

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE DRH30212-RY-6 (04/13)

Short Title: Civil Justice Improvement - 2.

(Public)

Sponsors: Representative Nye.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS IMPACTING MEDICAL MALPRACTICE  
INSURANCE RATES TO IMPROVE THE COST OF PROVIDING HEALTH  
CARE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

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

**"§ 90-21.11. Definitions.**

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

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

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

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

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

1            consortium; loss of society, companionship, comfort, guidance, kindly  
2            offices, or advice; pain and suffering; inconvenience; disfigurement;  
3            loss of limbs or body parts, physical impairment; and any other  
4            nonpecuniary damages.

5            (8) Periodic payments. – The payment of money or delivery of other  
6            property to the plaintiff at regular intervals.

7            (9) Recovered. – The net sum recovered after deducting any  
8            disbursements or costs incurred in connection with the litigation,  
9            arbitration, or settlement of the claim. The sum recovered shall include  
10           any punitive damages awarded under Chapter 1D of the General  
11           Statutes."

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

14 **"§ 90-21.18. Limitation on noneconomic damages in medical malpractice actions.**

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

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

26 **"§ 90-21.18A. Accounting for certain collateral source payments in medical**  
27 **malpractice actions.**

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

33 **"§ 90-21.18B. Periodic payment of future economic damages in medical**  
34 **malpractice actions.**

35           (a) Upon the award of damages in any medical malpractice action, the presiding  
36 judge shall, at the request of either party, enter a judgment ordering that money damages  
37 or its equivalent for future economic damages of the plaintiff as awarded by the jury in  
38 accordance with G.S. 90-21.18C(a)(3) be paid at the election of the defendant against  
39 whom the award was made by periodic payments rather than by a lump-sum payment  
40 when the award exceeds one hundred thousand dollars (\$100,000) in future economic  
41 damages. In entering a judgment ordering the payment of future economic damages by  
42 periodic payments, the court shall make a specific finding of fact as to the dollar amount  
43 of periodic payments that will compensate the plaintiff for such future economic  
44 damages. As a condition to authorizing periodic payments of future economic damages,

1 the court shall, in its order of judgment, require that such payments be made through the  
2 establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or  
3 during the continuance of the compensable injury or disability of the plaintiff. The  
4 establishment of a trust fund or the purchase of an annuity, as approved by the court,  
5 shall satisfy the defendant's judgment for future economic damages.

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

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

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

25 **§ 90-21.18C. Verdicts and awards of damages in medical malpractice actions;**  
26 **form.**

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

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

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

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

43 **§ 90-21.18D. Settlements in medical malpractice actions; reporting.**

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

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

17 **"§ 90-21.18E. Regulation of contingency fees in medical malpractice actions.**

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

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

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

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

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

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

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

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

2   "**§ 1-289. Undertaking to stay execution on money judgment.**

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

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

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

43       (c) If the appellee proves by a preponderance of the evidence that the appellant  
44 for whom the undertaking has been limited under subsection (b) or (b1) of this section

1 is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its  
2 assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina  
3 or the federal courts of the United States other than in the ordinary course of business,  
4 then the limitation in ~~subsection (b)~~ subsections (b) and (b1) of this section shall not  
5 apply and the appellant shall be required to make an undertaking in the full amount  
6 otherwise required by this section."

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

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

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

17 "**§ 58-2-170. Annual statements by professional liability insurers; medical**  
18 **malpractice claim reports.**

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

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

- 36 (1) Number of claims pending at beginning of year;
- 37 (2) Number of claims pending at end of year;
- 38 (3) Number of claims paid;
- 39 (4) Number of claims closed no payment;
- 40 (5) Number and amounts of claims in court in which judgment ~~paid: was~~  
41 entered, the amount of the judgment, and the actual amount paid on the  
42 judgment or in settlement of the judgment. For both the amount of the  
43 judgment and the actual amount paid, provide the:

44 a. Highest amount

- 1                   b.     Lowest amount
- 2                   c.     Average amount
- 3                   d.     Median amount;
- 4           (6)    Number and amounts of claims out of court in which settlement paid:
- 5                   a.     Highest amount
- 6                   b.     Lowest amount
- 7                   c.     Average amount
- 8                   d.     Median amount;
- 9           (7)    Average amount per claim set up in reserve;
- 10           (8)    Total premium collection;
- 11           (9)    Total expenses less reserve expenses; and
- 12           (10)   Total reserve expenses.

13       **(b1) The Commissioner shall analyze the reports described in subsections (a) and**  
14 **(b) of this section and shall file statistical and other summaries with the General**  
15 **Assembly no later than March 1 of each year. Summaries filed by the Commissioner**  
16 **pursuant to this subsection shall include all of the following:**

- 17           **(1) Any trends noted or observed from the data.**
- 18           **(2) All actions taken by the Commissioner in response to these trends.**
- 19           **(3) Any legislative or other recommendations from the Commissioner**  
20 **with respect to actions by the General Assembly in response to these**  
21 **trends.**

22       (c)    Every insurer, self-insurer, and risk retention group that provides professional  
23 liability insurance to health care providers in this State shall file, within 90 days  
24 following the request of the Commissioner, a report containing information for the  
25 purpose of allowing the Commissioner to analyze claims. The report shall be in the  
26 form prescribed by the Commissioner. The form prescribed by the Commissioner shall  
27 be a form that permits the public inspection, examination, or copying of any information  
28 contained in the report: Provided, however, that any data or other characteristics that  
29 identify or could be used to identify the names or addresses of the claimants or the  
30 names or addresses of the individual health care provider or medical center against  
31 whom the claims are or have been asserted or any data that could be used to identify the  
32 dollar amounts involved in such claims shall be treated as privileged information and  
33 shall not be made available to the public. The Commissioner shall analyze these reports  
34 and shall file statistical and other summaries based on these reports with the General  
35 Assembly as soon as practicable after receipt of the reports. The Commissioner shall  
36 assess a penalty against any person that willfully fails to file a report required by this  
37 subsection. Such penalty shall be one thousand dollars (\$1,000) for each day after the  
38 due date of the report that the person willfully fails to file: Provided, however, the  
39 penalty for an individual who self insures shall be two hundred dollars (\$200.00) for  
40 each day after the due date of the report that the person willfully fails to file: Provided,  
41 however, that upon the failure of a person to file the report as required by this  
42 subsection, the Commissioner shall send by certified mail, return receipt requested, a  
43 notice to that person informing him that he has 10 business days after receipt of the  
44 notice to either request an extension of time or file the report. The Commissioner may,



1 for good cause, authorize an extension of the report due date upon written application of  
2 any person required to file. An extension is not valid unless the Commissioner's  
3 authorization is in writing and signed by the Commissioner or one of his deputies.

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

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

10 "(b) Separate trials. –

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

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

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

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

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

35 (1) The pleading specifically has attached a sworn affidavit from a person  
36 who is reasonably expected to qualify as an expert witness under Rule  
37 702 of the Rules of Evidence that asserts that the medical care ~~has and~~  
38 all medical records pertaining to the alleged injury then available to the  
39 plaintiff after reasonable inquiry, have been reviewed by a person who  
40 is reasonably expected to qualify as an expert witness under Rule 702  
41 of the Rules of Evidence and who the person, and the person is willing  
42 to testify that the medical care did not comply with the applicable  
43 standard of care;

- 1           (2)    The pleading specifically has attached a sworn affidavit from a person  
2           that the complainant will seek to have qualified as an expert witness by  
3           motion under Rule 702(e) of the Rules of Evidence that asserts that the  
4           medical care ~~has~~ and all medical records pertaining to the alleged  
5           injury then available to the plaintiff after reasonable inquiry, have been  
6           reviewed by a person that the complainant will seek to have qualified  
7           as an expert witness by motion under Rule 702(e) of the Rules of  
8           Evidence and who the person, and the person is willing to testify that  
9           the medical care did not comply with the applicable standard of care,  
10          and the motion is filed with the complaint; or  
11          (3)    The pleading alleges facts establishing negligence under the existing  
12          common-law doctrine of res ipsa loquitur.

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

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

27          "**§ 90-14. Revocation, suspension, annulment or denial of license.**

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

- 33               (1)    Immoral or dishonorable conduct.  
34               (2)    Producing or attempting to produce an abortion contrary to law.  
35               (3)    Made false statements or representations to the Board, or who has  
36               willfully concealed from the Board material information in connection  
37               with an application for a license.  
38               (4)    Repealed by Session Laws 1977, c. 838, s. 3.  
39               (5)    Being unable to practice medicine with reasonable skill and safety to  
40               patients by reason of illness, drunkenness, excessive use of alcohol,  
41               drugs, chemicals, or any other type of material or by reason of any  
42               physical or mental abnormality. The Board is empowered and  
43               authorized to require a physician licensed by it to submit to a mental or  
44               physical examination by physicians designated by the Board before or

1 after charges may be presented against the physician, and the results of  
2 the examination shall be admissible in evidence in a hearing before the  
3 Board.

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

1 of the amount of restitution shall be based on credible testimony in the  
2 record.

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

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

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

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

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

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

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

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

36 (5) Reprimand the accused physician. – A reprimand is a written form of  
37 discipline more serious than an admonition 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, but the protection of the public does  
40 not require a censure. A reprimand shall generally be reserved for  
41 cases in which the physician's conduct has caused harm or potential  
42 harm to a patient, the profession, or members of the public.

43 (6) Admonish the accused physician. – An admonishment is a written  
44 form of discipline imposed in cases in which a physician has

1                   committed a minor act or conduct as set forth in subsection (a) of this  
2                   section.

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

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

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

11           "**§ 90-15.1. Registration every year with Board.**

12           Every person licensed to practice medicine by the North Carolina Medical Board  
13 shall register annually with the Board within 30 days of the person's birthday. A person  
14 who registers with the Board shall report to the Board the person's name and office and  
15 residence address and any other information required by the Board, and shall pay a  
16 registration fee of ~~one hundred twenty five dollars (\$125.00)~~ up to two hundred fifty  
17 dollars (\$250.00). A physician who is not actively engaged in the practice of medicine  
18 in North Carolina and who does not wish to register the license may direct the Board to  
19 place the license on inactive status. For purposes of annual registration, the Board shall  
20 use a simplified registration form which allows registrants to confirm information on  
21 file with the Board. A physician who fails to register as required by this section shall  
22 pay an additional fee of twenty dollars (\$20.00) to the Board. The license of any  
23 physician who fails to register and who remains unregistered for a period of 30 days  
24 after certified notice of the failure is automatically inactive. Except as provided in  
25 G.S. 90-12(d), a person whose license is inactive shall not practice medicine in North  
26 Carolina nor be required to pay the annual registration fee. Upon payment of all  
27 accumulated fees and penalties, the license of the physician may be reinstated, subject  
28 to the Board requiring the physician to appear before the Board for an interview and to  
29 comply with other licensing requirements. The penalty may not exceed the maximum  
30 fee for a license under G.S. 90-13."

31           **SECTION 11.** G.S. 90-18(a) reads as rewritten:

32           "(a) No person shall practice medicine or surgery, or any of the branches thereof,  
33 nor in any case prescribe for the cure of diseases unless the person shall have been first  
34 licensed and registered so to do in the manner provided in this Article, and if any person  
35 shall practice medicine or surgery without being duly licensed and registered, as  
36 provided in this Article, the person shall not be allowed to maintain any action to collect  
37 any fee for such services. The person so practicing without license shall be guilty of a  
38 ~~Class 1 misdemeanor.~~ Class I felony."

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

43           **SECTION 13.** Section 11 of this act becomes effective December 1, 2005.  
44 The remainder of this act becomes effective October 1, 2005. G.S. 90-21.18,

1 90-21.18A, 90-21.18B, 90-21.18C, 90-21.18D, and 90-21.18E, as enacted by Section 2  
2 of this act, apply to causes of actions arising on or after that date and to contingency fee  
3 agreements entered into on or after that date.