

Regular Session, 2010

HOUSE BILL NO. 427

BY REPRESENTATIVE MILLS

MALPRACTICE/MEDICAL: Provides relative to medical malpractice

1 AN ACT

2 To enact R.S. 9:2794.1, relative to medical malpractice; to provide procedures for
3 emergency medical care claims; to provide for the standard of care; to provide for
4 the burden of proof; to provide jury instructions; to provide for applicability; to
5 provide a limitation of liability; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2794.1 is hereby enacted to read as follows:

8 §2794.1. Emergency health care services; malpractice; standard of care; burden of
9 proof; jury instructions; expert witness

10 A. Notwithstanding any law to the contrary, including the provisions of R.S.
11 2794, in a malpractice action based on the negligence of a health care provider as
12 defined in R.S. 40:1299.41 and any physician assistant for any injury, death, loss,
13 civil penalty, or damage to a patient arising out of emergency medical care or
14 services, regardless of the location of the provision of services, the plaintiff shall
15 have the burden of proving by clear and convincing evidence all of the following:

16 (1) The degree of knowledge or skill possessed or the degree of care
17 ordinarily exercised by a health care provider licensed to practice in the state of
18 Louisiana and actively practicing in a similar community or locale and under similar
19 circumstances.

20 (2) The degree of care ordinarily practiced by a health care provider within
21 a particular medical specialty, when the defendant practices in a specialty and the
22 alleged acts of negligence raise issues particular to that specialty.

1 (3) The defendant lacked the degree of knowledge or skill or failed to use it
2 and his best judgment and diligence.

3 (4) The plaintiff suffered injuries that would not otherwise have been
4 incurred as a proximate result of a lack of knowledge or skill or the failure to
5 exercise this degree of care.

6 (5) The health care provider with willful and wanton misconduct departed
7 from accepted standards of emergency medical care reasonably expected of an
8 ordinarily prudent health care provider in the same or similar circumstances.

9 B. In a malpractice action in accordance with Subsection A of this Section,
10 the court shall instruct the jury to consider all of the following and all other relevant
11 matters:

12 (1) Whether the health care provider was unable to obtain any medical
13 history of the patient, including the knowledge of preexisting medical conditions,
14 allergies, and medications.

15 (2) Whether there was a preexisting health care provider-patient relationship.

16 (3) The circumstances constituting the emergency and the emergent medical
17 condition of the patient.

18 (4) The circumstances surrounding the delivery of emergency medical care
19 or services.

20 C. In a malpractice action in accordance with Subsection A of this Section,
21 the court shall only admit expert testimony from practicing health care providers
22 with substantial professional experience within the last five years in the same field
23 or specialty and at a similar facility. For the purposes of this Subsection, "substantial
24 professional experience" shall be determined in accordance with the custom and
25 practice in which emergency medical coverage is provided in similar localities where
26 the alleged negligence occurred.

27 D. For the purposes of this Section, "emergency medical care" and
28 "emergency medical services" means medical services rendered in accordance with
29 the Federal Emergency Medical Treatment and Active Labor Act.

1 E. Any health care provider or physician assistant providing emergency
 2 services pursuant to the Federal Emergency Medical Treatment and Active Labor
 3 Act shall not be liable for any injury, death, loss, civil penalty, or damages arising
 4 from any act or omission in rendering services prior to the patient being stabilized
 5 and capable of receiving medical treatment as a nonemergency patient, and for any
 6 services related to the original medical emergency, unless the injury or damage was
 7 caused by gross negligence or willful and wanton misconduct.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Mills

HB No. 427

Abstract: Provides for procedures and a limitation of liability for health care providers providing services in accordance with the Federal Emergency Medical Treatment and Active Labor Act.

Proposed law provides that in a medical malpractice action based on services provided in an emergency, the plaintiff shall have the burden of proving, by clear and convincing evidence, the degree of knowledge or skill possessed or ordinarily exercised by a health care provider practicing in a similar community, the defendant lacked the knowledge or skill or failed to use it and his best judgment, the plaintiff suffered injuries as a result of the lack of knowledge or skill and health care provider willfully and wantonly departed from the accepted standards of emergency medical services.

Proposed law provides that the court shall instruct the jury to consider if the health care provider had access to the plaintiff's medical history, a pre-existing doctor/patient relationship, the circumstances constituting the emergency and the delivery of medical care.

Proposed law provides that the court shall only admit expert witness testimony from practicing health care providers with substantial professional experience within the last five years in the same field and at a similar facility.

Proposed law defines "substantial professional experience", "emergency medical care", and "emergency medical services".

Proposed law provides that any health care provider providing these services shall not be liable for damages as a result of any act or omission in rendering the services, unless the damages were caused by gross negligence or willful and wanton misconduct.

(Adds R.S. 9:2794.1)