

1 Article 4.

2 Relevancy and Its Limits.

3 **Rule 401. Definition of "relevant evidence."**

4 "Relevant evidence" means evidence having any tendency to make the existence of any fact  
5 that is of consequence to the determination of the action more probable or less probable than it  
6 would be without the evidence. (1983, c. 701, s. 1.)  
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8 **Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.**

9 All relevant evidence is admissible, except as otherwise provided by the Constitution of the  
10 United States, by the Constitution of North Carolina, by Act of Congress, by Act of the General  
11 Assembly or by these rules. Evidence which is not relevant is not admissible. (1983, c. 701, s.  
12 1.)  
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14 **Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of  
15 time.**

16 Although relevant, evidence may be excluded if its probative value is substantially  
17 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or  
18 by considerations of undue delay, waste of time, or needless presentation of cumulative  
19 evidence. (1983, c. 701, s. 1.)  
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21 **Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.**

22 (a) Character evidence generally. – Evidence of a person's character or a trait of his  
23 character is not admissible for the purpose of proving that he acted in conformity therewith on a  
24 particular occasion, except:

- 25 (1) Character of accused. – Evidence of a pertinent trait of his character offered  
26 by an accused, or by the prosecution to rebut the same;  
27 (2) Character of victim. – Evidence of a pertinent trait of character of the victim  
28 of the crime offered by an accused, or by the prosecution to rebut the same,  
29 or evidence of a character trait of peacefulness of the victim offered by the  
30 prosecution in a homicide case to rebut evidence that the victim was the first  
31 aggressor;  
32 (3) Character of witness. – Evidence of the character of a witness, as provided in  
33 Rules 607, 608, and 609.

34 (b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is not  
35 admissible to prove the character of a person in order to show that he acted in conformity  
36 therewith. It may, however, be admissible for other purposes, such as proof of motive,  
37 opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment  
38 or accident. Admissible evidence may include evidence of an offense committed by a juvenile  
39 if it would have been a Class A, B1, B2, C, D, or E felony if committed by an adult. (1983, c.  
40 701, s. 1; 1994, Ex. Sess., c. 7, s. 3; 1995, c. 509, s. 7.)  
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42 **Rule 405. Methods of proving character.**

43 (a) Reputation or opinion. – In all cases in which evidence of character or a trait of  
44 character of a person is admissible, proof may be made by testimony as to reputation or by  
45 testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant  
46 specific instances of conduct. Expert testimony on character or a trait of character is not  
47 admissible as circumstantial evidence of behavior.

48 (b) Specific instances of conduct. – In cases in which character or a trait of character of  
49 a person is an essential element of a charge, claim, or defense, proof may also be made of  
50 specific instances of his conduct. (1983, c. 701, s. 1.)  
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1 **Rule 406. Habit; routine practice.**

2 Evidence of the habit of a person or of the routine practice of an organization, whether  
3 corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the  
4 conduct of the person or organization on a particular occasion was in conformity with the habit  
5 or routine practice. (1983, c. 701, s. 1.)  
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7 **Rule 407. Subsequent remedial measures.**

8 When, after an event, measures are taken which, if taken previously, would have made the  
9 event less likely to occur, evidence of the subsequent measures is not admissible to prove  
10 negligence or culpable conduct in connection with the event. This rule does not require the  
11 exclusion of evidence of subsequent measures when offered for another purpose, such as  
12 proving ownership, control, or feasibility of precautionary measures, if those issues are  
13 controverted, or impeachment. (1983, c. 701, s. 1.)  
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15 **Rule 408. Compromise and offers to compromise.**

16 Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering  
17 or promising to accept, a valuable consideration in compromising or attempting to compromise  
18 a claim which was disputed as to either validity or amount, is not admissible to prove liability  
19 for or invalidity of the claim or its amount. Evidence of conduct or evidence of statements  
20 made in compromise negotiations is likewise not admissible. This rule does not require the  
21 exclusion of any evidence otherwise discoverable merely because it is presented in the course  
22 of compromise negotiations. This rule also does not require exclusion when the evidence is  
23 offered for another purpose, such as proving bias or prejudice of a witness, negating a  
24 contention of undue delay, or proving an effort to obstruct a criminal investigation or  
25 prosecution. (1983, c. 701, s. 1.)  
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27 **Rule 409. Payment of medical and other expenses.**

28 Evidence of furnishing or offering or promising to pay medical, hospital, or other expenses  
29 occasioned by an injury is not admissible to prove liability for the injury. (1983, c. 701, s. 1.)  
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31 **Rule 410. Inadmissibility of pleas, plea discussions, and related statements.**

32 Except as otherwise provided in this rule, evidence of the following is not, in any civil or  
33 criminal proceeding, admissible for or against the defendant who made the plea or was a  
34 participant in the plea discussions:

- 35 (1) A plea of guilty which was later withdrawn;
- 36 (2) A plea of no contest;
- 37 (3) Any statement made in the course of any proceedings under Article 58 of  
38 Chapter 15A of the General Statutes or comparable procedure in district  
39 court, or proceedings under Rule 11 of the Federal Rules of Criminal  
40 Procedure or comparable procedure in another state, regarding a plea of  
41 guilty which was later withdrawn or a plea of no contest;
- 42 (4) Any statement made in the course of plea discussions with an attorney for  
43 the prosecuting authority which do not result in a plea of guilty or which  
44 result in a plea of guilty later withdrawn.

45 However, such a statement is admissible in any proceeding wherein another statement made  
46 in the course of the same plea or plea discussions has been introduced and the statement ought  
47 in fairness be considered contemporaneously with it. (1983, c. 701, s. 1.)  
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49 **Rule 411. Liability insurance.**

50 Evidence that a person was or was not insured against liability is not admissible upon the  
51 issue whether he acted negligently or otherwise wrongfully. This rule does not require the

1 exclusion of evidence of insurance against liability when offered for another purpose, such as  
2 proof of agency, ownership, or control, or bias or prejudice of a witness. (1983, c. 701, s. 1.)  
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4 **Rule 412. Rape or sex offense cases; relevance of victim's past behavior.**

5 (a) As used in this rule, the term "sexual behavior" means sexual activity of the  
6 complainant other than the sexual act which is at issue in the indictment on trial.

7 (b) Notwithstanding any other provision of law, the sexual behavior of the complainant  
8 is irrelevant to any issue in the prosecution unless such behavior:

- 9 (1) Was between the complainant and the defendant; or  
10 (2) Is evidence of specific instances of sexual behavior offered for the purpose  
11 of showing that the act or acts charged were not committed by the defendant;  
12 or  
13 (3) Is evidence of a pattern of sexual behavior so distinctive and so closely  
14 resembling the defendant's version of the alleged encounter with the  
15 complainant as to tend to prove that such complainant consented to the act or  
16 acts charged or behaved in such a manner as to lead the defendant  
17 reasonably to believe that the complainant consented; or  
18 (4) Is evidence of sexual behavior offered as the basis of expert psychological or  
19 psychiatric opinion that the complainant fantasized or invented the act or  
20 acts charged.

21 (c) Sexual behavior otherwise admissible under this rule may not be proved by  
22 reputation or opinion.

23 (d) Notwithstanding any other provision of law, unless and until the court determines  
24 that evidence of sexual behavior is relevant under subdivision (b), no reference to this behavior  
25 may be made in the presence of the jury and no evidence of this behavior may be introduced at  
26 any time during the trial of:

- 27 (1) A charge of rape or a lesser included offense of rape;  
28 (2) A charge of a sex offense or a lesser included offense of a sex offense; or  
29 (3) An offense being tried jointly with a charge of rape or a sex offense, or with  
30 a lesser included offense of rape or a sex offense.

31 Before any questions pertaining to such evidence are asked of any witness, the proponent of  
32 such evidence shall first apply to the court for a determination of the relevance of the sexual  
33 behavior to which it relates. The proponent of such evidence may make application either prior  
34 to trial pursuant to G.S. 15A-952, or during the trial at the time when the proponent desires to  
35 introduce such evidence. When application is made, the court shall conduct an in camera  
36 hearing, which shall be transcribed, to consider the proponent's offer of proof and the argument  
37 of counsel, including any counsel for the complainant, to determine the extent to which such  
38 behavior is relevant. In the hearing, the proponent of the evidence shall establish the basis of  
39 admissibility of such evidence. Notwithstanding subdivision (b) of Rule 104, if the relevancy of  
40 the evidence which the proponent seeks to offer in the trial depends upon the fulfillment of a  
41 condition of fact, the court, at the in camera hearing or at a subsequent in camera hearing  
42 scheduled for that purpose, shall accept evidence on the issue of whether that condition of fact  
43 is fulfilled and shall determine that issue. If the court finds that the evidence is relevant, it shall  
44 enter an order stating that the evidence may be admitted and the nature of the questions which  
45 will be permitted.

46 (e) The record of the in camera hearing and all evidence relating thereto shall be open  
47 to inspection only by the parties, the complainant, their attorneys and the court and its agents,  
48 and shall be used only as necessary for appellate review. At any probable cause hearing, the  
49 judge shall take cognizance of the evidence, if admissible, at the end of the in camera hearing  
50 without the questions being repeated or the evidence being resubmitted in open court. (1983, c.  
51 701, s. 1.)

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**Rule 413. Medical actions; statements to ameliorate or mitigate adverse outcome.**

Statements by a health care provider apologizing for an adverse outcome in medical treatment, offers to undertake corrective or remedial treatment or actions, and gratuitous acts to assist affected persons shall not be admissible to prove negligence or culpable conduct by the health care provider in an action brought under Article 1B of Chapter 90 of the General Statutes. (2004-149, s. 3.1.)

**Rule 414. Evidence of medical expenses.**

Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled. (2011-283, s. 1.1.)