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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1277 Session of  
2020

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INTRODUCED BY MUTH, COLLETT, PHILLIPS-HILL, L. WILLIAMS,  
FONTANA, FARNESE, BREWSTER, TARTAGLIONE, SANTARSIERO AND  
COSTA, OCTOBER 5, 2020

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REFERRED TO BANKING AND INSURANCE, OCTOBER 5, 2020

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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 further providing for informed consent.

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

19 Section 1. Section 504(b), (c) and (d)(1) of the act of  
20 March 20, 2002 (P.L.154, No.13), known as the Medical Care  
21 Availability and Reduction of Error (Mcare) Act, are amended and  
22 the section is amended by adding a subsection to read:

23 Section 504. Informed consent.

24 \* \* \*

1 (a.1) Examination.--

2 (1) Subject to paragraph (2), a health care provider,  
3 including a student participating in a course of professional  
4 instruction or clinical training program, may not knowingly  
5 perform any of the following examinations on a patient who is  
6 anesthetized or unconscious in a facility that provides  
7 health care services unless the patient or the patient's  
8 authorized representative provides specific informed consent,  
9 in verbal and written form, prior to the examination:

10 (i) Pelvic examinations.

11 (ii) Rectal examinations.

12 (iii) Prostate examinations.

13 (2) Paragraph (1) does not apply if the examination is:

14 (i) within the scope of care ordered for the  
15 patient;

16 (ii) court-ordered for the purpose of obtaining  
17 evidence; or

18 (iii) necessary in cases of a medical emergency for  
19 the purpose of diagnosis or treatment and the patient is  
20 incapable of providing informed consent.

21 (b) Description of procedure or examination.--Consent is  
22 informed if the patient has been given a description of a  
23 procedure set forth in subsection (a) or of the examination set  
24 forth in subsection (a.1) and the risks and alternatives that a  
25 reasonably prudent patient would require to make an informed  
26 decision as to that procedure or examination. The [physician]  
27 health care provider shall be entitled to present evidence of  
28 the description of that procedure or examination and those risks  
29 and alternatives that a [physician] health care provider acting  
30 in accordance with accepted medical standards of medical

1 practice would provide.

2 (c) Expert testimony.--Expert testimony is required to  
3 determine whether the procedure or examination constituted the  
4 type of procedure or examination set forth in subsection (a) or  
5 (a.1) and to identify the risks of that procedure or  
6 examination, the alternatives to that procedure or examination  
7 and the risks of these alternatives.

8 (d) Liability.--

9 (1) A [physician] health care provider is liable for  
10 failure to obtain the informed consent only if the patient  
11 proves that receiving such information would have been a  
12 substantial factor in the patient's decision whether to  
13 undergo a procedure or examination set forth in subsection  
14 (a) or (a.1).

15 \* \* \*

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