

58-13-2.5 Standard of proof for emergency care when immunity does not apply.

- (1) A person who is a health care provider as defined in Section 78B-3-403 who provides emergency care in good faith, but is not immune from suit because of an expectation of payment, a legal duty to respond, or other reason under Section 58-13-2, may only be liable for civil damages if fault, as defined in Section 78B-5-817, is established by clear and convincing evidence.
- (2) For purposes of Subsection (1), "emergency care" means the treatment of an emergency medical condition, as defined in Section 31A-22-627, from the time that the person presents at the emergency department of a hospital and including any subsequent transfer to another hospital, until the condition has been stabilized and the patient is either discharged from the emergency department or admitted to another department of the hospital.
- (3) This section does not apply to emergency care provided by a physician if:
 - (a) the physician has a previously established physician/patient relationship with the patient outside of the emergency room;
 - (b) the patient has been seen in the last three months by the physician for the same condition for which emergency care is sought; and
 - (c) the physician can access and consult the patient's relevant medical care records while the physician is making decisions about and providing the emergency care.
- (4)
 - (a) Nothing in this section may be construed as:
 - (i) altering the applicable standard of care for determining fault; or
 - (ii) applying the standard of proof of clear and convincing evidence to care outside of emergency care and the mandatory legal duty to treat.
 - (b) This section applies to emergency care given after June 1, 2009.
- (5) This section sunsets in accordance with Section 63I-1-258.

Enacted by Chapter 14, 2009 General Session