



Montana Legislative Services Division
Legal Services Office

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TO: CFHHS 2025 Interim Committee

FROM: Emily McKay, LSD Attorney

Date: 10/20/2025

RE: Emergency Medical Services Liability & Staffing Shortages

ISSUE

Whether an Emergency Medical Services (“EMS”) provider can be held liable when an ambulance arrives late to a medical emergency due to short staffing or resource allocation triage.

BACKGROUND

On September 23, 2025, the CFHHS Interim Committee (“Committee”) heard an array of testimony from EMS stakeholders regarding challenges facing the EMS industry. The testimony highlighted staffing and resource shortages for EMS agencies across the State, sometimes resulting in delays to patient care. The Committee expressed concern regarding potential liability to the EMS agencies if a patient experiences harm as a result of such delays, and requested an analysis from the Legislative Services Division.

SHORT ANSWER

Negligence cases are extremely fact-dependent, and as such, it is challenging to predict outcomes when delayed response times are at issue. Although it is unlikely that an EMS provider would face civil liability for negligence based *solely* on delayed response times due to verifiable staffing shortages or triage, particularly if the provider is a government entity, the determination of negligence ultimately rests with a jury to determine whether an EMS provider acted reasonably given their unique circumstances.

ANALYSIS

In order to hold an EMS provider civilly liable, a plaintiff would have to prove that the EMS provider was negligent.



Montana has codified the traditional common law duty for all individuals and entities to use reasonable care under the circumstances to avoid causing foreseeable harm to others.¹ If an individual or entity does not take reasonable care and then harms someone, then they may be liable for negligence. The Montana Supreme Court has explained the common law duty of reasonable care as, “[a]t the most basic level, we all share the common law duty to exercise the level of care that a reasonable and prudent person would under the same circumstances.”²

A successful negligence case must establish all of the following elements: (1) the defendant had a legal duty, (2) the defendant breached that duty, (3) the breach caused injury, and (4) the injury resulted in damages.³

A heightened duty of care may arise from a statute or a special relationship between the plaintiff and defendant, such as a physician/ patient relationship or police officer/ detainee relationship.⁴

For example, the negligence standard for a health care provider providing medical care to a patient considers the circumstances of that professional’s training. Thus, a plaintiff bringing a medical malpractice claim must establish (1) the accepted standard of care for the health care provider through the testimony of an expert witness with relevant medical training; (2) that the defendant departed from that standard of care; and (3) the departure proximately caused the plaintiff’s injury.⁵

In analyzing whether a duty exists, the Montana Supreme Court considers “whether the imposition of that duty comports with public policy, and whether the defendant could have foreseen that his conduct could have resulted in an injury to the plaintiff.”⁶

A. Public Providers

Although there is no statutory governmental immunity provision in Montana, the Montana Supreme Court has recognized the “public duty doctrine,” which clarifies that a government official has a duty to the public at large, but *no duty* to protect a particular individual absent a special relationship.⁷ The court writes, “a duty owed to all is a duty owed to none.”⁸ The

¹ Mont. Code Ann. §§1-1-204, 27-1-701, 28-1-201.

² *Fisher v. Swift Transp. Co.*, 2008 MT 105 ¶16.

³ *Gatlin-Johnson v. City of Miles City*, 2012 MT 302, ¶13.

⁴ *Fisher v. Swift Transp. Co.*, 2008 MT 105 ¶16

⁵ *Estate of Wilson v. Addison*, 2011 MT 179, ¶17.

⁶ *Id.* at ¶17.

⁷ *Nelson v. Driscoll*, 1999 MT 193, ¶21.

⁸ *Id.*



goal of the public duty doctrine is to protect municipalities and other governmental entities from negligence claims for failure to adequately enforce general laws and regulations that were intended to benefit the community as a whole.⁹

An exception to the public duty arises when there is a special relationship between the government official and an individual. The special relationship can be created: (a) by statute; (b) when a government officer undertakes specific action to protect a person; (c) when government actions reasonably induce detrimental reliance by a member of the public; or (d) when the agency or officer has custody of the plaintiff and causes harm.¹⁰

As applied to public EMS providers, the public duty doctrine likely protects the providers from a negligence claim based solely on a delayed response to an emergency because the EMS providers' duty is to the public as whole, not an individual such as the plaintiff. However, the public duty doctrine does not protect providers once a special relationship has been formed, for example, once they have accepted a dispatch to a patient, once they have begun caring for a particular patient, or if they took some sort of action prior to their arrival that created detrimental reliance by the patient. In summation, although it is not insurmountable, the public duty doctrine likely affords protections to public EMS providers for claims of negligence based solely on delayed response times prior to dispatching a unit to a scene.

B. Private Providers

A private EMS provider is a private ambulance company that contracts with a government body or hospital to provide EMS services. A private provider is subject to civil claims under ordinary negligence standards.

Negligence claims are inherently fact-dependent because they require a detailed examination of the specific circumstances surrounding an alleged wrongful act. Under common law negligence standards, a provider is responsible for operating their services with the same "level of care that a reasonable and prudent person would under the same circumstances."¹¹ Again, a successful negligence case must establish all of the following elements: (1) the defendant had a legal duty, (2) the defendant breached that duty, (3) the breach caused injury, and (4) the injury resulted in damages.¹² Each of these elements turn on factual details that vary from case to case.

⁹ *Gatlin-Johnson v. City of Miles City*, 2012 MT 302 at ¶15.

¹⁰ *Nelson v. Driscoll*, 1999 MT 193, ¶22.

¹¹ *Fisher v. Swift Transp. Co.*, 2008 MT 105 ¶16.

¹² *Gatlin-Johnson v. City of Miles City*, 2012 MT 302, ¶13.



For example, in *Christofferson v. City of Great Falls*, a woman sued the city after her husband died from an asthma attack.¹³ The woman called 911 when her husband was in respiratory distress, however, the dispatcher initially dispatched the ambulance to the wrong address. The ambulance arrived 12.5 minutes after the initial dispatch. The city admitted to negligence during dispatch but denied that its negligence caused the man's death. Ultimately, the jury agreed with the city and did not find the city guilty of negligence in the husband's death because there was not a sufficient showing of the element of causation; that is, the delay in the arrival of the ambulance, standing alone, was not a substantial factor in the man's death.

Thus, a negligence case is highly fact specific and requires a finder of fact, typically a jury, to determine if the defendant, or in this case an EMS provider, acted with the same reasonable care that another prudent provider would have provided under the same circumstances. Each element of negligence – duty, breach, causation, and damages – require a detailed analysis of the specific facts of the case.

Although it seems unlikely that a plaintiff could prove negligence based solely on a delayed response time due to staffing or triage issues, as that would likely be covered by the “reasonable person given the circumstances” standard, every negligence case presents different actors and fact patterns for a jury to review.

C. Volunteers

Montana's “Good Samaritan Law,” protects ambulance or fire service volunteers from negligence claims. The statute includes physicians, firefighters, ambulance operators, or “any other person who in good faith renders emergency care... or renders emergency medical treatment on a volunteer basis...”¹⁴

27-1-714. Limits on liability for emergency care rendered at scene of accident or emergency. (1) Any person licensed as a physician and surgeon under the laws of the state of Montana, any volunteer firefighter or officer of any nonprofit volunteer fire company, any search and rescue volunteer, or any other person who in good faith renders emergency care or assistance without compensation except as provided in subsection (2) at the scene of an emergency or accident is not liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the person in rendering the emergency care or assistance.

(2) Subsection (1) includes:

¹³ 2003 MT 189

¹⁴ Mont. Code 27-1-714.



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(a) a person properly trained under the laws of this state who operates an ambulance to and from the scene of an emergency or renders emergency medical treatment on a volunteer basis so long as the total reimbursement received for the volunteer services does not exceed 25% of the person's gross annual income or \$3,000 a calendar year, whichever is greater. Reimbursement for search and rescue expenses is not compensation for purposes of this section.

(b) a member of the army national guard or air national guard acting in an official capacity.

(3) If a nonprofit subscription fire company refuses to fight a fire on nonsubscriber property, the refusal does not constitute gross negligence or a willful or wanton act or omission.

Thus, in the unlikely event that a negligence case was brought against a volunteer solely for a delayed response due to staffing or resource shortages, the volunteer would almost certainly be protected from liability by the Good Samaritan Law.

CONCLUSION

Negligence cases are extremely fact-dependent, and as such, it is challenging to predict outcomes when delayed response times are at issue. The Montana Code and common law establish a general duty for all individuals to take reasonable care, and a heightened duty of care once EMS personnel begin treating a patient. Thus, so long as an EMS provider is operating their company in a reasonable manner given the circumstances, it is unlikely that the provider would be civilly liable. Nonetheless, all negligence cases are evaluated based on their own unique facts and small factual differences can create entirely different case outcomes.