



## NEGLIGENCE LAW SECTION

October 24, 2013

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### House Judiciary Committee:

The Negligence Section of the State Bar is interested in current tort reform legislation pending before your Committee. We are a voluntary organization that represents over 2,000 plaintiff and defense attorneys in Michigan. The governing council is comprised of an equal number of plaintiff and defense attorneys, so as to achieve a balanced perspective of civil law in Michigan. Though our views do not necessarily represent the State Bar, our members actively practice in medical malpractice litigation and have insight into issues relevant to your Committee.

The Negligence Council has considered HB 4354 (MCL 600.2912i), as we did earlier when the legislation was offered as SB 1110. At that time, the Negligence Section of the State Bar opposed SB 1110 and was very concerned about the effect the proposed legislation would have on the medical community, including physicians, hospitals, and the public. Our view has not changed.

### POSITION: *OPPOSED*

HB 4354 would provide immunity for medical care in the emergency department or obstetrical unit of a hospital. The bill requires **clear and convincing evidence of gross negligence**, an impossible standard. The bill extends immunity throughout the hospitalization to all practitioners who come into contact with the patient.

Approximately two years ago, the House Judiciary Committee appointed a sub-committee chaired by Representative Kurt Heise to explore and discuss the ramification of statutes which included a gross negligence standard. The sub-committee was unable to reach a consensus on a new and workable definition of the phrase 'gross negligence'. It was evident to those of us who attended the meetings that there was a general misunderstanding as to the meaning and effect of gross negligence.

HB 4354 bill would impose the clear and convincing standard on top of gross negligence, creating a legal morass and a standard of conduct unheard of in Michigan jurisprudence. It would be virtually impossible to prove gross negligence in a medical malpractice setting and compelling a litigant to also prove gross negligence by clear and convincing evidence would create absolute immunity favoring the hospital and doctors. No suit for medical malpractice could ever be successful, no matter how meritorious.



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The Negligence Section believes that if HB 4354 becomes law, many doctors will simply abandon office patients and send them to the emergency room since there would be immunity for treatment. It also appears the major group affected by the obstetrical provision of the statute is women and children; a vulnerable group. Finally, we are concerned the law would encourage sub-standard doctors to come to Michigan, and believe current programs successfully implemented by local hospitals to police doctors would be jeopardized.

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For these and other reasons, the Negligence Section of the State Bar opposes HB 4354. As always, our Section stands ready to assist in any legislative ideas which may come before your Committee.

Treasurer

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Sincerely yours,

**Steven B. Galbraith**  
Chair, SBM Negligence Law Section

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