

Legislative Analysis



MEDICAL MALPRACTICE: PHYSICIAN JUDGMENT

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House Bill 5670

Sponsor: Rep. Peter MacGregor

Committee: Judiciary

Complete to 6-6-12

A SUMMARY OF HOUSE BILL 5670 AS INTRODUCED 5-23-12

The bill would amend Section 2912a of the Revised Judicature Act (RJA) to prevent health care professionals or facilities from being liable in cases where conduct was the exercise of professional judgment. Additionally, plaintiffs would not be able to recover for loss of an opportunity to survive or an opportunity to achieve a better result.

Professional Judgment

The bill provides that people who qualify under Section 5838a(1), which include licensed health care professionals, licensed health facilities and their employees, or other employees or agents engaged in the health profession, are not liable in actions alleging medical malpractice if the person's conduct constituted the exercise of professional judgment. Under the bill, a person exercises professional judgment if the person acts with a reasonable and good faith belief that conduct is both well founded in medicine and is in the best interests of the patient. The bill indicates that the issue of whether or not an act or omission was due to professional judgment is a question of law for the court (i.e., a judge).

If a court determines that a person did not meet the burden of proving that an action or omission was an exercise of professional judgment, the question of whether or not the person failed to provide a recognized standard of acceptable professional practice is for the trier of fact (which could be a judge or jury) to decide. Any rulings on the issue of whether an act or omission was an exercise of professional judgment would be inadmissible as evidence at trial.

Loss of Opportunity Malpractice

Under current law, a plaintiff has the burden of proving that he or she suffered an injury that was more probably than not caused by the negligence of the defendant. The plaintiff may not bring forth an action alleging medical malpractice for loss of an opportunity to survive or achieve a better result, unless the opportunity was greater than 50%. The bill would amend this to not allow such actions to be brought under any circumstances (by elimination the language about the opportunity being greater than 50%).

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the judiciary. To the extent that this law reduces the number of medical malpractice actions that may be pursued, courts

may face reduced costs due to a decrease in caseload. The exact number of cases that would be precluded under this act is not known, and would likely vary significantly between court districts.

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