

House Bill 233

By: Representatives O`Neal of the 146th, Keen of the 179th, Burkhalter of the 50th, Fleming of the 117th, Cooper of the 41st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 change provisions relating to establishment of liability and standard of care in claims arising
3 out of the provision of emergency medical care; to provide for other related matters; to
4 provide for an effective date and applicability; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
9 after Code Section 51-1-29.4 a new Code Section 51-1-29.5 to read as follows:

10 "51-1-29.5.

11 (a) As used in this Code section, the term:

12 (1) 'Affiliate' means a person who, directly or indirectly through one or more
13 intermediaries, controls, is controlled by, or is under common control with a specified
14 person, including any direct or indirect parent or subsidiary.

15 (2) 'Claimant' means a person, including a decedent's estate, who seeks or has sought
16 recovery of damages in a health care liability claim. All persons claiming to have
17 sustained damages as the result of the bodily injury or death of a single person are
18 considered a single claimant.

19 (3) 'Control' means the possession, directly or indirectly, of the power to direct or cause
20 the direction of the management and policies of the person, whether through ownership
21 of equity or securities, by contract, or otherwise.

22 (4) 'Court' means any federal or state court.

23 (5) 'Emergency medical care' means bona fide emergency services provided after the
24 onset of a medical or traumatic condition manifesting itself by acute symptoms of
25 sufficient severity, including severe pain, such that the absence of immediate medical
26 attention could reasonably be expected to result in placing the patient's health in serious

1 jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily
2 organ or part. The term does not include medical care or treatment that occurs after the
3 patient is stabilized and is capable of receiving medical treatment as a nonemergency
4 patient or care that is unrelated to the original medical emergency.

5 (6) 'Emergency medical services provider' means any person providing emergency
6 medical care.

7 (7) 'Health care' means any act or treatment performed or furnished, or that should have
8 been performed or furnished, by any health care provider for, to, or on behalf of a patient
9 during the patient's medical care, treatment, or confinement.

10 (8) 'Health care institution' means:

11 (A) An ambulatory surgical center;

12 (B) A personal care home licensed under Chapter 7 of Title 31;

13 (C) An institution providing emergency medical services;

14 (D) A hospice;

15 (E) A hospital;

16 (F) A hospital system;

17 (G) An intermediate care facility for the mentally retarded; or

18 (H) A nursing home.

19 (9) 'Health care liability claim' means a cause of action against a health care provider or
20 physician for treatment, lack of treatment, or other claimed departure from accepted
21 standards of medical care, health care, or safety or professional or administrative services
22 directly related to health care, which departure from standards proximately results in
23 injury to or death of a claimant.

24 (10) 'Health care provider' means:

25 (A) Any person, partnership, professional association, corporation, facility, or
26 institution duly licensed, certified, registered, or chartered by the State of Georgia to
27 provide health care, including but not limited to:

28 (i) A registered nurse;

29 (ii) A dentist;

30 (iii) A podiatrist;

31 (iv) A pharmacist;

32 (v) A chiropractor;

33 (vi) An optometrist; or

34 (vii) A health care institution; and

35 (B) Any person who is:

36 (i) An officer, director, shareholder, member, partner, manager, owner, or affiliate
37 of a health care provider or physician; or

1 (ii) An employee, independent contractor, or agent of a health care provider or
2 physician acting in the course and scope of the employment or contractual
3 relationship.

4 (11) 'Hospice' means a facility licensed as such under the 'Georgia Hospice Law,' Article
5 9 of Chapter 7 of Title 31.

6 (12) 'Hospital' means a facility licensed as such under Chapter 7 of Title 31.

7 (13) 'Hospital system' means a system of hospitals located in this state that are under the
8 common governance or control of a corporate parent.

9 (14) 'Medical care' means any act defined as the practice of medicine under Code Section
10 43-34-20.

11 (15) 'Nursing home' means a facility licensed as such under Chapter 7 of Title 31.

12 (16) 'Pharmacist' means a person licensed as such under Chapter 4 of Title 26.

13 (17) 'Physician' means an individual licensed to practice medicine in this state, a
14 professional association organized by an individual physician or group of physicians, or
15 a partnership or limited liability partnership formed by a group of physicians.

16 (18) 'Professional or administrative services' means those duties or services that a
17 physician or health care provider is required to provide as a condition of maintaining the
18 physician's or health care provider's license, accreditation status, or certification to
19 participate in state or federal health care programs.

20 (b) Any legal term or word of art used in this chapter, not otherwise defined in this
21 chapter, shall have such meaning as is consistent with the common law.

22 (c) In an action involving a health care liability claim arising out of the provision of
23 emergency medical care in a hospital emergency department or obstetrical unit or in a
24 surgical suite immediately following the evaluation or treatment of a patient in a hospital
25 emergency department, no physician or health care provider shall be held liable unless it
26 is proven by clear and convincing evidence that the physician or health care provider's
27 actions showed willful or wanton misconduct.

28 (d) In an action involving a health liability claim arising out of the provision of emergency
29 medical care in a hospital emergency department or obstetrical unit or in a surgical suite
30 immediately following the evaluation or treatment of a patient in a hospital emergency
31 department, the court shall instruct the jury to consider, together with all other relevant
32 matters:

33 (1) Whether the person providing care did or did not have the patient's medical history
34 or was able or unable to obtain a full medical history, including the knowledge of
35 preexisting medical conditions, allergies, and medications;

36 (2) The presence or lack of a preexisting physician-patient relationship or health care
37 provider-patient relationship;

- 1 (3) The circumstances constituting the emergency; and
2 (4) The circumstances surrounding the delivery of the emergency medical care.”

3 **SECTION 2.**

4 This Act shall become effective July 1, 2005, and shall apply with respect to causes of action
5 arising on or after that date. Prior causes of action shall be governed by prior law.

6 **SECTION 3.**

7 All laws and parts of laws in conflict with this Act are repealed.