

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 507 Session of 2023

INTRODUCED BY FIEDLER, HANBIDGE, HILL-EVANS, FRANKEL, SCHLOSSBERG, SCHLEGEL CULVER, GILLEN, OTTEN, CIRESI, RABB, SANCHEZ, GUENST, HOHENSTEIN, McNEILL, MADDEN, SAMUELSON, GALLOWAY, KRAJEWSKI, SHUSTERMAN, FREEMAN, KINKEAD, O'MARA, N. NELSON, T. DAVIS, D. WILLIAMS, PARKER, STEHR, KAZEEM, ISAACSON, SAPPEY, WEBSTER, SMITH-WADE-EL, WAXMAN, BOROWSKI, HADDOCK, MALAGARI, CEPHAS, MARKOSEK, STEELE, GIRAL, DAWKINS, DELLOSO, VENKAT, BURGOS, ROWE, SALISBURY, MAJOR, INNAMORATO, SCHMITT, ABNEY, MERSKI, KEEFER, BULLOCK, CERRATO, DALEY, KHAN AND ZIMMERMAN, MARCH 17, 2023

AS REPORTED FROM COMMITTEE ON HEALTH, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 21, 2023

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 informed consent in pelvic, rectal and prostate
17 examinations.

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

20 Section 1. The act of March 20, 2002 (P.L.154, No.13), known
21 as the Medical Care Availability and Reduction of Error (Mcare)

1 Act, is amended by adding a section to read:

2 Section 504.1. Informed consent in pelvic, rectal and prostate
3 examinations.

4 (a) General rule.--A health care provider or student may not <--
5 knowingly perform any of the following examinations on a patient
6 who is anesthetized or unconscious in a facility that provides
7 health care services in the course of the health care provider
8 or student participating in or overseeing a professional
9 instruction or clinical training program, unless the patient or
10 the patient's authorized representative provides specific
11 informed consent to a health care provider, in verbal and
12 written form, prior to the examination: A HEALTH CARE PROVIDER, <--
13 IN THE COURSE OF PARTICIPATING IN OR OVERSEEING A PROFESSIONAL
14 INSTRUCTION OR CLINICAL TRAINING PROGRAM, OWES A DUTY TO A
15 PATIENT TO OBTAIN SPECIFIC INFORMED CONSENT, IN VERBAL AND
16 WRITTEN FORM, BEFORE KNOWINGLY PERFORMING ANY OF THE FOLLOWING
17 EXAMINATIONS ON A PATIENT WHO IS ANESTHETIZED OR UNCONSCIOUS IN
18 A FACILITY THAT PROVIDES HEALTH CARE SERVICES:

19 (1) Pelvic examination.

20 (2) Rectal examination.

21 (3) Prostate examination.

22 (b) Exceptions.--Subsection (a) does not apply if:

23 (1) the examination is within the scope of care ordered
24 for the patient; or

25 (2) the examination is necessary in the case of a
26 medical emergency for the purpose of diagnosis or treatment
27 and the patient is incapable of providing SPECIFIC informed <--
28 consent or, if the patient is incapable of providing informed <--
29 consent and has an authorized representative, the authorized
30 representative is unavailable to provide informed consent.

1 (c) Liability.--

2 (1) A health care provider shall be liable under section
3 504 for a violation of this section. In the event that a
4 student PARTICIPATING IN AND BEING OVERSEEN BY A HEALTH CARE <--
5 PROVIDER AS PART OF THE PROFESSIONAL INSTRUCTION OR CLINICAL
6 TRAINING PROGRAM violates this section, the health care
7 provider overseeing the student's professional instruction or
8 clinical training program shall be liable under section 504.

9 (2) Notwithstanding paragraph (1), the university,
10 educational institution or other corporate entity that hosts
11 the professional instruction or clinical training program
12 shall be liable to an individual damaged by a violation of
13 this section as follows:

14 (i) Five hundred dollars for a first violation.

15 (ii) One thousand dollars for a second or subsequent
16 violation.

17 (d) Definitions.--As used in this section, the following
18 words and phrases shall have the meanings given to them in this
19 subsection:

20 "Health care provider." A primary health care center or a
21 person, including a corporation, university or other educational
22 institution licensed or approved by the Commonwealth to provide
23 health care or professional medical services as a physician, a
24 physician assistant, a certified REGISTERED nurse practitioner, <--
25 a registered nurse under section 3 of the act of May 22, 1951
26 (P.L.317, No.69), known as The Professional Nursing Law, who is
27 authorized under the registered nurse's scope of practice to
28 perform the procedure as delegated by the physician or a
29 registered nurse authorized to administer anesthesia under 49
30 Pa. Code § 21.17 (relating to anesthesia), a certified nurse

1 midwife, a podiatrist, hospital, nursing home, birth center, <--
2 AMBULATORY SURGICAL FACILITY and an officer, employee or agent
3 of any of them acting in the course and scope of employment.

4 "Hospital." An entity licensed as a hospital under the act
5 of June 13, 1967 (P.L.31, No.21), known as the Human Services
6 Code, or the act of July 19, 1979 (P.L.130, No.48), known as the
7 Health Care Facilities Act.

8 "Patient." A natural person who receives or should have
9 received health care from a health care provider.

10 "SPECIFIC INFORMED CONSENT." THE CONSENT OF A PATIENT TO THE <--
11 PERFORMANCE OF AN EXAMINATION IN ACCORDANCE WITH THIS SECTION
12 AFTER THE PATIENT HAS RECEIVED A DESCRIPTION OF THE EXAMINATION,
13 THE PURPOSE FOR PROVIDING THE EXAMINATION AND ANY RISKS OR
14 ALTERNATIVES TO THE EXAMINATION SO THAT A REASONABLY PRUDENT
15 PATIENT MAY MAKE AN INFORMED DECISION AS TO THE EXAMINATION.

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