

RCW 7.70.040 Necessary elements of proof that injury resulted from failure to follow accepted standard of care—COVID-19 pandemic.

(1) The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(a) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances;

(b) Such failure was a proximate cause of the injury complained of.

(2)(a) The following shall be necessary elements of proof that injury resulted from the failure of a health care provider to follow the accepted standard of care in acting or failing to act following the proclamation of a state of emergency in all counties in the state of Washington by the governor in response to the COVID-19 pandemic on February 29, 2020, and until the state of emergency is terminated:

(i) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances, taking into account whether the act or omission:

(A) Was in good faith based upon guidance, direction, or recommendations, including in interim or preliminary form, published by the federal government, the state of Washington or departments, divisions, agencies, or agents thereof, or local governments in the state of Washington or departments, divisions, agencies, or agents thereof, in response to the COVID-19 pandemic and applicable to such health care provider; or

(B) Was due to a lack of resources including, but not limited to, available facility capacity, staff, and supplies, directly attributable to the COVID-19 pandemic;

(ii) Such failure was a proximate cause of the injury complained of.

(b) The provisions in (a) of this subsection apply only if relevant to the determination of whether the health care provider followed the standard of care, as determined by the court.

(c) If any health care provider presents evidence described in (a) of this subsection, the injured patient or the patient's representative is permitted to present rebuttal evidence, so long as such evidence is otherwise admissible. [2021 c 241 § 2; 2011 c 336 § 251; 1983 c 149 § 2; 1975-'76 2nd ex.s. c 56 § 9.]

Findings—Intent—2021 c 241: "(1) The legislature finds that the COVID-19 pandemic, a public health crisis, has placed an oversized burden on Washington's health care providers and health care facilities, as they care for communities and families.

(2) The legislature further finds that during the pandemic, the law should accurately reflect the realities of the challenging practice conditions. It is fair and appropriate to give special consideration to the challenges arising during the pandemic, such as evolving and sometimes conflicting direction from health officials regarding treatment for COVID-19 infected patients, supply chain shortages of personal protective equipment and testing supplies, and a

proclamation on nonurgent procedures resulting in delayed or missed health screenings and diagnoses.

(3) The legislature intends, during the period of the declared state of emergency due to the COVID-19 pandemic, to amend the current standard of care law governing health care providers to give special consideration to additional relevant factors." [2021 c 241 § 1.]

Effective date—2021 c 241: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2021]." [2021 c 241 § 3.]

Severability—1975-'76 2nd ex.s. c 56: See note following RCW 4.16.350.