

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 730  
Committee Substitute Favorable 5/3/95  
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Short Title: Prevent Frivolous Malp. Action.

(Public)

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Sponsors:

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Referred to:

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April 3, 1995

A BILL TO BE ENTITLED

1 AN ACT TO PREVENT FRIVOLOUS MEDICAL MALPRACTICE ACTIONS BY  
2 REQUIRING THAT EXPERT WITNESSES IN MEDICAL MALPRACTICE  
3 CASES HAVE APPROPRIATE QUALIFICATIONS TO TESTIFY ON THE  
4 STANDARD OF CARE AT ISSUE AND TO REQUIRE EXPERT WITNESS  
5 REVIEW AS A CONDITION OF FILING A MEDICAL MALPRACTICE ACTION.  
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7 The General Assembly of North Carolina enacts:

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

9 "Rule 702. Testimony by experts.

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

14 (b) In a medical malpractice action as defined in G.S. 90-21.11, a person shall not  
15 give expert testimony on the appropriate standard of health care as defined in G.S. 90-  
16 21.12 unless the person is a licensed health care provider in this State or another state and  
17 meets all of the following criteria:

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

1 practitioners, certified registered nurse anesthetists, certified registered nurse midwives,  
2 or physician assistants licensed under Chapter 90 of the General Statutes.

3 (e) Upon motion by either party, the senior resident judge of the superior court in  
4 the county in which the action is pending may allow expert testimony on the appropriate  
5 standard of health care by a witness who does not meet the requirements of subsection (b)  
6 of this Rule, but who is otherwise qualified as an expert witness, upon a showing by the  
7 movant of extraordinary circumstances and a determination by the court that the motion  
8 should be allowed to serve the ends of justice.

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

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

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

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

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

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

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

31 Upon motion by the complainant, the senior resident judge of the superior court of the  
32 county in which the cause of action arose may, for good cause shown, allow the  
33 complainant additional time, not to exceed 90 days after the expiration of the applicable  
34 statute of limitations, to file a complaint in a medical malpractice action in compliance  
35 with this Rule."

36 Sec. 3. Section 2 of this act is not intended, and shall not be construed, to  
37 establish, approve, or endorse any extension of the doctrine of res ipsa loquitur to medical  
38 malpractice claims.

39 Sec. 4. This act becomes effective October 1, 1995, and applies to actions filed  
40 on or after that date.