
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 495 Session of
2011

INTRODUCED BY GILLESPIE, BOYD, CLYMER, CUTLER, DAY, EVERETT,
FLECK, GEIST, GINGRICH, GRELL, GROVE, KILLION, MILLER,
MUSTIO, PICKETT, READSHAW, REICHLEY, ROSS, SAYLOR, SONNEY AND
TALLMAN, FEBRUARY 4, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 4, 2011

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,
18 regardless of the cause, including, but not limited to, the

1 unanticipated outcome of any treatment, consultation, care or
2 service or omission of treatment, consultation, care or
3 service provided by the health care provider, assisted living
4 residence or personal care home, its employees, agents or
5 contractors, prior to the commencement of a medical
6 professional liability action, liability action or mediation
7 shall be inadmissible as evidence of liability or as evidence
8 of an admission against interest; or

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

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

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

29 "Benevolent gesture." Any and all action, conduct, statement
30 or gesture that conveys a sense of apology, condolence,

1 explanation, compassion or commiseration emanating from humane
2 impulses.

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

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

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

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

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

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

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