

HOUSE INSURANCE COMMITTEE
Public Hearing on House Bill 804
April 2, 2014

Good Morning, my name is Charles Barbera. I am president of the Pennsylvania Chapter, American College of Emergency Physicians (PaACEP) and chairman of the Department of Emergency Medicine of Reading Hospital.

I want to thank Chairman Pickett, Chairman DeLuca, and fellow members of the House Insurance Committee for the opportunity to speak to you today about House Bill 804.

House Bill 804 offers liability protection for emergency health care providers. A physician or a health care provider who delivers emergency health care would not be held liable in a medical malpractice act unless ‘clear and convincing evidence’ proves a physician or health care provider’s actions or omissions were grossly negligent.

In cases involving true emergencies, emergency medicine and on-call physicians would not be held to the same standard of practice as a physician who has a long standing doctor-patient relationship, knowledge of medical history, or who has had time to prepare for a certain care plan or treatment.

Why should House Bill 804 be adopted? My emergency physician colleagues and I, as well as on-call physician specialists, provide emergency care in a unique environment with specific challenges. We care for patients under a federal mandate, the Emergency Medical Treatment and Active Labor Act, or EMTALA. EMTALA was adopted to protect patient safety and to create an environment where patients in need of critical emergent medical care receive a screening examination to determine the presence of a medical emergency, no matter their insurance status or their ability to pay. The EMTALA mandate has held emergency care providers to a higher standard for the past 29 years.

On a daily basis emergency physicians and on-call physician specialists often make life and death diagnosis and treatment decisions in a very short time frame, without the benefit of a prior relationship with the patient, and often without any knowledge of the patient’s medical history — and then we are held liable for not having this critical information. In the current litigious environment, lack of information opens the door to legal action.

One of Governor Corbett’s commitments laid out in his *Healthy Pennsylvania* plan is to continue to reform PA’s medical liability system, noting that, “Defensive medicine and malpractice costs add to rising health care costs, but generate little in terms of improved outcomes or better health care.” House Bill 804 is the next clear step to further advance his goal, and Pennsylvania would not be the first state to reach this logical conclusion.

House Bill 804 has been carefully crafted based on current federal and state emergency health care definitions and language from a successful Georgia law. The Georgia Supreme Court has upheld the ‘clear and convincing’ aspect of their law, and since adoption in 2005, premiums have decreased, medical liability lawsuits and claims have declined, and the number of insurers writing new policies has increased.

Emergency medicine is a critical component of health care in Pennsylvania and nationwide. We are the patient’s safety net. Yet there are a number of threats to our ability to provide quality emergency care, including: overcrowded emergency departments and hospitals, patient boarding, a diminishing physician workforce, liability premiums, and a fear of lawsuits that has not only created a trend of defensive medicine, but discourages physician specialists from providing on-call services to emergency patients.

High risk specialties, such as those providing care in the areas of ophthalmology, orthopedics, neurosurgery, neurology and obstetrics/gynecology are opting out of providing on-call services to the emergency department, especially in rural areas. Emergency physicians do not have the choice of “opting out.”

Non-emergency physicians are able to choose their patients and can decline to care for the high-risk, litigious, uninsured or underinsured patients. Physician specialists are negotiating fewer on-call hours or declining privileges in certain areas that typically originate in the emergency department. At times, patients are forced to be transported many miles to receive the care they need because a specialist physician will not take an on-call shift, or will not treat patients in the emergency department. This delay often places patients at greater risk.

The lack of specialty care in emergent care situations endangers patients’ long-term health and is detrimental to the recovery process.

Adding to access concerns, there were 6.1 million emergency department visits in Pennsylvania as of June 2012, compared to 5.6 just five years ago. While the visits continue to increase, more and more emergency departments are closing their doors. The Pennsylvania Department of Health reports 157 emergency departments in 2012, compared to 163 five years ago, and more troubling, compared to 188 ten years ago. So in 31 areas throughout Pennsylvania, patients now need to travel longer distances to get the emergency care that used to be available closer to home.

It is becoming increasingly difficult for providers of medical care to function in this environment, and patients cannot receive even the safety net care that EMTALA was intended to protect. The medical liability environment has improved in Pennsylvania, but this additional action is needed to ensure that emergency and on-call physicians who make up this important medical safety net, and who provide this vital service in a unique and challenging environment, are protected.

This new standard would not relieve us from providing quality care. Patients will still have legal recourse and physicians will still be held liable for their actions. HB 804 just balances this responsibility with the amount of knowledge that we have of the patient’s health history.

I believe that House Bill 804 takes a step forward to ensure a future where quality emergency care will continue to be available to all Pennsylvania citizens. I urge you to report out the bill for consideration by the House.

Thank you for your time.

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