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Senate Bill 184 (Substitute S-1 as reported)
Sponsor: Senator John J.H. Schwarz, M.D.
Committee: Judiciary

Date Completed: 2-21-01

RATIONALE

The Public Health Code provides for the licensure and regulation of physician's assistants. Physician's assistants practice under the supervision of licensed physicians. The first Michigan law governing physician's assistants was Public Act 312 of 1972; its initial aim was for these professionals to help alleviate problems in some areas where the patient-to-physician ratio was inordinately high. Since 1972, the duties of physician's assistants have expanded: Although they act under the supervision of a physician, physician's assistants are permitted to make rounds, write progress reports, assist in surgery, run tests, take histories, prescribe medication, and perform other necessary procedures. Unlike other health care professionals, however, physician's assistants are not protected from liability when they act as a "Good Samaritan".

The Good Samaritan law provides immunity from civil liability for certain medical professionals who offer medical aid in emergency situations, unless their acts or omissions amount to gross negligence or willful and wanton misconduct. The law also applies to certain medical professionals who perform physical exams for student-athletes or render medical assistance to a student-athlete at the site of a school athletic event. The law is designed to encourage bystanders who are medical professionals to offer on-site care or assistance in an emergency situation and to volunteer to provide medical service to student-athletes without being exposed to a civil action claim by the people they attempt to assist. Some people believe that physician's assistants should be included among the medical professionals who are protected from liability under the Good Samaritan law.

CONTENT

The bill would amend the Good Samaritan law to include physician's assistants in the law's immunity from liability for certain health care professionals for rendering care at the scene of an emergency, performing physical examinations

for competitive sports, rendering emergency care to someone who requires the care as a result of engaging in competitive sports, and responding to a life-threatening emergency within a hospital or other medical care facility when the person's actual hospital duty does not require a response.

Under the Good Samaritan law, a physician, registered professional nurse, or licensed practical nurse who, in good faith, renders emergency care at the scene of an emergency and does not have a health professional-patient relationship with the person in need of care, is not liable for civil damages as a result of acts or omissions in rendering that care, except acts or omissions amounting to gross negligence or willful and wanton misconduct. The bill would include a physician's assistant in this provision.

The law also exempts from liability a physician who in good faith performs a physical examination, without compensation, upon an individual to determine his or her fitness to engage in competitive sports, if the physician has obtained a statement signed by the individual or the individual's parent or guardian that the person signing the statement knows that the physician is not necessarily performing a complete physical and is not liable for civil damages as a result of acts or omissions except those amounting to gross negligence or willful and wanton misconduct or that are outside the scope of the license held by the physician. The bill would include a physician's assistant in this provision.

Under the law, a physician, registered professional nurse, or licensed practical nurse who in good faith renders emergency care, without compensation, to an individual requiring that care as a result of having engaged in competitive sports is not liable for civil damages as a result of acts or omissions in rendering the emergency care, except acts or omissions amounting to gross negligence or willful and wanton misconduct and except acts or omissions that are outside of the scope of the license held by the person. This exemption from liability applies to the rendering of emergency care to a

minor even if the health professional does not obtain the consent of the minor's parent or guardian before the emergency care is rendered. The bill would include a physician's assistant in these provisions.

The Good Samaritan law provides that, if an individual's actual hospital duty does not require a response to an emergency situation, a physician, dentist, podiatrist, intern, resident, registered nurse, licensed practical nurse, registered physical therapist, clinical laboratory technologist, inhalation therapist, certified registered nurse anesthetist, x-ray technician, or paramedic who, in good faith, responds to a life-threatening emergency or responds to a request for emergency assistance in a life-threatening emergency within a hospital or other licensed medical care facility, is not liable for civil damages as a result of an act or omission in the rendering of emergency care, except an act or omission amounting to gross negligence or willful and wanton misconduct. This exemption from liability does not apply to a physician if a physician-patient relationship existed prior to the emergency or to a licensed nurse if a nurse-patient relationship existed before the emergency. The bill would include a physician's assistant in the immunity provision. Immunity would not apply if a physician's assistant-patient relationship existed before the emergency.

MCL 691.1501 & 691.1502

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Physician's assistants have been recognized as licensed medical professionals in Michigan for nearly 30 years. They are highly trained and fully capable of dealing with emergency situations and providing care to the injured or performing physicals for student-athletes. The Good Samaritan law has been amended over the years to include a broad range of medical professionals and has even been extended to people who are not medical professionals under some circumstances (e.g., individuals performing cardiopulmonary resuscitation or using an automated external defibrillator), so it is appropriate to include physician's assistants under the law's liability umbrella.

In addition, the Public Health Code's provisions covering the regulation of physician's assistants seem to give greater authority to physician's assistants who are reacting to emergency situations. The Code states: "*Except in an emergency situation*, a physician's assistant shall provide medical care services only under the supervision of a physician..." (emphasis added). Thus, physician's assistants apparently are authorized to act on their own, without physician supervision, in an emergency situation. The only impediment to their intervention might be the risk of exposure to liability. While the grant of immunity might not be a deciding factor in a physician's assistant's willingness to offer medical assistance in an emergency, it could help him or her to know that he or she would not be risking exposure to civil liability by deciding to do so.

Response: Under the bill, a physician's assistant's immunity for rendering care at the scene of an accident would be limited to situations in which there was no prior "physician's assistant-patient relationship". Since physician's assistants practice under the supervision of physicians, physician's assistants do not technically have their own patients. A patient's relationship, then, is with the supervising physician, not the physician's assistant. The meaning of the bill's limitation is unclear.

Opposing Argument

The introduced version of the bill would have required that care rendered by a health professional at the scene of an emergency be given "without compensation", and that care rendered in a competitive sports situation be "at the scene of an

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emergency". The provision of the law that applies to the scene of an emergency includes the rendering of care at the scene, but does not have the without-compensation qualifier. Conversely, the provision that applies to scholastic sporting events applies when no compensation is involved, but is not limited to care provided at the scene of the emergency. Including the provisions that were in the original bill would make the Good Samaritan law more internally consistent and would clarify the types of situations in which Good Samaritan immunity can arise.

Response: On the contrary, adding those limitations to the Good Samaritan law might confuse the question of when immunity applies. For almost 40 years, the law has both shielded medical professionals from liability and encouraged them to intervene in emergency situations. Adding new qualifiers or limitations to that shield could call into question the breadth of the immunity provided and might actually discourage the rendering of emergency care. Limiting immunity for emergency care to situations in which there was no compensation could result in a scenario in which a doctor relinquished his or her protection from liability by accepting a gift of gratitude such as a floral arrangement or fruit basket. Also, limiting immunity for assistance rendered at the scene of a sporting event could make that immunity insufficient because a doctor or other medical professional might need to accompany an injured student-athlete in transport to a hospital. The bill should not tinker with the scope of the protection already offered by the law.

In addition, the no-compensation restriction on immunity likely was included in the sporting event provision to exclude medical professionals who are hired or retained to provide medical services for a sports team and to limit the liability protection at sporting events to those acting in a volunteer capacity. No such employment distinction exists for rendering emergency care at the scene of an emergency such as a traffic accident.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman