

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, KOTIK, PEIFER, GINGRICH, EVERETT, GODSHALL, TOEPEL, GABLER, READSHAW, FARRY, BLOOM, D. COSTA, HICKERNELL, SAYLOR, MENTZER, KILLION, REGAN, TURZAI, MOUL, O'BRIEN, WATSON, ZIMMERMAN, GRELL, MILNE AND GILLEN, MAY 6, 2015

REFERRED TO COMMITTEE ON INSURANCE, MAY 6, 2015

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.

23 (a) Qualified immunity.--In a medical professional liability

1 action arising out of the provision of emergency health care, no
2 physician or other health care provider may be held liable for
3 any act or failure to act unless it is proven by clear and
4 convincing evidence that the physician or health care provider's
5 actions or omissions were grossly negligent.

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

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

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

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

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

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

28 "Emergency health care." As follows:

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

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

9 (ii) pursuant to a mandate under Federal or State
10 law, including the Emergency Medical Treatment and Labor
11 Act (Public Law 99-272, 100 Stat. 164).

12 (2) The term includes:

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

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

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

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

29 "Health care service." An act or treatment that is performed
30 or furnished, or that should have been performed or furnished,

1 by a health care provider for, to or on behalf of a patient
2 during a patient's medical care, treatment or confinement. The
3 term includes the direction to perform, not perform, furnish or
4 not furnish a health care service.

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

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

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