

**Senate Bill 1314 with House committee
amendment
First Analysis (12-13-00)**

**Sponsor: Sen. John J. H. Schwarz
House Committee: Family and Civil Law
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

The Public Health Code provides for the regulation and supervision of physicians' assistants. Practice as a physician's assistant is a health profession subfield of the practice of medicine and osteopathic medicine and surgery. The first law governing physicians' assistants was enacted in 1972 (Public Act 312 of 1972). The initial intent was for physicians' assistants to alleviate problems in some areas where the patient to physician ratio was inordinately high (1,000-2,000/1 in some areas). Since 1972, the duties of physicians' assistants have expanded -- although they act under the supervision of a physician, physicians' assistants are able to make rounds, write progress reports, assist in surgery, run tests, take histories, prescribe medication and perform other necessary procedures. However, in spite of all the responsibilities that the state has allowed physicians' assistants, they are not yet protected when they act as "good Samaritans."

Public Act 17 of 1963, known as the "Good Samaritan" law, provides immunity from civil liability to certain authorized medical personnel who give medical aid in emergency situations, unless the act or omission amounts to gross negligence or willful and wanton misconduct. The act also provides for limitations on liability for certain laypersons who make a good faith effort to assist another in an emergency either by attempting cardio-pulmonary resuscitation or using an automated external defibrillator. The purpose of the act is to encourage bystanders (particularly those with medical training) to offer on-site medical care or assistance to accident or heart attack victims in an emergency situation without fear of being sued by the people they attempt to help. There seems little reason not to include physicians' assistants in the group of medical personnel who are protected from liability when they help others in emergency situations.

THE CONTENT OF THE BILL:

The bill would amend the Good Samaritan law to include physician's assistants in the law's immunity from liability for civil damages resulting from acts or omissions of certain health care professionals, unless the acts or omissions amount to gross negligence or willful and wanton misconduct. The current immunity provisions apply to the following:

-- A physician, registered nurse (RN), or licensed practical nurse (LPS) who, in good faith, renders care at the scene of an emergency, if the physician, RN, or LPN does not have a professional relationship with the person in need of care.

-- A physician who, without compensation, performs a physical examination upon an individual to determine his or her fitness to engage in competitive sports, if the physician has obtained from the individual or his or her parent or guardian, a signed statement that he or she knows that the physician is not necessarily performing a complete physical and is not liable for acts or omissions except for gross negligence or willful and wanton misconduct.

-- A physician, RN, or LPN who renders emergency care, without compensation, to someone requiring care as a result of engaging in competitive sports (unless the physician's or nurse's acts or omissions are outside of his or her scope of license).

-- A physician or other specified health professional who responds to a life-threatening emergency or responds to a request for emergency assistance in a life-threatening emergency within a licensed medical care facility, if the person's actual hospital duty does not require a response to an emergency situation. (This does not apply to a physician if a physician-patient relationship existed before the emergency, or to a licensed nurse if a nurse-patient relationship existed before the emergency.)

The bill would also require that care provided at the scene of an emergency must be done “without compensation” and care for injuries that result from competitive sports would have to be provided “at the scene of the emergency” in order to be immune from civil liability.

MCL 691.1501 and 691.1502

HOUSE COMMITTEE ACTION:

The House Committee on Family and Civil Law added amendments to make the language consistent within each subsection. Application of immunity would be limited to situations where the care was rendered without compensation and at the scene of the emergency.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the Senate-passed version of the bill would have no fiscal impact. (12-1-00)

ARGUMENTS:

For:

Physicians assistants have been recognized for nearly thirty years. They are highly trained and fully capable of dealing with emergency situations and providing care to the injured in such cases. The Good Samaritan law has even been extended to non-medical personnel under some circumstances, so it makes no sense not to include physicians’ assistants. While the grant of immunity would not be likely to play a major role in a physician’s assistant’s decision whether or not to offer assistance in an medical emergency, it will help to know that he or she will not be risking facing a lawsuit by deciding to do so.

Against:

The amendments made by the House Committee could have an unexpected impact. Although the amendments appear to be intended to clarify the language by making the provisions of two separate sections mirror one another, it is quite possible that the differences are warranted. The two sections are the general immunity provision for medical personnel who offer assistance at the scene of an emergency, and the provisions for immunity for medical personnel who offer assistance to someone who needs emergency care for injuries resulting from participation in competitive sports (those sponsored by a public or private school providing kindergarten through 12th grade instruction or by a

charitable or volunteer organization). While the act limits the general immunity to care rendered “at the scene of the emergency”, no such restriction is made on the competitive sports provisions. Further, under the competitive sports immunity provisions, the care must be given without compensation – a restriction which may have been intended to prevent its application from extending to those hired to act as team physicians or trainers. No such restriction is included in the general immunity provision, arguably because whether or not payment is made or offered to someone who acts as a good Samaritan he or she should not be at risk of being sued for having stepped forward to assist someone when he or she had no duty to do so. It is possible that the two sections were intentionally dissimilar, and that changing these provisions could change the effect of the law and increase the risk of lawsuits for good Samaritans.

POSITIONS:

The Michigan Academy of Physician Assistants supports the bill. (12-13-00)

The Michigan Trial Lawyers Association has no official position on the bill. (12-13-00)

Analyst: W. Flory

#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.