

SHUMAKER

Shumaker, Loop & Kendrick, LLP

M E M O R A N D U M

FROM: Christian H. Staples, Attorney, Medical Malpractice Defense Practice Group

DATE: August 10, 2011

RE: New Medical Malpractice Laws in North Carolina

The full text of the new laws affecting medical malpractice claims filed in North Carolina is available at the General Assembly website:

<http://www.ncga.state.nc.us/Sessions/2011/Bills/Senate/PDF/S33v7.pdf>

Effective Date:

- Sections 5 (Definitions), 6 (Standard of Health Care) and 9 (Disabilities) of the Act become effective October 1, 2011, and apply to causes of action arising on or after that date.
- The remainder of the Act becomes effective October 1, 2011 and applies to actions commenced on or after that date.

Notable Provisions:

- *Separate Trials.* Upon motion of any party in an action in tort wherein the plaintiff seeks damages exceeding \$150,000.00, the court shall order separate trials for the issues of liability and damages, unless the court for good cause shown orders a single trial. The same trier of fact that tries the issues relating to liability shall try the issues relating to damages.
- *Modification of Rule 9(j).* Under the new law, the plaintiff must assert that the medical care and all medical records pertaining to the alleged negligence that are available to the plaintiff after reasonable inquiry have been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 and who is willing to testify that the medical care did not comply with the applicable standard of care.
- *Definition of Medical Malpractice expanded.* The new law expands the definition of a “medical malpractice action” to include corporate negligence theories of recovery against a hospital, nursing home, or adult care home.

- *Clear and convincing evidentiary standard.* This applies in medical malpractice actions arising out of the treatment of an emergency medical condition only.
- *Liability limit for non-economic damages.* The total amount of non-economic damages for which judgment is entered against all defendants shall not exceed \$500,000.00. (This amount will be recalculated every third year based on the Consumer Price Index effective January 1, 2014).
 - Exception: there shall be no limit on the amount of non-economic damages if the trier of fact finds both of the following:
 - The plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death; and
 - The defendant's acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional, or with malice.
 - Definition: "Non-economic damages" means damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other non-pecuniary compensatory damages. "Non-economic damages" does not include punitive damages.
- *Statute of limitations applicable to minors.* See Section 9 of the Act for a complete summary of changes in this regard.

*** For more information, please feel free to contact me by email at cstaples@slk-law.com or by telephone at (704) 375-0057.**