

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1719 Session of  
2003

INTRODUCED BY LEACH, LaGROTTA, HARHAI, TANGRETTI, FAIRCHILD,  
FRANKEL, HALUSKA, HANNA, MARKOSEK, NICKOL, PALLONE, RUBLEY,  
HENNESSEY, CREIGHTON AND J. TAYLOR, JUNE 26, 2003

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 26, 2003

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," further providing for remittitur.

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

18 Section 1. Sections 102 and 515 of the act of March 20, 2002  
19 (P.L.154, No.13), known as the Medical Care Availability and  
20 Reduction of Error (Mcare) Act, are amended to read:

21 Section 102. Declaration of policy.

22 The General Assembly finds and declares as follows:

23 (1) It is the purpose of this act to ensure that medical  
24 care is available in this Commonwealth through a

comprehensive and high-quality health care system.

(2) Access to a full spectrum of hospital services and to highly trained physicians in all specialties must be available across this Commonwealth.

(3) To maintain this system, medical professional liability insurance has to be obtainable at an affordable and reasonable cost in every geographic region of this Commonwealth.

(4) A person who has sustained injury or death as a result of medical negligence by a health care provider must be afforded a prompt determination and fair compensation. To further this objective, the "shock the conscience" standard for granting a motion for remittitur, that has evolved through case law, must be changed to give courts better ability to modify large, aberrant jury awards that have contributed in driving up the cost of medical malpractice insurance. In order to assist the courts in this objective, the collection of information on noneconomic damage awards based on severity of injury must be compiled to provide guidelines that will promote more uniform rulings on motions for remittitur assisting the courts in applying the new remittitur standard.

(5) Every effort must be made to reduce and eliminate medical errors by identifying problems and implementing solutions that promote patient safety.

(6) Recognition and furtherance of all of these elements is essential to the public health, safety and welfare of all the citizens of Pennsylvania.

Section 515. Remittitur.

(a) General rule.--In any case in which a defendant health

1 care provider challenges a verdict on grounds of excessiveness,  
2 the trial court shall, in deciding a motion for remittitur,  
3 consider [evidence of the impact, if any, upon availability or  
4 access to health care in the community if the defendant health  
5 care provider is required to satisfy the verdict rendered by the  
6 jury.] whether the award deviates materially from what would be  
7 considered reasonable compensation. The court shall also  
8 consider the following:

9 (1) The severity of the injury.

10 (2) The age of the plaintiff, descendant or beneficiary.

11 (3) Whether the injury was temporary or permanent.

12 (4) Whether the injury impairs physical function,  
13 requiring assistance with activities of daily living.

14 (5) In cases of disfigurement, whether the disfigurement  
15 is obvious and the emotional consequence of the disfigurement  
16 for the victim.

17 (6) Similar verdicts in the jurisdiction.

18 (7) The preexisting condition of the victim prior to the  
19 incident.

20 (b) Factors and evidence.--A trial court denying a motion  
21 for remittitur shall specifically set forth the factors and  
22 evidence it considered with respect to the [impact of the  
23 verdict upon availability or access to health care in the  
24 community.] standards set forth in subsection (a) and the impact  
25 of the verdict upon availability or access to health care in the  
26 community.

27 (c) Abuse of discretion.--An appellate court reviewing a  
28 lower court's denial of remittitur may find an abuse of  
29 discretion if evidence of [the impact of paying the verdict upon  
30 availability and access to health care in the community] the

1 standards set forth in subsection (a) and evidence of the impact  
2 of paying the verdict upon availability and access to health  
3 care in the community has not been adequately considered by the  
4 lower court.

5 (d) Limit of security.--A trial court or appellate court may  
6 limit or reduce the amount of security that a defendant health  
7 care provider must post to prevent execution if the court finds  
8 that requiring a bond in excess of the limits of available  
9 insurance coverage would effectively deny the right to appeal.

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