



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 1116 (as introduced 5-3-12)  
Sponsor: Senator Arlan Meekhof  
Committee: Insurance

Date Completed: 5-22-12

## **CONTENT**

**The bill would amend the Revised Judicature Act to do the following:**

- **Excuse a health care professional or facility from medical malpractice liability for conduct that constituted the exercise of professional judgment.**
- **Prevent a medical malpractice plaintiff from recovering for loss of an opportunity to survive or achieve a better result.**

### Professional Judgment

The bill provides that a person described in Section 5838a(1) would not be liable in an action alleging medical malpractice if the person's conduct at issue constituted the exercise of professional judgment. (Section 5838a(1) refers to a licensed health care professional, a licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging or otherwise assisting in medical care and treatment.)

For the purpose of this provision, a person would exercise professional judgment if the person acted with a reasonable and good-faith belief that his or her conduct was both well founded in medicine and in the best interests of the patient. The issue of whether an act or omission was an exercise of professional judgment would be a question of law for the court.

If the court determined that the person did not meet the burden of proving that the act or omission was an exercise of professional conduct, the question of whether the person failed to provide the recognized standard of acceptable professional practice or care would be a question for the trier of fact (the judge or jury) to decide. The ruling of the court as to whether an act or omission was an exercise of professional judgment would be inadmissible as evidence at trial, and the court could not permit the parties' counsel to argue any of this provision to a jury.

### Lost Opportunity

The Act provides that, in an action alleging medical malpractice, the plaintiff has the burden of proving that he or she suffered an injury that more probably than not was proximately caused by the defendant's or defendants' negligence. The plaintiff cannot recover for loss of an opportunity to survive or an opportunity to achieve a better result unless the opportunity was greater than 50%.

Under the bill, the plaintiff could not recover for loss of an opportunity to survive or to achieve a better result (regardless of the percentage).

MCL 600.2912a

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would allow a judge to determine whether a defendant was exercising "professional judgment" (as defined in the bill) and, if the judge found in the affirmative, the defendant would not be liable. As a result, it is possible that more cases would conclude without need for a jury trial, which could reduce caseload and costs for local courts. The bill also would strike language that allows plaintiffs to recover for loss of an opportunity if the opportunity was greater than 50%. The bill would prohibit recovery for loss of an opportunity (of any variety), and allow recovery only if the plaintiff had suffered an injury. By narrowing the situations in which a recovery is allowed, the bill could reduce the number of actions brought before the courts, potentially reducing caseload and costs.

Fiscal Analyst: Dan O'Connor

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