

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

2

HOUSE BILL 730
Committee Substitute Favorable 5/3/95

Short Title: Prevent Frivolous Malp. Action.

(Public)

Sponsors:

Referred to:

April 3, 1995

A BILL TO BE ENTITLED

AN ACT TO PREVENT FRIVOLOUS MEDICAL MALPRACTICE ACTIONS BY
REQUIRING THAT EXPERT WITNESSES IN MEDICAL MALPRACTICE
CASES HAVE APPROPRIATE QUALIFICATIONS TO TESTIFY ON THE
STANDARD OF CARE AT ISSUE AND TO REQUIRE EXPERT WITNESS
REVIEW AS A CONDITION OF FILING A MEDICAL MALPRACTICE ACTION.

The General Assembly of North Carolina enacts:

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

"Rule 702. Testimony by experts.

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

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

(1) If the party against whom or on whose behalf the testimony is offered is a specialist, the expert witness must specialize in the same specialty as

1 the party against whom or on whose behalf the testimony is offered.
2 However, if the party against whom or on whose behalf the testimony is
3 offered is a specialist who is board certified or otherwise certified by a
4 specialty health care group, the expert witness must be a specialist who
5 is similarly certified in that specialty; and

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

9 a. The active clinical practice of the same health profession in
10 which the party against whom or on whose behalf the testimony
11 is offered, and if that party is a specialist, the active clinical
12 practice of that specialty; or

13 b. The instruction of students in an accredited health professional
14 school or accredited residency or clinical research program in the
15 same health profession in which the party against whom or on
16 whose behalf the testimony is offered, and if that party is a
17 specialist, an accredited health professional school or accredited
18 residency or clinical research program in the same specialty.

19 (c) Notwithstanding subsection (b) of this section, if the party against whom or on
20 whose behalf the testimony is offered is a general practitioner, the expert witness, during
21 the year immediately preceding the date of the occurrence that is the basis for the action,
22 must have devoted a majority of his or her professional time to either or both of the
23 following:

24 (1) Active clinical practice as a general practitioner; or

25 (2) Instruction of students in an accredited health professional school or
26 accredited residency or clinical research program in the general practice
27 of medicine.

28 (d) Notwithstanding subsection (b) of this section, a physician who qualifies as an
29 expert under subsection (a) of this Rule and who by reason of active clinical practice or
30 instruction of students has knowledge of the applicable standard of care for nurses, nurse
31 practitioners, certified registered nurse anesthetists, certified registered nurse midwives,
32 or physician assistants may give expert testimony in a medical malpractice action with
33 respect to the standard of care of which he is knowledgeable of nurses, nurse
34 practitioners, certified registered nurse anesthetists, certified registered nurse midwives,
35 or physician assistants licensed under Chapter 90 of the General Statutes.

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

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

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

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

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

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

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

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

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

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

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