

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1498

Short Title: Civil Justice Improvement - 1. (Public)

Sponsors: Representatives Kiser, Harrell, Crawford, Justus (Primary Sponsors); Almond, Blackwood, Brown, Brubaker, Clary, Cleveland, Culp, Current, Dockham, Folwell, Frye, Gillespie, Grady, Gulley, Hilton, Hollo, Holmes, Howard, Johnson, Justice, Langdon, LaRoque, Lewis, Pate, Ray, Rayfield, Sauls, Setzer, Sherrill, Starnes, Steen, Underhill, Vinson, Walker, West, Wiley, and Wilson.

Referred to: Rules, Calendar, and Operations of the House.

April 21, 2005

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.
4

5 The General Assembly of North Carolina enacts:

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

7 "**§ 90-21.11. Definitions.**

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

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

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

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

1 professional services in the performance of medical, dental, or other
2 health care by a health care provider.

3 (7) Noneconomic damages. – Includes all damages to compensate mental
4 anguish; emotional distress; emotional pain and suffering; loss of
5 consortium; loss of society, companionship, comfort, guidance, kindly
6 offices, or advice; pain and suffering; inconvenience; disfigurement;
7 loss of limbs or body parts, physical impairment; and any other
8 nonpecuniary damages.

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

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

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

18 **"§ 90-21.18. Limitation on noneconomic damages in medical malpractice actions.**

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

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

30 **"§ 90-21.18A. Accounting for certain collateral source payments in medical**
31 **malpractice actions.**

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

37 **"§ 90-21.18B. Periodic payment of future economic damages in medical**
38 **malpractice actions.**

39 (a) Upon the award of damages in any medical malpractice action, the presiding
40 judge shall, at the request of either party, enter a judgment ordering that money damages
41 or its equivalent for future economic damages of the plaintiff as awarded by the jury in
42 accordance with G.S. 90-21.18C(a)(3) be paid at the election of the defendant against
43 whom the award was made by periodic payments rather than by a lump-sum payment
44 when the award exceeds one hundred thousand dollars (\$100,000) in future economic

1 damages. In entering a judgment ordering the payment of future economic damages by
2 periodic payments, the court shall make a specific finding of fact as to the dollar amount
3 of periodic payments that will compensate the plaintiff for such future economic
4 damages. As a condition to authorizing periodic payments of future economic damages,
5 the court shall, in its order of judgment, require that such payments be made through the
6 establishment of a trust fund or the purchase of an annuity for the life of the plaintiff or
7 during the continuance of the compensable injury or disability of the plaintiff. The
8 establishment of a trust fund or the purchase of an annuity, as approved by the court,
9 shall satisfy the defendant's judgment for future economic damages.

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

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

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

29 **"§ 90-21.18C. Verdicts and awards of damages in medical malpractice actions;**
30 **form.**

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

- 34 (1) Noneconomic damages.
- 35 (2) Present economic damages.
- 36 (3) Future economic damages.

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

42 (b) In any wrongful death medical malpractice action, any verdict or award of
43 damages shall indicate specifically the amount of damages, if any, awarded for each of
44 the elements of damages provided in G.S. 28A-12-2 for which there was evidence

1 presented at trial. The verdict or award shall also specify the amount of noneconomic
2 damages as provided in subsection (a) of this section.

3 **"§ 90-21.18D. Settlements in medical malpractice actions; reporting.**

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

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

20 **"§ 90-21.18E. Regulation of contingency fees in medical malpractice actions.**

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

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

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

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

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

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

43 In any action brought against a health care provider pursuant to Article 1B of
44 Chapter 90 of the General Statutes, evidence offered to prove past medical expenses

1 may include all bills reasonably paid or incurred and a statement of the amounts actually
2 necessary to satisfy the bills that have been incurred. Evidence of source of payment
3 and rights of subrogation related to the payment shall be admissible."

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

5 **"§ 1-289. Undertaking to stay execution on money judgment.**

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

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

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

1 amount of the judgment or the amount of the appellant's medical malpractice insurance
2 coverage applicable to the action.

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

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

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

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

21 "**§ 58-2-170. Annual statements by professional liability insurers; medical**
22 **malpractice claim reports.**

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

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

- 40 (1) Number of claims pending at beginning of year;
- 41 (2) Number of claims pending at end of year;
- 42 (3) Number of claims paid;
- 43 (4) Number of claims closed no payment;

1 (5) Number and amounts of claims in court in which judgment ~~paid~~ was
2 entered, the amount of the judgment, and the actual amount paid on the
3 judgment or in settlement of the judgment. For both the amount of the
4 judgment and the actual amount paid, provide the:

- 5 a. Highest amount
- 6 b. Lowest amount
- 7 c. Average amount
- 8 d. Median amount;

9 (6) Number and amounts of claims out of court in which settlement paid:

- 10 a. Highest amount
- 11 b. Lowest amount
- 12 c. Average amount
- 13 d. Median amount;

14 (7) Average amount per claim set up in reserve;

15 (8) Total premium collection;

16 (9) Total expenses less reserve expenses; and

17 (10) Total reserve expenses.

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

22 (1) Any trends noted or observed from the data.

23 (2) All actions taken by the Commissioner in response to these trends.

24 (3) Any legislative or other recommendations from the Commissioner
25 with respect to actions by the General Assembly in response to these
26 trends.

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

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

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

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

15 "(b) Separate trials. –

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

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

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

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

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

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

1 is reasonably expected to qualify as an expert witness under Rule 702
2 of the Rules of Evidence and who the person, and the person is willing
3 to testify that the medical care did not comply with the applicable
4 standard of care;

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

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

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

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

31 "**§ 90-14. Revocation, suspension, annulment or denial of license.**

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

- 37 (1) Immoral or dishonorable conduct.
38 (2) Producing or attempting to produce an abortion contrary to law.
39 (3) Made false statements or representations to the Board, or who has
40 willfully concealed from the Board material information in connection
41 with an application for a license.
42 (4) Repealed by Session Laws 1977, c. 838, s. 3.
43 (5) Being unable to practice medicine with reasonable skill and safety to
44 patients by reason of illness, drunkenness, excessive use of alcohol,

1 drugs, chemicals, or any other type of material or by reason of any
2 physical or mental abnormality. The Board is empowered and
3 authorized to require a physician licensed by it to submit to a mental or
4 physical examination by physicians designated by the Board before or
5 after charges may be presented against the physician, and the results of
6 the examination shall be admissible in evidence in a hearing before the
7 Board.

8 (6) Unprofessional conduct, including, but not limited to, departure from,
9 or the failure to conform to, the standards of acceptable and prevailing
10 medical practice, or the ethics of the medical profession, irrespective
11 of whether or not a patient is injured thereby, or the committing of any
12 act contrary to honesty, justice, or good morals, whether the same is
13 committed in the course of the physician's practice or otherwise, and
14 whether committed within or without North Carolina. The Board shall
15 not revoke the license of or deny a license to a person solely because
16 of that person's practice of a therapy that is experimental,
17 nontraditional, or that departs from acceptable and prevailing medical
18 practices unless, by competent evidence, the Board can establish that
19 the treatment has a safety risk greater than the prevailing treatment or
20 that the treatment is generally not effective.

21 (7) Conviction in any court of a crime involving moral turpitude, or the
22 violation of a law involving the practice of medicine, or a conviction
23 of a felony; provided that a felony conviction shall be treated as
24 provided in subsection (c) of this section.

25 (8) By false representations has obtained or attempted to obtain practice,
26 money or anything of value.

27 (9) Has advertised or publicly professed to treat human ailments under a
28 system or school of treatment or practice other than that for which the
29 physician has been educated.

30 (10) Adjudication of mental incompetency, which shall automatically
31 suspend a license unless the Board orders otherwise.

32 (11) Lack of professional competence to practice medicine with a
33 reasonable degree of skill and safety for patients. In this connection the
34 Board may consider repeated acts of a physician indicating the
35 physician's failure to properly treat a patient. The Board may, upon
36 reasonable grounds, require a physician to submit to inquiries or
37 examinations, written or oral, by members of the Board or by other
38 physicians licensed to practice medicine in this State, as the Board
39 deems necessary to determine the professional qualifications of such
40 licensee. In order to annul, suspend, deny, or revoke a license of an
41 accused person, the Board shall find by the greater weight of the
42 evidence that the care provided was not in accordance with the
43 standards of practice for the procedures or treatments administered.

- 1 (12) Promotion of the sale of drugs, devices, appliances or goods for a
2 patient, or providing services to a patient, in such a manner as to
3 exploit the patient, and upon a finding of the exploitation, the Board
4 may order restitution be made to the payer of the bill, whether the
5 patient or the insurer, by the physician; provided that a determination
6 of the amount of restitution shall be based on credible testimony in the
7 record.
- 8 (13) Having a license to practice medicine or the authority to practice
9 medicine revoked, suspended, restricted, or acted against or having a
10 license to practice medicine denied by the licensing authority of any
11 jurisdiction. For purposes of this subdivision, the licensing authority's
12 acceptance of a license to practice medicine voluntarily relinquished
13 by a physician or relinquished by stipulation, consent order, or other
14 settlement in response to or in anticipation of the filing of
15 administrative charges against the physician's license, is an action
16 against a license to practice medicine.
- 17 (14) The failure to respond, within a reasonable period of time and in a
18 reasonable manner as determined by the Board, to inquiries from the
19 Board concerning any matter affecting the license to practice
20 medicine.
- 21 (15) The failure to complete an amount not to exceed 150 hours of
22 continuing medical education during any three consecutive calendar
23 years pursuant to rules adopted by the Board.
- 24 (a1) For any of the ~~foregoing reasons~~, reasons set forth in subsection (a) of this
25 section, the Board may do any of the following:
- 26 (1) ~~deny~~ Deny the issuance of a license to an applicant or revoke a license
27 issued to a ~~physician~~, physician.
- 28 (2) ~~may suspend such~~ Suspend a license for a period of time, and may
29 impose conditions upon the continued practice after ~~such a~~ period of
30 suspension as the Board may deem ~~advisable~~, advisable.
- 31 (3) ~~may limit~~ Limit the accused physician's practice of medicine with
32 respect to the extent, nature or location of the physician's practice as
33 the Board deems advisable.
- 34 (4) Censure the accused physician. – A censure is a written form of
35 discipline more serious than a reprimand issued in cases in which a
36 physician has committed one or more of the acts or conduct as set forth
37 in subsection (a) of this section and has caused significant harm or
38 potential significant harm to a patient, the profession, or members of
39 the public, but the protection of the patient or public does not require
40 suspension of the physician's license.
- 41 (5) Reprimand the accused physician. – A reprimand is a written form of
42 discipline more serious than an admonition issued in cases in which a
43 physician has committed one or more of the acts or conduct as set forth
44 in subsection (a) of this section, but the protection of the public does

1 not require a censure. A reprimand shall generally be reserved for
2 cases in which the physician's conduct has caused harm or potential
3 harm to a patient, the profession, or members of the public.

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

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

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

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

16 "**§ 90-15.1. Registration every year with Board.**

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

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

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

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.** Section 11 of this act becomes effective December 1, 2005.
6 The remainder of this act becomes effective October 1, 2005. G.S. 90-21.18, 90-21.18A,
7 90-21.18B, 90-21.18C, 90-21.18D, and 90-21.18E, as enacted by Section 2 of this act,
8 apply to causes of actions arising on or after that date and to contingency fee
9 agreements entered into on or after that date.