

REFERENCE TITLE: health care actions; liability

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1167

Introduced by
Senator Pearce R; Representatives Gowan, Kavanagh; Senators Allen C,
Burns, Gray C, Huppenthal, Melvin; Representatives Antenori, Burges

AN ACT

AMENDING SECTIONS 12-572 AND 12-573, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 5.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 12-574, 12-575, 12-576 AND 12-577; AMENDING TITLE 36, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; RELATING TO HEALTH CARE ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-572, Arizona Revised Statutes, is amended to
3 read:

4 12-572. Elements of proof for treatment in emergency
5 departments or rendered by on-call providers

6 A. Unless the elements of proof contained in section 12-563 are
7 established by ~~clear and convincing evidence~~ A PREPONDERANCE OF THE EVIDENCE
8 AND THE ACT OR OMISSION WAS DONE WITH WANTON AND WILLFUL NEGLIGENCE, a health
9 professional as defined in section 32-3201 who provides or who is consulted
10 to provide services to a patient of a licensed hospital in compliance with
11 the emergency medical treatment and ACTIVE labor act (P.L. 99-272; 100 Stat.
12 164; 42 United States Code section 1395dd) or as a result of a disaster is
13 not liable for any civil or other damages as a result of any act or omission.

14 B. Unless the elements of proof contained in section 12-563 are
15 established by ~~clear and convincing~~ A PREPONDERANCE OF THE evidence regarding
16 the acts or omissions of a licensed hospital or its agents and employees AND
17 THE ACT OR OMISSION WAS DONE WITH WANTON AND WILLFUL NEGLIGENCE in cases that
18 are covered by subsection A of this section, the hospital is not liable for
19 any civil or other damages as a result of any act or omission.

20 Sec. 2. Section 12-573, Arizona Revised Statutes, is amended to read:

21 12-573. Limited liability for treatment related to delivery of
22 infants; exception; definition

23 A. Unless the elements of proof contained in section 12-563 are
24 established by ~~clear and convincing evidence~~ A PREPONDERANCE OF THE EVIDENCE
25 AND THE ACT OR OMISSION WAS DONE WITH WANTON AND WILLFUL NEGLIGENCE, a
26 physician licensed to practice pursuant to title 32, chapter 13 or 17 is not
27 liable to the pregnant female patient, the child or children delivered or
28 their families for medical malpractice related to labor or delivery rendered
29 on an emergency basis if the patient was not previously treated for the
30 pregnancy by the physician, by a physician in a group practice with the
31 physician or by a physician, physician assistant or certified nurse midwife
32 with whom the physician has an agreement to attend the labor and delivery of
33 the patient.

34 B. Unless the elements of proof contained in section 12-563 are
35 established by clear and convincing evidence regarding the acts or omissions
36 of a licensed health care facility or its employees AND THE ACT OR OMISSION
37 WAS DONE WITH WANTON AND WILLFUL NEGLIGENCE in cases that are covered by
38 subsection A of this section, the health care facility is not liable to the
39 female patient, the child or children delivered or their families for medical
40 malpractice related to labor or delivery.

41 C. This section does not apply to treatment that is rendered in
42 connection with labor and delivery if the patient has been seen regularly by
43 or under the direction of a licensed health care provider or a licensed
44 physician from whom the patient's medical information is immediately
45 available to the physicians attending the patient during labor and delivery.

1 D. For the purposes of this section, "emergency" means when labor has
2 begun or a condition exists requiring the delivery of the child or children.

3 Sec. 3. Title 12, chapter 5.1, article 1, Arizona Revised Statutes, is
4 amended by adding sections 12-574, 12-575, 12-576 and 12-577, to read:

5 12-574. Jury instructions: medical malpractice actions for
6 treatment in emergency departments: treatment related
7 to delivery of infants

8 A. IN A MEDICAL MALPRACTICE ACTION THAT INVOLVES A CLAIM OF NEGLIGENCE
9 ARISING FROM EMERGENCY MEDICAL CARE IN A HOSPITAL EMERGENCY DEPARTMENT OR
10 OBSTETRICAL UNIT OR IN A SURGICAL SUITE IMMEDIATELY FOLLOWING THE EVALUATION
11 OR TREATMENT OF A PATIENT IN A HOSPITAL EMERGENCY DEPARTMENT, THE COURT SHALL
12 INSTRUCT THE JURY TO CONSIDER, TOGETHER WITH ALL OTHER RELEVANT MATTERS:

13 1. WHETHER THE PERSON PROVIDING CARE DID OR DID NOT HAVE THE PATIENT'S
14 MEDICAL HISTORY OR WAS ABLE OR UNABLE TO OBTAIN A FULL MEDICAL HISTORY,
15 INCLUDING THE KNOWLEDGE OF PREEXISTING MEDICAL CONDITIONS, ALLERGIES AND
16 MEDICATIONS.

17 2. THE PRESENCE OR LACK OF A PREEXISTING PHYSICIAN-PATIENT
18 RELATIONSHIP OR HEALTH CARE PROVIDER-PATIENT RELATIONSHIP.

19 3. THE CIRCUMSTANCES CONSTITUTING THE EMERGENCY.

20 4. THE CIRCUMSTANCES SURROUNDING THE DELIVERY OF THE EMERGENCY MEDICAL
21 CARE.

22 B. SUBSECTION A DOES NOT APPLY TO MEDICAL CARE OR TREATMENT THAT
23 EITHER:

24 1. OCCURS AFTER THE PATIENT IS STABILIZED AND IS CAPABLE OF RECEIVING
25 MEDICAL TREATMENT AS A NONEMERGENCY PATIENT.

26 2. IS UNRELATED TO THE ORIGINAL MEDICAL EMERGENCY.

27 3. IS RELATED TO AN EMERGENCY CAUSED IN WHOLE OR IN PART BY THE
28 NEGLIGENCE OF THE DEFENDANT.

29 12-575. Medical malpractice actions: notice; pleadings; tolling
30 period

31 A. AT LEAST SIXTY DAYS BEFORE FILING A MEDICAL MALPRACTICE ACTION IN
32 THIS STATE, A PERSON OR THE PERSON'S AUTHORIZED AGENT WHO ASSERTS A MEDICAL
33 MALPRACTICE CLAIM SHALL GIVE WRITTEN NOTICE OF THE CLAIM BY CERTIFIED MAIL,
34 RETURN RECEIPT REQUESTED, TO EACH PHYSICIAN OR HEALTH CARE PROVIDER AGAINST
35 WHOM THE CLAIM IS BEING MADE. THE AUTHORIZATION FORM FOR RELEASE OF
36 PROTECTED HEALTH INFORMATION PRESCRIBED BY SECTION 12-576 SHALL ACCOMPANY THE
37 NOTICE.

38 B. IF THE PLEADINGS ARE SUBSEQUENTLY FILED IN ANY COURT, EACH PARTY
39 SHALL STATE THAT IT HAS FULLY COMPLIED WITH THIS SECTION AND SECTION 12-576
40 AND SHALL PROVIDE ANY EVIDENCE THAT THE COURT MAY REQUIRE TO DETERMINE IF THE
41 PROVISIONS OF THIS SECTION AND SECTION 12-576 HAVE BEEN MET.

42 C. NOTICE GIVEN PURSUANT TO SUBSECTION A OF THIS SECTION TOLLS ANY
43 APPLICABLE STATUTE OF LIMITATIONS UNTIL SEVENTY-FIVE DAYS AFTER THE PHYSICIAN
44 OR HEALTH CARE PROVIDER RECEIVES THE NOTICE. THIS TOLLING APPLIES TO ALL
45 PARTIES AND POTENTIAL PARTIES.

1 D. ALL PARTIES ARE ENTITLED TO OBTAIN COMPLETE AND UNALTERED COPIES OF
2 THE PATIENT'S MEDICAL RECORDS FROM ANY OTHER PARTY WITHIN FORTY-FIVE DAYS
3 AFTER THE DATE OF RECEIPT OF A WRITTEN REQUEST FOR THE RECORDS. IF A
4 CLAIMANT EXECUTES A MEDICAL AUTHORIZATION AS PRESCRIBED BY SECTION 12-576,
5 THE RECEIPT OF THAT MEDICAL AUTHORIZATION IS CONSIDERED COMPLIANCE BY THE
6 CLAIMANT WITH THIS SUBSECTION.

7 E. NOTWITHSTANDING ANY OTHER LAW, A REQUEST FOR THE MEDICAL RECORDS OF
8 A DECEASED PERSON OR AN INCOMPETENT PERSON IS DEEMED VALID IF THE MEDICAL
9 AUTHORIZATION PRESCRIBED BY SECTION 12-576 IS SIGNED BY A PARENT, SPOUSE OR
10 ADULT CHILD OF THE DECEASED OR INCOMPETENT PERSON.

11 12-576. Authorization form for release of protected health
12 information

13 A. NOTICE OF A MEDICAL MALPRACTICE CLAIM UNDER SECTION 12-575 MUST BE
14 ACCOMPANIED BY A MEDICAL AUTHORIZATION IN THE FORM SPECIFIED BY THIS
15 SECTION. THE FAILURE TO PROVIDE THIS AUTHORIZATION WITH THE NOTICE OF
16 MEDICAL MALPRACTICE CLAIM ABATES ALL FURTHER PROCEEDINGS AGAINST THE
17 PHYSICIAN OR HEALTH CARE PROVIDER RECEIVING THE NOTICE UNTIL SIXTY DAYS
18 FOLLOWING RECEIPT BY THE PHYSICIAN OR HEALTH CARE PROVIDER OF THE REQUIRED
19 AUTHORIZATION.

20 B. IF THE AUTHORIZATION REQUIRED BY THIS SECTION IS MODIFIED OR
21 REVOKED, THE PHYSICIAN OR HEALTH CARE PROVIDER WHO RECEIVED THE AUTHORIZATION
22 MAY ABATE ALL FURTHER PROCEEDINGS UNTIL SIXTY DAYS FOLLOWING RECEIPT OF A
23 REPLACEMENT AUTHORIZATION.

24 C. THE MEDICAL AUTHORIZATION OR A REPLACEMENT AUTHORIZATION SHALL BE
25 IN THE FOLLOWING FORM:

26 AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

27 I, _____ (NAME OF PATIENT OR AUTHORIZED
28 REPRESENTATIVE), AUTHORIZE _____ (NAME OF PHYSICIAN OR
29 OTHER HEALTH CARE PROVIDER TO WHOM THE NOTICE OF MEDICAL
30 MALPRACTICE CLAIM IS DIRECTED) TO OBTAIN AND DISCLOSE THE
31 PROTECTED HEALTH INFORMATION DESCRIBED BELOW FOR EITHER OF THE
32 FOLLOWING SPECIFIC PURPOSES:

33 1. TO FACILITATE THE INVESTIGATION AND EVALUATION OF THE
34 MEDICAL MALPRACTICE CLAIM ASSERTED IN THE ACCOMPANYING NOTICE OF
35 MEDICAL MALPRACTICE CLAIM.

36 2. THE DEFENSE OF ANY LITIGATION ARISING OUT OF THE CLAIM
37 ASSERTED IN THE ACCOMPANYING NOTICE OF MEDICAL MALPRACTICE
38 CLAIM.

39 THE HEALTH INFORMATION TO BE OBTAINED, USED OR DISCLOSED
40 EXTENDS TO AND INCLUDES BOTH VERBAL AND WRITTEN:

41 1. HEALTH INFORMATION IN THE CUSTODY OF THE FOLLOWING
42 PHYSICIANS OR HEALTH CARE PROVIDERS WHO HAVE EXAMINED, EVALUATED
43 OR TREATED _____ (PATIENT) IN CONNECTION WITH THE INJURIES
44 ALLEGED TO HAVE BEEN SUSTAINED IN CONNECTION WITH THE CLAIM
45 ASSERTED IN THE ACCOMPANYING NOTICE OF MEDICAL MALPRACTICE

1 CLAIM. (LIST THE NAMES AND CURRENT ADDRESSES OF ALL TREATING
2 PHYSICIANS OR HEALTH CARE PROVIDERS). THIS AUTHORIZATION
3 EXTENDS TO ADDITIONAL PHYSICIANS OR HEALTH CARE PROVIDERS WHO IN
4 THE FUTURE MAY EVALUATE, EXAMINE OR TREAT _____ (PATIENT)
5 FOR INJURIES ALLEGED IN CONNECTION WITH THE CLAIM ASSERTED IN
6 THE ATTACHED NOTICE OF MEDICAL MALPRACTICE CLAIM.

7 2. HEALTH INFORMATION IN THE CUSTODY OF THE FOLLOWING
8 PHYSICIANS OR HEALTH CARE PROVIDERS WHO HAVE EXAMINED, EVALUATED
9 OR TREATED _____ (PATIENT) DURING A PERIOD COMMENCING FIVE
10 YEARS BEFORE THE INCIDENT THAT IS THE BASIS OF THE ACCOMPANYING
11 NOTICE OF MEDICAL MALPRACTICE CLAIM. (LIST THE NAMES AND
12 CURRENT ADDRESSES OF THE PHYSICIANS OR HEALTH CARE PROVIDERS, IF
13 APPLICABLE.)

14 THIS AUTHORIZATION DOES NOT APPLY TO THE FOLLOWING
15 PHYSICIANS OR HEALTH CARE PROVIDERS POSSESSING HEALTH CARE
16 INFORMATION CONCERNING _____ (PATIENT) BECAUSE I CONTEND
17 THAT SUCH HEALTH CARE INFORMATION IS NOT RELEVANT TO THE DAMAGES
18 BEING CLAIMED OR TO THE PHYSICAL, MENTAL OR EMOTIONAL CONDITION
19 OF _____ (PATIENT) ARISING OUT OF THE CLAIM ASSERTED IN THE
20 ACCOMPANYING NOTICE OF MEDICAL MALPRACTICE CLAIM. (STATE "NONE"
21 OR LIST THE NAME OF EACH PHYSICIAN OR HEALTH CARE PROVIDER TO
22 WHOM THIS AUTHORIZATION DOES NOT EXTEND AND THE INCLUSIVE DATES
23 OF EXAMINATION, EVALUATION OR TREATMENT TO BE WITHHELD FROM
24 DISCLOSURE.)

25 THE PERSONS OR CLASS OF PERSONS TO WHOM THE HEALTH
26 INFORMATION OF _____ (PATIENT) WILL BE DISCLOSED OR WHO
27 WILL MAKE USE OF THE HEALTH INFORMATION ARE:

28 1. ANY PHYSICIAN OR HEALTH CARE PROVIDER PROVIDING CARE
29 OR TREATMENT TO _____ (PATIENT).

30 2. ANY LIABILITY INSURANCE ENTITY PROVIDING LIABILITY
31 INSURANCE COVERAGE OR DEFENSE TO ANY PHYSICIAN OR HEALTH CARE
32 PROVIDER TO WHOM NOTICE OF MEDICAL MALPRACTICE CLAIM HAS BEEN
33 GIVEN WITH REGARD TO THE CARE AND TREATMENT OF _____
34 (PATIENT).

35 3. ANY CONSULTING OR TESTIFYING EXPERT EMPLOYED BY OR ON
36 BEHALF OF _____ (NAME OF PHYSICIAN OR HEALTH CARE PROVIDER
37 TO WHOM NOTICE OF MEDICAL MALPRACTICE CLAIM HAS BEEN GIVEN) WITH
38 REGARD TO THE MATTER SET OUT IN THE NOTICE OF MEDICAL
39 MALPRACTICE CLAIM ACCOMPANYING THIS AUTHORIZATION.

40 4. ANY ATTORNEY, INCLUDING THE ATTORNEY'S SECRETARIAL,
41 CLERICAL OR PARALEGAL STAFF, EMPLOYED BY OR ON BEHALF OF
42 _____ (NAME OF PHYSICIAN OR HEALTH CARE PROVIDER TO WHOM
43 NOTICE OF MEDICAL MALPRACTICE CLAIM HAS BEEN GIVEN) WITH REGARD
44 TO THE MATTER SET OUT IN THE NOTICE OF MEDICAL MALPRACTICE CLAIM
45 ACCOMPANYING THIS AUTHORIZATION.

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5. ANY TIER OF THE LAW OR FACTS RELATING TO ANY SUIT FILED SEEKING DAMAGES ARISING OUT OF THE MEDICAL CARE OR TREATMENT OF _____ (PATIENT).

THIS AUTHORIZATION EXPIRES ON RESOLUTION OF THE CLAIM ASSERTED OR AT THE CONCLUSION OF ANY LITIGATION INSTITUTED IN CONNECTION WITH THE SUBJECT MATTER OF THE NOTICE OF MEDICAL MALPRACTICE CLAIM ACCOMPANYING THIS AUTHORIZATION, WHICHEVER OCCURS FIRST.

I UNDERSTAND THAT, WITHOUT EXCEPTION, I HAVE THE RIGHT TO REVOKE THIS AUTHORIZATION IN WRITING.

I UNDERSTAND THAT THE SIGNING OF THIS AUTHORIZATION IS NOT A CONDITION FOR CONTINUED TREATMENT, PAYMENT, ENROLLMENT OR ELIGIBILITY FOR HEALTH PLAN BENEFITS.

I UNDERSTAND THAT INFORMATION USED OR DISCLOSED PURSUANT TO THIS AUTHORIZATION MAY BE SUBJECT TO REDISCLOSURE BY THE RECIPIENT AND MAY NO LONGER BE PROTECTED UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA").

SIGNATURE OF PATIENT/REPRESENTATIVE

DATE

NAME OF PATIENT/REPRESENTATIVE

DESCRIPTION OF REPRESENTATIVE'S AUTHORITY

12-577. Medical malpractice action; failure to disclose risks and hazards; negligence

A MEDICAL MALPRACTICE ACTION AGAINST A PHYSICIAN OR HEALTH CARE PROVIDER THAT IS BASED ON THE FAILURE OF THE PHYSICIAN OR HEALTH CARE PROVIDER TO DISCLOSE OR ADEQUATELY DISCLOSE THE RISKS AND HAZARDS INVOLVED IN THE MEDICAL CARE OR SURGICAL PROCEDURE RENDERED BY THE PHYSICIAN OR HEALTH CARE PROVIDER MAY ONLY BE BASED ON NEGLIGENCE IN FAILING TO DISCLOSE THE RISKS OR HAZARDS THAT COULD HAVE INFLUENCED A REASONABLE PERSON IN MAKING A DECISION TO GIVE OR WITHHOLD CONSENT.

Sec. 4. Title 36, chapter 1, Arizona Revised Statutes, is amended by adding article 3, to read:

ARTICLE 3. MEDICAL DISCLOSURE

36-171. Medical disclosure committee; membership; duties; report

A. THE MEDICAL DISCLOSURE COMMITTEE IS ESTABLISHED IN THE DEPARTMENT OF HEALTH SERVICES CONSISTING OF THE FOLLOWING MEMBERS WHO ARE APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES:

- 1. THREE MEMBERS WHO ARE LICENSED TO PRACTICE LAW IN THIS STATE.
- 2. THREE MEMBERS WHO ARE LICENSED PURSUANT TO CHAPTER 13 OF THIS

TITLE.

1 3. THREE MEMBERS WHO ARE LICENSED PURSUANT TO CHAPTER 17 OF THIS
2 TITLE.

3 B. MEMBERS SERVE SIX YEAR TERMS, TO BEGIN AND END ON JANUARY 1. A
4 COMMITTEE MEMBER WHO IS ABSENT FOR THREE CONSECUTIVE MEETINGS WITHOUT THE
5 CONSENT OF A MAJORITY OF THE COMMITTEE PRESENT AT EACH MEETING MAY BE REMOVED
6 BY THE DIRECTOR AT THE REQUEST OF THE COMMITTEE. THE DIRECTOR SHALL FILL A
7 VACANCY BY APPOINTING A PERSON WHO HAS THE SAME QUALIFICATIONS AS THE PERSON
8 WHO PREVIOUSLY OCCUPIED THAT POSITION.

9 C. COMMITTEE MEMBERS ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE
10 ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4,
11 ARTICLE 2.

12 D. COMMITTEE MEETINGS SHALL BE HELD AT THE CALL OF THE CHAIRPERSON OR
13 ON PETITION OF AT LEAST THREE COMMITTEE MEMBERS.

14 E. IF ANY COMMITTEE MEMBER IS PHYSICALLY PRESENT AT A MEETING, ANY
15 OTHER MEMBER MAY ATTEND THE MEETING BY USE OF A TELEPHONE CONFERENCE CALL,
16 VIDEOCONFERENCING OR OTHER SIMILAR TELECOMMUNICATION METHOD FOR PURPOSES OF
17 CONDUCTING THE MEETING. TWO-WAY COMMUNICATION MUST BE MAINTAINED AT ALL
18 TIMES OR THE COMMITTEE MUST RECESS UNTIL TWO-WAY COMMUNICATION IS
19 REESTABLISHED.

20 F. THE COMMITTEE MEMBERS ANNUALLY SHALL SELECT A CHAIRPERSON AND
21 VICE-CHAIRPERSON FROM ITS MEMBERSHIP.

22 G. THE COMMITTEE SHALL IDENTIFY AND MAKE A THOROUGH EXAMINATION OF ALL
23 MEDICAL TREATMENTS AND SURGICAL PROCEDURES IN WHICH PHYSICIANS AND HEALTH
24 CARE PROVIDERS MAY BE INVOLVED IN ORDER TO DETERMINE WHICH OF THOSE
25 TREATMENTS AND PROCEDURES DO AND DO NOT REQUIRE DISCLOSURE OF THE RISKS AND
26 HAZARDS TO THE PATIENT OR TO A PERSON WHO IS AUTHORIZED TO CONSENT FOR THE
27 PATIENT.

28 H. AT LEAST ANNUALLY, THE COMMITTEE SHALL PREPARE SEPARATE LISTS OF
29 THOSE MEDICAL TREATMENTS AND SURGICAL PROCEDURES THAT DO AND DO NOT REQUIRE
30 DISCLOSURE AND, FOR THOSE TREATMENTS AND PROCEDURES THAT DO REQUIRE
31 DISCLOSURE, SHALL ESTABLISH THE DEGREE OF DISCLOSURE REQUIRED AND THE FORM IN
32 WHICH THE DISCLOSURE WILL BE MADE. A DISCLOSURE FORM PREPARED UNDER THIS
33 SUBSECTION MUST BE MADE AVAILABLE IN ENGLISH AND IN SPANISH.

34 I. THE DEPARTMENT SHALL PREPARE AN ANNUAL WRITTEN REPORT THAT INCLUDES
35 THE LISTS PREPARED PURSUANT TO SUBSECTION H AND A WRITTEN EXPLANATION OF THE
36 DEGREE AND FORM OF DISCLOSURE. THE DEPARTMENT SHALL MAKE THIS REPORT
37 AVAILABLE TO THE PUBLIC ON REQUEST.

38 36-172. Consent to medical care or surgical procedures; full
39 disclosure; jury instructions

40 A. BEFORE A PATIENT OR A PERSON WHO IS AUTHORIZED TO CONSENT FOR A
41 PATIENT GIVES CONSENT TO ANY MEDICAL CARE OR SURGICAL PROCEDURE THAT APPEARS
42 ON A LIST PRESCRIBED BY SECTION 36-171 REQUIRING DISCLOSURE, THE PHYSICIAN OR
43 HEALTH CARE PROVIDER SHALL DISCLOSE TO THE PATIENT OR AUTHORIZED PERSON THE
44 RISKS AND HAZARDS INVOLVED IN THAT KIND OF CARE OR PROCEDURE. A PHYSICIAN OR

1 HEALTH CARE PROVIDER IS CONSIDERED TO HAVE COMPLIED WITH THE REQUIREMENTS OF
2 THIS SECTION IF DISCLOSURE IS MADE PURSUANT TO SUBSECTION B.

3 B. CONSENT TO MEDICAL CARE THAT APPEARS ON THE LIST PRESCRIBED BY
4 SECTION 36-171 REQUIRING DISCLOSURE IS EFFECTIVE IF IT IS GIVEN IN WRITING,
5 IS SIGNED BY THE PATIENT OR A PERSON AUTHORIZED TO GIVE CONSENT AND BY A
6 COMPETENT WITNESS AND SPECIFICALLY STATES THE RISKS AND HAZARDS THAT ARE
7 INVOLVED IN THE MEDICAL CARE OR SURGICAL PROCEDURE IN THE FORM AND TO THE
8 DEGREE REQUIRED BY THE COMMITTEE.

9 C. IN AN ACTION AGAINST A PHYSICIAN OR HEALTH CARE PROVIDER INVOLVING
10 A HEALTH CARE LIABILITY CLAIM THAT IS BASED ON THE NEGLIGENT FAILURE OF THE
11 PHYSICIAN OR HEALTH CARE PROVIDER TO DISCLOSE OR ADEQUATELY DISCLOSE THE
12 RISKS AND HAZARDS INVOLVED IN THE MEDICAL CARE OR SURGICAL PROCEDURE RENDERED
13 BY THE PHYSICIAN OR HEALTH CARE PROVIDER, BOTH DISCLOSURE MADE AS PROVIDED IN
14 SUBSECTION A AND FAILURE TO DISCLOSE BASED ON INCLUSION OF ANY MEDICAL CARE
15 OR SURGICAL PROCEDURE ON THE LIST PRESCRIBED BY SECTION 36-171 FOR WHICH
16 DISCLOSURE IS NOT REQUIRED IS ADMISSIBLE IN EVIDENCE AND ESTABLISHES A
17 REBUTTABLE PRESUMPTION THAT THE REQUIREMENTS OF SUBSECTIONS A AND B HAVE BEEN
18 COMPLIED WITH. THE COURT SHALL INCLUDE THIS PRESUMPTION IN ITS JURY
19 INSTRUCTIONS.

20 D. THE FAILURE TO DISCLOSE THE RISKS AND HAZARDS INVOLVED IN ANY
21 MEDICAL CARE OR SURGICAL PROCEDURE REQUIRED TO BE DISCLOSED PURSUANT TO
22 SUBSECTIONS A AND B IS ADMISSIBLE IN EVIDENCE AND ESTABLISHES A REBUTTABLE
23 PRESUMPTION OF A NEGLIGENT FAILURE TO CONFORM TO THE DUTY OF DISCLOSURE
24 PRESCRIBED IN SUBSECTIONS A AND B. THE COURT SHALL INCLUDE THIS PRESUMPTION
25 IN ITS JURY INSTRUCTIONS.

26 E. THE FAILURE TO DISCLOSE MAY BE FOUND NOT TO BE NEGLIGENT IF THERE
27 WAS AN EMERGENCY OR IF FOR SOME OTHER REASON IT WAS NOT MEDICALLY FEASIBLE TO
28 MAKE A DISCLOSURE OF THE KIND THAT WOULD OTHERWISE HAVE BEEN NEGLIGENCE.

29 F. IF MEDICAL CARE OR A SURGICAL PROCEDURE IS RENDERED WITH RESPECT TO
30 WHICH THE MEDICAL DISCLOSURE COMMITTEE HAS NOT MADE A DETERMINATION REGARDING
31 A DUTY OF DISCLOSURE AS PRESCRIBED BY SECTION 36-171, THE PHYSICIAN OR HEALTH
32 CARE PROVIDER IS UNDER THE DUTY OTHERWISE IMPOSED BY LAW.

33 36-173. Consent to undergo a hysterectomy; full disclosure

34 A. THE MEDICAL DISCLOSURE COMMITTEE SHALL DEVELOP AND PREPARE WRITTEN
35 MATERIALS TO INFORM A PATIENT OR PERSON AUTHORIZED TO CONSENT FOR A PATIENT
36 OF THE RISKS AND HAZARDS OF A HYSTERECTOMY. THE MATERIALS MUST BE AVAILABLE
37 IN ENGLISH AND IN SPANISH AND ANY OTHER LANGUAGE THE COMMITTEE CONSIDERS
38 APPROPRIATE. THE INFORMATION MUST BE PRESENTED IN A MANNER UNDERSTANDABLE TO
39 A LAYPERSON. THE MATERIALS MUST INCLUDE:

40 1. A NOTICE THAT A DECISION MADE AT ANY TIME TO REFUSE TO UNDERGO A
41 HYSTERECTOMY WILL NOT RESULT IN THE WITHDRAWAL OR WITHHOLDING OF ANY BENEFITS
42 PROVIDED BY PROGRAMS OR PROJECTS RECEIVING FEDERAL FUNDS OR OTHERWISE AFFECT
43 THE PATIENT'S RIGHT TO FUTURE CARE OR TREATMENT.

44 2. THE NAME OF THE PERSON PROVIDING AND EXPLAINING THE MATERIALS.

1 3. A STATEMENT THAT THE PATIENT OR PERSON AUTHORIZED TO CONSENT FOR
2 THE PATIENT UNDERSTANDS THAT THE HYSTERECTOMY IS PERMANENT AND NONREVERSIBLE
3 AND THAT THE PATIENT WILL NOT BE ABLE TO BECOME PREGNANT OR BEAR CHILDREN IF
4 SHE UNDERGOES A HYSTERECTOMY.

5 4. A STATEMENT THAT THE PATIENT HAS THE RIGHT TO SEEK A CONSULTATION
6 FROM A SECOND PHYSICIAN.

7 5. A STATEMENT THAT THE PATIENT OR PERSON AUTHORIZED TO CONSENT FOR
8 THE PATIENT HAS BEEN INFORMED THAT A HYSTERECTOMY IS A REMOVAL OF THE UTERUS
9 THROUGH AN INCISION IN THE LOWER ABDOMEN OR VAGINA AND THAT ADDITIONAL
10 SURGERY MAY BE NECESSARY TO REMOVE OR REPAIR OTHER ORGANS, INCLUDING AN
11 OVARY, TUBE OR APPENDIX OR THE BLADDER, RECTUM OR VAGINA.

12 6. A DESCRIPTION OF THE RISKS AND HAZARDS INVOLVED IN THE PERFORMANCE
13 OF THE PROCEDURE.

14 7. A WRITTEN STATEMENT TO BE SIGNED BY THE PATIENT OR PERSON
15 AUTHORIZED TO CONSENT FOR THE PATIENT INDICATING THAT THE MATERIALS HAVE BEEN
16 PROVIDED AND EXPLAINED TO THE PATIENT OR PERSON AUTHORIZED TO CONSENT FOR THE
17 PATIENT AND THAT THE PATIENT OR PERSON AUTHORIZED TO CONSENT FOR THE PATIENT
18 UNDERSTANDS THE NATURE AND CONSEQUENCES OF A HYSTERECTOMY.

19 B. THE PHYSICIAN OR HEALTH CARE PROVIDER SHALL OBTAIN INFORMED CONSENT
20 UNDER THIS SECTION AND SECTION 36-172 FROM THE PATIENT OR PERSON AUTHORIZED
21 TO CONSENT FOR THE PATIENT BEFORE PERFORMING A HYSTERECTOMY UNLESS THE
22 HYSTERECTOMY IS PERFORMED IN A LIFE-THREATENING SITUATION IN WHICH THE
23 PHYSICIAN DETERMINES OBTAINING INFORMED CONSENT IS NOT REASONABLY POSSIBLE.
24 IF OBTAINING INFORMED CONSENT IS NOT REASONABLY POSSIBLE, THE PHYSICIAN OR
25 HEALTH CARE PROVIDER SHALL INCLUDE IN THE PATIENT'S MEDICAL RECORDS A WRITTEN
26 STATEMENT SIGNED BY THE PHYSICIAN CERTIFYING THE NATURE OF THE EMERGENCY.

27 C. THE MEDICAL DISCLOSURE COMMITTEE MAY NOT PRESCRIBE MATERIALS UNDER
28 THIS SECTION WITHOUT FIRST CONSULTING WITH THE ARIZONA MEDICAL BOARD.

29 Sec. 5. Initial terms of members of the medical disclosure committee

30 A. Notwithstanding section 36-171, Arizona Revised Statutes, as added
31 by this act, the initial terms of members of the medical disclosure committee
32 are:

- 33 1. Two terms ending January 1, 2014.
- 34 2. Three terms ending January 1, 2015.
- 35 3. Four terms ending January 1, 2016.

36 B. The director of the department of health services shall make all
37 subsequent appointments as prescribed by statute.