

## AMENDMENTS TO SENATE BILL NO. 549

Sponsor: SENATOR COLLETT

Printer's No. 532

1 Amend Bill, page 1, lines 1 through 17, by striking out all  
2 of said lines and inserting

3 Amending the act of March 20, 2002 (P.L.154, No.13), entitled  
4 "An act reforming the law on medical professional liability;  
5 providing for patient safety and reporting; establishing the  
6 Patient Safety Authority and the Patient Safety Trust Fund;  
7 abrogating regulations; providing for medical professional  
8 liability informed consent, damages, expert qualifications,  
9 limitations of actions and medical records; establishing the  
10 Interbranch Commission on Venue; providing for medical  
11 professional liability insurance; establishing the Medical  
12 Care Availability and Reduction of Error Fund; providing for  
13 medical professional liability claims; establishing the Joint  
14 Underwriting Association; regulating medical professional  
15 liability insurance; providing for medical licensure  
16 regulation; providing for administration; imposing penalties;  
17 and making repeals," in medical professional liability,  
18 providing for informed consent in pelvic, rectal and prostate  
19 examinations.

20 Amend Bill, page 1, lines 20 through 24; page 2, lines 1  
21 through 30; page 3, lines 1 through 29; by striking out all of  
22 said lines on said pages and inserting

23 Section 1. The act of March 20, 2002 (P.L.154, No.13), known  
24 as the Medical Care Availability and Reduction of Error (Mcare)  
25 Act, is amended by adding a section to read:

26 Section 504.1. Informed consent in pelvic, rectal and prostate  
27 examinations.

28 (a) General rule.--A health care provider, in the course of  
29 participating in or overseeing a professional instruction or  
30 clinical training program, owes a duty to a patient to obtain  
31 specific informed consent, in verbal and written form, before  
32 knowingly performing any of the following examinations on a  
33 patient who is anesthetized or unconscious in a facility that  
34 provides health care services:

35 (1) Pelvic examination.

1           (2) Rectal examination.

2           (3) Prostate examination.

3           (b) Exceptions.--Subsection (a) does not apply if:

4           (1) the examination is within the scope of care ordered  
5           for the patient; or

6           (2) the examination is necessary in the case of a  
7           medical emergency for the purpose of diagnosis or treatment  
8           and the patient is incapable of providing specific informed  
9           consent.

10          (c) Liability.--

11          (1) A health care provider shall be liable under section  
12          504 for a violation of this section. In the event that a  
13          student participating in and being overseen by a health care  
14          provider as part of the professional instruction or clinical  
15          training program violates this section, the health care  
16          provider overseeing the student's professional instruction or  
17          clinical training program shall be liable under section 504.

18          (2) Notwithstanding paragraph (1), the university,  
19          educational institution or other corporate entity that hosts  
20          the professional instruction or clinical training program  
21          shall be liable to an individual damaged by a violation of  
22          this section for \$1,000. Nothing in this paragraph shall  
23          preclude or limit an individual from recovering any other  
24          damages from a university, educational institution or other  
25          corporate entity.

26          (d) Delegation.--A health care provider may delegate the  
27          task of obtaining the specific informed consent of a patient to  
28          a qualified practitioner for an examination under subsection  
29          (a). For the purpose of this subsection, a qualified  
30          practitioner may not be a student participating in or being  
31          overseen by a health care provider as part of the professional  
32          instruction or clinical training program.

33          (e) Definitions.--As used in this section, the following  
34          words and phrases shall have the meanings given to them in this  
35          subsection:

36          "Health care provider." A primary health care center or a  
37          person, including a corporation, university or other educational  
38          institution licensed or approved by the Commonwealth to provide  
39          health care or professional medical services as a physician, a  
40          physician assistant, a certified registered nurse practitioner,  
41          a registered nurse under section 3 of the act of May 22, 1951  
42          (P.L.317, No.69), known as The Professional Nursing Law, who is  
43          authorized under the registered nurse's scope of practice to  
44          perform the procedure as delegated by the physician or a  
45          registered nurse authorized to administer anesthesia under 49  
46          Pa. Code § 21.17 (relating to anesthesia), a certified nurse  
47          midwife, a podiatrist, hospital, nursing home, birth center,  
48          ambulatory surgical facility and an officer, employee or agent  
49          of any of them acting in the course and scope of employment.

50          "Hospital." An entity licensed as a hospital under the act  
51          of June 13, 1967 (P.L.31, No.21), known as the Human Services

1 Code, or the act of July 19, 1979 (P.L.130, No.48), known as the  
2 Health Care Facilities Act.  
3 "Patient." A natural person who receives or should have  
4 received health care from a health care provider.  
5 "Specific informed consent." The consent of a patient to the  
6 performance of an examination in accordance with this section  
7 after the patient has received a description of the examination,  
8 the purpose for providing the examination and any risks or  
9 alternatives to the examination so that a reasonably prudent  
10 patient may make an informed decision as to the examination.  
11 Section 2. This act shall take effect in 60 days.