

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 415

Short Title: Collateral Source Evid. Admissable/Med Mal. (Public)

Sponsors: Representatives Rapp, England, Goforth (Primary Sponsors); Barnhart, Justus, and Lucas.

Referred to: Health, if favorable, Judiciary I.

March 5, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW JURIES TO CONSIDER EVIDENCE OF CERTAIN COLLATERAL
3 SOURCE PAYMENTS IN MEDICAL MALPRACTICE ACTIONS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 90-21.11. Definitions.

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

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

21 (1) Collateral source payments. – A payment for an expense for which recovery
22 is permitted in a medical malpractice action that is made to or for the benefit
23 of a plaintiff or is otherwise available to the plaintiff:

24 a. For medical expenses and disability payments under the federal
25 Social Security Act, any federal, state, or local income disability act,
26 or any other public program.

27 b. Under any health, sickness, or income disability insurance or
28 automobile accident insurance that provides health benefits or
29 income disability coverage, and any other similar insurance benefits
30 available to the plaintiff, except life insurance.

31 c. Under any contract or agreement of any person, group, organization,
32 partnership, or corporation to provide, pay for, or reimburse the costs
33 of hospital, medical, dental, or health care services.

34 d. Under any contractual or voluntary wage continuation plan provided
35 by an employer or other system intended to provide wages during a
36 period of disability.



1 e. From any other source.

2 A collateral source payment does not include gifts, gratuitous contributions
3 or assistance, or payments arising from assets of the plaintiff.

4 (2) Health care provider. – Any person who, pursuant to the provisions of
5 Chapter 90 of the General Statutes, is licensed, or is otherwise registered or
6 certified to engage in the practice of or otherwise performs duties associated
7 with any of the following: medicine, surgery, dentistry, pharmacy,
8 optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing,
9 physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis,
10 rendering assistance to a physician, dental hygiene, psychiatry, psychology;
11 or a hospital or a nursing home; or any other person who is legally
12 responsible for the negligence of such person, hospital, or nursing home; or
13 any other person acting at the direction or under the supervision of any of the
14 foregoing persons, hospital, or nursing home.

15 (3) Medical malpractice action. – A civil action for damages for personal injury
16 or death arising out of the furnishing or failure to furnish professional
17 services in the performance of medical, dental, or other health care by a
18 health care provider."

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

21 "**§ 90-21.18A. Accounting for certain collateral source payments in medical malpractice**
22 **actions.**

23 In any medical malpractice action, the court shall allow into evidence, if requested by a
24 defendant, collateral source payments paid to or for the benefit of the plaintiff, or that are
25 otherwise available to the plaintiff, related to the losses or damages alleged in the medical
26 malpractice action. The court shall allow into evidence, if requested by the plaintiff, rights of
27 subrogation of any collateral source."

28 **SECTION 3.** This act becomes effective December 1, 2009, and applies to causes
29 of actions arising on or after that date.