



State Statutes Establishing Clear and Convincing Evidence Standards in Medical Liability Tort

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ARIZONA

Medical Liability Reform: Immunity for Free Health Care Services: HB 2556 (1990).

Limits physician and health care facility liability related to the delivery of infants under certain emergency care situations if the patient was not previously treated for pregnancy by the physician, a group practice of the physician, or the physician assistant and nurse midwife with whom the physician had an agreement. (Unless elements are proved by **clear and convincing evidence**, the licensed health care facility is not liable to the female patient, the child or children delivered or their families for medical malpractice related to labor or delivery.)

Burden of Proof for Treatment in Emergency Departments or by On-Call Providers: SB 1018 (2009).

Under this statute, an emergency room physician, on-call medical specialist, hospital or hospital employee can be held liable for medical negligence in connection with providing emergency treatment only when the plaintiff presents "**clear and convincing**" evidence that the medical care provider committed malpractice.

Qualified Immunity for Students: SB 1429 (2011).

A medical student in an educational or training program of a certified, accredited or state approved school of health professions is not liable in a medical malpractice action for injury that occurs during or as a result of care that is provided while the student is in the program and under the supervision of a licensed health care provider, unless gross negligence is established by **clear and convincing** evidence. The provision does not eliminate any responsibility of the supervising licensed provider for the student's actions.

ARKANSAS

Damage Caps: §16-55-205 to 16-55-209.

Punitive damages award for each plaintiff shall not be more than the greater of the following: (1) \$250,000; or (2) Three times the amount of compensatory damages awarded in the action, not to exceed \$1 million. Limits adjusted for inflation at three-year intervals. Limits shall not apply when the finder of fact: (1) Determines by **clear and convincing** evidence that, at the time of the injury, the defendant intentionally pursued a course of conduct for the purpose of causing injury or damage; and (2) Determines that the defendant's conduct did, in fact, harm the plaintiff.

COLORADO

Noneconomic Damages Reform: SB 67 (1986).

This provision limits the award of noneconomic damages to \$250,000, unless the court finds justification by "**clear and convincing**" evidence for a larger award not to exceed \$500,000. [The

\$250,000 limit on noneconomic damages in medical liability actions is constitutional. Scholz v. Metropolitan Pathologists, P.C., No. 92-8A277, Co. Sup. Ct., April 26, 1993.]

FLORIDA

Medical Liability Reform: Nursing Homes: Punitive Damages: SB 1202 (2001).

Requires a plaintiff to prove punitive damages by **clear and convincing** evidence in cases against nursing home facilities. Limits punitive damages against nursing home facilities to the greater of three times the award of compensatory damages or \$1 million. Limits punitive damages against nursing home facilities to the greater of \$4 million or four times the award of compensatory damages, where conduct is proven to be motivated by financial gain. Sets no limit on the award of punitive damages against nursing home facilities, where intentional harm is proven.

Medical Liability Reform: Medicaid: HB 7109 (2011).

Caps non-economic damages for physicians treating Medicaid patients at \$300,000 per claim and \$200,000 per physician. An award may exceed the cap if the plaintiff can prove through **clear and convincing** evidence that the physician acted with malicious or wanton behavior.

GEORGIA

Medical Liability Reform: Emergency Medical Situations: S.B. 3 (2005).

Provides that in claims arising out of the provision of emergency medical care against a hospital emergency department, no physician or health care provider shall be liable unless it is proven by **clear and convincing** evidence that the physician or health care provider's actions showed gross negligence.

MINNESOTA

Damage Caps: §549.20.

Punitive damages shall be allowed in civil actions only upon **clear and convincing** evidence that the acts of the defendant show deliberate disregard for the rights or safety of others. The court shall specifically review the punitive damages award and shall make specific findings. The appellate court, if any, also shall review the award. Nothing in this section may be construed to restrict either court's authority to limit punitive damages.

NEVADA

Medical Liability Reform: Noneconomic Damages Reform: AB 1 (2002).

Limits noneconomic damages in medical liability cases to \$350,000, except upon a showing of "gross malpractice" or a judicial determination that there is "**clear and convincing** evidence" that the noneconomic award should exceed the cap.

NORTH CAROLINA

Medical Liability Reform: Emergency Care: SB 33 (2011).

Provides that in the treatment of an emergency medical condition, as defined in 42 U.S.C. § 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice by **clear and convincing** evidence.

OKLAHOMA

Medical Liability Reform: Noneconomic Damages: HB 2661 (2004); HB 2128 (2011).

In civil actions arising from claims for bodily injury, a trier of fact may award a plaintiff a maximum of \$350,000 for noneconomic damages, regardless of the number of parties against whom the action is brought or the number of actions brought. There will be no limit on the amount of noneconomic damages that may be awarded in a claim for bodily injury resulting from negligence if a judge and jury find by **clear and convincing** evidence that the defendant's acts or failures to act were in reckless disregard of the rights of others, grossly negligent, fraudulent, or with malice.

SOURCES

American Tort Reform Association, <http://www.atra.org/issues/index.php?issue=7338>. Accessed January 16, 2012.

National Conference of State Legislatures, <http://www.ncsl.org/issues-research/banking-insurance-financial-services/medical-liability-medical-malpractice-laws.aspx>. Accessed January 16, 2012.