

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1037** Session of
2017

INTRODUCED BY KAMPF, GROVE, KEEFER, GODSHALL, PICKETT, KAUFFMAN,
B. MILLER, ROE, MILNE, LAWRENCE, BAKER, MUSTIO, EVERETT,
CUTLER, OBERLANDER, KNOWLES, SAYLOR, MASSER, ZIMMERMAN,
PHILLIPS-HILL, CORBIN, TURZAI, JOZWIAK, HELM, MARSICO,
MACKENZIE, ROTHMAN, WHEELAND, METCALFE, RYAN, GILLEN,
SCHEMEL, RAPP, TOBASH, WENTLING, NELSON, COX AND DUSH,
MARCH 31, 2017

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 22, 2018

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 punitive damages.

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

19 Section 1. Section 505(d) of the act of March 20, 2002
20 (P.L.154, No.13), known as the Medical Care Availability and
21 Reduction of Error (Mcare) Act, is amended to read:
22 Section 505. Punitive damages.

1 * * *

2 (d) Total amount of damages.--

3 (1) Except as provided under paragraph (2) and in cases
4 alleging intentional misconduct, punitive damages against an
5 individual physician shall not exceed 200% of the
6 compensatory damages awarded.

7 ~~(2) Except in cases where the trier of fact finds that~~ <--
8 ~~an officer, employee or agent of an entity under subparagraph~~
9 ~~(i) or (ii) acted with intent to harm, punitive EXCEPT WHEN~~ <--
10 THE TORT OCCURRED UNDER THE INFLUENCE OF ALCOHOL OR A
11 NONPRESCRIBED CONTROLLED SUBSTANCE OR AS SET FORTH IN
12 PARAGRAPH (2.1), (2.2), (2.3) OR (2.4), PUNITIVE damages
13 against any of the following shall not exceed 250% of the
14 compensatory damages awarded:

15 (i) A personal care home or an assisted living
16 residence, licensed by the Department of Human Services
17 under the act of June 13, 1967 (P.L.31, No.21), known as
18 the Human Services Code.

19 (ii) A long-term care nursing facility licensed by
20 the Department of Health under the act of July 19, 1979
21 (P.L.130, No.48), known as the Health Care Facilities
22 Act.

23 (iii) An officer, employee or agent of an entity
24 under subparagraph (i) or (ii), while acting in the
25 course and scope of employment.

26 (2.1) PARAGRAPH (2) DOES NOT APPLY IF THE PLAINTIFF IS A <--
27 VETERAN.

28 (2.2) PARAGRAPH (2) DOES NOT APPLY IF THE PLAINTIFF IS
29 AN UNEMANCIPATED MINOR.

30 (2.3) PARAGRAPH (2) DOES NOT APPLY IF THE PLAINTIFF IS

1 DIAGNOSED WITH POST-TRAUMATIC STRESS DISORDER.

2 (2.4) PARAGRAPH (2) DOES NOT APPLY IF THE PLAINTIFF HAS
3 AN INTELLECTUAL DISABILITY.

4 (3) PARAGRAPH (2) SHALL NOT APPLY IF THE TRIER OF FACT
5 FINDS THAT AN OFFICER, EMPLOYEE OR AGENT OF AN ENTITY UNDER
6 PARAGRAPH (2) (I) OR (II):

7 (I) ACTED WITH INTENT TO HARM;

8 (II) FALSIFIED MEDICAL RECORDS RELATING TO THE CAUSE
9 OF ACTION; OR

10 (III) IS CONVICTED OF OR ENTERS INTO A DIVERSIONARY
11 PROGRAM FOR A CRIME ARISING OUT OF THE SAME CONDUCT THAT
12 CAUSED THE HARM.

13 ~~(3)~~ (4) Punitive damages, when awarded, shall not be <--
14 less than \$100,000 unless a lower verdict amount is returned
15 by the trier of fact.

16 (5) THREE YEARS AFTER THE EFFECTIVE DATE OF THIS <--
17 PARAGRAPH, THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE SHALL
18 CONDUCT A STUDY MEASURING THE IMPACT OF PARAGRAPH (2) ON THE
19 NUMBER OF LAWSUITS FILED AGAINST NURSING HOMES, PERSONAL CARE
20 HOMES AND ASSISTED LIVING RESIDENCES, INCLUDING AWARDS FROM
21 BOTH SETTLEMENTS AND TRIALS. THE STUDY SHALL DOCUMENT THE
22 TREND IN THE AWARDING OF COMPENSATORY DAMAGES AND PUNITIVE
23 DAMAGES AND THE PERCENTAGE OF CASES INVOLVING ALLEGED SEXUAL
24 ABUSE, SEXUAL ASSAULT AND RAPE, AS WELL AS THE PERCENTAGE OF
25 CASES INVOLVING PATIENTS WHO HAVE BEEN DIAGNOSED WITH
26 ALZHEIMER'S DISEASE OR DEMENTIA.

27 (6) A PUNITIVE DAMAGE AWARD SHALL NOT BE REDUCED AS
28 PROVIDED UNDER PARAGRAPHS (1) AND (2) IF THE PLAINTIFF
29 SUFFERED BATTERY OR SEXUAL OR PHYSICAL ABUSE.

30 * * *

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