

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1064** Session of
2015

INTRODUCED BY EVANKOVICH, CUTLER, SACCONI, SIMMONS, MACKENZIE,
TALLMAN, MURT, GROVE, PICKETT, GREINER, MILLARD, BOBACK,
PEIFER, GINGRICH, EVERETT, GODSHALL, TOEPEL, GABLER, FARRY,
BLOOM, HICKERNELL, SAYLOR, MENTZER, KILLION, REGAN, TURZAI,
MOUL, WATSON, ZIMMERMAN, GRELL, MILNE, GILLEN AND QUINN,
MAY 6, 2015

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 17, 2016

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 emergency care.

17 The General Assembly of the Commonwealth of Pennsylvania

18 hereby enacts as follows:

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

22 Section 517. Emergency care.

1 (a) Qualified immunity.--In a medical professional liability
2 action arising out of the provision of emergency health care,
3 UNDER CIRCUMSTANCES IN WHICH THE HEALTH CARE PROVIDER DID NOT <--
4 HAVE, AND COULD NOT REASONABLY OBTAIN AT THE TIME THE CARE WAS
5 RENDERED, THE PATIENT'S PERTINENT MEDICAL HISTORY, no physician <--
6 or other health care provider may be held liable for any act or
7 failure to act OMISSION unless it is proven by clear and <--
8 convincing evidence that the physician or health care provider's <--
9 actions or omissions were HEALTH CARE PROVIDER WAS grossly <--
10 negligent.

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

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

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

22 (B) LIMITATION.--THE QUALIFIED IMMUNITY PROVIDED IN <--
23 SUBSECTION (A) APPLIES SOLELY TO EMERGENCY HEALTH CARE PROVIDED
24 WITHIN AN EMERGENCY DEPARTMENT, INCLUDING CARE PROVIDED IN A
25 MEDICAL EMERGENCY VEHICLE UNDER THE DIRECTION OF A MEDICAL
26 COMMAND PHYSICIAN, AND TO CONTINUING EMERGENCY HEALTH CARE
27 PROVIDED IN ANY OTHER DEPARTMENT WITHIN THE FACILITY UNTIL THE
28 PATIENT IS STABILIZED.

29 (C) RELEVANT FACTORS.--THE TRIER OF THE FACT SHALL CONSIDER,
30 TOGETHER WITH ALL OTHER RELEVANT MATTERS:

1 ~~(3)~~ (1) The circumstances constituting the need for <--
2 emergency health care.

3 ~~(4)~~ (2) The circumstances surrounding the delivery of <--
4 the emergency health care, including, if relevant, factors
5 such as where the care was provided, the demands on the
6 emergency department at the time and the promptness with
7 which it was necessary to make medical decisions and to order
8 and provide care.

9 (3) WHETHER THERE WAS A PREEXISTING HEALTH CARE <--
10 PROVIDER-PATIENT RELATIONSHIP.

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

14 "Emergency health care." As follows: <--

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

17 ~~(i)~~ ALL HEALTH CARE SERVICES PROVIDED TO A PATIENT <--
18 after the onset, AND UNTIL SUCH TIME AS THE PATIENT IS <--
19 STABILIZED, of a medical or traumatic condition
20 manifesting itself by acute symptoms of sufficient
21 severity, including severe pain, such that the absence of
22 immediate medical attention could reasonably be expected
23 to result in placing the individual's health in serious
24 jeopardy, serious impairment of bodily functions or
25 serious dysfunction of any bodily organ or part; or. <--

26 ~~(ii)~~ pursuant to a mandate under Federal or State <--
27 law, including the Emergency Medical Treatment and Labor
28 Act (Public Law 99-272, 100 Stat. 164).

29 ~~(2)~~ The term includes:
30 ~~(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 an individual is stabilized.~~

~~(3) The term does not include care or treatment that occurs after a 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." A health care provider providing emergency medical care, including physicians in all specialties.~~

~~"Health care service." An act or treatment that is performed or furnished, or that should have been performed or furnished, by a health care provider for, to or on behalf of a patient during a patient's medical care, OR treatment or confinement.~~ <--

~~The term includes the direction to perform, not perform, furnish or not furnish a health care service.~~

~~"Stabilized." Based on the clinical judgment of the medical professional assessing the patient for an emergency health care condition as described in paragraph (1) of the definition of "emergency health care," to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during transfer from a facility or discharge from the facility.~~ <--

~~"STABILIZED." IN REFERENCE TO AN EMERGENCY MEDICAL~~ <--

1 CONDITION, THAT NO MATERIAL DETERIORATION OF THE EMERGENCY
2 MEDICAL CONDITION IS LIKELY, WITHIN REASONABLE MEDICAL
3 PROBABILITY, TO RESULT FROM OR OCCUR DURING A TRANSFER OF THE
4 PATIENT TO ANOTHER DEPARTMENT WITHIN THE FACILITY, TRANSFER TO
5 ANOTHER FACILITY OR DISCHARGE FROM THE FACILITY.

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

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