

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 72

Short Title: Health Care Liability Claims. (Public)

Sponsors: Senators Pittenger; Allran, Apodaca, Berger of Rockingham, Bingham, Blake, Brock, Brown, Brunstetter, East, Forrester, Goodall, Hartsell, Hunt, Jacumin, Preston, Smith, Stevens, and Tillman.

Referred to: Judiciary 1 (Civil).

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE AMOUNT OF DAMAGES THAT MAY BE AWARDED
IN CIVIL ACTIONS AGAINST HEALTH CARE PROVIDERS FOR HEALTH
CARE LIABILITY CLAIMS, TO OTHERWISE REFORM HEALTH CARE
LIABILITY, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART 1. HEALTH CARE LIABILITY CLAIMS

SECTION 1. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 1H.

"Health Care Liability Claims.

"Part 1. General Provisions.

"§ 90-21.57. Findings.

(a) The General Assembly finds that:

- (1) The number of health care liability claims (frequency) has increased since 1995 inordinately;
- (2) The filing of legitimate health care liability claims in North Carolina is a contributing factor affecting medical professional liability insurance rates;
- (3) The amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period;
- (4) The effect of the above has caused a serious public problem in availability and affordability of adequate medical professional liability insurance;
- (5) The situation has created a medical malpractice insurance crisis in North Carolina;

- 1 (6) This crisis has had a material adverse effect on the delivery of medical
2 and health care in North Carolina, including significant reductions of
3 availability of medical and health care services to the people of our
4 State and a likelihood of further reductions in the future;
- 5 (7) The crisis has had a substantial impact on the physicians and hospitals
6 of North Carolina, and the cost to physicians and hospitals for
7 adequate medical malpractice liability insurance has dramatically
8 risen, with cost impact on patients and the public;
- 9 (8) The direct cost of medical care to the patients and citizens of our State
10 has materially increased due to the rising cost of malpractice liability
11 insurance protection for physicians and hospitals in North Carolina;
- 12 (9) The crisis has increased the cost of medical care both directly through
13 fees and indirectly through additional services provided for protection
14 against future suits or claims, and defensive medicine has resulted in
15 increasing cost to patients, private insurers, and North Carolina and
16 has contributed to the general inflation that has marked health care in
17 recent years;
- 18 (10) Satisfactory insurance coverage for adequate amounts of insurance in
19 this area is often not available at any price;
- 20 (11) The combined effect of the defects in the medical, insurance, and legal
21 systems has caused a serious public problem both with respect to the
22 availability of coverage and to the high rates being charged by insurers
23 for medical professional liability insurance to some physicians, health
24 care providers, and hospitals; and
- 25 (12) The adoption of certain modifications in the medical, insurance, and
26 legal systems, the total effect of which is currently undetermined, will
27 have a positive effect on the rates charged by insurers for medical
28 professional liability insurance.
- 29 (b) Because of the conditions stated in subsection (a) of this section, it is the
30 purpose of this Article to improve and modify the system by which health care liability
31 claims are determined in order to:
- 32 (1) Reduce excessive frequency and severity of health care liability claims
33 through reasonable improvements and modifications in the North
34 Carolina insurance, tort, and medical practice systems;
- 35 (2) Decrease the cost of those claims and ensure that awards are rationally
36 related to actual damages;
- 37 (3) Do so in a manner that will not unduly restrict a claimant's rights any
38 more than necessary to deal with the crisis;
- 39 (4) Make available to physicians, hospitals, and other health care
40 providers protection against potential liability through the insurance
41 mechanism at reasonably affordable rates;
- 42 (5) Make affordable medical and health care more accessible and available
43 to the citizens of North Carolina;

- 1 (6) Make certain modifications in the medical, insurance, and legal
2 systems in order to determine whether or not there will be an effect on
3 rates charged by insurers for medical professional liability insurance;
4 and
5 (7) Make certain modifications to the liability laws as they relate to health
6 care liability claims only and with an intention of the General
7 Assembly to not extend or apply the modifications of liability laws to
8 any other area of the North Carolina legal system or tort law.

9 **§ 90-21.58. Definitions.**

10 (a) In this Part:

- 11 (1) "Affiliate" means a person who, directly or indirectly, through one or
12 more intermediaries, controls, is controlled by, or is under common
13 control with a specified person, including any direct or indirect parent
14 or subsidiary.
15 (2) "Claimant" means a person, including a decedent's estate, seeking or
16 who has sought recovery of damages in a health care liability claim.
17 All persons claiming to have sustained damages as the result of the
18 bodily injury or death of a single person are considered a single
19 claimant.
20 (3) "Control" means the possession, directly or indirectly, of the power to
21 direct or cause the direction of the management and policies of the
22 person, whether through ownership of equity or securities, by contract,
23 or otherwise.
24 (4) "Court" means any federal or State court.
25 (5) "Disclosure Panel" or "Panel" means the North Carolina Medical
26 Disclosure Panel established under this Article.
27 (6) "Economic damages" means compensatory damages intended to
28 compensate a claimant for actual economic or pecuniary loss; the term
29 does not include punitive damages or noneconomic damages.
30 (7) "Emergency medical care" means bona fide emergency services
31 provided after the sudden onset of a medical or traumatic condition
32 manifesting itself by acute symptoms of sufficient severity, including
33 severe pain, such that the absence of immediate medical attention
34 could reasonably be expected to result in placing the patient's health in
35 serious jeopardy, serious impairment to bodily functions, or serious
36 dysfunction of any bodily organ or part. The term does not include
37 medical care or treatment that occurs after the patient is stabilized and
38 is capable of receiving medical treatment as a nonemergency patient or
39 that is unrelated to the original medical emergency.
40 (8) "Emergency medical services provider" means an individual or entity
41 licensed under Article 7 of Chapter 131E of the General Statutes.
42 (9) "Gross negligence" means an act or omission:
43 a. Which, when viewed objectively from the standpoint of the
44 actor at the time of its occurrence, involves an extreme degree

- 1 of risk, considering the probability and magnitude of the
2 potential harm to others; and
- 3 b. Of which the actor has actual, subjective awareness of the risk
4 involved, but nevertheless proceeds with conscious indifference
5 to the rights, safety, or welfare of others.
- 6 (10) "Health care" means any act or treatment performed or furnished, or
7 that should have been performed or furnished, by any health care
8 provider for, to, or on behalf of a patient during the patient's medical
9 care, treatment, or confinement.
- 10 (11) "Health care institution" includes:
- 11 a. An ambulatory surgical center;
12 b. An assisted living facility licensed under Chapter 131D of the
13 General Statutes;
14 c. An emergency medical services provider;
15 d. A health services district created under Chapter 131E of the
16 General Statutes;
17 e. A home care agency;
18 f. A hospice;
19 g. A hospital;
20 h. A hospital system;
21 i. An intermediate care facility for the mentally retarded or a
22 home and community-based services waiver program for
23 persons with mental retardation adopted in accordance with
24 section 1915(c) of the federal Social Security Act (42 U.S.C.
25 § 1396n), as amended; or
- 26 j. A nursing home.
- 27 (12) "Health care liability claim" means a cause of action against a health
28 care provider or physician for treatment, lack of treatment, or other
29 claimed departure from accepted standards of medical care, or health
30 care, or safety or professional or administrative services directly
31 related to health care, which proximately results in injury to or death of
32 a claimant; whether the claimant's claim or cause of action sounds in
33 tort or contract.
- 34 (13) "Health care provider" means any person, partnership, professional
35 association, corporation, facility, or institution duly licensed to provide
36 health care in this State, including:
- 37 a. A registered nurse;
38 b. A dentist;
39 c. A podiatrist;
40 d. A pharmacist;
41 e. A chiropractor;
42 f. An optometrist; or
43 g. A health care institution.
- 44 The term "health care provider" includes:

- 1 h. An officer, director, shareholder, member, partner, manager,
2 owner, or affiliate of a health care provider or physician; and
3 i. An employee, independent contractor, or agent of a health care
4 provider or physician acting in the course and scope of the
5 employment or contractual relationship.

6 (14) "Home care agency" means an agency licensed under Part 3 of Article
7 6 of Chapter 131E of the General Statutes.

8 (15) "Hospice" means a hospice facility or activity licensed under Article
9 10 of Chapter 131E of the General Statutes.

10 (16) "Hospital" means a public or private institution licensed under Chapter
11 131E of the General Statutes.

12 (17) "Hospital system" means a system of hospitals located in this State that
13 are under the common governance or control of a corporate parent.

14 (18) "Intermediate care facility for the mentally retarded" means a licensed
15 public or private institution operated under Chapter 122C of the
16 General Statutes.

17 (19) "Medical care" means any act defined as practicing medicine under
18 Article 1 of this Chapter, performed or furnished, or which should
19 have been performed or furnished, by a person licensed to practice
20 medicine in this State for, to, or on behalf of a patient during the
21 patient's care, treatment, or confinement.

22 (20) "Noneconomic damages" means damages awarded for the purpose of
23 compensating a claimant for physical pain and suffering, mental or
24 emotional pain or anguish, loss of consortium, disfigurement, physical
25 impairment, loss of companionship and society, inconvenience, loss of
26 enjoyment of life, injury to reputation, and all other nonpecuniary
27 losses of any kind other than punitive damages.

28 (21) "Nursing home" means a licensed public or private institution licensed
29 under Article 6 of Chapter 131E of the General Statutes.

30 (22) "Pharmacist" means an individual licensed under Article 4A of this
31 Chapter, who, for the purposes of this Chapter, performs those
32 activities limited to the dispensing of prescription medicines which
33 result in health care liability claims and does not include any other
34 cause of action that may exist at common law against them, including,
35 but not limited to, causes of action for the sale of mishandled or
36 defective products.

37 (23) "Physician" means:

- 38 a. An individual licensed to practice medicine in this State;
39 b. A professional association organized under the laws of this
40 State by an individual physician or group of physicians;
41 c. A partnership or limited liability partnership formed by a group
42 of physicians;
43 d. A nonprofit health corporation organized under the laws of this
44 State; or

1 e. A company formed by a group of physicians under Chapter 57C
2 of the General Statutes.

3 (24) "Professional or administrative services" means those duties or
4 services that a physician or health care provider is required to provide
5 as a condition of maintaining the physician's or health care provider's
6 license, accreditation status, or certification to participate in State or
7 federal health care programs.

8 (25) "Representative" means the spouse, parent, guardian, trustee,
9 authorized attorney, or other authorized legal agent of the patient or
10 claimant.

11 (26) "Secretary" means the Secretary of Health and Human Services.

12 (b) Any legal term or word of art used in this Chapter, not otherwise defined in
13 this Chapter, shall have the meaning consistent with the common law.

14 **§§ 90-21.59 and 90-21.60: Reserved for future codification purposes.**

15 **§ 90-21.61. Conflict with other law and rules of civil procedure.**

16 (a) In the event of a conflict between this Article and another law, including a
17 rule of procedure or evidence or court rule, this Article controls to the extent of the
18 conflict.

19 (b) Notwithstanding subsection (a) of this section, in the event of a conflict
20 between this Chapter and Articles 31 and 31A of Chapter 143 of the General Statutes,
21 those Articles control to the extent of the conflict.

22 (c) The district courts and superior courts may not adopt local rules in conflict
23 with this Article.

24 **§ 90-21.62. Sovereign immunity not waived.**

25 This Chapter does not waive sovereign immunity from suit or from liability.

26 **§ 90-21.63. Exception from certain laws.**

27 (a) Notwithstanding any other law, Article 1 of Chapter 75 of the General
28 Statutes does not apply to physicians or health care providers with respect to claims for
29 damages for personal injury or death resulting, or alleged to have resulted, from
30 negligence on the part of any physician or health care provider.

31 (b) This section does not apply to pharmacists.

32 **§ 90-21.64. Res ipsa loquitur doctrine.**

33 The common law doctrine of res ipsa loquitur shall not apply to health care liability
34 claims against health care providers or physicians.

35 "Part 2. Notice and Pleadings.

36 **§ 90-21.65. Notice.**

37 (a) Any person or the person's authorized agent asserting a health care liability
38 claim shall give written notice of such claim by certified mail, return receipt requested,
39 to each physician or health care provider against whom the claim is being made at least
40 60 days before the filing of a suit in any court of this State based upon a health care
41 liability claim. The notice must be accompanied by the authorization form for release of
42 protected health information as required under G.S. 90-21.66.

43 (b) In such pleadings as are subsequently filed in any court, each party shall state
44 that it has fully complied with the provisions of this section and G.S. 90-21.66 and shall

1 provide such evidence thereof as the judge of the court may require to determine if the
2 provisions of this Article have been met.

3 (c) Notice given as provided in this Chapter shall toll the applicable statute of
4 limitations to and including a period of 75 days following the giving of the notice, and
5 this tolling shall apply to all parties and potential parties.

6 (d) All parties shall be entitled to obtain complete and unaltered copies of the
7 patient's medical records from any other party within 45 days from the date of receipt of
8 a written request for the records. The receipt of a medical authorization in the form
9 required by G.S. 90-21.66 executed by the claimant herein is considered compliance by
10 the claimant with this subsection.

11 (e) For the purposes of this section, and notwithstanding any other provision of
12 law, a request for the medical records of a deceased person or a person who is
13 incompetent shall be deemed to be valid if accompanied by an authorization in the form
14 required by G.S. 90-21.66 signed by a parent, spouse, or adult child of the deceased or
15 incompetent person.

16 **"§ 90-21.66. Authorization form for release of protected health information.**

17 (a) Notice of a health care liability claim under this Article must be accompanied
18 by a medical authorization in the form specified by this section. Failure to provide this
19 authorization along with the notice of health care claim shall abate all further
20 proceedings against the physician or health care provider receiving the notice until 60
21 days following receipt by the physician or health care provider of the required
22 authorization.

23 (b) If the authorization required by this section is modified or revoked, the
24 physician or health care provider to whom the authorization has been given shall have
25 the option to abate all further proceedings until 60 days following receipt of a
26 replacement authorization that must comply with the form specified by this section.

27 (c) The medical authorization required by this section shall be in the following
28 form and shall be construed in accordance with the "Standards for Privacy of
29 Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164):

30 "AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH
31 INFORMATION

32 A. I, _____ (name of patient or authorized representative), hereby
33 authorize _____ (name of physician or other health care provider to whom the
34 notice of health care claim is directed) to obtain and disclose (within the parameters set
35 out below) the protected health information described below for the following specific
36 purposes:

37 1. To facilitate the investigation and evaluation of the health care claim
38 described in the accompanying Notice of Health Care Claim; or

39 2. Defense of any litigation arising out of the claim made the basis of the
40 accompanying Notice of Health Care Claim.

41 B. The health information to be obtained, used, or disclosed extends to and
42 includes the verbal as well as the written and is specifically described as follows:

43 1. The health information in the custody of the following physicians or
44 health care providers who have examined, evaluated, or treated _____ (patient) in

1 connection with the injuries alleged to have been sustained in connection with the claim
2 asserted in the accompanying Notice of Health Care Claim. (Here list the name and
3 current address of all treating physicians or health care providers). This authorization
4 shall extend to any additional physicians or health care providers that may in the future
5 evaluate, examine, or treat _____ (patient) for injuries alleged in connection with
6 the claim made the basis of the attached Notice of Health Care Claim;

7 2. The health information in the custody of the following physicians or
8 health care providers who have examined, evaluated, or treated _____ (patient)
9 during a period commencing five years prior to the incident made the basis of the
10 accompanying Notice of Health Care Claim. (Here list the name and current address of
11 such physicians or health care providers, if applicable.)

12 C. Excluded Health Information – the following constitutes a list of physicians
13 or health care providers possessing health care information concerning _____
14 (patient) to which this authorization does not apply because I contend that such health
15 care information is not relevant to the damages being claimed or to the physical, mental,
16 or emotional condition of _____ (patient) arising out of the claim made the basis of
17 the accompanying Notice of Health Care Claim. (Here state "none" or list the name of
18 each physician or health care provider to whom this authorization does not extend and
19 the inclusive dates of examination, evaluation, or treatment to be withheld from
20 disclosure.)

21 D. The persons or class of persons to whom the health information of
22 _____ (patient) will be disclosed or who will make use of the information are:

23 1. Any and all physicians or health care providers providing care or
24 treatment to _____ (patient);

25 2. Any liability insurance entity providing liability insurance coverage or
26 defense to any physician or health care provider to whom Notice of Health Care Claim
27 has been given with regard to the care and treatment of _____ (patient);

28 3. Any consulting or testifying experts employed by or on behalf of
29 _____ (name of physician or health care provider to whom Notice of Health Care
30 Claim has been given) with regard to the matter set out in the Notice of Health Care
31 Claim accompanying this authorization;

32 4. Any attorneys (including secretarial, clerical, or paralegal staff)
33 employed by or on behalf of _____ (name of physician or health care provider to
34 whom Notice of Health Care Claim has been given) with regard to the matter set out in
35 the Notice of Health Care Claim accompanying this authorization;

36 5. Any trier of the law or facts relating to any suit filed seeking damages
37 arising out of the medical care or treatment of _____ (patient).

38 E. This authorization shall expire upon resolution of the claim asserted or at the
39 conclusion of any litigation instituted in connection with the subject matter of the
40 Notice of Health Care Claim accompanying this authorization, whichever occurs
41 sooner.

42 F. I understand that, without exception, I have the right to revoke this
43 authorization in writing. I further understand the consequence of any such revocation as
44 set out in G.S. 90-21.66.

1 G. I understand that the signing of this authorization is not a condition for
2 continued treatment, payment, enrollment, or eligibility for health plan benefits.

3 H. I understand that information used or disclosed pursuant to this authorization
4 may be subject to redisclosure by the recipient and may no longer be protected by
5 federal HIPAA privacy regulations.

6 Signature of Patient/Representative

7 _____
8 Date

9 _____
10 Name of Patient/Representative

11 _____
12 Description of Representative's Authority

13 _____ "
14 **§ 90-21.67. Pleadings not to state damage amount; special exception; exclusion**
15 **from section.**

16 Pleadings in a suit based on a health care liability claim shall not specify an amount
17 of money claimed as damages. The defendant may file a special exception to the
18 pleadings on the ground the suit is not within the court's jurisdiction, in which event the
19 plaintiff shall inform the court and defendant in writing of the total dollar amount
20 claimed. This section does not prevent a party from mentioning the total dollar amount
21 claimed in examining prospective jurors on voir dire or in argument to the court or jury.

22 **§§ 90-21.68 and 90-21.69: Reserved for future codification purposes.**

23 "Part 3. Informed Consent.

24 **§ 90-21.70. Theory of recovery.**

25 In a suit against a physician or health care provider involving a health care liability
26 claim that is based on the failure of the physician or health care provider to disclose or
27 adequately disclose the risks and hazards involved in the medical care or surgical
28 procedure rendered by the physician or health care provider, the only theory on which
29 recovery may be obtained is that of negligence in failing to disclose the risks or hazards
30 that could have influenced a reasonable person in making a decision to give or withhold
31 consent.

32 **§ 90-21.71. North Carolina Medical Disclosure Panel.**

33 (a) The North Carolina Medical Disclosure Panel is created to determine which
34 risks and hazards related to medical care and surgical procedures must be disclosed by
35 health care providers or physicians to their patients or persons authorized to consent for
36 their patients and to establish the general form and substance of the disclosure.

37 (b) The disclosure panel shall be located in the Department of Health and Human
38 Services for administrative and budgetary purposes only. The Department of Health and
39 Human Services, at the request of the Disclosure Panel, shall provide administrative
40 assistance to the Panel; and the Department of Health and Human Services and the
41 Disclosure Panel shall coordinate administrative responsibilities in order to avoid
42 unnecessary duplication of facilities and services. The Department of Health and
43 Human Services, at the request of the Panel, shall submit the Panel's budget request to
44 the General Assembly. The Panel shall be subject, except where inconsistent, to the

1 rules and procedures of the Department of Health and Human Services; however, the
2 duties and responsibilities of the Panel as set forth in this Part shall be exercised solely
3 by the Disclosure Panel, and the Department of Health and Human Services shall have
4 no authority or responsibility with respect to the duties and responsibilities of the
5 Disclosure Panel.

6 (c) The Disclosure Panel is composed of nine members, three of whom shall be
7 members licensed to practice law in this State and six of whom shall be members
8 licensed to practice medicine in this State. Members of the Disclosure Panel shall be
9 selected by the Secretary of Health and Human Services.

10 (d) At the expiration of the term of each member of the Disclosure Panel, the
11 Secretary shall select a successor, and the successor shall serve for a term of six years,
12 or until his successor is selected. Any member who is absent for three consecutive
13 meetings without the consent of a majority of the Disclosure Panel present at each such
14 meeting may be removed by the Secretary at the request of the Disclosure Panel
15 submitted in writing and signed by the Chair. Upon the death, resignation, or removal of
16 any member, the Secretary shall fill the vacancy by selection for the unexpired portion
17 of the term.

18 (e) Members of the Disclosure Panel are not entitled to compensation for their
19 services, but each panelist is entitled to reimbursement of any necessary expense
20 incurred in the performance of the panelist's duties on the Panel, including necessary
21 travel expenses, in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

22 (f) Meetings of the Panel shall be held at the call of the Chair or on petition of at
23 least three members of the Panel.

24 (g) At the first meeting of the Panel each year after its members assume their
25 positions, the panelists shall select one of the panel members to serve as Chair and one
26 of the panel members to serve as Vice-Chair. The Chair and Vice-Chair shall serve for a
27 term of one year. The Chair shall preside at meetings of the Panel, and in the Chair's
28 absence, the Vice-Chair shall preside.

29 (h) Employees of the Department of Health and Human Services shall serve as
30 the staff for the Panel.

31 **§ 90-21.72. Duties of Disclosure Panel.**

32 (a) To the extent feasible, the Disclosure Panel shall identify and make a
33 thorough examination of all medical treatments and surgical procedures in which
34 physicians and health care providers may be involved in order to determine which of
35 those treatments and procedures require disclosure of the risks and hazards to the patient
36 or person authorized to consent for the patient and which do not require disclosure.

37 (b) The Panel shall prepare separate lists of those medical treatments and surgical
38 procedures that do and do not require disclosure and, for those treatments and
39 procedures that do require disclosure, shall establish the degree of disclosure required
40 and the form in which the disclosure will be made.

41 (c) Lists prepared under subsection (b) of this section together with written
42 explanations of the degree and form of disclosure shall be published in the North
43 Carolina Register.

1 (d) At least annually, or at such other period the Panel may determine from time
2 to time, the Panel shall identify and examine any new medical treatments and surgical
3 procedures that have been developed since its last determinations, shall assign them to
4 the proper list, and shall establish the degree of disclosure required and the form in
5 which the disclosure will be made. The Panel will also examine the treatments and
6 procedures for the purpose of revising lists previously published. These determinations
7 shall be published in the North Carolina Register.

8 **"§ 90-21.73. Duty of physician or health care provider.**

9 Before a patient or a person authorized to consent for a patient gives consent to any
10 medical care or surgical procedure that appears on the Disclosure Panel's list requiring
11 disclosure, the physician or health care provider shall disclose to the patient or person
12 authorized to consent for the patient the risks and hazards involved in that kind of care
13 or procedure. A physician or health care provider shall be considered to have complied
14 with the requirements of this section if disclosure is made as provided in G.S. 90-21.74.

15 **"§ 90-21.74. Manner of disclosure.**

16 Consent to medical care that appears on the Disclosure Panel's list requiring
17 disclosure shall be considered effective under this Article if it is given in writing, signed
18 by the patient or a person authorized to give the consent and by a competent witness,
19 and if the written consent specifically states the risks and hazards that are involved in
20 the medical care or surgical procedure in the form and to the degree required by the
21 Disclosure Panel under G.S. 90-21.72.

22 **"§ 90-21.75. Effect of disclosure.**

23 (a) In a suit against a physician or health care provider involving a health care
24 liability claim that is based on the negligent failure of the physician or health care
25 provider to disclose or adequately disclose the risks and hazards involved in the medical
26 care or surgical procedure rendered by the physician or health care provider:

27 (1) Both disclosure made as provided in G.S. 90-21.73 and failure to
28 disclose based on inclusion of any medical care or surgical procedure
29 on the Disclosure Panel's list for which disclosure is not required shall
30 be admissible in evidence and shall create a rebuttable presumption
31 that the requirements of G.S. 90-21.73 and G.S. 90-21.74 have been
32 complied with, and this presumption shall be included in the charge to
33 the jury; and

34 (2) Failure to disclose the risks and hazards involved in any medical care
35 or surgical procedure required to be disclosed under G.S. 90-21.73 and
36 G.S. 90-21.74 shall be admissible in evidence and shall create a
37 rebuttable presumption of a negligent failure to conform to the duty of
38 disclosure set forth in G.S. 90-21.73 and G.S. 90-21.74, and this
39 presumption shall be included in the charge to the jury; but failure to
40 disclose may be found not to be negligent if there was an emergency or
41 if for some other reason it was not medically feasible to make a
42 disclosure of the kind that would otherwise have been negligence.

1 (b) If medical care or surgical procedure is rendered with respect to which the
2 Disclosure Panel has made no determination either way regarding a duty of disclosure,
3 the physician or health care provider is under the duty otherwise imposed by law.

4 **"§ 90-21.76. Informed consent for hysterectomies.**

5 (a) The Disclosure Panel shall develop and prepare written materials to inform a
6 patient or person authorized to consent for a patient of the risks and hazards of a
7 hysterectomy.

8 (b) The materials shall be available in English, Spanish, and any other language
9 the Disclosure Panel considers appropriate. The information shall be presented in a
10 manner understandable to a layperson.

11 (c) The materials shall include:

12 (1) A notice that a decision made at anytime to refuse to undergo a
13 hysterectomy will not result in the withdrawal or withholding of any
14 benefits provided by programs or projects receiving federal funds or
15 otherwise affect the patient's right to future care or treatment;

16 (2) The name of the person providing and explaining the materials;

17 (3) A statement that the patient or person authorized to consent for the
18 patient understands that the hysterectomy is permanent and
19 nonreversible and that the patient will not be able to become pregnant
20 or bear children if she undergoes a hysterectomy;

21 (4) A statement that the patient has the right to seek a consultation from a
22 second physician;

23 (5) A statement that the patient or person authorized to consent for the
24 patient has been informed that a hysterectomy is a removal of the
25 uterus through an incision in the lower abdomen or vagina and that
26 additional surgery may be necessary to remove or repair other organs,
27 including an ovary, tube, appendix, bladder, rectum, or vagina;

28 (6) A description of the risks and hazards involved in the performance of
29 the procedure; and

30 (7) A written statement to be signed by the patient or person authorized to
31 consent for the patient indicating that the materials have been provided
32 and explained to the patient or person authorized to consent for the
33 patient and that the patient or person authorized to consent for the
34 patient understands the nature and consequences of a hysterectomy.

35 (d) The physician or health care provider shall obtain informed consent under
36 this section and G.S. 90-21.73 from the patient or person authorized to consent for the
37 patient before performing a hysterectomy unless the hysterectomy is performed in a
38 life-threatening situation in which the physician determines obtaining informed consent
39 is not reasonably possible. If obtaining informed consent is not reasonably possible, the
40 physician or health care provider shall include in the patient's medical records a written
41 statement signed by the physician certifying the nature of the emergency.

42 (e) The Disclosure Panel may not prescribe materials under this section without
43 first consulting with the North Carolina Medical Board.

44 **"§§ 90-21.77 and 90-21.78: Reserved for future codification purposes.**

1 "Part 4. Emergency and Volunteer Medical Care.

2 **"§ 90-21.79. Standard of proof in cases involving emergency medical care.**

3 In a suit involving a health care liability claim against a physician or health care
4 provider for injury to or death of a patient arising out of the provision of emergency
5 medical care in a hospital emergency department or obstetrical unit or in a surgical suite
6 immediately following the evaluation or treatment of a patient in a hospital emergency
7 department, the claimant bringing the suit may prove that the treatment or lack of
8 treatment by the physician or health care provider departed from accepted standards of
9 medical care or health care only if the claimant shows by a preponderance of the
10 evidence that the physician or health care provider, with willful and wanton negligence,
11 deviated from the degree of care and skill that is reasonably expected of an ordinarily
12 prudent physician or health care provider in the same or similar circumstances.

13 **"§ 90-21.80. Jury instructions in cases involving emergency medical care.**

14 (a) In an action for damages that involves a claim of negligence arising from the
15 provision of emergency medical care in a hospital emergency department or obstetrical
16 unit or in a surgical suite immediately following the evaluation or treatment of a patient
17 in a hospital emergency department, the court shall instruct the jury to consider,
18 together with all other relevant matters:

19 (1) Whether the person providing care did or did not have the patient's
20 medical history or was able or unable to obtain a full medical history,
21 including the knowledge of preexisting medical conditions, allergies,
22 and medications;

23 (2) The presence or lack of a preexisting physician-patient relationship or
24 health care provider-patient relationship;

25 (3) The circumstances constituting the emergency; and

26 (4) The circumstances surrounding the delivery of the emergency medical
27 care.

28 (b) The provisions of subsection (a) of this section do not apply to medical care
29 or treatment:

30 (1) That occurs after the patient is stabilized and is capable of receiving
31 medical treatment as a nonemergency patient;

32 (2) That is unrelated to the original medical emergency; or

33 (3) That is related to an emergency caused in whole or in part by the
34 negligence of the defendant.

35 **"§§ 90-21.81 and 90-21.82: Reserved for future codification purposes.**

36 "Part 5. Statute of Limitations.

37 **"§ 90-21.83. Statute of limitations on health care liability claims.**

38 (a) Notwithstanding any other law and subject to subsection (b) of this section,
39 no health care liability claim may be commenced unless the action is filed within two
40 years from the occurrence of the breach or tort or from the date the medical or health
41 care treatment that is the subject of the claim or the hospitalization for which the claim
42 is made is completed; provided that, minors under the age of 12 years shall have until
43 their 14th birthday in which to file, or have filed on their behalf, the claim. Except as

1 otherwise provided in this section, this section applies to all persons regardless of
2 minority or other legal disability.

3 (b) A claimant must bring a health care liability claim not later than 10 years
4 after the date of the act or omission that gives rise to the claim. This subsection is
5 intended as a statute of repose so that all claims must be brought within 10 years or they
6 are time-barred.

7 **"§§ 90-21.84 and 90-21.85: Reserved for future codification purposes.**

8 "Part 6. Liability Limits.

9 **"§ 90-21.86. Limitation on noneconomic damages.**

10 (a) In an action on a health care liability claim where final judgment is rendered
11 against a physician or health care provider other than a health care institution, the limit
12 of civil liability for noneconomic damages of the physician or health care provider other
13 than a health care institution, inclusive of all persons for whom and entities for which
14 vicarious liability theories may apply, shall be limited to an amount not to exceed two
15 hundred fifty thousand dollars (\$250,000) for each claimant, regardless of the number of
16 defendant physicians or health care providers other than a health care institution against
17 whom the claim is asserted or the number of separate causes of action on which the
18 claim is based.

19 (b) In an action on a health care liability claim where final judgment is rendered
20 against a single health care institution, the limit of civil liability for noneconomic
21 damages, inclusive of all persons for whom and entities for which vicarious liability
22 theories may apply, shall be limited to an amount not to exceed two hundred fifty
23 thousand dollars (\$250,000) for each claimant.

24 (c) In an action on a health care liability claim where final judgment is rendered
25 against more than one health care institution, the limit of civil liability for noneconomic
26 damages for each health care institution, inclusive of all persons for whom and entities
27 for which vicarious liability theories may apply, shall be limited to an amount not to
28 exceed two hundred fifty thousand dollars (\$250,000) for each claimant, and the limit of
29 civil liability for noneconomic damages for all health care institutions, inclusive of all
30 persons for whom and entities for which vicarious liability theories may apply, shall be
31 limited to an amount not to exceed five hundred thousand dollars (\$500,000) for each
32 claimant.

33 **"§ 90-21.86A. Alternative limitation on noneconomic damages.**

34 (a) In the event that G.S. 90-21.86 is stricken from this Article or is otherwise to
35 any extent invalidated by a method other than through legislative means, the following,
36 subject to the provisions of this section, shall become effective:

37 (1) In an action on a health care liability claim where final judgment is
38 rendered against a physician or health care provider other than a health
39 care institution, the limit of civil liability for noneconomic damages of
40 the physician or health care provider other than a health care
41 institution, inclusive of all persons for whom and entities for which
42 vicarious liability theories may apply, shall be limited to an amount
43 not to exceed two hundred fifty thousand dollars (\$250,000) for each
44 claimant, regardless of the number of defendant physicians or health

1 care providers other than a health care institution against whom the
2 claim is asserted or the number of separate causes of action on which
3 the claim is based.

4 (2) In an action on a health care liability claim where final judgment is
5 rendered against a single health care institution, the limit of civil
6 liability for noneconomic damages, inclusive of all persons for whom
7 and entities for which vicarious liability theories may apply, shall be
8 limited to an amount not to exceed two hundred fifty thousand dollars
9 (\$250,000) for each claimant.

10 (3) In an action on a health care liability claim where final judgment is
11 rendered against more than one health care institution, the limit of civil
12 liability for noneconomic damages for each health care institution,
13 inclusive of all persons for whom and entities for which vicarious
14 liability theories may apply, shall be limited to an amount not to
15 exceed two hundred fifty thousand dollars (\$250,000) for each
16 claimant, and the limit of civil liability for noneconomic damages for
17 all health care institutions, inclusive of all persons and entities for
18 which vicarious liability theories may apply, shall be limited to an
19 amount not to exceed five hundred thousand dollars (\$500,000) for
20 each claimant.

21 (b) Effective until October 1, 2007, subsection (a) of this section applies to any
22 physician or health care provider that provides evidence of financial responsibility in the
23 following amounts in effect for any act or omission to which this Article applies:

24 (1) At least one hundred thousand dollars (\$100,000) for each health care
25 liability claim and at least three hundred thousand dollars (\$300,000)
26 in aggregate for all health care liability claims occurring in an
27 insurance policy year, calendar year, or fiscal year for a physician
28 participating in an approved residency program;

29 (2) At least two hundred thousand dollars (\$200,000) for each health care
30 liability claim and at least six hundred thousand dollars (\$600,000) in
31 aggregate for all health care liability claims occurring in an insurance
32 policy year, calendar year, or fiscal year for a physician or health care
33 provider, other than a hospital; and

34 (3) At least five hundred thousand dollars (\$500,000) for each health care
35 liability claim and at least one million five hundred thousand dollars
36 (\$1,500,000) in aggregate for all health care liability claims occurring
37 in an insurance policy year, calendar year, or fiscal year for a hospital.

38 (c) Effective October 1, 2007, subsection (a) of this section applies to any
39 physician or health care provider that provides evidence of financial responsibility in the
40 following amounts in effect for any act or omission to which this Article applies:

41 (1) At least one hundred thousand dollars (\$100,000) for each health care
42 liability claim and at least three hundred thousand dollars (\$300,000)
43 in aggregate for all health care liability claims occurring in an

1 insurance policy year, calendar year, or fiscal year for a physician
2 participating in an approved residency program;

3 (2) At least three hundred thousand dollars (\$300,000) for each health care
4 liability claim and at least nine hundred thousand dollars (\$900,000) in
5 aggregate for all health care liability claims occurring in an insurance
6 policy year, calendar year, or fiscal year for a physician or health care
7 provider, other than a hospital; and

8 (3) At least seven hundred fifty thousand dollars (\$750,000) for each
9 health care liability claim and at least two million two hundred fifty
10 thousand dollars (\$2,250,000) in aggregate for all health care liability
11 claims occurring in an insurance policy year, calendar year, or fiscal
12 year for a hospital.

13 (d) Effective October 1, 2009, subsection (a) of this section applies to any
14 physician or health care provider that provides evidence of financial responsibility in the
15 following amounts in effect for any act or omission to which this Article applies:

16 (1) At least one hundred thousand dollars (\$100,000) for each health care
17 liability claim and at least three hundred thousand dollars (\$300,000)
18 in aggregate for all health care liability claims occurring in an
19 insurance policy year, calendar year, or fiscal year for a physician
20 participating in an approved residency program;

21 (2) At least five hundred thousand dollars (\$500,000) for each health care
22 liability claim and at least one million dollars (\$1,000,000) in
23 aggregate for all health care liability claims occurring in an insurance
24 policy year, calendar year, or fiscal year for a physician or health care
25 provider, other than a hospital; and

26 (3) At least one million dollars (\$1,000,000) for each health care liability
27 claim and at least three million dollars (\$3,000,000) in aggregate for
28 all health care liability claims occurring in an insurance policy year,
29 calendar year, or fiscal year for a hospital.

30 (e) Evidence of financial responsibility may be established at the time of
31 judgment by providing proof of:

32 (1) The purchase of a contract of insurance or other plan of insurance
33 authorized by this State or federal law or regulation;

34 (2) The purchase of coverage from a trust organized and operating under
35 G.S. 116-220 and reported by self-insurers under G.S. 58-2-170;

36 (3) The purchase of coverage or another plan of insurance provided by or
37 through a risk retention group or purchasing group authorized under
38 applicable laws of this State or under the Product Liability Risk
39 Retention Act of 1981 (15 U.S.C. § 3901, et seq.), as amended, or the
40 Liability Risk Retention Act of 1986 (15 U.S.C. § 3901, et seq.), as
41 amended, or any other contract or arrangement for transferring and
42 distributing risk relating to legal liability for damages, including cost
43 of defense, legal costs, fees, and other claims expenses; or

1 (4) The maintenance of financial reserves in or an irrevocable letter of
2 credit from a federally insured financial institution that has its main
3 office or a branch office in this State.

4 **"§ 90-21.87. Limitation on damages.**

5 (a) In a wrongful death or survival action on a health care liability claim where
6 final judgment is rendered against a physician or health care provider, the limit of civil
7 liability for all damages, including punitive damages, shall be limited to an amount not
8 to exceed five hundred thousand dollars (\$500,000) for each claimant, regardless of the
9 number of defendant physicians or health care providers against whom the claim is
10 asserted or the number of separate causes of action on which the claim is based.

11 (b) When there is an increase or decrease in the consumer price index with
12 respect to the amount of that index on August 29, 1977, the liability limit prescribed in
13 subsection (a) of this section shall be increased or decreased, as applicable, by a sum
14 equal to the amount of such limit multiplied by the percentage increase or decrease in
15 the consumer price index, as published by the Bureau of Labor Statistics of the United
16 States Department of Labor, that measures the average changes in prices of goods and
17 services purchased by urban wage earners and clerical workers' families and single
18 workers living alone (CPI-W: Seasonally Adjusted U.S. City Average – All Items),
19 between August 29, 1977, and the time at which damages subject to such limits are
20 awarded by final judgment or settlement.

21 (c) Subsection (a) of this section does not apply to the amount of damages
22 awarded on a health care liability claim for the expenses of necessary medical, hospital,
23 and custodial care received before judgment or required in the future for treatment of
24 the injury.

25 (d) In any action on a health care liability claim that is tried by a jury in any court
26 in this State, both of the following shall be included in the court's written instructions to
27 the jurors:

28 (1) "Do not consider, discuss, nor speculate whether or not liability, if any,
29 on the part of any party is or is not subject to any limit under
30 applicable law."

31 (2) "A finding of negligence may not be based solely on evidence of a bad
32 result to the claimant in question, but a bad result may be considered
33 by you, along with other evidence, in determining the issue of
34 negligence. You are the sole judges of the weight, if any, to be given to
35 this kind of evidence."

36 **"§ 90-21.88: Reserved for future codification purposes.**

37 **"§ 90-21.89. Organization liability of hospitals providing free care.**

38 (a) In any civil action brought against a hospital or hospital system, or its
39 employees, officers, directors, or volunteers, for damages based on an act or omission
40 by the hospital or hospital system, or its employees, officers, directors, or volunteers,
41 the liability of the hospital or hospital system is limited to money damages in a
42 maximum amount of five hundred thousand dollars (\$500,000) for any act or omission
43 resulting in death, damage, or injury to a patient if the patient or, if the patient is a minor

1 or is otherwise legally incompetent, the person responsible for the patient signs a written
2 statement that acknowledges:

3 (1) That the hospital is providing care that is not administered for or in
4 expectation of compensation; and

5 (2) The limitations on the recovery of damages from the hospital in
6 exchange for receiving the health care services.

7 (b) Subsection (a) of this section applies even if:

8 (1) The patient is incapacitated due to illness or injury and cannot sign the
9 acknowledgment statement required by that subsection; or

10 (2) The patient is a minor or is otherwise legally incompetent and the
11 person responsible for the patient is not reasonably available to sign
12 the acknowledgment statement required by that subsection.

13 (c) As used in this section:

14 (1) "Hospital system" means a system of hospitals and other health care
15 providers located in this State that are under the common governance
16 or control of a corporate parent.

17 (2) "Person responsible for the patient" means any of the following:

18 a. The patient's parent, managing conservator, or guardian.

19 b. The patient's grandparent.

20 c. The patient's adult brother or sister.

21 d. Another adult who has actual care, control, and possession of
22 the patient and has written authorization to consent for the
23 patient from the parent, managing conservator, or guardian of
24 the patient.

25 e. An educational institution in which the patient is enrolled that
26 has written authorization to consent for the patient from the
27 parent, managing conservator, or guardian of the patient.

28 f. Any other person with legal responsibility for the care of the
29 patient.

30 (d) This section does not limit liability when it is established that the injuries or
31 death were caused by gross negligence, wanton conduct, or intentional wrongdoing on
32 the part of the person rendering the services.

33 "Part 7. Procedural Provisions.

34 **"§ 90-21.90. Expert report.**

35 (a) In a health care liability claim, a claimant shall, not later than the 120th day
36 after the date the claim was filed, serve on each party or the party's attorney one or more
37 expert reports, with a curriculum vitae of each expert listed in the report for each
38 physician or health care provider against whom a liability claim is asserted. The date for
39 -serving the report may be extended by written agreement of the affected parties. Each
40 defendant physician or health care provider whose conduct is implicated in a report
41 must file and serve any objection to the sufficiency of the report not later than the 21st
42 day after the date it was served, failing which all objections are waived.

43 (b) If, as to a defendant physician or health care provider, an expert report has not
44 been served within the period specified by subsection (a) of this section, the court, on

1 the motion of the affected physician or health care provider, shall, subject to subsection
2 (c) of this section, enter an order that:

3 (1) Awards to the affected physician or health care provider reasonable
4 attorneys' fees and costs of court incurred by the physician or health
5 care provider; and

6 (2) Dismisses the claim with respect to the physician or health care
7 provider, with prejudice to the refiling of the claim.

8 (c) If an expert report has not been served within the period specified by
9 subsection (a) of this section because elements of the report are found deficient, the
10 court may grant one 30-day extension to the claimant in order to cure the deficiency. If
11 the claimant does not receive notice of the court's ruling granting the extension until
12 after the 120-day deadline has passed, then the 30-day extension shall run from the date
13 the plaintiff first received the notice.

14 (d) Notwithstanding any other provision of this section, a claimant may satisfy
15 any requirement of this section for serving an expert report by serving reports of
16 separate experts regarding different physicians or health care providers or regarding
17 different issues arising from the conduct of a physician or health care provider, such as
18 issues of liability and causation. Nothing in this section shall be construed to mean that
19 a single expert must address all liability and causation issues with respect to all
20 physicians or health care providers or with respect to both liability and causation issues
21 for a physician or health care provider.

22 (e) Nothing in this section shall be construed to require the serving of an expert
23 report regarding any issue other than an issue relating to liability or causation.

24 (f) Subject to subsection (j) of this section, an expert report served under this
25 section:

26 (1) Is not admissible in evidence by any party;

27 (2) Shall not be used in a deposition, trial, or other proceeding; and

28 (3) Shall not be referred to by any party during the course of the action for
29 any purpose.

30 (g) A court shall grant a motion challenging the adequacy of an expert report
31 only if it appears to the court, after hearing, that the report does not represent an
32 objective good faith effort to comply with the definition of an expert report in
33 subdivision (h)(5) of this section.

34 (h) In this section:

35 (1) "Affected parties" means the claimant and the physician or health care
36 provider who are directly affected by an act or agreement required or
37 permitted by this section and does not include other parties to an action
38 who are not directly affected by that particular act or agreement.

39 (2) "Claim" means a health care liability claim.

40 (3) "Defendant" means a physician or health care provider against whom a
41 health care liability claim is asserted. The term includes a third-party
42 defendant, cross-defendant, or counterdefendant.

43 (4) "Expert" means:

- 1 a. With respect to a person giving opinion testimony regarding
2 whether a physician departed from accepted standards of
3 medical care, an expert qualified to testify under the
4 requirements of G.S. 90-21.94;
5 b. With respect to a person giving opinion testimony regarding
6 whether a health care provider departed from accepted
7 standards of health care, an expert qualified to testify under the
8 requirements of G.S. 90-21.95;
9 c. With respect to a person giving opinion testimony about the
10 causal relationship between the injury, harm, or damages
11 claimed and the alleged departure from the applicable standard
12 of care in any health care liability claim, a physician who is
13 otherwise qualified to render opinions on such causal
14 relationship under the North Carolina Rules of Evidence;
15 d. With respect to a person giving opinion testimony about the
16 causal relationship between the injury, harm, or damages
17 claimed and the alleged departure from the applicable standard
18 of care for a dentist, a dentist or physician who is otherwise
19 qualified to render opinions on such causal relationship under
20 the North Carolina Rules of Evidence; or
21 e. With respect to a person giving opinion testimony about the
22 causal relationship between the injury, harm, or damages
23 claimed and the alleged departure from the applicable standard
24 of care for a podiatrist, a podiatrist or physician who is
25 otherwise qualified to render opinions on such causal
26 relationship under the North Carolina Rules of Evidence.

27 (5) "Expert report" means a written report by an expert that provides a fair
28 summary of the expert's opinions as of the date of the report regarding
29 applicable standards of care, the manner in which the care rendered by
30 the physician or health care provider failed to meet the standards, and
31 the causal relationship between that failure and the injury, harm, or
32 damages claimed.

33 (i) Until a claimant has served the expert report and curriculum vitae as required
34 by subsection (a) of this section, all discovery in a health care liability claim is stayed
35 except for the acquisition by the claimant of information, including medical or hospital
36 records or other documents or tangible things, related to the patient's health care
37 through:

- 38 (1) Written discovery as defined in Rule 34, North Carolina Rules of Civil
39 Procedure;
40 (2) Depositions on written questions under Rule 31, North Carolina Rules
41 of Civil Procedure; and
42 (3) Discovery from nonparties under Rule 26, North Carolina Rules of
43 Civil Procedure.

1 (j) If an expert report is used by the claimant in the course of the action for any
2 purpose other than to meet the service requirement of subsection (a) of this section, the
3 restrictions imposed by subsection (f) of this section on use of the expert report by any
4 party are waived.

5 (k) Notwithstanding any other provision of this section, after a claim is filed, all
6 claimants, collectively, may take not more than two depositions before the expert report
7 is served as required by subsection (a) of this section.

8 (l) An order that denies all or part of the relief sought by a motion under
9 subsection (b) of this section is an interlocutory order. An order granting relief sought
10 by a motion under subsection (g) of this section is an interlocutory order. An order
11 granting an extension under this section is not an interlocutory order.

12 **"§§ 90-21.91 through 90-21.93: Reserved for future codification purposes.**

13 "Part 8. Expert Witnesses and Collateral Source Payments.

14 **"§ 90-21.94. Qualifications of expert witness in action against physician.**

15 (a) In a suit involving a health care liability claim against a physician for injury
16 to or death of a patient, a person may qualify as an expert witness on the issue of
17 whether the physician departed from accepted standards of medical care only if the
18 person is a physician who:

19 (1) Is practicing medicine at the time the testimony is given or was
20 practicing medicine at the time the claim arose;

21 (2) Has knowledge of accepted standards of medical care for the
22 diagnosis, care, or treatment of the illness, injury, or condition
23 involved in the claim; and

24 (3) Is qualified on the basis of training or experience to offer an expert
25 opinion regarding those accepted standards of medical care.

26 (b) For the purpose of this section, "practicing medicine" or "medical practice"
27 includes, but is not limited to, training residents or students at an accredited school of
28 medicine or osteopathy or serving as a consulting physician to other physicians who
29 provide direct patient care, upon the request of such other physicians.

30 (c) In determining whether a witness is qualified on the basis of training or
31 experience, the court shall consider whether, at the time the claim arose or at the time
32 the testimony is given, the witness:

33 (1) Is board certified or has other substantial training or experience in an
34 area of medical practice relevant to the claim; and

35 (2) Is actively practicing medicine in rendering medical care services
36 relevant to the claim.

37 (d) The court shall apply the criteria specified in subsections (a), (b), and (c) of
38 this section in determining whether an expert is qualified to offer expert testimony on
39 the issue of whether the physician departed from accepted standards of medical care, but
40 may depart from those criteria if, under the circumstances, the court determines that
41 there is a good reason to admit the expert's testimony. The court shall state on the record
42 the reason for admitting the testimony if the court departs from the criteria.

43 (e) A pretrial objection to the qualifications of a witness under this section must
44 be made not later than the later of the 21st day after the date the objecting party receives

1 a copy of the witness's curriculum vitae or the 21st day after the date of the witness's
2 deposition. If circumstances arise after the date on which the objection must be made
3 that could not have been reasonably anticipated by a party before that date and that the
4 party believes in good faith provide a basis for an objection to a witness's qualifications,
5 and if an objection was not made previously, this subsection does not prevent the party
6 from making an objection as soon as practicable under the circumstances. The court
7 shall conduct a hearing to determine whether the witness is qualified as soon as
8 practicable after the filing of an objection and, if possible, before trial. If the objecting
9 party is unable to object in time for the hearing to be conducted before the trial, the
10 hearing shall be conducted outside the presence of the jury. This subsection does not
11 prevent a party from examining or cross-examining a witness at trial about the witness's
12 qualifications.

13 (f) This section does not prevent a physician who is a defendant from qualifying
14 as an expert.

15 (g) In this Part, "physician" means a person who is:

16 (1) Licensed to practice medicine in one or more states in the United
17 States; or

18 (2) A graduate of a medical school accredited by the Liaison Committee
19 on Medical Education or the American Osteopathic Association only if
20 testifying as a defendant and that testimony relates to that defendant's
21 standard of care, the alleged departure from that standard of care, or
22 the causal relationship between the alleged departure from that
23 standard of care and the injury, harm, or damages claimed.

24 **"§ 90-21.95. Qualifications of expert witness in action against health care provider.**

25 (a) For purposes of this section, "practicing health care" includes:

26 (1) Training health care providers in the same field as the defendant health
27 care provider at an accredited educational institution; or

28 (2) Serving as a consulting health care provider and being licensed,
29 certified, or registered in the same field as the defendant health care
30 provider.

31 (b) In a suit involving a health care liability claim against a health care provider,
32 a person may qualify as an expert witness on the issue of whether the health care
33 provider departed from accepted standards of care only if the person:

34 (1) Is practicing health care in a field of practice that involves the same
35 type of care or treatment as that delivered by the defendant health care
36 provider, if the defendant health care provider is an individual, at the
37 time the testimony is given or was practicing that type of health care at
38 the time the claim arose;

39 (2) Has knowledge of accepted standards of care for health care providers
40 for the diagnosis, care, or treatment of the illness, injury, or condition
41 involved in the claim; and

42 (3) Is qualified on the basis of training or experience to offer an expert
43 opinion regarding those accepted standards of health care.

1 (c) In determining whether a witness is qualified on the basis of training or
2 experience, the court shall consider whether, at the time the claim arose or at the time
3 the testimony is given, the witness:

4 (1) Is certified by a licensing agency of one or more states of the United
5 States or a national professional certifying agency, or has other
6 substantial training or experience, in the area of health care relevant to
7 the claim; and

8 (2) Is actively practicing health care in rendering health care services
9 relevant to the claim.

10 (d) The court shall apply the criteria specified in subsections (a), (b), and (c) of
11 this section in determining whether an expert is qualified to offer expert testimony on
12 the issue of whether the defendant health care provider departed from accepted
13 standards of health care but may depart from those criteria if, under the circumstances,
14 the court determines that there is good reason to admit the expert's testimony. The court
15 shall state on the record the reason for admitting the testimony if the court departs from
16 the criteria.

17 (e) This section does not prevent a health care provider who is a defendant, or an
18 employee of the defendant health care provider, from qualifying as an expert.

19 (f) A pretrial objection to the qualifications of a witness under this section must
20 be made not later than the later of the 21st day after the date the objecting party receives
21 a copy of the witness's curriculum vitae or the 21st day after the date of the witness's
22 deposition. If circumstances arise after the date on which the objection must be made
23 that could not have been reasonably anticipated by a party before that date and that the
24 party believes in good faith provide a basis for an objection to a witness's qualifications,
25 and if an objection was not made previously, this subsection does not prevent the party
26 from making an objection as soon as practicable under the circumstances. The court
27 shall conduct a hearing to determine whether the witness is qualified as soon as
28 practicable after the filing of an objection and, if possible, before trial. If the objecting
29 party is unable to object in time for the hearing to be conducted before the trial, the
30 hearing shall be conducted outside the presence of the jury. This subsection does not
31 prevent a party from examining or cross-examining a witness at trial about the witness's
32 qualifications.

33 **"§ 90-21.96. Qualifications of expert witness on causation in health care liability**
34 **claim.**

35 (a) Except as provided in subsections (b) and (c) of this section, in a suit
36 involving a health care liability claim against a physician or health care provider, a
37 person may qualify as an expert witness on the issue of the causal relationship between
38 the alleged departure from accepted standards of care and the injury, harm, or damages
39 claimed only if the person is a physician and is otherwise qualified to render opinions
40 on that causal relationship under the North Carolina Rules of Evidence.

41 (b) In a suit involving a health care liability claim against a dentist, a person may
42 qualify as an expert witness on the issue of the causal relationship between the alleged
43 departure from accepted standards of care and the injury, harm, or damages claimed if

1 the person is a dentist or physician and is otherwise qualified to render opinions on that
2 causal relationship under the North Carolina Rules of Evidence.

3 (c) In a suit involving a health care liability claim against a podiatrist, a person
4 may qualify as an expert witness on the issue of the causal relationship between the
5 alleged departure from accepted standards of care and the injury, harm, or damages
6 claimed if the person is a podiatrist or physician and is otherwise qualified to render
7 opinions on that causal relationship under the North Carolina Rules of Evidence.

8 (d) A pretrial objection to the qualifications of a witness under this section must
9 be made not later than the later of the 21st day after the date the objecting party receives
10 a copy of the witness's curriculum vitae or the 21st day after the date of the witness's
11 deposition. If circumstances arise after the date on which the objection must be made
12 that could not have been reasonably anticipated by a party before that date and that the
13 party believes in good faith provide a basis for an objection to a witness's qualifications,
14 and if an objection was not made previously, this subsection does not prevent the party
15 from making an objection as soon as practicable under the circumstances. The court
16 shall conduct a hearing to determine whether the witness is qualified as soon as
17 practicable after the filing of an objection and, if possible, before trial. If the objecting
18 party is unable to object in time for the hearing to be conducted before the trial, the
19 hearing shall be conducted outside the presence of the jury. This subsection does not
20 prevent a party from examining or cross-examining a witness at trial about the witness's
21 qualifications.

22 **"§ 90-21.97. Accounting for certain collateral source payments.**

23 (a) As used in this section, "collateral source payments" means any current or
24 future payments or benefits paid to or for the benefit of the plaintiff or that are otherwise
25 made available to the plaintiff, by a federal, State, or local government agency for
26 medical care, custodial care, education, therapy, disability, loss of income, or other
27 similar benefits for expenses or losses alleged in the complaint for a health care liability
28 claim. "Collateral source payments" does not include life or health insurance benefits,
29 including health insurance benefits provided to a public employee, or any other private
30 benefits paid as a result of a contract entered into and paid for, by, or on behalf of, the
31 plaintiff.

32 (b) In any action for a health care liability claim, the court shall allow into
33 evidence, if requested by a defendant, collateral source payments paid to or for the
34 benefit of the plaintiff, or that are otherwise made available to the plaintiff, related to
35 the losses or damages alleged in the complaint for the health care liability claim.

36 **"§ 90-21.98: Reserved for future codification purposes.**

37 "Part 9. Arbitration Agreements.

38 **"§ 90-21.99. Arbitration agreements.**

39 (a) No physician, professional association of physicians, or other health care
40 provider shall request or require a patient or prospective patient to execute an agreement
41 to arbitrate a health care liability claim unless the form of agreement delivered to the
42 patient contains a written notice in 10-point boldface type clearly and conspicuously
43 stating:

1 "UNDER NORTH CAROLINA LAW, THIS AGREEMENT IS INVALID
2 AND OF NO LEGAL EFFECT UNLESS IT IS ALSO SIGNED BY AN
3 ATTORNEY OF YOUR OWN CHOOSING. THIS AGREEMENT
4 CONTAINS A WAIVER OF IMPORTANT LEGAL RIGHTS,
5 INCLUDING YOUR RIGHT TO A JURY. YOU SHOULD NOT SIGN
6 THIS AGREEMENT WITHOUT FIRST CONSULTING WITH AN
7 ATTORNEY."

8 (b) A violation of this section by a physician or professional association of
9 physicians constitutes a violation of G.S. 90-14 and shall be subject to the enforcement
10 provisions and sanctions for violations of G.S. 90-14.

11 (c) A violation of this section by a health care provider other than a physician
12 shall constitute a false, misleading, or deceptive act or practice in the conduct of trade or
13 commerce within the meaning of Article 1 of Chapter 75 of the General Statutes and
14 shall be subject to an enforcement action and to the penalties and remedies under Article
15 1 of Chapter 75 of the General Statutes, notwithstanding G.S. 90-21.61 or any other
16 law.

17 (d) Notwithstanding any other provision of this section, a person who is found to
18 be in violation of this section for the first time shall be subject only to injunctive relief
19 or other appropriate order requiring the person to cease and desist from such violation,
20 and not to any other penalty or sanction.

21 **"§§ 90-21.100 and 90-21.101: Reserved for future codification purposes.**

22 "Part 10. Payment for Future Losses.

23 **"§ 90-21.102. Definitions.**

24 As used in this Part:

25 (1) "Future damages" means damages that are incurred after the date of
26 judgment for:

27 a. Medical, health care, or custodial care services;

28 b. Physical pain and mental anguish, disfigurement, or physical
29 impairment;

30 c. Loss of consortium, companionship, or society; or

31 d. Loss of earnings.

32 (2) "Future loss of earnings" means the following losses incurred after the
33 date of the judgment:

34 a. Loss of income, wages, or earning capacity and other pecuniary
35 losses; and

36 b. Loss of inheritance.

37 (3) "Periodic payments" means the payment of money or its equivalent to
38 the recipient of future damages at defined intervals.

39 **"§ 90-21.103. Scope of Part.**

40 This Part applies only to an action on a health care liability claim against a physician
41 or health care provider in which the present value of the award of future damages, as
42 determined by the court, equals or exceeds one hundred thousand dollars (\$100,000).

43 **"§ 90-21.104. Court order for periodic payments.**

1 (a) At the request of a defendant physician or health care provider or claimant,
2 the court shall order that medical, health care, or custodial services awarded in a health
3 care liability claim be paid in whole or in part in periodic payments rather than by a
4 lump-sum payment.

5 (b) At the request of a defendant physician or health care provider or claimant,
6 the court may order that future damages other than medical, health care, or custodial
7 services awarded in a health care liability claim be paid in whole or in part in periodic
8 payments rather than by a lump-sum payment.

9 (c) The court shall make a specific finding of the dollar amount of periodic
10 payments that will compensate the claimant for the future damages.

11 (d) The court shall specify in its judgment ordering the payment of future
12 damages by periodic payments the:

13 (1) Recipient of the payments;

14 (2) Dollar amount of the payments;

15 (3) Interval between payments; and

16 (4) Number of payments or the period of time over which payments must
17 be made.

18 **"§ 90-21.105. Release.**

19 The entry of an order for the payment of future damages by periodic payments
20 constitutes a release of the health care liability claim filed by the claimant.

21 **"§ 90-21.106. Financial responsibility.**

22 (a) As a condition to authorizing periodic payments of future damages, the court
23 shall require a defendant who is not adequately insured to provide evidence of financial
24 responsibility in an amount adequate to assure full payment of damages awarded by the
25 judgment.

26 (b) The judgment must provide for payments to be funded by:

27 (1) An annuity contract issued by a company licensed to do business as an
28 insurance company, including an assignment within the meaning of
29 section 130, Internal Revenue Code of 1986, as amended;

30 (2) An obligation of the United States;

31 (3) Applicable and collectible liability insurance from one or more
32 qualified insurers; or

33 (4) Any other satisfactory form of funding approved by the court.

34 (c) On termination of periodic payments of future damages, the court shall order
35 the return of the security, or as much as remains, to the defendant.

36 **"§ 90-21.107. Death of recipient.**

37 (a) On the death of the recipient, money damages awarded for loss of future
38 earnings continue to be paid to the estate of the recipient of the award without reduction.

39 (b) Periodic payments, other than future loss of earnings, terminate on the death
40 of the recipient.

41 (c) If the recipient of periodic payments dies before all payments required by the
42 judgment are paid, the court may modify the judgment to award and apportion the
43 unpaid damages for future loss of earnings in an appropriate manner.

1 (d) Following the satisfaction or termination of any obligations specified in the
2 judgment for periodic payments, any obligation of the defendant physician or health
3 care provider to make further payments ends and any security given reverts to the
4 defendant.

5 **"§ 90-21.108. Award of attorneys' fees.**

6 For purposes of computing the award of attorneys' fees when the claimant is
7 awarded a recovery that will be paid in periodic payments, the court shall:

8 (1) Place a total value on the payments based on the claimant's projected
9 life expectancy; and

10 (2) Reduce the amount in subdivision (1) of this section to present value.

11 **"§ 90-21.109: Reserved for future codification purposes.**

12 "Part 11. Attorneys' Fees Paid on Contingency Fee Basis.

13 **"§ 90-21.110. Limit attorneys' fees paid on contingency fee basis.**

14 (a) No attorney shall contract for or collect a contingency fee for representing
15 any person seeking damages in connection with a health care liability claim against a
16 health care provider in excess of the following limits:

17 (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000)
18 recovered.

19 (2) Thirty-three and one-third percent (33 1/3%) of the next fifty thousand
20 dollars (\$50,000) recovered.

21 (3) Twenty-five percent (25%) of the next five hundred thousand dollars
22 (\$500,000) recovered.

23 (4) Fifteen percent (15%) of any amount for which the recovery exceeds
24 six hundred thousand dollars (\$600,000).

25 (b) The limits under subsection (a) of this section apply regardless of whether the
26 recovery is by settlement, arbitration, or judgment, or whether the person for whom the
27 recovery is made is a responsible adult, an infant, or a person of unsound mind.

28 (c) As used in this section, "amount recovered" means the net sum recovered
29 after deducting any disbursements or costs incurred in connection with prosecution or
30 settlement of the claim. "Amount recovered" includes any punitive damages awarded in
31 accordance with Chapter 1D of the General Statutes, subject to this Article. Costs of
32 medical care incurred by the plaintiff and the attorneys' office overhead costs or charges
33 are not deductible disbursements or costs for purposes of this section."

34 **SECTION 2.** G.S. 90-21.12A is recodified as G.S. 90-21.59 in Part 1 of
35 Article 1H of Chapter 90 of the General Statutes, as enacted in Section 1 of this act.
36 G.S. 90-21.17 is recodified as G.S. 90-21.60 in Part 1 of Article 1H of Chapter 90 of the
37 General Statutes, as enacted in Section 1 of this act. G.S. 90-21.14 is recodified as
38 G.S. 90-21.77 in Part 4 of Article 1H of Chapter 90 of the General Statutes, as enacted
39 in Section 1 of this act. G.S. 90-21.15 is recodified as G.S. 90-21.78 in Part 4 of Article
40 1H of Chapter 90 of the General Statutes, as enacted in Section 1 of this act.
41 G.S. 90-21.16 is recodified as G.S. 90-21.81 in Part 4 of Article 1H of Chapter 90 of the
42 General Statutes. G.S. 90-21.18 is recodified as G.S. 90-21.88 in Part 6 of Article 1H of
43 Chapter 90 of the General Statutes, as enacted in Section 1 of this act. The remainder of
44 Article 1B of Chapter 90 of the General Statutes is repealed.

1 **SECTION 3.** G.S. 131E-44 reads as rewritten:

2 "**§ 131E-44. General powers.**

3 (a) The inhabitants of a hospital district are a body corporate and politic by the
4 name specified by the North Carolina Medical Care Commission. Under that name they:

- 5 (1) Are vested with all the property and rights of property belonging to
6 any corporation;
7 (2) Have perpetual succession;
8 (3) May sue or be sued; a health care liability claim, as defined in Article
9 1H of Chapter 90 of the General Statutes, may be brought against the
10 district only in the county in which the district is established.
11 (4) May contract;
12 (5) May acquire any real or personal property;
13 (6) May hold, invest, sell or dispose of property;
14 (7) May have a seal and alter and renew it; and
15 (8) May exercise the powers conferred upon them by this Part.

16 (b) A hospital district is vested with all the powers necessary or convenient to
17 carry out the purposes of this Part, including the following powers, which are in
18 addition to the powers granted elsewhere:

- 19 (1) Those powers granted under the Municipal Hospital Act, Chapter
20 131E of the General Statutes, Article 2, Part A;
21 (2) To issue general obligation and revenue bonds and bond anticipation
22 notes pursuant to the Local Government Finance Act, Chapter 159 of
23 the General Statutes;
24 (3) To issue tax and revenue anticipation notes pursuant to Chapter 159 of
25 the General Statutes, Article 9, Part 2; and
26 (4) All other powers as are necessary and incidental to the exercise of the
27 powers of this Part."

28 **PART 2. CONFORMING CHANGES**

29 **SECTION 4.** G.S. 1A-1, Rule 3(b) reads as rewritten:

30 "(b) The clerk shall maintain as prescribed by the Administrative Office of the
31 Courts a separate index of all ~~medical malpractice actions, as defined in~~
32 ~~G.S. 90-21.11~~ health care liability claims under Article 1H of Chapter 90 of the General
33 Statutes. Upon the commencement of a medical malpractice action, the clerk shall
34 provide a current copy of the index to the senior regular resident judge of the district in
35 which the action is pending."

36 **SECTION 5.** G.S. 1A-1, Rule 9(j) reads as rewritten:

37 "(j) ~~Medical malpractice.~~ Health Care Liability Claims. – Any complaint alleging
38 ~~medical malpractice~~ a health care liability claim by a health care provider ~~as defined in~~
39 ~~G.S. 90-21.11~~ in failing to comply with the applicable standard of care under
40 ~~G.S. 90-21.12~~ under Article 1H of Chapter 90 of the General Statutes for departing from
41 accepted standards of medical care or health care shall be dismissed unless:

- 42 (1) The pleading specifically asserts that the medical care or health care
43 has been reviewed by a person who is reasonably expected to qualify
44 as an expert witness under Rule 702 of the Rules of Evidence and who

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

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

25 **SECTION 6.** G.S. 1A-1, Rule 16(b) reads as rewritten:

26 "(b) In a ~~medical malpractice action as defined in G.S. 90-21.11~~, health care
27 liability claim under Article 1H of Chapter 90 of the General Statutes, at the close of the
28 discovery period scheduled pursuant to Rule 26(f1), the judge shall schedule a final
29 conference. After the conference, the judge shall refer any consent order calendaring the
30 case for trial to the senior resident superior court judge or the chief district court judge,
31 who shall approve the consent order unless he finds that:

- 32 (1) The date specified in the order is unavailable,
33 (2) The terms of the order unreasonably delay the trial, or
34 (3) The ends of justice would not be served by approving the order.

35 If the senior resident superior court judge or the chief district court judge does not
36 approve the consent order, he shall calendar the case for trial.

37 In calendaring the case, the court shall take into consideration the nature and
38 complexity of the case, the proximity and convenience of witnesses, the needs of
39 counsel for both parties concerning their respective calendars, the benefits of an early
40 disposition and such other matters as the court may deem proper."

41 **SECTION 7.** G.S. 1A-1, Rule 26(f1) reads as rewritten:

42 "(f1) ~~Medical malpractice~~ Health care liability claim discovery conference. – In a
43 ~~medical malpractice action as defined in G.S. 90-21.11~~, health care liability claim under
44 Article 1H of Chapter 90 of the General Statutes, upon the case coming at issue or the

1 filing of a responsive pleading or motion requiring a determination by the court, the
2 judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery
3 conference. At the conference the court may consider the matters set out in Rule 16, and
4 shall:

- 5 (1) Rule on all motions;
- 6 (2) Establish an appropriate schedule for designating expert witnesses,
7 consistent with a discovery schedule pursuant to subdivision (3), to be
8 complied with by all parties to the action such that there is a deadline
9 for designating all expert witnesses within an appropriate time for all
10 parties to implement discovery mechanisms with regard to the
11 designated expert witnesses;
- 12 (3) Establish by order an appropriate discovery schedule designated so
13 that, unless good cause is shown at the conference for a longer time,
14 and subject to further orders of the court, discovery shall be completed
15 within 150 days after the order is issued; nothing herein shall be
16 construed to prevent any party from utilizing any procedures afforded
17 under Rules 26 through 36, so long as trial or any hearing before the
18 court is not thereby delayed; and
- 19 (4) Approve any consent order which may be presented by counsel for the
20 parties relating to parts (2) and (3) of this subsection, unless the court
21 finds that the terms of the consent order are unreasonable.

22 If a party fails to identify an expert witness as ordered, the court shall, upon motion
23 by the moving party, impose an appropriate sanction, which may include dismissal of
24 the action, entry of default against the defendant, or exclusion of the testimony of the
25 expert witness at trial."

26 **SECTION 8.** G.S. 1-15 reads as rewritten:

27 "**§ 1-15. Statute runs from accrual of action.**

28 (a) Civil actions can only be commenced within the periods prescribed in this
29 Chapter, after the cause of action has accrued, except where in special cases a different
30 limitation is prescribed by statute.

31 (b) Repealed by Session Laws 1979, c. 654, s. 3.

32 (c) Except where otherwise provided by statute, a cause of action for malpractice
33 arising out of the performance of or failure to perform professional services shall be
34 deemed to accrue at the time of the occurrence of the last act of the defendant giving
35 rise to the cause of action: Provided that whenever there is bodily injury to the person,
36 economic or monetary loss, or a defect in or damage to property which originates under
37 circumstances making the injury, loss, defect or damage not readily apparent to the
38 claimant at the time of its origin, and the injury, loss, defect or damage is discovered or
39 should reasonably be discovered by the claimant two or more years after the occurrence
40 of the last act of the defendant giving rise to the cause of action, suit must be
41 commenced within one year from the date discovery is made: Provided nothing herein
42 shall be construed to reduce the statute of limitation in any such case below three years.
43 Provided further, that in no event shall an action be commenced more than four years
44 from the last act of the defendant giving rise to the cause of ~~action: Provided further,~~

1 that where damages are sought by reason of a foreign object, which has no therapeutic
2 or diagnostic purpose or effect, having been left in the body, a person seeking damages
3 for malpractice may commence an action therefor within one year after discovery
4 thereof as hereinabove provided, but in no event may the action be commenced more
5 than 10 years from the last act of the defendant giving rise to the cause of action.action.

6 (d) G.S. 90-21.83 applies to health care liability claims under Article 1H of
7 Chapter 90 of the General Statutes."

8 **SECTION 9.** G.S. 8C-702(b) reads as rewritten:

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

13 (1) ~~If the party against whom or on whose behalf the testimony is offered~~
14 ~~is a specialist, the expert witness must:~~

15 a. ~~Specialize in the same specialty as the party against whom or on~~
16 ~~whose behalf the testimony is offered; or~~

17 b. ~~Specialize in a similar specialty which includes within its~~
18 ~~specialty the performance of the procedure that is the subject of~~
19 ~~the complaint and have prior experience treating similar~~
20 ~~patients.~~

21 (2) ~~During the year immediately preceding the date of the occurrence that~~
22 ~~is the basis for the action, the expert witness must have devoted a~~
23 ~~majority of his or her professional time to either or both of the~~
24 ~~following:~~

25 a. ~~The active clinical practice of the same health profession in~~
26 ~~which the party against whom or on whose behalf the testimony~~
27 ~~is offered, and if that party is a specialist, the active clinical~~
28 ~~practice of the same specialty or a similar specialty which~~
29 ~~includes within its specialty the performance of the procedure~~
30 ~~that is the subject of the complaint and have prior experience~~
31 ~~treating similar patients; or~~

32 b. ~~The instruction of students in an accredited health professional school or~~
33 ~~accredited residency or clinical research program in the same health profession in which~~
34 ~~the party against whom or on whose behalf the testimony is offered, and if that party is a~~
35 ~~specialist, an accredited health professional school or accredited residency or clinical~~
36 ~~research program in the same specialty~~health care liability claim under Article 1H of
37 Chapter 90 of the General Statutes, the provisions of Part 8 of that Article apply to
38 whether a person is qualified to give testimony as an expert witness."

39 **SECTION 10.** G.S. 8C-702(c) through G.S. 8C-702(f) and G.S. 8C-702(h)
40 are repealed.

41 **SECTION 11.** G.S. 90-21.59, as recodified under Section 2 of this act, reads
42 as rewritten:

43 "**§ 90-21.59. Nonresident physicians.**

1 A patient may bring a ~~medical malpractice claim~~ health care liability claim in the
2 courts of this State against a nonresident physician who practices medicine or surgery
3 by use of any electronic or other media in this State."

4 **SECTION 12.** G.S. 90-21.78(c), as recodified under Section 2 of this act,
5 reads as rewritten:

6 "(c) The use of an automated external defibrillator when used to attempt to save or
7 to save a life shall constitute "first-aid or emergency health care treatment" under
8 ~~G.S. 90-21.14(a)~~. G.S. 90-21.77(a)."

9 **SECTION 13.** G.S. 90-21.51(e) reads as rewritten:

10 "(e) An action brought under this Article is not a ~~medical malpractice action as~~
11 ~~defined in Article 1B of this Chapter.~~ health care liability claim under Article 1H of this
12 Chapter. A managed care entity may not use as a defense in an action brought under this
13 Article any law that prohibits the corporate practice of medicine."

14 **SECTION 14.** G.S. 90-21.51(f) reads as rewritten:

15 "(f) A managed care entity shall not be liable for the independent actions of a
16 health care provider, who is not an agent or employee of the managed care entity, when
17 that health care provider ~~fails to exercise the standard of care required by G.S. 90-21.12.~~
18 departs from accepted standards of medical care or health care. A health care provider
19 shall not be liable for the independent actions of a managed care entity when the
20 managed care entity fails to exercise the standard of care required by this Article."

21 **SECTION 15.** G.S. 119-60 reads as rewritten:

22 **"§ 119-60. Liquefied petroleum gas accidents; liability limitations.**

23 Any person who provides assistance upon request of any police agency, fire
24 department, rescue or emergency squad, or any governmental agency in the event of an
25 accident or other emergency involving the use, handling, transportation, transmission or
26 storage of liquefied petroleum gas, when the reasonably apparent circumstances require
27 prompt decisions and actions, shall not be liable for any civil damages resulting from
28 any act of commission or omission on his part in the course of his rendering such
29 assistance unless such acts or omissions amount to willful or wanton negligence or
30 intentional wrongdoing. Nothing in this section shall be deemed or construed to relieve
31 any person from liability for civil damages (a) where the accident or emergency referred
32 to above involved his own facilities or equipment or (b) resulting from any act of
33 commission or omission on his part in the course of providing care or assistance in the
34 normal and ordinary course of conducting his own business or profession, nor shall this
35 section be construed to relieve from liability for civil damages any other tortfeasor not
36 referred to herein. When the assistance takes the form of rendering first aid or
37 emergency health care treatment, questions of liability shall be governed by
38 ~~G.S. 90-21.14~~. G.S. 90-21.77."

39 **PART 3. EFFECTIVE DATE**

40 **SECTION 16.** This act becomes effective October 1, 2008, and applies to
41 any contracts entered into on or after that date and to any health care liability claims, as
42 defined in G.S. 90-21.57, as enacted by Section 1 of this act, that are filed on or after
43 that date.