

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 2480**

Short Title: Civil Justice Improvement Act - 2. (Public)

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Sponsors: Representatives Kiser, Justus, Howard (Primary Sponsors); Almond, Blackwood, Brown, Brubaker, Capps, Clary, Cleveland, Culp, Current, Daughtridge, Daughtry, Dockham, Dollar, Eddins, Folwell, Frye, Gillespie, Gulley, Hollo, Holloway, Holmes, Johnson, Justice, Langdon, LaRoque, Lewis, McComas, McGee, Pate, Preston, Ray, Rayfield, Rhodes, Sauls, Setzer, Sherrill, Starnes, Steen, Stiller, Vinson, Walend, Walker, West, Wiley, and Wilson.

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Referred to: Judiciary II, if favorable, Finance.

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May 24, 2006

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE LAWS IMPACTING MEDICAL MALPRACTICE  
2 INSURANCE RATES TO IMPROVE THE COST OF PROVIDING HEALTH  
3 CARE IN NORTH CAROLINA AND TO APPROPRIATE FUNDS TO  
4 IMPLEMENT THE ACT.  
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 90-21.11 reads as rewritten:

8 **"§ 90-21.11. Definitions.**

9 As used in this Article, the term ~~"health care provider"~~ means ~~without limitation any~~  
10 ~~person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed,~~  
11 ~~or is otherwise registered or certified to engage in the practice of or otherwise performs~~  
12 ~~duties associated with any of the following: medicine, surgery, dentistry, pharmacy,~~  
13 ~~optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing,~~  
14 ~~physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering~~  
15 ~~assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital or a~~  
16 ~~nursing home; or any other person who is legally responsible for the negligence of such~~  
17 ~~person, hospital or nursing home; or any other person acting at the direction or under the~~  
18 ~~supervision of any of the foregoing persons, hospital, or nursing home.~~

19 As used in this Article, the term ~~"medical malpractice action"~~ means ~~a civil action~~  
20 ~~for damages for personal injury or death arising out of the furnishing or failure to~~  
21 ~~furnish professional services in the performance of medical, dental, or other health care~~  
22 ~~by a health care provider. following terms mean:~~

- 1           (1) Collateral source payments. – A payment for an expense for which  
2 recovery is permitted in a medical malpractice action that is made to or  
3 for the benefit of a plaintiff or is otherwise available to the plaintiff:  
4           a. For medical expenses and disability payments under the federal  
5 Social Security Act, any federal, state, or local income  
6 disability act, or any other public program.  
7           b. Under any health, sickness, or income disability insurance or  
8 automobile accident insurance that provides health benefits or  
9 income disability coverage, and any other similar insurance  
10 benefits available to the plaintiff, except life insurance.  
11           c. Under any contract or agreement of any person, group,  
12 organization, partnership, or corporation to provide, pay for, or  
13 reimburse the costs of hospital, medical, dental, or health care  
14 services.  
15           d. Under any contractual or voluntary wage continuation plan  
16 provided by an employer or other system intended to provide  
17 wages during a period of disability.  
18           e. From any other source.  
19 A collateral source payment does not include gifts, gratuitous  
20 contributions or assistance, or payments arising from assets of the  
21 plaintiff.  
22           (2) Economic damages. – Damages to compensate for present and future  
23 medical costs, hospital costs, custodial care, rehabilitation costs, lost  
24 earnings, loss of bodily function, and any other pecuniary damages.  
25           (3) Future economic damages. – Includes all economic damages for future  
26 medical treatment, care or custody, loss of future earnings, loss of  
27 bodily function, and any other pecuniary damages of the plaintiff  
28 following the date of the verdict or award.  
29           (4) Health care provider. – Any person who, pursuant to the provisions of  
30 Chapter 90 of the General Statutes, is licensed, or is otherwise  
31 registered or certified to engage in the practice of or otherwise  
32 performs duties associated with any of the following: medicine,  
33 surgery, dentistry, pharmacy, optometry, midwifery, osteopathy,  
34 podiatry, chiropractic, radiology, nursing, physiotherapy, pathology,  
35 anesthesiology, anesthesia, laboratory analysis, rendering assistance to  
36 a physician, dental hygiene, psychiatry, psychology; or a hospital or a  
37 nursing home; or any other person who is legally responsible for the  
38 negligence of such person, hospital, or nursing home; or any other  
39 person acting at the direction or under the supervision of any of the  
40 foregoing persons, hospital, or nursing home.  
41           (5) Insurer. – Every insurer, self-insurer, and risk retention group, as those  
42 terms are defined in Chapter 58 of the General Statutes, that provides  
43 professional malpractice insurance to health care providers in this  
44 State.

- 1           (6) Medical malpractice action. – A civil action for damages for personal  
2 injury or death arising out of the furnishing or failure to furnish  
3 professional services in the performance of medical, dental, or other  
4 health care by a health care provider.
- 5           (7) Noneconomic damages. – Includes all damages to compensate mental  
6 anguish; emotional distress; emotional pain and suffering; loss of  
7 consortium; loss of society, companionship, comfort, guidance, kindly  
8 offices, or advice; pain and suffering; inconvenience; disfigurement;  
9 loss of limbs or body parts, physical impairment; and any other  
10 nonpecuniary damages.
- 11           (8) Periodic payments. – The payment of money or delivery of other  
12 property to the plaintiff at regular intervals.
- 13           (9) Recovered. – The net sum recovered after deducting any  
14 disbursements or costs incurred in connection with the litigation,  
15 arbitration, or settlement of the claim. The sum recovered shall include  
16 any punitive damages awarded under Chapter 1D of the General  
17 Statutes."

18           **SECTION 2.** Article 1B of Chapter 90 of the General Statutes is amended  
19 by adding the following new sections to read:

20 **"§ 90-21.18. Limitation on noneconomic damages in medical malpractice actions.**

21           (a) In any medical malpractice action, the plaintiff may be entitled to recover  
22 noneconomic damages. The total amount of all noneconomic damages shall not exceed  
23 three hundred fifty thousand dollars (\$350,000) per plaintiff.

24           (b) Any award of damages in a medical malpractice action shall be stated in  
25 accordance with G.S. 90-21.18C. If a jury is determining the facts, the court shall not  
26 instruct the jury with respect to the limit on noneconomic damages under subsection (a)  
27 of this section, and neither the attorney for any party nor a witness shall inform the jury  
28 or potential members of the jury panel of that limit. Notwithstanding the limits set forth  
29 in this section, if the negligence resulted in a persistent vegetative state or death, the  
30 total noneconomic damages recovered under this section shall not exceed five hundred  
31 thousand dollars (\$500,000) per plaintiff.

32 **"§ 90-21.18A. Accounting for certain collateral source payments in medical**  
33 **malpractice actions.**

34           In any medical malpractice action, the court shall allow into evidence, if requested  
35 by a defendant, collateral source payments paid to or for the benefit of the plaintiff, or  
36 that are otherwise available to the plaintiff, related to the losses or damages alleged in  
37 the medical malpractice action. The court shall allow into evidence, if requested by the  
38 plaintiff, rights of subrogation of any collateral source.

39 **"§ 90-21.18B. Periodic payment of future economic damages in medical**  
40 **malpractice actions.**

41           (a) Upon the award of damages in any medical malpractice action, the presiding  
42 judge shall, at the request of either party, enter a judgment ordering that money damages  
43 or the equivalent for future economic damages of the plaintiff as awarded by the jury in  
44 accordance with G.S. 90-21.18C(a)(3) be paid at the election of the defendant against

1 whom the award was made by periodic payments rather than by a lump-sum payment  
2 when the award exceeds one hundred thousand dollars (\$100,000) in future economic  
3 damages. In entering a judgment ordering the payment of future economic damages by  
4 periodic payments, the court shall make a specific finding of fact as to the dollar amount  
5 of periodic payments that will compensate the plaintiff for such future economic  
6 damages. As a condition to authorizing periodic payments of future economic damages,  
7 the court shall, in its order of judgment, require that such payments be made through the  
8 establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or  
9 during the continuance of the compensable injury or disability of the plaintiff. The  
10 establishment of a trust fund or the purchase of an annuity, as approved by the court,  
11 shall satisfy the defendant's judgment for future economic damages.

12 (b) The judgment ordering the payment of future economic damages by periodic  
13 payments shall specify the recipient of the payments, the dollar amount of the payments,  
14 the interval between payments, and the number of payments or the period of time over  
15 which payment shall be made. Such payments shall only be subject to modification by  
16 the court in the event of the death of the plaintiff as provided in subsection (c) of this  
17 section.

18 (c) In any judgment that orders future economic damages payable in periodic  
19 payments, liability for payment of future economic damages not yet due shall terminate  
20 upon the death of the plaintiff; however, the court that rendered the original judgment  
21 may modify the judgment to provide that damages awarded for loss of future earnings  
22 shall not be reduced or payments terminated by reason of the death of the plaintiff, so  
23 long as the court finds that the proximate cause of the death was the negligence of the  
24 defendant that led to the award, but shall be paid to persons to whom the plaintiff owed  
25 a duty of support, as provided by law, immediately prior to the plaintiff's death.

26 (d) In the event the court finds that the defendant has exhibited a continuing  
27 pattern of failing to make the payment specified in subsection (a) of this section, the  
28 court shall find the defendant in contempt of court and, in addition to the required  
29 periodic payments, shall order the defendant to pay the plaintiff all damages caused by  
30 the failure to make such periodic payments, including court costs and attorneys' fees.

31 **"§ 90-21.18C. Verdicts and awards of damages in medical malpractice actions;**  
32 **form.**

33 (a) In any medical malpractice action, any verdict or award of damages, if  
34 supported by the evidence, shall indicate specifically what amount is awarded for each  
35 of all of the following:

- 36 (1) Noneconomic damages.
- 37 (2) Present economic damages.
- 38 (3) Future economic damages.

39 If applicable, the court shall instruct the jury on the definition of noneconomic  
40 damages and the definition of future economic damages. If applicable, the court shall  
41 instruct the jury that present economic damages are those damages for medical  
42 treatment, care or custody, loss of future earnings, loss of bodily function, and any other  
43 pecuniary damages of the plaintiff up to the date of the verdict or award.

1       (b) In any wrongful death medical malpractice action, any verdict or award of  
2 damages shall indicate specifically the amount of damages, if any, awarded for each of  
3 the elements of damages provided in G.S. 28A-12-2 for which there was evidence  
4 presented at trial. The verdict or award shall also specify the amount of noneconomic  
5 damages as provided in subsection (a) of this section.

6 **"§ 90-21.18D. Settlements in medical malpractice actions; reporting.**

7       (a) In any medical malpractice action in which the parties agree to settle the  
8 claim, the insurer for the health care provider shall report the settlement as required  
9 under G.S. 58-2-170. The insurer shall identify the amount of the settlement attributable  
10 to economic damages and provide documentation to substantiate that amount. A claim  
11 is settled if at any time after the claim is made and before, during, or after trial, the  
12 parties mutually agree to end the litigation in exchange for monetary payment.

13       (b) In any medical malpractice action in which the parties agree to settle the  
14 claim, the attorney for the plaintiff shall report the settlement to the Department of  
15 Insurance. The attorney shall certify the amount of the settlement proceeds received in  
16 reimbursement of any costs incurred in prosecution of the case, including separate  
17 amounts expended for expert witnesses, exhibits, travel, and all other categories of  
18 expenses which the attorney charges to the plaintiff, including documentation to  
19 substantiate that amount. Further, the attorney shall certify the amount of the settlement  
20 attributable to attorneys' fees. A claim is settled if at any time after the claim is made  
21 and before, during, or after trial, the parties mutually agree to end the litigation in  
22 exchange for monetary payment.

23 **"§ 90-21.18E. Regulation of contingency fees in medical malpractice actions.**

24       (a) No attorney shall contract for or collect a contingency fee for representing  
25 any person seeking damages in connection with a medical malpractice action in excess  
26 of the following limits:

- 27           (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000)  
28 recovered.
- 29           (2) Thirty-three and one-third percent (33 1/3%) of the next one hundred  
30 thousand dollars (\$100,000) recovered.
- 31           (3) Twenty-five percent (25%) of the next four hundred fifty thousand  
32 dollars (\$450,000) recovered.
- 33           (4) Fifteen percent (15%) of any amount for which the recovery exceeds  
34 six hundred thousand dollars (\$600,000).

35       (b) The limits under subsection (a) of this section apply regardless of whether  
36 recovery is by settlement, arbitration, or judgment, or whether the person for whom the  
37 recovery is made is a responsible adult or a person who is under a disability as provided  
38 in G.S. 1-17.

39       (c) If periodic payments are awarded to the plaintiff pursuant to G.S. 90-21.18B,  
40 the court shall place a total value on these payments based upon the projected life  
41 expectancy of the plaintiff and use this amount in computing the total award from which  
42 attorneys' fees are calculated under this section."

43       **SECTION 3.** Article 4 of Chapter 8C of the General Statutes is amended by  
44 adding a new section to read:

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

2 In any action brought against a health care provider pursuant to Article 1B of  
3 Chapter 90 of the General Statutes, evidence offered to prove past medical expenses  
4 may include all bills reasonably paid or incurred and a statement of the amounts actually  
5 necessary to satisfy the bills that have been incurred. Evidence of source of payment  
6 and rights of subrogation related to the payment shall be admissible."

7 **SECTION 4.** G.S. 1-289 reads as rewritten:

8 **"§ 1-289. Undertaking to stay execution on money judgment.**

9 (a) If the appeal is from a judgment directing the payment of money, it does not  
10 stay the execution of the judgment unless a written undertaking is executed on the part  
11 of the appellant, by one or more sureties, to the effect that if the judgment appealed  
12 from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay  
13 the amount directed to be paid by the judgment, or the part of such amount as to which  
14 the judgment shall be affirmed, if affirmed only in part, and all damages which shall be  
15 awarded against the appellant upon the appeal, except as provided in subsection (b) and  
16 (b1) of this section. Whenever it is satisfactorily made to appear to the court that since  
17 the execution of the undertaking the sureties have become insolvent, the court may, by  
18 rule or order, require the appellant to execute, file and serve a new undertaking, as  
19 above. In case of neglect to execute such undertaking within twenty days after the  
20 service of a copy of the rule or order requiring it, the appeal may, on motion to the  
21 court, be dismissed with costs. Whenever it is necessary for a party to an action or  
22 proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu  
23 thereof, deposit with the officer into court money to the amount of the bond or  
24 undertaking to be given. The court in which the action or proceeding is pending may  
25 direct what disposition shall be made of such money pending the action or proceeding.  
26 In a case where, by this section, the money is to be deposited with an officer, a judge of  
27 the court, upon the application of either party, may, at any time before the deposit is  
28 made, order the money deposited in court instead of with the officer; and a deposit made  
29 pursuant to such order is of the same effect as if made with the officer. The perfecting of  
30 an appeal by giving the undertaking mentioned in this section stays proceedings in the  
31 court below upon the judgment appealed from; except when the sale of perishable  
32 property is directed, the court below may order the property to be sold and the proceeds  
33 thereof to be deposited or invested, to abide the judgment of the appellate court.

34 (b) If the appellee in a civil action brought under any legal theory obtains a  
35 judgment directing the payment or expenditure of money in the amount of twenty five  
36 million dollars (\$25,000,000) or more, and the appellant seeks a stay of execution of the  
37 judgment within the period of time during which the appellant has the right to pursue  
38 appellate review, including discretionary review and certiorari, the amount of the  
39 undertaking that the appellant is required to execute to stay execution of the judgment  
40 during the entire period of the appeal shall be twenty five million dollars (\$25,000,000).

41 (b1) If the appellee in any medical malpractice action, as defined in G.S. 90-21.11,  
42 obtains a judgment directing the payment or expenditure of money, and the appellant  
43 seeks a stay of execution of the judgment within the period of time during which the  
44 appellant has the right to pursue appellate review, including discretionary review and

1 certiorari, the amount of the undertaking that the appellant is required to execute to stay  
2 execution of the judgment during the entire period of the appeal shall be the lesser of the  
3 amount of the judgment or the amount of the appellant's medical malpractice insurance  
4 coverage applicable to the action.

5 (c) If the appellee proves by a preponderance of the evidence that the appellant  
6 for whom the undertaking has been limited under subsection (b) or (b1) of this section  
7 is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its  
8 assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina  
9 or the federal courts of the United States other than in the ordinary course of business,  
10 then the limitation in ~~subsection (b)~~subsections (b) and (b1) of this section shall not  
11 apply and the appellant shall be required to make an undertaking in the full amount  
12 otherwise required by this section."

13 **SECTION 5.** G.S. 1-17(b) reads as rewritten:

14 "(b) Notwithstanding the provisions of subsection (a) of this section, an action on  
15 behalf of a minor for malpractice arising out of the performance of or failure to perform  
16 professional services shall be commenced within the limitations of time specified in  
17 G.S. 1-15(c), except that if those time limitations expire before the minor attains the full  
18 age of 19 years, the action may be brought before the minor attains the full age of 19  
19 years-years, but in no event may an action arising from birth-related injuries be  
20 commenced more than 10 years from the last act of the defendant giving rise to the  
21 cause of action."

22 **SECTION 6.** G.S. 58-2-170 reads as rewritten:

23 "**§ 58-2-170. Annual statements by professional liability insurers; medical**  
24 **malpractice claim reports.**

25 (a) In addition to the financial statements required by G.S. 58-2-165, every  
26 insurer, self-insurer, and risk retention group that provides professional liability  
27 insurance in the State shall file with the Commissioner, on or before the first day of  
28 February in each year, in form and detail as the Commissioner prescribes, a statement  
29 showing the items set forth in subsection (b) of this section, as of the preceding 31st day  
30 of December. The annual statement shall not be reported or disclosed to the public in a  
31 manner or format which identifies or could reasonably be used to identify any  
32 individual health care provider or medical center. The statement shall be signed and  
33 sworn to by the chief managing agent or officer of the insurer, self-insurer, or risk  
34 retention group, before the Commissioner or some officer authorized by law to  
35 administer oaths. The Commissioner shall, in December of each year, furnish to each  
36 such person that provides professional liability insurance in the State forms for the  
37 annual statements. The Commissioner may, for good cause, authorize an extension of  
38 the report due date upon written application of any person required to file. An extension  
39 is not valid unless the Commissioner's authorization is in writing and signed by the  
40 Commissioner or one of his deputies.

41 (b) The statement required by subsection (a) of this section shall contain:

- 42 (1) Number of claims pending at beginning of year;
- 43 (2) Number of claims pending at end of year;
- 44 (3) Number of claims paid;

- 1 (4) Number of claims closed no payment;
- 2 (5) Number and amounts of claims in court in which judgment ~~paid~~ was
- 3 entered, the amount of the judgment, and the actual amount paid on the
- 4 judgment or in settlement of the judgment. For both the amount of the
- 5 judgment and the actual amount paid, provide the:
- 6 a. Highest amount
- 7 b. Lowest amount
- 8 c. Average amount
- 9 d. Median amount;
- 10 (6) Number and amounts of claims out of court in which settlement paid:
- 11 a. Highest amount
- 12 b. Lowest amount
- 13 c. Average amount
- 14 d. Median amount;
- 15 (7) Average amount per claim set up in reserve;
- 16 (8) Total premium collection;
- 17 (9) Total expenses less reserve expenses; and
- 18 (10) Total reserve expenses.

19 (b1) The Commissioner shall analyze the reports described in subsections (a) and

20 (b) of this section and shall file statistical and other summaries with the General

21 Assembly no later than March 1 of each year. Summaries filed by the Commissioner

22 pursuant to this subsection shall include all of the following:

- 23 (1) Any trends noted or observed from the data.
- 24 (2) All actions taken by the Commissioner in response to these trends.
- 25 (3) Any legislative or other recommendations from the Commissioner
- 26 with respect to actions by the General Assembly in response to these
- 27 trends.

28 (c) Every insurer, self-insurer, and risk retention group that provides professional

29 liability insurance to health care providers in this State shall file, within 90 days

30 following the request of the Commissioner, a report containing information for the

31 purpose of allowing the Commissioner to analyze claims. The report shall be in the

32 form prescribed by the Commissioner. The form prescribed by the Commissioner shall

33 be a form that permits the public inspection, examination, or copying of any information

34 contained in the report: Provided, however, that any data or other characteristics that

35 identify or could be used to identify the names or addresses of the claimants or the

36 names or addresses of the individual health care provider or medical center against

37 whom the claims are or have been asserted or any data that could be used to identify the

38 dollar amounts involved in such claims shall be treated as privileged information and

39 shall not be made available to the public. The Commissioner shall analyze these reports

40 and shall file statistical and other summaries based on these reports with the General

41 Assembly as soon as practicable after receipt of the reports. The Commissioner shall

42 assess a penalty against any person that willfully fails to file a report required by this

43 subsection. Such penalty shall be one thousand dollars (\$1,000) for each day after the

44 due date of the report that the person willfully fails to file: Provided, however, the



1 penalty for an individual who self insures shall be two hundred dollars (\$200.00) for  
2 each day after the due date of the report that the person willfully fails to file: Provided,  
3 however, that upon the failure of a person to file the report as required by this  
4 subsection, the Commissioner shall send by certified mail, return receipt requested, a  
5 notice to that person informing him that he has 10 business days after receipt of the  
6 notice to either request an extension of time or file the report. The Commissioner may,  
7 for good cause, authorize an extension of the report due date upon written application of  
8 any person required to file. An extension is not valid unless the Commissioner's  
9 authorization is in writing and signed by the Commissioner or one of his deputies.

10 (d) Every person that self-insures against professional liability in this State shall  
11 provide the Commissioner with written notice of such self-insurance, which notice shall  
12 include the name and address of the person self-insuring. This notice shall be filed with  
13 the Commissioner each year for the purpose of apprising the Commissioner of the  
14 number and locations of persons that self-insure against professional liability."

15 **SECTION 7.** G. S. 1A-1, Rule 42(b), reads as rewritten:

16 "(b) Separate trials.

17 (1) The court may in furtherance of convenience or to avoid prejudice and  
18 shall for considerations of venue upon timely motion order a separate  
19 trial of any claim, cross-claim, counterclaim, or third-party claim, or of  
20 any separate issue or of any number of claims, cross-claims,  
21 counterclaims, third-party claims, or issues.

22 (2) Upon motion of any party in an action that includes a claim  
23 commenced under Article 1G of Chapter 90 of the General Statutes  
24 involving a managed care entity as defined in G.S. 90-21.50, the court  
25 shall order separate discovery and a separate trial of any claim,  
26 cross-claim, counterclaim, or third-party claim against a physician or  
27 other medical provider.

28 (3) Upon motion of any party in a medical malpractice commenced under  
29 Article 1B of Chapter 90 of the General Statutes wherein the plaintiff  
30 alleges damages greater than one hundred thousand dollars (\$100,000),  
31 the court shall order separate trials for the issue of liability and the  
32 issue of damages. Evidence relating solely to pecuniary damages shall  
33 not be admissible until the trier of fact has determined that the  
34 defendant is liable for medical malpractice. The same trier of fact that  
35 tried the issues relating to liability shall try the issues relating to  
36 damages."

37 **SECTION 8.** G.S. 1A-1, Rule 9(j), reads as rewritten:

38 "(j) Medical malpractice. – Any complaint alleging medical malpractice by a  
39 health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable  
40 standard of care under G.S. 90-21.12 shall be dismissed unless:

41 (1) The pleading specifically has attached a sworn affidavit from a person  
42 who is reasonably expected to qualify as an expert witness under Rule  
43 702 of the Rules of Evidence that asserts that the medical care has and  
44 all medical records pertaining to the alleged injury then available to the

1 plaintiff after reasonable inquiry have been reviewed by a person who  
2 is reasonably expected to qualify as an expert witness under Rule 702  
3 of the Rules of Evidence and who the person, and the person is willing  
4 to testify that the medical care did not comply with the applicable  
5 standard of care;

6 (2) The pleading specifically has attached a sworn affidavit from a person  
7 that the complainant will seek to have qualified as an expert witness by  
8 motion under Rule 702(e) of the Rules of Evidence that asserts that the  
9 medical care has and all medical records pertaining to the alleged  
10 injury then available to the plaintiff after reasonable inquiry have been  
11 reviewed by a person that the complainant will seek to have qualified  
12 as an expert witness by motion under Rule 702(e) of the Rules of  
13 Evidence and who the person, and the person is willing to testify that  
14 the medical care did not comply with the applicable standard of care,  
15 and the motion is filed with the complaint; or

16 (3) The pleading alleges facts establishing negligence under the existing  
17 common-law doctrine of res ipsa loquitur.

18 Upon motion by the complainant prior to the expiration of the applicable statute of  
19 limitations, a resident judge of the superior court for a judicial district in which venue  
20 for the cause of action is appropriate under G.S. 1-82 or, if no resident judge for that  
21 judicial district is physically present in that judicial district, otherwise available, or able  
22 or willing to consider the motion, then any presiding judge of the superior court for that  
23 judicial district may allow a motion to extend the statute of limitations for a period not  
24 to exceed 120 days to file a complaint in a medical malpractice action in order to  
25 comply with this Rule, upon a determination that good cause exists for the granting of  
26 the motion and that the ends of justice would be served by an extension. The plaintiff  
27 shall provide, at the request of the defendant, proof of compliance with this subsection  
28 through up to ten written interrogatories, the answers to which shall be verified by the  
29 expert required under this subsection. These interrogatories do not count against the  
30 interrogatory limit under Rule 33."

31 **SECTION 9.** G.S. 90-14(a) reads as rewritten:

32 "**§ 90-14. Revocation, suspension, annulment or denial of license.**

33 (a) The Board shall have the power to ~~deny, annul, suspend, or revoke~~ take any  
34 action set forth in subsection (a1) of this section relative to a license, or other authority  
35 to practice medicine in this State, issued by the Board to any person who has been found  
36 by the Board to have committed any of the following acts or conduct, or for any of the  
37 following reasons:

- 38 (1) Immoral or dishonorable conduct.  
39 (2) Producing or attempting to produce an abortion contrary to law.  
40 (3) Made false statements or representations to the Board, or who has  
41 willfully concealed from the Board material information in connection  
42 with an application for a license.  
43 (4) Repealed by Session Laws 1977, c. 838, s. 3.

- 1 (5) Being unable to practice medicine with reasonable skill and safety to  
2 patients by reason of illness, drunkenness, excessive use of alcohol,  
3 drugs, chemicals, or any other type of material or by reason of any  
4 physical or mental abnormality. The Board is empowered and  
5 authorized to require a physician licensed by it to submit to a mental or  
6 physical examination by physicians designated by the Board before or  
7 after charges may be presented against the physician, and the results of  
8 the examination shall be admissible in evidence in a hearing before the  
9 Board.
- 10 (6) Unprofessional conduct, including, but not limited to, departure from,  
11 or the failure to conform to, the standards of acceptable and prevailing  
12 medical practice, or the ethics of the medical profession, irrespective  
13 of whether or not a patient is injured thereby, or the committing of any  
14 act contrary to honesty, justice, or good morals, whether the same is  
15 committed in the course of the physician's practice or otherwise, and  
16 whether committed within or without North Carolina. The Board shall  
17 not revoke the license of or deny a license to a person solely because  
18 of that person's practice of a therapy that is experimental,  
19 nontraditional, or that departs from acceptable and prevailing medical  
20 practices unless, by competent evidence, the Board can establish that  
21 the treatment has a safety risk greater than the prevailing treatment or  
22 that the treatment is generally not effective.
- 23 (7) Conviction in any court of a crime involving moral turpitude, or the  
24 violation of a law involving the practice of medicine, or a conviction  
25 of a felony; provided that a felony conviction shall be treated as  
26 provided in subsection (c) of this section.
- 27 (8) By false representations has obtained or attempted to obtain practice,  
28 money or anything of value.
- 29 (9) Has advertised or publicly professed to treat human ailments under a  
30 system or school of treatment or practice other than that for which the  
31 physician has been educated.
- 32 (10) Adjudication of mental incompetency, which shall automatically  
33 suspend a license unless the Board orders otherwise.
- 34 (11) Lack of professional competence to practice medicine with a  
35 reasonable degree of skill and safety for patients. In this connection the  
36 Board may consider repeated acts of a physician indicating the  
37 physician's failure to properly treat a patient. The Board may, upon  
38 reasonable grounds, require a physician to submit to inquiries or  
39 examinations, written or oral, by members of the Board or by other  
40 physicians licensed to practice medicine in this State, as the Board  
41 deems necessary to determine the professional qualifications of such  
42 licensee. In order to annul, suspend, deny, or revoke a license of an  
43 accused person, the Board shall find by the greater weight of the

1 evidence that the care provided was not in accordance with the  
2 standards of practice for the procedures or treatments administered.

3 (12) Promotion of the sale of drugs, devices, appliances or goods for a  
4 patient, or providing services to a patient, in such a manner as to  
5 exploit the patient, and upon a finding of the exploitation, the Board  
6 may order restitution be made to the payer of the bill, whether the  
7 patient or the insurer, by the physician; provided that a determination  
8 of the amount of restitution shall be based on credible testimony in the  
9 record.

10 (13) Having a license to practice medicine or the authority to practice  
11 medicine revoked, suspended, restricted, or acted against or having a  
12 license to practice medicine denied by the licensing authority of any  
13 jurisdiction. For purposes of this subdivision, the licensing authority's  
14 acceptance of a license to practice medicine voluntarily relinquished  
15 by a physician or relinquished by stipulation, consent order, or other  
16 settlement in response to or in anticipation of the filing of  
17 administrative charges against the physician's license, is an action  
18 against a license to practice medicine.

19 (14) The failure to respond, within a reasonable period of time and in a  
20 reasonable manner as determined by the Board, to inquiries from the  
21 Board concerning any matter affecting the license to practice  
22 medicine.

23 (15) The failure to complete an amount not to exceed 150 hours of  
24 continuing medical education during any three consecutive calendar  
25 years pursuant to rules adopted by the Board.

26 (a1) For any of the ~~foregoing reasons,~~ reasons set forth in subsection (a) of this  
27 section, the Board may do any of the following:

28 (1) ~~deny~~ Deny the issuance of a license to an applicant or revoke a license  
29 issued to a ~~physician,~~ physician.

30 (2) ~~may suspend such~~ Suspend a license for a period of time, and may  
31 impose conditions upon the continued practice after ~~such a~~ period of  
32 suspension as the Board may deem ~~advisable,~~ advisable.

33 (3) ~~may limit~~ Limit the accused physician's practice of medicine with  
34 respect to the extent, nature or location of the physician's practice as  
35 the Board deems advisable.

36 (4) Censure the accused physician. – A censure is a written form of  
37 discipline more serious than a reprimand issued in cases in which a  
38 physician has committed one or more of the acts or conduct as set forth  
39 in subsection (a) of this section and has caused significant harm or  
40 potential significant harm to a patient, the profession, or members of  
41 the public, but the protection of the patient or public does not require  
42 suspension of the physician's license.

43 (5) Reprimand the accused physician. – A reprimand is a written form of  
44 discipline more serious than an admonition issued in cases in which a

1           physician has committed one or more of the acts or conduct as set forth  
2           in subsection (a) of this section, but the protection of the public does  
3           not require a censure. A reprimand shall generally be reserved for  
4           cases in which the physician's conduct has caused harm or potential  
5           harm to a patient, the profession, or members of the public.

6           (6) Admonish the accused physician. – An admonishment is a written  
7           form of discipline imposed in cases in which a physician has  
8           committed a minor act or conduct as set forth in subsection (a) of this  
9           section.

10          (a2) Actions taken by the Board pursuant to subdivisions (1), (2), (4), and (5) of  
11          subsection (a1) of this section shall be a matter of public record under Chapter 132 of  
12          the General Statutes.

13          (a3) The Board may, in its discretion and upon such terms and conditions and for  
14          such period of time as it may prescribe, restore a license so revoked or rescinded, except  
15          that no license that has been revoked shall be restored for a period of two years  
16          following the date of revocation."

17          **SECTION 10.** G.S. 90-15.1 reads as rewritten:

18          "**§ 90-15.1. Registration every year with Board.**

19          Every person licensed to practice medicine by the North Carolina Medical Board  
20          shall register annually with the Board within 30 days of the person's birthday. A person  
21          who registers with the Board shall report to the Board the person's name and office and  
22          residence address and any other information required by the Board, and shall pay a  
23          registration fee of ~~one hundred seventy five dollars (\$175.00)~~, two hundred fifty dollars  
24          (\$250.00), except those who have a limited license to practice in a medical education  
25          and training program approved by the Board for the purpose of education or training  
26          shall pay a registration fee of one hundred twenty-five dollars (\$125.00) and those who  
27          have a limited volunteer license shall pay an annual registration fee of twenty-five  
28          dollars (\$25.00). A physician who is not actively engaged in the practice of medicine in  
29          North Carolina and who does not wish to register the license may direct the Board to  
30          place the license on inactive status. For purposes of annual registration, the Board shall  
31          use a simplified registration form which allows registrants to confirm information on  
32          file with the Board. A physician who fails to register as required by this section shall  
33          pay an additional fee of fifty dollars (\$50.00) to the Board. The license of any physician  
34          who fails to register and who remains unregistered for a period of 30 days after certified  
35          notice of the failure is automatically inactive. Except as provided in G.S. 90-12(d), a  
36          person whose license is inactive shall not practice medicine in North Carolina nor be  
37          required to pay the annual registration fee. Upon payment of all accumulated fees and  
38          penalties, the license of the physician may be reinstated, subject to the Board requiring  
39          the physician to appear before the Board for an interview and to comply with other  
40          licensing requirements. The penalty may not exceed the maximum fee for a license  
41          under G.S. 90-13."

42          **SECTION 11.** There is appropriated from the General Fund to the  
43          Department of Insurance the sum of twenty-five thousand dollars (\$25,000) for the  
44          2006-2007 fiscal year to implement the provisions of Section 6 of this act.

1           **SECTION 12.** The provisions of this act are severable. If any portion of this  
2 act is declared unconstitutional or unenforceable or if the application of a portion of this  
3 act to any person or circumstances is held invalid, then the remaining portions of this act  
4 shall remain valid and enforceable.

5           **SECTION 13.** This act becomes effective October 1, 2006. G.S. 90-21.18,  
6 90-21.18A, 90-21.18B, 90-21.18C, 90-21.18D, and 90-21.18E, as enacted by Section 2  
7 of this act, apply to causes of actions arising on or after that date and to contingency fee  
8 agreements entered into on or after that date.