

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 804 Session of 2013

INTRODUCED BY CUTLER, REED, KAUFFMAN, AUMENT, HICKERNELL,
PICKETT, ROCK, BAKER, SWANGER, TURZAI, LAWRENCE, GINGRICH,
EVANKOVICH, GABLER, HESS, MILNE, TALLMAN, MOUL, GROVE,
DENLINGER AND EVERETT, FEBRUARY 25, 2013

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 25, 2013

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," providing for emergency care.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

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

21 Section 517. Emergency care.

22 (a) Qualified immunity.--In a medical professional liability
23 action arising out of the provision of emergency health care, no

1 physician or other health care provider shall be held liable for
2 any act or failure to act unless it is proven by clear and
3 convincing evidence that the physician or health care provider's
4 actions or omissions were grossly negligent.

5 (b) Mitigating circumstances.--In a medical professional
6 liability action arising out of the provision of emergency
7 health care, the trier of the fact shall consider, together with
8 all other relevant matters:

9 (1) Whether the person providing the care had the
10 patient's pertinent medical history, either from medical
11 records or from a reliable person, including information as
12 to preexisting medical conditions, allergies and medications
13 being taken.

14 (2) The preexistence of a physician-patient relationship
15 or health care provider-patient relationship.

16 (3) The circumstances constituting the need for
17 emergency health care.

18 (4) The circumstances surrounding the delivery of the
19 emergency health care, including, if relevant, factors such
20 as where the care was provided, the demands on the emergency
21 department at the time and the promptness with which it was
22 necessary to make medical decisions and to order and provide
23 care.

24 (c) Definitions.-- The following words and phrases when used
25 in this section shall have the meanings given to them in this
26 subsection unless the context clearly indicates otherwise:

27 "Emergency health care." As follows:

28 (1) Health care services that are provided to an
29 individual:

30 (i) after the onset of a medical or traumatic

1 condition manifesting itself by acute symptoms of
2 sufficient severity, including severe pain, such that the
3 absence of immediate medical attention could reasonably
4 be expected to result in placing the individual's health
5 in serious jeopardy, serious impairment of bodily
6 functions or serious dysfunction of any bodily organ or
7 part; or

8 (ii) pursuant to a mandate under Federal or State
9 law, including the Emergency Medical Treatment and Active
10 Labor Act, 42 U.S.C. § 1395 (dd).

11 (2) The term includes:

12 (i) The described care in all settings, including
13 prehospital emergency care by a medical command
14 physician, emergency care in a hospital emergency
15 department or obstetrical unit or emergency care in a
16 surgical suite immediately following the evaluation or
17 treatment of a patient in a hospital emergency
18 department.

19 (ii) All care or treatment, regardless of setting,
20 until the individual is stabilized.

21 (3) The term does not include care or treatment that
22 occurs after the patient is stabilized and is capable of
23 receiving medical treatment as a nonemergency patient or care
24 that is unrelated to the original emergency or mandate.

25 "Emergency health care provider." Any health care provider
26 providing emergency medical care, including physicians in all
27 specialties.

28 "Health care service." Any act or treatment that is
29 performed or furnished, or that should have been performed or
30 furnished, by any health care provider for, to or on behalf of a

1 patient during a patient's medical care, treatment or
2 confinement. The term includes the direction to perform, not
3 perform, furnish or not furnish a health care service.

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

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