

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 1089

Short Title: Limited Liability/Emergency Medical Care. (Public)

Sponsors: Senators Purcell; Bingham, Dannelly, Forrester, Garrou, Malone, and Queen.

Referred to: Judiciary I (Civil).

March 21, 2007

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE STANDARD OF PROOF IN CERTAIN MEDICAL MALPRACTICE ACTIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1B of Chapter 90 of the General Statutes is amended by adding the following new section to read:

**"§ 90-21.19. Standard of proof in cases involving emergency medical care.**

(a) Definitions. – In this section:

(1) Emergency medical care. – Medical services provided to determine if an emergency exists or emergency medical services provided after the sudden onset of medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the person's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(2) Health care provider includes:

a. An individual or entity licensed under Article 7 of Chapter 131E of the General Statutes.

b. An individual or entity, including, without limitation, any physician, person, partnership, professional association, limited liability organization, corporation, facility, or institution duly licensed in North Carolina to provide emergency medical care.

c. An individual, including, without limitation, a physician or other person duly licensed in North Carolina to provide medical care, who provides emergency medical care.

(3) Health care liability claim. – A cause of action against a health care provider arising from the provision of emergency medical care, which

1                   proximately results in the injury to or death of the claimant, whether  
2                   the claimant's claim or cause of action sounds in tort, contract, or  
3                   otherwise.

4           (b)   In a health care liability claim asserted by a claimant against a health care  
5   provider, the claimant may prove that the health care provider deviated from accepted  
6   standards of medical care or statutory or regulatory requirements, only if the claimant  
7   shows clear and convincing evidence that the health care provider deviated from the  
8   degree of care and skill that is reasonably expected of a reasonable, prudent health care  
9   provider in the same or similar circumstances.

10           (c)   Nothing in this section shall be construed to change, override, or otherwise  
11   affect G.S. 90.21-14, 90.21-15, 90.21-16, or 20-166."

12           **SECTION 2.** This act is effective when it becomes law and applies to claims  
13   arising or actions filed on and after that date.