GEORGIA’S EMERGENCY ROOM STANDARD:

RECENT CHANGES IN POLICY & IMPACTS ON PATIENTS
EXECUTIVE SUMMARY

According to the Institute of Medicine, preventable medical errors kill as many as 98,000 Americans each year, and seriously injure another 1,000,000 patients each year. This makes medical errors the 8th leading cause of death in the US, higher than automobile accidents, breast cancer and AIDS.¹

Extrapolated to Georgia’s population, the Institute of Medicine study shows that nearly 2,800 Georgians die annually as a result of medical errors – more than seven patients die from malpractice every single day. Another 77 Georgia patients are seriously injured by medical mistakes every day.

However, in the emergency room, current Georgia law shields negligent members of the medical community from accountability for those errors, and prevents innocent patients from achieving the justice they deserve. Georgia’s is the most restrictive law in the nation.

As of February 2005, when Gov. Sonny Perdue signed Senate Bill 3, patients must prove “gross negligence” – instead of “negligence,” the standard for liability for all other areas of medical care – in order to hold any emergency department personnel accountable for injury or death resulting from negligence or abuse.

And yet, the unique characteristics of emergency rooms – a high volume of patients, often with critical injuries, combined with chronic staff shortages – increase the likelihood of negligence and medical errors. A Harvard study of more than 30,000 hospital records showed that emergency rooms have more injuries due to negligence than all other areas of the hospital combined.²

Given the unique conditions of emergency rooms, it is nearly impossible to prove gross negligence after the fact, leaving many injured patients without recourse. As a result, injured patients, or the survivors of those killed by medical errors, have been shut out of the very process that affords fairness and accountability in every other industry in the country: the US legal system.

Senate Bill 286, filed during the 2007 Georgia General Assembly, would eliminate the “gross negligence” standard. Specifically, the bill would:

- Amend the standard of liability in hospital emergency departments from “gross negligence” to “negligence.” Gross negligence is most often characterized as a reckless disregard for the safety of a patient, whereas negligence means a doctor or nurse failed to use reasonable care to avoid foreseeable harm.
- Maintain a “clear and convincing” burden of proof for emergency room malpractice claims.
- Maintain SB 3’s requirement that juries consider the specific circumstances of the hospital emergency department.
INTRODUCTION

Hospital emergency departments now play an increasingly prevalent role in the delivery of health care in Georgia. ER doctors and nurses now care for more patients than ever before. But as the volume of patients coming through the emergency room doors continues to grow, the number of hospitals with emergency departments and emergency department personnel have dwindled, leaving a crisis of care that can contribute to mistakes and errors.

According to a report issued by the Centers for Disease Control and Prevention’s National Center for Health Statistics, emergency room visits rose by 31 percent between 1995 and 2005 – an average 1.8 million additional visits each year, and an average 219 visits by US patients every minute during 2005. During the same time frame, the number of emergency rooms operating in the US shrank by 9 percent.

For Georgia, this trend is especially significant as the number of Level 1 trauma centers – emergency departments equipped to handle the most serious of trauma injuries – has decreased as well, forcing emergency rooms to deliver care beyond the usual scope.

From a young child critically injured in a drunken driving accident, to a grandmother suffering from heart failure, common visitors to emergency rooms include patients from
all walks of life. However, some are more likely than others to rely on the emergency department. For example, mothers in labor are most often admitted to the hospital through the emergency room.

A recent Kaiser Family Foundation report showed that those who utilize the emergency room most often are more likely to be in poor health and have more needs for health care, such as the elderly, low-income wage earners and those living with chronic health conditions such as diabetes.

The emergency room is also the primary access to health care for the medically uninsured, a trend many experts anticipate will continue as insurance coverage becomes more limited, the number of employers offering health insurance dwindles and preventative and routine care becomes more costly.

The chaotic nature of the emergency room, the critical condition of many emergency room patients, and chronic staff shortages create a working environment where mistakes are more easily made. Doctors make quick decisions to save lives, often without access to a person’s health care history, medication information or details on their family history.

Common emergency room errors include:

- Negligence – not taking customary steps to ensure that a patient is receiving care that meets typical standards in such a setting
- Patient dumping – when one hospital transfers a patient to another facility, or refuses to treat a patient because of their insurance status or inability to self-pay
- Delayed treatment
- Failure to fully evaluate a patient
- Surgical errors
- Medication errors
- Lack of communication among staff regarding a patient
- Laboratory errors
- Delayed diagnosis, misdiagnosis or failure to diagnose
- Contaminated or incorrect blood transfusions
- Failure to review patient history for previous conditions, drug allergies, etc.
- Emergency room "boarding" – when patients are examined, treated, and admitted to a hospital but kept waiting for a room

These errors can lead to serious, long-term conditions that continue long after patients leave the emergency room. For some, these errors can mean death.

**THE EMERGENCY ROOM: AN ACCOUNTABILITY-FREE ZONE?**

Patients who are injured as a result of clear negligence in Georgia’s emergency departments have few avenues to hold caregivers responsible for negligent care – even when preventable mistakes lead to death.
Current Georgia law, as established in 2005 by Senate Bill 3, requires that emergency room patients prove “gross negligence” instead of “negligence” – the standard for liability for all other areas of medical care. Gross negligence is most often characterized as a reckless disregard for the safety of a patient, whereas negligence means a doctor or nurse failed to use reasonable care to avoid foreseeable harm. The gross negligence standard applies to both economic and non-economic damages.

The effect of this standard on every patient who receives care in a Georgia emergency room is that it is an absolute barrier to accountability and justice. If a patient cannot prove gross negligence, the patient cannot even bring a claim for the harm done to them, and has no hope for any recourse, accountability or compensation.

For Georgia’s health care system, the effect of the gross negligence standard is the creation of accountability-free zones. Gross negligence provides blanket immunity for all emergency room personnel, and removes important incentives for the provision of emergency care that consistently meets generally-accepted standards of care.

In order to hold emergency department personnel accountable in this situation, the patient must show that the worker’s or hospital’s actions were reckless to the point of disregard for the patient’s well-being. Thus, the gross negligence standard for liability makes it essentially impossible for a patient to hold a health care provider accountable for injuries sustained either in the emergency room or elsewhere in the hospital while emergency care is still being administered.

The gross negligence standard follows patients throughout the hospital as long as they remain in need of emergency medical care. For example, when a new mother in labor arrives at the hospital through the emergency room, and is then admitted to the hospital to deliver her child, the immunity that shields emergency department personnel from accountability will follow that mother and child throughout the delivery. In fact, the gross negligence standard only lifts once the baby is born and all complications are resolved.

This form of immunity protects surgeons, physicians, technicians, nurses and other health care personnel outside the emergency room for any care given to a patient to address whatever situation that first brought them to the emergency room. If mistakes are made, the patient would have to prove gross negligence to hold the caregiver accountable.

**IMPACT ON GEORGIA PATIENTS**

**Janie Davis**

In March 2005, 68-year-old Janie Davis was rushed to a hospital emergency room in Perry complaining of a sore chest, neck and jaw, as well as vomiting and nausea. All are common symptoms of women having a heart attack or other serious heart-related condition. Davis suffered from congestive heart failure, a condition where the heart is unable to pump enough blood to the rest of the body.
Though he had knowledge of her condition, the emergency room doctor only briefly examined Davis and concluded that she had the common cold. He wrote her a prescription for sinus medication and released her from the emergency room. Janie Davis – along with Willie, her husband of 50 years – left the hospital, stopping at an area CVS to have the prescription filled. While Willie Davis was waiting in line to get her medicine, Janie Davis stopped breathing in the parking lot.

In an effort to revive Davis, one pharmacist administered nitroglycerin while another pumped her chest. Willie rushed her back to the hospital, where they waited for more than an hour to be seen. The wait was too long. Davis died in the emergency room. An autopsy later showed that her aorta had ruptured.

Willie Davis knows that Janie Davis’ complaints were not taken seriously by emergency department personnel. He doesn’t understand why these caregivers didn’t administer further tests, and why they abruptly released a patient with a history of serious heart problems, without observation.

But because the doctor’s misdiagnosis and Davis’ death occurred in the emergency room, her family is left with little recourse. Willie Davis cannot secure legal representation as a direct result of Georgia’s gross negligence statute. Even though Davis’ heart condition was clearly misdiagnosed, and she was forced to wait for an hour while suffering a heart attack, those responsible for Janie Davis’ death haven’t been held accountable and have no reason to improve the quality of their care for other patients.

Judy Nelms

While handling a sick horse on her farm in McDonough in June 2006, Judy Nelms fully severed one finger and severely sliced her ring finger. She wrapped her hand in a towel, and placed the detached finger on ice to preserve it. She then rushed to her local emergency room.

Once there, Nelms waited 90 minutes before being seen by an emergency doctor. She learned the artery on her ring finger had been cut, a potentially critical condition the doctor immediately treated. The doctor also called an orthopedist to assist with the severed finger, though the specialist never returned the call or came to the hospital.

Nelms’ hand was instead simply wrapped in a gauze bandage, and she was sent home with pain medication and instructions to call the next day for an appointment. She was given no information on how to care for her finger or hand.

Nelms awoke the next morning with her gauze bandage saturated in blood. She called the orthopedist, as instructed, but was told that the office was booked with appointments and would be unable to help.

Nelms next turned to her primary doctor, who was shocked by the negligent treatment she had received at the hospital and by the orthopedist. He referred her to another
orthopedist, who was unable to re-attach Nelms’ finger. The first eight to 12 hours were the most crucial, and by the time Nelms finally received adequate care, 18 hours had passed.

Even worse, infection had set in. Nelms had to care for the open wound for weeks before having surgery to close the wound – followed by months of physical therapy. She now has a stub in place of her finger.

Because of clear negligence in the emergency room, Nelms lost her finger and a job she had held for 27 years. She missed too many days at work coping with a condition that could have been swiftly and correctly treated when she first entered the emergency room.

Judy Nelms cannot secure legal representation as a direct result of Georgia’s gross negligence statute. Neither the emergency room doctor nor the orthopedist have been held accountable, and have no reason to improve the quality of their care for other patients.

Rodney Fretwell

In February 2006, after suffering from an excruciating headache for days and numbness on the left side of his face, Phenix City resident and small businessman Rodney Fretwell went to the nearest emergency room, just across the Alabama-Georgia state line in Columbus. The emergency room doctor diagnosed Fretwell with a pulled muscle – not a stroke, as Fretwell feared.

Testing for a stroke was available at a cost of about $1,000. The emergency room doctor advised Fretwell, who was uninsured, that the test was unnecessary and encouraged him to forgo it. Fretwell was discharged with prescriptions for blood pressure medicine and a muscle relaxant.

Fretwell went back to work at the awning company he owned. Within two hours, the left side of his body was severely paralyzed, and Fretwell could not walk without dragging his leg. He returned to the same emergency room, handed over his paperwork from earlier in the day, and waited for several hours, during which time he began to vomit.

Technicians performed a CAT scan and discovered a lesion on the left side of Fretwell’s brain. However, once again the emergency room doctor told Fretwell that his symptoms were nothing more than a pulled muscle, and sent him home with instructions to contact a specialist in the morning.

During the night, Fretwell’s vision became blurred and his vomiting violent. By morning, his condition had worsened and his blood pressure was dangerously high. Fretwell’s wife Sherry called an ambulance. This time, the hospital admitted Fretwell and ran tests that soon confirmed he had suffered a stroke.
Today, Fretwell is unable to maintain balance, and always feels numbness and tingling in his body. He is unable to work and the future of his small business is in jeopardy. Fretwell worries about Sherry and their two children – and his future medical costs. The family has filed for bankruptcy, and has already lost their home and car.

Rodney Fretwell cannot secure legal representation as a direct result of Georgia’s gross negligence statute. Despite repeated misdiagnoses over the course of a day as Fretwell’s symptoms worsened, the emergency room doctor has not been held accountable, and has no reason to improve the quality of their care for other patients.

**SENATE BILL 286**

Senate Bill 286 would change SB 3 by amending the liability standard for care provided in the emergency room from *gross negligence* to *negligence*, the standard expected throughout the rest of the hospital.

Under SB 286, a jury would still have to consider the unique circumstances of the emergency room when deciding a claim for harm in that setting. Also, SB 286 would not affect the “clear and convincing” burden of proof originally established by SB 3.

State senators from both sides of the aisle, and from across the state, have signed on to SB 286, including ten Republican and five Democratic senators. SB 286 is sponsored by Sen. Seth Harp (R-Midland), and co-sponsored by Senate Majority Leader Tommie Williams (R-Lyons), Senate Majority Whip Mitch Seabaugh (R-Sharpsburg), Senate Minority Leader Robert Brown (D-Macon), Senate Minority Whip David Adelman (D-Atlanta), David Shafer (R-Duluth), Bill Cowsert (R-Athens), Jack Murphy (R-Cumming), Ronnie Chance (R-Tyrone) and Jeff Mullis (R-Chickamauga).

SB 286 was filed during the 2007 Georgia General Assembly and will be eligible for action during the 2008 legislative session.

**CONCLUSION**

Studies show emergency rooms have more injuries due to negligence than all other areas of the hospital. Yet, current Georgia law shields negligent members of the medical community from accountability for unnecessary errors, and prevents innocent patients from even bringing a claim for harm done to them.

Patients injured or killed as a result of negligence have few means to achieve accountability and justice under current state law.

SB 286 would amend the “gross negligence” standard enacted three years ago, replacing it with a standard of “negligence,” which is the standard for liability for all other areas of medical care.
APPENDIX

LEGISLATION IN OTHER STATES

Most states hold emergency department personnel to the same standard for liability for all other areas of medical care. In fact, only three other states have standards similar to Georgia: South Carolina, Florida and Texas.

The standard of care in Texas is “willful or wanton misconduct,” meaning it would have to be substantially clear that a provider had either intended to harm, or had acted with no regard whatsoever to the patient’s safety, in order hold them accountable for injuries or death occurring in the emergency room.

Florida law requires that the patient prove “reckless disregard.” This applies to emergency room and trauma center health care providers.

Attempts to enact a “willful and wanton” standard in emergency rooms in other state legislatures have failed, including in Arizona and Michigan.
1 “To Err is Human: Building a Safer Health System,” Institute of Medicine, November 1999.