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BILL ANALYSIS

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

Date Completed: 5-24-01

### **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. In addition, the bill would limit immunity, in the case of emergency care rendered at the scene of an emergency, to care that was rendered without compensation.**

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, and limit the immunity for all of those health professionals to care rendered without compensation.

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.

### **Supporting Argument**

By specifying that care rendered at the scene of an emergency would have to be given "without compensation" in order for immunity to apply, as currently is the case under the law for performing team physicals and rendering care in an emergency situation at an athletic event, the bill would make application of the Good Samaritan law more consistent. In addition, limiting immunity to situations in which emergency care was provided without compensation would be in keeping with the rationale behind the Good Samaritan law, which is to encourage the provision of medical care without expectation of benefit for the services rendered. Although there apparently is no record of health professionals' providing compensated emergency care and then claiming immunity, the current immunity provision conceivably could apply even if a doctor or nurse billed a person for medical services performed at the scene of an accident. The bill would preclude that situation from arising in the future.

**Response:** Adding limitations to the Good Samaritan law actually could confuse the question of when immunity applied. 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 actually discourage the rendering of emergency care. Limiting immunity for emergency care to situations in which there was no compensation even 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.

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

### **Opposing Argument**

The introduced version of the bill would have required that care rendered in a competitive sports situation be "at the scene of an emergency" in order to qualify for protection from liability. Currently, the provision of the

law that applies generally to emergency care refers to the rendering of care at the scene, but the provision that applies to scholastic sporting events is not limited to care provided at the scene of the emergency. Adding this qualifier to the provision concerning a sports injury would make the Good Samaritan law more internally consistent and would clarify the types of situations in which Good Samaritan immunity can arise.

**Response:** This limitation could make the immunity provision 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 existing protection for scholastic athletes and medical professionals who voluntarily offer them care.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

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

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.