

## REQUIRING PROOF OF GREATER NEGLIGENCE IN CASES INVOLVING EMERGENCY MEDICAL CARE

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Health care providers who provide emergency medical care do so under conditions that make the provision of health care more difficult than it is in other medical settings. Often, emergency health care providers are called upon to make split-second decisions regarding critically-ill patients with whom they have no prior relationship and about whom they have limited information.

Nonetheless, current North Carolina law fails to recognize the difficulties that come with providing health care in emergency situations. Health care providers who provide emergency medical care in the normal and ordinary course of their business are held to the standard of health care established in G.S. 90-21.12. Any deviation from that demanding standard is negligence.

There is a disconnect between the demands of North Carolina's high standard of care and the realities of providing medical care in the emergency medicine setting. Thus, it should come as no surprise that the emergency medicine specialty is one of the most frequently sued health care specialties. Frequency of suit makes emergency medicine positions less attractive to health care providers. In turn, this directly impacts the number of emergency medicine providers who are available to treat patients in North Carolina.

North Carolina law should be changed to acknowledge the additional challenges that health care providers who provide medical care in the emergency medicine setting encounter. To adjust for these additional challenges, more should be required from a plaintiff who seeks to recover damages from an emergency medicine provider.

Instead of requiring a plaintiff to show the defendant health care provider's mere deviation from the standard of care, North Carolina law should be changed to require a plaintiff who brings suit against a health care provider based upon care rendered in an emergency setting to prove that the health care provider "willfully and wantonly deviated from the normally acceptable degree of care and skill."

The proposed change to the standard of proof in cases involving emergency medical care would help to account for the difficulty of providing health care in emergency circumstances. Health care providers who provide emergency medical care would be protected from liability for those adverse results that occur as a consequence of the setting in which the health care is rendered, rather than as a consequence of physician error.

The proposed change would not permit health care providers to escape responsibility for clear failures to meet acceptable standards. Plaintiff patients would still be permitted to recover in cases where emergency medicine providers grossly deviate from the standard of care.