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Short Title: Prevent Frivolous Malp. Action.

(Public)

Sponsors:

Referred to:

April 3, 1995

A BILL TO BE ENTITLED

AN ACT TO PREVENT FRIVOLOUS MEDICAL MALPRACTICE ACTIONS BY
REQUIRING THAT EXPERT WITNESSES IN MEDICAL MALPRACTICE
CASES HAVE APPROPRIATE QUALIFICATIONS TO TESTIFY ON THE
STANDARD OF CARE AT ISSUE AND TO REQUIRE EXPERT WITNESS
REVIEW AS A CONDITION OF FILING A MEDICAL MALPRACTICE ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8C-1, Rule 702, of the General Statutes reads as rewritten:
"Rule 702. Testimony by experts.

(a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion.

(b) In a medical malpractice action as defined in G.S. 90-21.11, a person shall not give expert testimony on the appropriate standard of health care as defined in G.S. 90-21.12 unless the person is a licensed health care provider in this State or another state and meets the following criteria:

- 1 (1) If the party against whom or on whose behalf the testimony is offered is
2 a specialist, the expert witness must:
3 a. Specialize in the same specialty as the party against whom or on
4 whose behalf the testimony is offered; or
5 b. Specialize in a similar specialty which includes within its
6 specialty the performance of the procedure that is the subject of
7 the complaint and have prior experience treating similar patients.
8 (2) During the year immediately preceding the date of the occurrence that is
9 the basis for the action, the expert witness must have devoted a majority
10 of his or her professional time to either or both of the following:
11 a. The active clinical practice of the same health profession in
12 which the party against whom or on whose behalf the testimony
13 is offered, and if that party is a specialist, the active clinical
14 practice of the same specialty or a similar specialty which
15 includes within its specialty the performance of the procedure
16 that is the subject of the complaint and have prior experience
17 treating similar patients; or
18 b. The instruction of students in an accredited health professional
19 school or accredited residency or clinical research program in the
20 same health profession in which the party against whom or on
21 whose behalf the testimony is offered, and if that party is a
22 specialist, an accredited health professional school or accredited
23 residency or clinical research program in the same specialty.
24 (c) Notwithstanding subsection (b) of this section, if the party against whom or on
25 whose behalf the testimony is offered is a general practitioner, the expert witness, during
26 the year immediately preceding the date of the occurrence that is the basis for the action,
27 must have devoted a majority of his or her professional time to either or both of the
28 following:
29 (1) Active clinical practice as a general practitioner; or
30 (2) Instruction of students in an accredited health professional school or
31 accredited residency or clinical research program in the general practice
32 of medicine.
33 (d) Notwithstanding subsection (b) of this section, a physician who qualifies as an
34 expert under subsection (a) of this Rule and who by reason of active clinical practice or
35 instruction of students has knowledge of the applicable standard of care for nurses, nurse
36 practitioners, certified registered nurse anesthetists, certified registered nurse midwives,
37 physician assistants, or other medical support staff may give expert testimony in a
38 medical malpractice action with respect to the standard of care of which he is
39 knowledgeable of nurses, nurse practitioners, certified registered nurse anesthetists,
40 certified registered nurse midwives, physician assistants licensed under Chapter 90 of the
41 General Statutes, or other medical support staff.
42 (e) Upon motion by either party, a resident judge of the superior court in the
43 county or judicial district in which the action is pending may allow expert testimony on

1 the appropriate standard of health care by a witness who does not meet the requirements
2 of subsection (b) or (c) of this Rule, but who is otherwise qualified as an expert witness,
3 upon a showing by the movant of extraordinary circumstances and a determination by the
4 court that the motion should be allowed to serve the ends of justice.

5 (f) In an action alleging medical malpractice, an expert witness shall not testify on
6 a contingency fee basis.

7 (g) This section does not limit the power of the trial court to disqualify an expert
8 witness on grounds other than the qualifications set forth in this section.

9 (h) Notwithstanding subsection (b) of this section, in a medical malpractice action
10 against a hospital, or other health care or medical facility, a person may give expert
11 testimony on the appropriate standard of care as to administrative or other nonclinical
12 issues if the person has substantial knowledge, by virtue of his or her training and
13 experience, about the standard of care among hospitals, or health care or medical
14 facilities, of the same type as the hospital, or health care or medical facility, whose
15 actions or inactions are the subject of the testimony situated in the same or similar
16 communities at the time of the alleged act giving rise to the cause of action."

17 Sec. 2. G.S. 1A-1, Rule 9, of the General Statutes is amended by adding a new
18 subsection to read:

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

22 (1) The pleading specifically asserts that the medical care has been
23 reviewed by a person who is reasonably expected to qualify as an expert
24 witness under Rule 702 of the Rules of Evidence and who is willing to
25 testify that the medical care did not comply with the applicable standard
26 of care;

27 (2) The pleading specifically asserts that the medical care has been
28 reviewed by a person that the complainant will seek to have qualified as
29 an expert witness by motion under Rule 702(e) of the Rules of Evidence
30 and who is willing to testify that the medical care did not comply with
31 the applicable standard of care, and the motion is filed with the
32 complaint; or

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

35 Upon motion by the complainant prior to the expiration of the applicable statute of
36 limitations, a resident judge of the superior court of the county in which the cause of
37 action arose may allow a motion to extend the statute of limitations for a period not to
38 exceed 120 days to file a complaint in a medical malpractice action in order to comply
39 with this Rule, upon a determination that good cause exists for the granting of the motion
40 and that the ends of justice would be served by an extension."

41 Sec. 3. Section 2 of this act is not intended, and shall not be construed, to
42 enlarge or diminish the doctrine of res ipsa loquitur in medical malpractice claims.

1 Sec. 4. This act becomes effective January 1, 1996, and applies to actions filed
2 on or after that date.