

SENATE BILL No. 434

July 11, 1991, Introduced by Senators EMMONS, EHLERS, CISKY, GAST, DE GROW, DUNASKISS, N. SMITH, MC MANUS, WARTNER, PRIDNIA, CARL and ARTHURHULTZ and referred to the Committee on Health Policy.

A bill to amend Act No. 236 of the Public Acts of 1961, entitled as amended
"Revised judicature act of 1961,"
as amended, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, by adding section 2912f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 236 of the Public Acts of 1961, as
2 amended, being sections 600.101 to 600.9947 of the Michigan
3 Compiled Laws, is amended by adding section 2912f to read as
4 follows:

5 SEC. 2912F. (1) IN AN ACTION ALLEGING MEDICAL MALPRACTICE
6 AGAINST A PHYSICIAN OR THE PHYSICIAN'S EMPLOYER IN WHICH A VIOLA-
7 TION OF A STANDARD OF CARE IS ALLEGED, IF THE PHYSICIAN HAS
8 ELECTED TO PARTICIPATE IN THE MEDICAL LIABILITY DEMONSTRATION
9 PROJECT UNDER SECTIONS 17090 TO 17098 OF THE PUBLIC HEALTH CODE,

1 ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.17090
2 TO 333.17098 OF THE MICHIGAN COMPILED LAWS, THE PHYSICIAN OR THE
3 PHYSICIAN'S EMPLOYER MAY INTRODUCE INTO EVIDENCE AS AN AFFIRMA-
4 TIVE DEFENSE THE EXISTENCE OF THE PRACTICE PARAMETERS AND RISK
5 MANAGEMENT PROTOCOLS PROMULGATED AS RULES UNDER SECTION 17095 OF
6 ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.17095
7 OF THE MICHIGAN COMPILED LAWS. THE PLAINTIFF IN AN ACTION
8 DESCRIBED IN THIS SUBSECTION SHALL NOT INTRODUCE THE EXISTENCE OF
9 THE PRACTICE PARAMETERS AND RISK MANAGEMENT PROTOCOLS INTO
10 EVIDENCE.

11 (2) A PHYSICIAN OR PHYSICIAN'S EMPLOYER WHO PLEADS COMPLI-
12 ANCE WITH THE PRACTICE PARAMETERS AND RISK MANAGEMENT PROTOCOLS
13 DESCRIBED IN SUBSECTION (1) AS AN AFFIRMATIVE DEFENSE TO AN
14 ACTION DESCRIBED IN SUBSECTION (1) HAS THE BURDEN OF PROVING THAT
15 THE PHYSICIAN'S CONDUCT WAS CONSISTENT WITH THE PRACTICE PARAME-
16 TERS AND RISK MANAGEMENT PROTOCOLS IN ORDER TO RELY UPON THE
17 AFFIRMATIVE DEFENSE AS THE BASIS FOR A DETERMINATION THAT THE
18 PHYSICIAN'S CONDUCT DID NOT CONSTITUTE MEDICAL MALPRACTICE.

19 (3) IN AN ACTION DESCRIBED IN SUBSECTION (1), IF THE PHYSI-
20 CIAN OR THE PHYSICIAN'S EMPLOYER INTRODUCES AT TRIAL EVIDENCE OF
21 THE PHYSICIAN'S COMPLIANCE WITH THE PRACTICE PARAMETERS AND RISK
22 MANAGEMENT PROTOCOLS DESCRIBED IN SUBSECTION (1), THE PLAINTIFF
23 MAY INTRODUCE EVIDENCE ON THE ISSUE OF COMPLIANCE.

24 (4) UNLESS INDEPENDENTLY DEVELOPED FROM A SOURCE OUTSIDE OF
25 THE PROCESS THAT DEVELOPED THEM, THE PRACTICE PARAMETERS AND RISK
26 MANAGEMENT PROTOCOLS DESCRIBED IN SUBSECTION (1) ARE NOT

1 ADMISSIBLE IN EVIDENCE IN A CIVIL CAUSE OF ACTION AGAINST EITHER
2 OF THE FOLLOWING:

3 (A) A PHYSICIAN WHO IS NOT PARTICIPATING IN THE MEDICAL
4 LIABILITY DEMONSTRATION PROJECT DESCRIBED IN SUBSECTION (1).

5 (B) A PHYSICIAN WHO IS PARTICIPATING IN THE MEDICAL LIABIL-
6 ITY DEMONSTRATION PROJECT AND WHO IS DEFENDING IN A MEDICAL MAL-
7 PRACTICE ACTION ACCRUING BEFORE JANUARY 1, 1992 OR ON OR AFTER
8 JANUARY 1, 1997.

9 (5) THIS SECTION DOES NOT AFFECT THE PLAINTIFF'S BURDEN OF
10 PROVING THE PLAINTIFF'S CAUSE OF ACTION. THIS SECTION DOES NOT
11 ALTER THE BURDEN OF PROOF IN MEDICAL MALPRACTICE ACTIONS.

12 (6) THIS SECTION APPLIES TO A CLAIM BASED ON MEDICAL MAL-
13 PRACTICE THAT ACCRUES ON OR AFTER JANUARY 1, 1992 BUT BEFORE
14 JANUARY 1, 1997.

15 Section 2. This amendatory act shall not take effect unless
16 all of the following bills of the 86th Legislature are enacted
17 into law:

18 (a) Senate Bill No. 433.

19

20 (b) Senate Bill No. 435.

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