



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

MEMORANDUM

April 4, 2012

TO: All House Members

FROM: Representative Cutler
Representative Mann

RE: Co-sponsorship-Clear and Convincing Standards in Emergency Care

In the near future we intend to introduce legislation amending the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

In cases of true emergencies, doctors and emergency personnel currently are held to the same standard of care for a patient as a doctor or physician who has known the patient for years or even decades. Physicians, who have a history of treating the patient, often have had time to prepare for a certain care plan or treatment.

Emergency physicians and emergency personnel do not have that luxury of knowledge about the patient. Often, they must make immediate medical decisions to save the patient's life without the benefit of knowing if the patient is diabetic, if they have a serious allergic reaction to certain medications or if they have a pre-existing heart condition.

Both physicians, the one who has extensive knowledge of the patient's health history and the one who has absolutely no knowledge of their background, are held to the same standard of

proof in a lawsuit. We feel this is unfair to the physician and can possibly delay care which could cause further harm to the patient.

The current standard for both physicians is called "Preponderance of the Evidence". This is a relatively low standard which only requires the plaintiff to show the greater weight of the evidence is in their favor. We are proposing that for emergency situations, when the medical personnel have no knowledge of or history with the patient, the standard be elevated to "Clear and Convincing" evidence.

This level would state that no physician or emergency personnel shall be held liable for any act, or failure to act, unless it is proven by clear and convincing evidence that the physician or healthcare provider's actions were grossly negligent in that circumstance. This new standard does no relieve the physician from providing quality care, but balances this responsibility with the amount of knowledge that they have of the patient's health history.

Should you wish to co-sponsor this legislation, please contact Jennifer at jwilliam@pahousegop.com or 717-783-6424.

BC/jjw