

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 549 Session of 2023

INTRODUCED BY MUTH, COLLETT, PHILLIPS-HILL, HAYWOOD, FONTANA, BREWSTER, KANE, SCHWANK, DILLON, TARTAGLIONE, DUSH, STREET, COSTA, CAPPELLETTI, COMITTA, KEARNEY, SAVAL, SANTARSIERO AND L. WILLIAMS, MARCH 28, 2023

SENATOR BROOKS, HEALTH AND HUMAN SERVICES, AS AMENDED, MAY 2, 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 AMENDING THE ACT OF MARCH 20, 2002 (P.L.154, NO.13), ENTITLED <--
19 "AN ACT REFORMING THE LAW ON MEDICAL PROFESSIONAL LIABILITY;
20 PROVIDING FOR PATIENT SAFETY AND REPORTING; ESTABLISHING THE
21 PATIENT SAFETY AUTHORITY AND THE PATIENT SAFETY TRUST FUND;
22 ABROGATING REGULATIONS; PROVIDING FOR MEDICAL PROFESSIONAL
23 LIABILITY INFORMED CONSENT, DAMAGES, EXPERT QUALIFICATIONS,
24 LIMITATIONS OF ACTIONS AND MEDICAL RECORDS; ESTABLISHING THE
25 INTERBRANCH COMMISSION ON VENUE; PROVIDING FOR MEDICAL
26 PROFESSIONAL LIABILITY INSURANCE; ESTABLISHING THE MEDICAL
27 CARE AVAILABILITY AND REDUCTION OF ERROR FUND; PROVIDING FOR
28 MEDICAL PROFESSIONAL LIABILITY CLAIMS; ESTABLISHING THE JOINT
29 UNDERWRITING ASSOCIATION; REGULATING MEDICAL PROFESSIONAL
30 LIABILITY INSURANCE; PROVIDING FOR MEDICAL LICENSURE

1 REGULATION; PROVIDING FOR ADMINISTRATION; IMPOSING PENALTIES;
2 AND MAKING REPEALS," IN MEDICAL PROFESSIONAL LIABILITY,
3 PROVIDING FOR INFORMED CONSENT IN PELVIC, RECTAL AND PROSTATE
4 EXAMINATIONS.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 ~~Section 1. The act of March 20, 2002 (P.L.154, No.13), known <--~~
8 ~~as the Medical Care Availability and Reduction of Error (Mcare)~~
9 ~~Act, is amended by adding a section to read:~~

10 ~~Section 504.1. Informed consent in pelvic, rectal and prostate~~
11 ~~examinations.~~

12 ~~(a) General rule. A health care provider or student may not~~
13 ~~knowingly perform any of the following examinations on a patient~~
14 ~~who is anesthetized or unconscious in a facility that provides~~
15 ~~health care services in the course of the health care provider~~
16 ~~or student participating in or overseeing a professional~~
17 ~~instruction or clinical training program, unless the patient or~~
18 ~~the patient's authorized representative provides specific~~
19 ~~informed consent to a health care provider, in verbal and~~
20 ~~written form, prior to the examination:~~

21 ~~(1) Pelvic examination.~~

22 ~~(2) Rectal examination.~~

23 ~~(3) Prostate examination.~~

24 ~~(b) Exceptions. Subsection (a) does not apply if:~~

25 ~~(1) the examination is within the scope of care ordered~~
26 ~~for the patient; or~~

27 ~~(2) the examination is necessary in the case of a~~
28 ~~medical emergency for the purpose of diagnosis or treatment~~
29 ~~and the patient is incapable of providing informed consent~~
30 ~~or, if the patient is incapable of providing informed consent~~
31 ~~and has an authorized representative, the authorized~~
32 ~~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 violates this section, the health care provider~~
5 ~~overseeing the student's professional instruction or clinical~~
6 ~~training program shall be liable under section 504.~~

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

12 ~~(i) Five hundred dollars for a first violation.~~

13 ~~(ii) One thousand dollars for a second or subsequent~~
14 ~~violation.~~

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

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

1 ~~course and scope of employment.~~

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

6 ~~"Patient." A natural person who receives or should have~~
7 ~~received health care from a health care provider.~~

8 ~~Section 2. This act shall take effect in 60 days.~~

9 SECTION 1. THE ACT OF MARCH 20, 2002 (P.L.154, NO.13), KNOWN <--
10 AS THE MEDICAL CARE AVAILABILITY AND REDUCTION OF ERROR (MCARE)
11 ACT, IS AMENDED BY ADDING A SECTION TO READ:

12 SECTION 504.1. INFORMED CONSENT IN PELVIC, RECTAL AND PROSTATE
13 EXAMINATIONS.

14 (A) GENERAL RULE.--A HEALTH CARE PROVIDER, IN THE COURSE OF
15 PARTICIPATING IN OR OVERSEEING A PROFESSIONAL INSTRUCTION OR
16 CLINICAL TRAINING PROGRAM, OWES A DUTY TO A PATIENT TO OBTAIN
17 SPECIFIC INFORMED CONSENT, IN VERBAL AND WRITTEN FORM, BEFORE
18 KNOWINGLY PERFORMING ANY OF THE FOLLOWING EXAMINATIONS ON A
19 PATIENT WHO IS ANESTHETIZED OR UNCONSCIOUS IN A FACILITY THAT
20 PROVIDES HEALTH CARE SERVICES:

21 (1) PELVIC EXAMINATION.

22 (2) RECTAL EXAMINATION.

23 (3) PROSTATE EXAMINATION.

24 (B) EXCEPTIONS.--SUBSECTION (A) DOES NOT APPLY IF:

25 (1) THE EXAMINATION IS WITHIN THE SCOPE OF CARE ORDERED
26 FOR THE PATIENT; OR

27 (2) THE EXAMINATION IS NECESSARY IN THE CASE OF A
28 MEDICAL EMERGENCY FOR THE PURPOSE OF DIAGNOSIS OR TREATMENT
29 AND THE PATIENT IS INCAPABLE OF PROVIDING SPECIFIC INFORMED
30 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 FOR \$1,000. NOTHING IN THIS PARAGRAPH SHALL
14 PRECLUDE OR LIMIT AN INDIVIDUAL FROM RECOVERING ANY OTHER
15 DAMAGES FROM A UNIVERSITY, EDUCATIONAL INSTITUTION OR OTHER
16 CORPORATE ENTITY.

17 (D) DELEGATION.--A HEALTH CARE PROVIDER MAY DELEGATE THE
18 TASK OF OBTAINING THE SPECIFIC INFORMED CONSENT OF A PATIENT TO
19 A QUALIFIED PRACTITIONER FOR AN EXAMINATION UNDER SUBSECTION
20 (A). FOR THE PURPOSE OF THIS SUBSECTION, A QUALIFIED
21 PRACTITIONER MAY NOT BE A STUDENT PARTICIPATING IN OR BEING
22 OVERSEEN BY A HEALTH CARE PROVIDER AS PART OF THE PROFESSIONAL
23 INSTRUCTION OR CLINICAL TRAINING PROGRAM.

24 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
25 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
26 SUBSECTION:

27 "HEALTH CARE PROVIDER." A PRIMARY HEALTH CARE CENTER OR A
28 PERSON, INCLUDING A CORPORATION, UNIVERSITY OR OTHER EDUCATIONAL
29 INSTITUTION LICENSED OR APPROVED BY THE COMMONWEALTH TO PROVIDE
30 HEALTH CARE OR PROFESSIONAL MEDICAL SERVICES AS A PHYSICIAN, A

1 PHYSICIAN ASSISTANT, A CERTIFIED REGISTERED NURSE PRACTITIONER,
2 A REGISTERED NURSE UNDER SECTION 3 OF THE ACT OF MAY 22, 1951
3 (P.L.317, NO.69), KNOWN AS THE PROFESSIONAL NURSING LAW, WHO IS
4 AUTHORIZED UNDER THE REGISTERED NURSE'S SCOPE OF PRACTICE TO
5 PERFORM THE PROCEDURE AS DELEGATED BY THE PHYSICIAN OR A
6 REGISTERED NURSE AUTHORIZED TO ADMINISTER ANESTHESIA UNDER 49
7 PA. CODE § 21.17 (RELATING TO ANESTHESIA), A CERTIFIED NURSE
8 MIDWIFE, A PODIATRIST, HOSPITAL, NURSING HOME, BIRTH CENTER,
9 AMBULATORY SURGICAL FACILITY AND AN OFFICER, EMPLOYEE OR AGENT
10 OF ANY OF THEM ACTING IN THE COURSE AND SCOPE OF EMPLOYMENT.

11 "HOSPITAL." AN ENTITY LICENSED AS A HOSPITAL UNDER THE ACT
12 OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE HUMAN SERVICES
13 CODE, OR THE ACT OF JULY 19, 1979 (P.L.130, NO.48), KNOWN AS THE
14 HEALTH CARE FACILITIES ACT.

15 "PATIENT." A NATURAL PERSON WHO RECEIVES OR SHOULD HAVE
16 RECEIVED HEALTH CARE FROM A HEALTH CARE PROVIDER.

17 "SPECIFIC INFORMED CONSENT." THE CONSENT OF A PATIENT TO THE
18 PERFORMANCE OF AN EXAMINATION IN ACCORDANCE WITH THIS SECTION
19 AFTER THE PATIENT HAS RECEIVED A DESCRIPTION OF THE EXAMINATION,
20 THE PURPOSE FOR PROVIDING THE EXAMINATION AND ANY RISKS OR
21 ALTERNATIVES TO THE EXAMINATION SO THAT A REASONABLY PRUDENT
22 PATIENT MAY MAKE AN INFORMED DECISION AS TO THE EXAMINATION.

23 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.