

HOUSE BILL No. 4980

July 16, 2003, Introduced by Reps. Bieda, Vagnozzi, Lipsey, Paletko, Adamini, Plakas, LaSata, Pappageorge, Garfield, Gleason, McConico, Condino, Rivet, Woodward, Dennis, Meisner, Stewart, Koetje, Byrum, Brown, Shaffer, Stahl, Gaffney, Hoogendyk, Pumford, Gillard, Smith, O'Neil, Anderson, Gielegem, Farrah, Tobocman, Hardman and Waters and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
 "Revised judicature act of 1961,"
 by amending section 2912a (MCL 600.2912a), as amended by 1993
 PA 78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2912a. (1) Subject to ~~subsection~~ **subsections** (2) **and**
 2 **(3)**, in an action alleging malpractice, the plaintiff has the
 3 burden of proving ~~that~~ **1 of the following** in light of the state
 4 of the art existing at the time of the alleged malpractice:

5 (a) The defendant, if a general practitioner, failed to
 6 provide the plaintiff the recognized standard of acceptable
 7 professional practice or care in the community in which the
 8 defendant practices or in a similar community, and ~~that~~ as a
 9 proximate result of the defendant failing to provide that
 10 standard, the plaintiff suffered an injury.

1 (b) The defendant, if a specialist, failed to provide the
2 recognized standard of practice or care within that specialty as
3 reasonably applied in light of the facilities available in the
4 community or other facilities reasonably available under the
5 circumstances, and as a proximate result of the defendant failing
6 to provide that standard, the plaintiff suffered an injury.

7 (2) In an action alleging medical malpractice, the plaintiff
8 has the burden of proving that he or she suffered **or will in the**
9 **future suffer** an injury that more probably than not was
10 proximately caused by the negligence of the defendant or
11 defendants.

12 (3) In an action alleging medical malpractice, the plaintiff,
13 ~~cannot~~ **including a living plaintiff, may** recover for loss of an
14 opportunity to survive or an opportunity to achieve a better
15 result. ~~unless the opportunity was greater than 50%.~~ **The**
16 **plaintiff may recover economic and noneconomic damages in**
17 **proportion to the loss of opportunity to survive or achieve a**
18 **better result that was proximately caused in whole or in part by**
19 **the alleged malpractice.**