
809.20 MEDICAL MALPRACTICE—EXISTENCE OF EMERGENCY MEDICAL CONDITION[1]

(Use for claims arising on or after 1 October 2011.)

The *(state number)* issue reads:

"Was the plaintiff in an emergency medical condition when [the defendant] *[name defendant]* [furnished] [or] [failed to furnish][2] professional services to *him*?"

On this issue the burden of proof is on the defendant. This means that [the defendant] *[name defendant]* must prove by the greater weight of the evidence that the plaintiff was in an emergency medical condition when [the defendant] *[name defendant]* [furnished] [or] [failed to furnish] professional services to *him*.

[An "emergency medical condition"[3] is a medical condition manifesting

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1 Pursuant to N.C. Gen. Stat. § 90-21.12(b): "In any medical malpractice action arising out of the furnishing or the failure to furnish professional services in the treatment of an emergency medical condition . . . the claimant must prove a violation of the standards of practice . . . by clear and convincing evidence." If the jury finds that the plaintiff had an emergency medical condition, then use N.C.P.I.—Civil 809.22 *et seq.* (clear and convincing standard for violation of the standards of practice under N.C. Gen. Stat. § 90-21.12(b) and greater weight standard for common law duties) to submit to the jury the liability issues connected with the treatment of that condition. If the jury does not so find, then use N.C.P.I.—Civil 809.00A *et seq.* (greater weight standard for both statutory and common law duties) for the liability issues.

2 "Failed to furnish" should be used only when a treating relationship has been established. A health care provider is not bound to render professional services to everyone who applies. However, when a health care provider undertakes the care and treatment of a patient, unless otherwise limited by contract, the relationship cannot be terminated at the mere will of the health care provider. The relationship must continue until the treatment is no longer required, until it is dissolved by the consent of the parties or until notice is given which allows the patient a reasonable opportunity to engage the services of another health care provider. *See Galloway v. Lawrence*, 266 N.C. 245, 248, 145 S.E.2d 861, 864 (1965); *Groce v. Myers*, 224 N.C. 165, 171, 29 S.E.2d 553, 557 (1944); *Childers v. Frye*, 201 N.C. 42, 45, 158 S.E. 744, 746 (1931); *Nash v. Royster*, 189 N.C. 408, 413, 127 S.E. 356, 359 (1925).

3 N.C. Gen. Stat. § 90-21.12(b) defines an "emergency medical condition" according to ì42 U.S.C. 1395dd(e)(1)," which is a provision within the federal Emergency Treatment and Active Labor Act (EMTALA). It defines an "emergency medical condition" as:

itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

[placing the health of the individual in serious jeopardy] [or]

[serious impairment to bodily functions] [or]

[serious dysfunction of any bodily organ or part] [or]

[placing the health of a pregnant woman in serious jeopardy] [or]

[placing the health of a pregnant woman's unborn child in serious jeopardy] [or]

[placing the health of a pregnant woman and her unborn child in serious jeopardy]].

In this case, the defendant contends, and the plaintiff denies, that the plaintiff was in an emergency medical condition when [the defendant] *[name defendant]* [furnished] [or] [failed to furnish] professional services to *him*.

Finally, as to this *(state number)* issue on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that the plaintiff was in an emergency medical condition when [the defendant] *[name defendant]* [furnished] [or] [failed to furnish] professional services to *him*, then it would be your duty to answer this issue "Yes" in favor of the

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ì(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in-

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
(ii) serious impairment to bodily functions, or
(iii) serious dysfunction of any bodily organ or part.î

42 U.S.C. § 1395dd(e)(1)(A).

Cf. Diaz v. Div. of Soc. Serv., 360 N.C. 384, 387–90, 628 S.E.2d 1, 3–5 (2006) (applying plain language of "emergency medical condition" in a Medicaid coverage dispute before the enactment of N.C. Gen. Stat. § 90-21.12(b)).

defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.