

# HEALTH LAW ALERT

from the Health Law Group of Poyner Spruill LLP

## Summary of North Carolina Senate Bill 33's Medical Malpractice Reform

by Kim Licata



Medical malpractice reform entered the North Carolina General Assembly through Senators Apodaca, Brown and Rucho's sponsorship of Senate Bill 33 "Medical Liability Reforms" (the "Bill"). These malpractice reform measures would apply to nursing homes, hospitals, physicians, and other persons defined as "health care providers" under N.C. Gen. Stat. § 90-21.11. Medical malpractice actions are defined by statute to include lawsuits based on personal injury or death arising out of the furnishing or failure to furnish professional services by a health care provider. The Bill proposes to reform medical malpractice actions in the following ways:

1. **LIMITING THE LIABILITY OF EMERGENCY SERVICES PROVIDERS:** The Bill makes it harder for a plaintiff to recover for damages resulting from emergency care by raising the level of misconduct and intent required of a health care provider of emergency services before malpractice is found. The Bill requires a plaintiff to prove more likely than not that a health care provider failed to meet the standard of care (as judged by providers of the same profession with similar training and experience in the same or similar communities) and this failure amounted to gross negligence, wanton conduct, or intentional wrongdoing before a plaintiff can win damages. Currently, a plaintiff must only show that more likely than not a health care provider did not meet the standards of practice among members of the same health care professional with similar training and experience in the same or similar communities. "Emergency services" is defined by statute to mean that medical care needed to screen for or treat an emergency medical condition, including services in an emergency department.
2. **\$250,000 CAP ON NONECONOMIC DAMAGES:** A plaintiff's recovery for noneconomic damages is capped at \$250,000. Noneconomic damages include pain, suffering, emotional distress, loss of consortium, inconvenience, physical impairment, disfigurement, or other similar damages. A court will reduce any award of more than \$250,000 noneconomic damages to the capped level.
3. **PERIODIC PAYMENT VERSUS LUMP SUM AWARDS FOR FUTURE ECONOMIC DAMAGES OVER \$75,000:** Today, medical malpractice awards, even for future expenses related to medical care or lost future earnings, are due and payable in a lump sum amount. The Bill changes current practice by permitting either party in a medical malpractice lawsuit to ask the judge to permit the payment of future economic damages in whole or in part by regular periodic payments versus a lump sum amount. This will require judgments

to specify what amount is awarded for future economic damages as opposed to other types of damages for which a plaintiff sued. The Bill requires that these periodic payments be made by a trust fund or annuity approved by the court and that the judgment specify the person to receive the payments, the amount of each payment, that these payments will fully satisfy the defendant's judgment as to future economic damages. Under this proposal, the general rule would be that the periodic payments not yet paid or due end with the death of the plaintiff. The Bill permits the court which entered the malpractice award to modify the judgment to provide that upon the plaintiff's death, the periodic payments are to continue and to be paid to persons surviving the plaintiff.

4. **NEW FORM FOR MEDICAL MALPRACTICE VERDICTS AND AWARDS:** The Bill would require any malpractice award to specify the amount for (a) noneconomic damages (pain and suffering, emotional distress, and other damages noted above), (b) present economic damages (medical care, lost wages, or other damages to the plaintiff that have occurred up to the date of malpractice award), and (c) future economic damages (medical care, lost wages, and other damages to the plaintiff that will occur in the future).
5. **APPEAL BONDS:** The Bill sets a new bond requirement for health care providers appealing a medical malpractice award at the lesser of the amount of the judgment or the amount of the provider's medical malpractice insurance coverage.

*If you would like more information about medical malpractice reform, please consult with your regular contacts at Poyner Spruill or Kim Licata at [klicata@poynerspruill.com](mailto:klicata@poynerspruill.com) and (919) 783-2949.*

