

---

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

---

## DIGEST

Proposed law provides that in a malpractice action based on the negligence of a health care provider for injury to or death of a patient arising out of the provision of emergency medical care or services in a hospital emergency room or department, obstetrical unit, diagnostic unit or surgical suite, the plaintiff shall have the burden of proving:

- (1) The degree of knowledge or skill possessed or the degree of care ordinarily exercised by a health care provider licensed to practice in the state of Louisiana and actively practicing in a similar community or locale and under similar circumstances; where the defendant practices in a particular specialty and where the alleged acts of medical negligence raise issues peculiar to the particular medical specialty involved, the plaintiff has the burden of proving the degree of care ordinarily practiced by a health care provider within the involved medical specialty.
- (2) That the defendant either lacked this degree of knowledge or skill or failed to use this degree of knowledge or skill, along with his best judgment and diligence in the application of that knowledge or skill.
- (3) That as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.
- (4) That the health care provider, with willful and wanton misconduct, departed from accepted standards of emergency medical care reasonably expected of an ordinarily prudent health care provider in the same or similar circumstances.

Proposed law provides that in a malpractice action based on proposed law, the court shall instruct the jury to consider, together with all other relevant matters, the following:

- (1) Whether the health care provider providing emergency medical care or services had access to the patient's medical history or was unable to obtain a full medical history, including, but not limited to, the knowledge of preexisting medical conditions, allergies, or medications, or both.
- (2) The lack of a pre-existing health care provider-patient relationship.
- (3) The circumstances constituting the emergency and the emergent medical condition of the patient.
- (4) The circumstances surrounding the delivery of the emergency medical care or services.

Proposed law provides that the provisions of proposed law shall not apply to subsequent medical

care or services unrelated to the original medical emergency care rendered to the patient.

Proposed law provides that the term "health care provider" shall have the same meaning as defined in present law.

Proposed law provides that, for the purposes of proposed law, the provisions of present law (R.S. 9:2794(D)) shall apply not only to physicians, but also to any health care provider rendering emergency medical care or services, though the expert witness, as qualified under present law (R.S. 9:2794(D)) and applicable to proposed law, shall be qualified based on the health care provider's specific profession, education, specialty, training, licensure and knowledge, relative to the emergency medical care or services rendered by the healthcare provider and governed by proposed law and present law (R.S. 9:2794(D)).

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2794.1)