdiction. A court may award appropriate relief,  
25 including temporary, preliminary and permanent injunctive  
26 relief, an award of compensatory and punitive damages and an  
27 award of reasonable attorney fees and costs. In lieu of actual  
28 damages, the plaintiff may elect at any time prior to final  
29 judgment, statutory damages of \$5,000 per violation.

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