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, ZIMMERMAN AND TAKAC, MARCH 17, 2023

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 13, 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, in the course of

5 participating in or overseeing a professional instruction or

6 clinical training program, owes a duty to a patient to obtain

7 specific informed consent, in verbal and written form, before

8 knowingly performing any of the following examinations on a

9 patient who is anesthetized or unconscious in a facility that

10 provides health care services:

11 　　　(1) Pelvic examination.

12 　　　(2) Rectal examination.

13 　　　(3) Prostate examination.

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

15 　　　(1) the examination is within the scope of care ordered

16 　for the patient; or

17 　　　(2) the examination is necessary in the case of a

18 　medical emergency for the purpose of diagnosis or treatment

19 　and the patient is incapable of providing specific informed

20 　consent.

21 　(c) Liability.--

22 　　　(1) A health care provider shall be liable under section

23 　504 for a violation of this section. In the event that a

24 　student participating in and being overseen by a health care

25 　provider as part of the professional instruction or clinical

26 　training program violates this section, the health care

27 　provider overseeing the student's professional instruction or

28 　clinical training program shall be liable under section 504.

29 　　　(2) Notwithstanding paragraph (1), the university,

30 　educational institution or other corporate entity that hosts

1   the professional instruction or clinical training program

2   shall be liable to an individual damaged by a violation of

3   this section for $1,000 A $1,000 PENALTY. Nothing in this   <--

4   paragraph shall preclude or limit an individual from

5   recovering any other damages from a university, educational

6   institution or other corporate entity.

7   (d) Delegation.--A health care provider may delegate the

8   task of obtaining the specific informed consent of a patient to

9   a qualified practitioner for an examination under subsection

10 (a). For the purpose of this subsection, a qualified

11 practitioner may not be a student participating in or being

12 overseen by a health care provider as part of the professional

13 instruction or clinical training program.

14 (e) Definitions.--As used in this section, the following

15 words and phrases shall have the meanings given to them in this

16 subsection:

17 "Health care provider." A primary health care center or a

18 person, including a corporation, university or other educational

19 institution licensed or approved by the Commonwealth to provide

20 health care or professional medical services as a physician, a

21 physician assistant, a certified registered nurse practitioner,

22 a registered nurse under section 3 of the act of May 22, 1951

23 (P.L.317, No.69), known as The Professional Nursing Law, who is

24 authorized under the registered nurse's scope of practice to

25 perform the procedure as delegated by the physician or a

26 registered nurse authorized to administer anesthesia under 49

27 Pa. Code § 21.17 (relating to anesthesia), a certified nurse

28 midwife, a podiatrist, hospital, nursing home, birth center,

29 ambulatory surgical facility and an officer, employee or agent

30 of any of them acting in the course and scope of employment.

1   "Hospital." An entity licensed as a hospital under the act

2   of June 13, 1967 (P.L.31, No.21), known as the Human Services

3   Code, or the act of July 19, 1979 (P.L.130, No.48), known as the

4   Health Care Facilities Act.

5   "Patient." A natural person who receives or should have

6   received health care from a health care provider.

7   "Specific informed consent." The consent of a patient to the

8   performance of an examination in accordance with this section

9   after the patient has received a description of the examination,

10   the purpose for providing the examination and any risks or

11   alternatives to the examination so that a reasonably prudent

12   patient may make an informed decision as to the examination.

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