

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 33

Short Title: Medical Liability Reforms. (Public)

Sponsors: Senators Apodaca, Brown, Rucho; Bingham, Blake; Brock, Clary, Davis, Goolsby, Gunn, Harrington, Hise, Hunt, Jackson, Jones, Mansfield, Meredith, Pate, Preston, Purcell, Rabon, Rouzer, Soucek, Stevens, Tillman, Tucker, and Walters.

Referred to: Judiciary I.

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO REFORM THE LAWS RELATING TO MEDICAL LIABILITY BY PROVIDING LIMITED PROTECTION FROM LIABILITY TO THOSE PROVIDING EMERGENCY MEDICAL CARE, BY AUTHORIZING THE BIFURCATION OF TRIALS ON ISSUES OF LIABILITY AND DAMAGES IN CERTAIN ACTIONS, BY LIMITING THE AMOUNT OF NONECONOMIC DAMAGES THAT MAY BE AWARDED, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE ECONOMIC DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, AND BY MODIFYING APPEAL BONDS IN MEDICAL MALPRACTICE ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.12 reads as rewritten:

"§ 90-21.12. **Standard of health care.**

(a) Except as provided in subsection (b) of this section, in any medical malpractice action, action for damages for personal injury or death arising out of the furnishing or the failure to furnish professional services in the performance of medical, dental, or other health care, the defendant health care provider shall not be liable for the payment of damages unless the trier of the facts fact is satisfied finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice action arising out of the provision of emergency services as defined in G.S. 58-3-190(g)(2), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action, and finds by the greater weight of the evidence that such failure to meet the applicable standards of practice constituted gross negligence, wanton conduct or intentional wrongdoing on the part of such health care provider. Nothing in this subsection shall be construed to change, alter, override, or otherwise affect the provisions of G.S. 90-21.14, 90-21.15, 90-21.16, or 20-166."

SECTION 2. G.S. 1A-1, Rule 42(b), reads as rewritten:

"(b) Separate trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any



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1 claim, cross-claim, counterclaim, or third-party claim, or of any separate
2 issue or of any number of claims, cross-claims, counterclaims, third-party
3 claims, or issues.

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

9 (3) Upon motion of any party in a medical malpractice action commenced under
10 Article 1B of Chapter 90 of the General Statutes wherein the plaintiff seeks
11 damages in an amount equal to or greater than seventy-five thousand dollars
12 (\$75,000), the court shall order separate trials for the issue of liability and
13 the issue of damages. Evidence relating solely to compensatory damages
14 shall not be admissible until the trier of fact has determined that the
15 defendant is liable for medical malpractice. The same trier of fact that tried
16 the issues relating to liability shall try the issues relating to damages."

17 **SECTION 3.** Article 1B of Chapter 90 of the General Statutes is amended by
18 adding the following new section to read:

19 **"§ 90-21.19. Liability limit for noneconomic damages.**

20 (a) In any medical malpractice action against a health care provider in which the
21 plaintiff is entitled to an award of noneconomic damages, the amount of noneconomic damages
22 for which judgment is entered shall not exceed two hundred fifty thousand dollars (\$250,000)
23 per plaintiff. In the event that any verdict or award of noneconomic damages stated pursuant to
24 G.S. 90-21.19B(1) exceeds two hundred fifty thousand dollars (\$250,000) per plaintiff, the
25 court shall modify the judgment as necessary to conform to the requirements of this subsection.

26 (b) As used in this section, 'noneconomic damages' means damages to compensate for
27 pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment,
28 disfigurement, and any other nonpecuniary, compensatory damage. 'Noneconomic damages'
29 does not include punitive damages as defined in G.S. 1D-5.

30 (c) Any award of damages in a medical malpractice action shall be stated in accordance
31 with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with
32 respect to the limit of noneconomic damages under subsection (a) of this section, and neither
33 the attorney for any party nor a witness shall inform the jury or potential members of the jury
34 panel of that limit."

35 **SECTION 4.** Article 1B of Chapter 90 of the General Statutes is amended by
36 adding the following new section to read:

37 **"§ 90-21.19A. Periodic payment of future economic damages in medical malpractice**
38 **actions.**

39 (a) The following definitions apply in this section:

40 (1) Future economic damages. – Damages for future expense for medical
41 treatment, care or custody, loss of future earnings, and any other future
42 pecuniary damages of the plaintiff following the date of the verdict or award.

43 (2) Periodic payments. – The payment of money or delivery of other property to
44 the plaintiff at regular intervals.

45 (b) In any medical malpractice action, the form of the fact finder's verdict or award of
46 damages, if supported by the evidence, shall indicate specifically what amount is awarded for
47 future economic damages.

48 (c) Upon the award of future economic damages in any medical malpractice action, the
49 presiding judge shall, at the request of either party, enter a judgment ordering that the future
50 economic damages of the plaintiff be paid in whole or in part by periodic payments rather than
51 by a lump-sum payment if the present value of the future economic damages award is greater

1 than or equal to seventy-five thousand dollars (\$75,000). In entering a judgment ordering the
2 payment of future economic damages by periodic payments, the court shall make a specific
3 finding as to the dollar amount of the present value of that portion of the future economic
4 damages for which the plaintiff is to be paid by periodic payments. In calculating the total
5 damages upon which any attorney contingency fee for representing the plaintiff in connection
6 with the medical malpractice action is calculated, the present value of any portion of the award
7 representing future economic damages that are to be paid by periodic payments shall be used.

8 (d) A judgment authorizing periodic payments of future economic damages shall
9 require that such payments be made through the establishment of a trust fund or the purchase of
10 an annuity for the life of the plaintiff or during the continuance of the compensable injury or
11 disability of the plaintiff, in such form and under such terms as shall be approved by the court.
12 The establishment of a trust fund or the purchase of an annuity, as required and approved by the
13 court, shall constitute the satisfaction of the defendant's judgment for future economic damages.

14 (e) The judgment ordering the payment of future economic damages by periodic
15 payments shall specify the recipient of the payments, the schedule of the periodic payments,
16 and the dollar amount of each periodic payment to be made pursuant to the schedule. The death
17 of the plaintiff terminates liability for payment of future economic damages which by judgment
18 pursuant to this section are required to be paid in periodic payments not yet due, except that the
19 court that entered the original judgment may modify the judgment to provide that liability for
20 payment of future periodic payments compensating the plaintiff for loss of future earnings shall
21 not be terminated by reason of the death of the plaintiff, but shall continue to be paid to persons
22 surviving the plaintiff to whom the plaintiff owed a duty of support pursuant to law
23 immediately prior to the plaintiff's death."

24 **SECTION 5.** Article 1B of Chapter 90 of the General Statutes is amended by
25 adding the following new section to read:

26 "**§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.**

27 In any malpractice action, any verdict or award of damages, if supported by the evidence,
28 shall indicate specifically what amount is awarded for each of all of the following:

- 29 (1) Noneconomic damages.
- 30 (2) Present economic damages.
- 31 (3) Future economic damages.

32 If applicable, the court shall instruct the jury on the definition of noneconomic damages
33 under G.S. 90-21.19(b) and the definition of future economic damages under
34 G.S. 90-21.19A(a)(1). If applicable, the court shall instruct the jury that present economic
35 damages are those damages for medical treatment, care or custody, loss of earnings, and any
36 other pecuniary damages of the plaintiff up to the date of the verdict or award."

37 **SECTION 6.** G.S. 1-289 reads as rewritten:

38 "**§ 1-289. Undertaking to stay execution on money judgment.**

39 (a) If the appeal is from a judgment directing the payment of money, it does not stay the
40 execution of the judgment unless a written undertaking is executed on the part of the appellant,
41 by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is
42 affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by
43 the judgment, or the part of such amount as to which the judgment shall be affirmed, if
44 affirmed only in part, and all damages which shall be awarded against the appellant upon the
45 appeal, except as provided in ~~subsection (b)~~ subsections (b) and (b1) of this section. Whenever
46 it is satisfactorily made to appear to the court that since the execution of the undertaking the
47 sureties have become insolvent, the court may, by rule or order, require the appellant to
48 execute, file and serve a new undertaking, as above. In case of neglect to execute such
49 undertaking within twenty days after the service of a copy of the rule or order requiring it, the
50 appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a
51 party to an action or proceeding to give a bond or an undertaking with surety or sureties, he

1 may, in lieu thereof, deposit with the officer into court money to the amount of the bond or
2 undertaking to be given. The court in which the action or proceeding is pending may direct
3 what disposition shall be made of such money pending the action or proceeding. In a case
4 where, by this section, the money is to be deposited with an officer, a judge of the court, upon
5 the application of either party, may, at any time before the deposit is made, order the money
6 deposited in court instead of with the officer; and a deposit made pursuant to such order is of
7 the same effect as if made with the officer. The perfecting of an appeal by giving the
8 undertaking mentioned in this section stays proceedings in the court below upon the judgment
9 appealed from; except when the sale of perishable property is directed, the court below may
10 order the property to be sold and the proceeds thereof to be deposited or invested, to abide the
11 judgment of the appellate court.

12 (b) If the appellee in a civil action brought under any legal theory obtains a judgment
13 directing the payment or expenditure of money in the amount of twenty five million dollars
14 (\$25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the
15 period of time during which the appellant has the right to pursue appellate review, including
16 discretionary review and certiorari, the amount of the undertaking that the appellant is required
17 to execute to stay execution of the judgment during the entire period of the appeal shall be
18 ~~twenty five~~ twenty-five million dollars (\$25,000,000).

19 (b1) If the appellee in any medical malpractice action, as defined in G.S. 90-21.11,
20 obtains a judgment directing the payment or expenditure of money, and the appellant seeks a
21 stay of execution of the judgment within the period of time during which the appellant has the
22 right to pursue appellate review, including discretionary review and certiorari, the amount of
23 the undertaking that the appellant is required to execute to stay execution of the judgment
24 during the entire period of the appeal shall be the lesser of the amount of the judgment or the
25 amount of the appellant's medical malpractice insurance coverage applicable to the action.

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

33 **SECTION 7.** This act becomes effective October 1, 2011. Sections 1, 3, 4, and 5
34 apply to causes of action arising on or after the effective date. Section 2 applies to actions
35 commenced on or after the effective date. Section 6 applies to judgments entered on or after
36 the effective date.