ASSEMBLY, No. 1831

STATE OF NEW JERSEY

215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)

Co-Sponsored by:
Assemblywoman Handlin

SYNOPSIS
Concerns liability and insurance coverage for medical malpractice actions.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel

(Sponsorship Updated As Of: 2/8/2013)
AN ACT concerning medical professional liability and

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. (New section) Notwithstanding any law or rule to the
contrary, if an attorney representing a plaintiff in a medical
malpractice action files a complaint using fictitious names for one
or more persons who may be determined to be parties to the action
but whose role is unknown at the time of the filing of the complaint,
the attorney shall substitute the name of a person for a fictitious
name for any person who may be determined to be a party to the
action at least 120 days prior to the date on which the action is set
for trial, after which time names of persons shall not be substituted
for fictitious names.

2. Section 10 of P.L.2004, c.17 (C.2A:62A-1.3) is amended to
read as follows:

10. a. If an individual's actual health care facility duty,
including on-call duty, does not require a response to a patient
emergency situation, a health care professional 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 health care facility, is not liable for civil damages
as a result of an act or omission in the rendering of emergency care.
The immunity granted pursuant to this section shall not apply to
acts or omissions constituting gross negligence, recklessness or
willful misconduct.

b. The provisions of subsection a. of this section shall [not]
apply to a health care professional if [a] there is no current and
active provider-patient relationship [existed before] with the
patient who is the subject of the emergency assistance at the time of
the emergency [; or if consideration in any form is provided to the
health care professional for the service rendered].

c. The provisions of subsection a. of this section do not
diminish a general hospital's responsibility to comply with all
Department of Health and Senior Services licensure requirements
concerning medical staff availability at the hospital.

d. A health care professional shall not be liable for civil
damages for injury or death caused in an emergency situation
occurring in the health care professional's private practice or in a
health care facility on account of a failure to inform a patient of the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
possible consequences of a medical procedure when the failure to inform is caused by any of the following:
(1) the patient was unconscious;
(2) the medical procedure was undertaken without the consent of the patient because the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or
(3) the medical procedure was performed on a person legally incapable of giving informed consent, and the health care professional reasonably believed that the medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of the person authorized to give such consent for the patient.

The provisions of this subsection shall apply only to actions for damages for an injury or death arising as a result of a health care professional's failure to inform, and not to actions for damages arising as a result of a health care professional's negligence in rendering or failing to render treatment.

e. As used in this section:
(1) "Health care professional" means a physician, dentist, nurse or other health care professional whose professional practice is regulated pursuant to Title 45 of the Revised Statutes and an emergency medical technician or mobile intensive care paramedic certified by the Commissioner of Health and Senior Services pursuant to Title 26 of the Revised Statutes; and
(2) "Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 [et seq.] et al.) and a psychiatric hospital operated by the Department of Human Services and listed in R.S.30:1-7.

3. Section 17 of P.L.2004, c.17 (C.17:30D-22) is amended to read as follows:

17. a. An insurer shall not increase the premium of any medical malpractice liability insurance policy based on a claim of medical negligence or malpractice against an insured unless the claim results in a medical malpractice claim settlement, judgment or arbitration award against the insured. For the purposes of this subsection, "claim" means any demand received by an insured seeking damages that results from a medical incident, or an insured’s notice to the insurer of a specific professional services act or omission that the insured reasonably believes may result in a demand for damages.

b. Notwithstanding any other law or regulation to the contrary, an insurer authorized to transact medical malpractice liability
insurance in this State shall not increase the premium of any medical malpractice liability insurance policy based on a claim of medical negligence or malpractice against the insured if: (1) the insured is dismissed from an action alleging medical malpractice within 180 days of the filing of the last responsive pleading; or (2) the alleged medical malpractice occurred in any case in which the insured performed any treatment or procedure on a charitable basis, without consideration; or (3) the alleged medical malpractice occurred in any case in which the insured provided emergency assistance pursuant to section 10 of P.L.2004, c.17 (C.2A:62A-1.3), whether or not for consideration.

(cf: P.L.2004, c.17, s.17)

4. This act shall take effect immediately and shall apply to actions for damages that occur on or after the effective date of the act.

STATEMENT

The bill revises the law governing lawsuits and insurance coverage for medical malpractice. The bill provides that, notwithstanding any law or rule to the contrary, if an attorney representing a plaintiff in a medical malpractice action files a complaint using fictitious names for one or more persons who may be determined to be parties to the action but whose role is unknown at the time of the filing of the complaint, the attorney shall substitute the name of a person for a fictitious name for any person who may be determined to be a party to the action at least 120 days prior to the date on which the action is set for trial, after which time names of persons shall not be substituted for fictitious names.

This bill also provides that a health care professional who volunteers to respond in good faith to an emergency at a hospital or health care facility has immunity for civil damages, if there is no current active provider-patient relationship with the patient. Currently, a health care provider, in order to have the benefit of immunity for such an emergency, could not have had a provider-patient relationship before the emergency, and could not have been provided any consideration for the service rendered.

The bill further provides that an insurer shall not increase the premium of any medical malpractice liability insurance policy based on a claim of medical negligence or malpractice against an insured unless the claim, as defined in the bill, results in a medical malpractice claim settlement, judgment or arbitration award against the insured. Finally, the bill also prohibits an insurer from
increasing medical malpractice insurance premiums, if the alleged 
malpractice occurred in certain charitable or emergency situations.