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MED. MALPRACTICE: LOSS OF OPPORTUNITY

House Bill 5934

Sponsor: Rep. Andrew Raczkowski

Committee: Civil Law and the Judiciary

Complete to 8-5-02

A SUMMARY OF HOUSE BILL 5934 AS INTRODUCED 4-23-02

House Bill 5934 would amend the Revised Judicature Act of 1961 (MCL 600.2912a) to allow a living plaintiff to recover for loss of an opportunity to survive or loss of an opportunity to achieve a better result and to eliminate a provision that limits actions to recover for such losses to cases in which the opportunity was greater than 50 percent. Under the Revised Judicature Act, the plaintiff has the burden of proving certain claims in an action alleging malpractice. A plaintiff who is alleging *medical* malpractice also has the burden of proving that he or she suffered an injury that more probably than not was proximately caused by the negligence of the defendant. A plaintiff alleging medical malpractice may only recover for loss of an opportunity to survive or loss of an opportunity to achieve a better result if the opportunity was greater than 50 percent.

The bill would specify that in an action alleging medical malpractice, the plaintiff has the burden of proving that he or she suffered an injury *or will in the future suffer* an injury that more probably than not was proximately caused by the negligence of the defendant. The bill would eliminate the current restriction on a plaintiff's ability to recover for loss of an opportunity to survive or to achieve a better result, which requires that the opportunity be greater than 50 percent. Instead, the bill would specify that a plaintiff, *including a living plaintiff*, could recover for (any) loss of an opportunity to survive or loss of an opportunity to achieve a better result. The plaintiff could recover economic and noneconomic damages in proportion to the loss of opportunity to survive or to achieve a better result that was proximately caused in whole or in part by the alleged malpractice.

House Bill 5934 (8-5-02)

Analyst: J. Caver

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