

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1012

Short Title: Medical Malpractice Pleadings.

(Public)

---

Sponsors: Senator Cooper.

---

Referred to: Judiciary I.

---

April 15, 1999

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW A PRESIDING JUDGE IN A COUNTY WITH PROPER  
2 VENUE TO EXTEND THE STATUTE OF LIMITATIONS IN A MEDICAL  
3 MALPRACTICE ACTION THAT WAS IMPROPERLY PLEADED UNDER RULE  
4 9 OF THE RULES OF CIVIL PROCEDURE AND TO PROVIDE THAT AN  
5 INVOLUNTARY DISMISSAL FOR FAILURE TO COMPLY WITH RULE 9 IS  
6 NOT AN ADJUDICATION ON THE MERITS IN MEDICAL MALPRACTICE  
7 ACTIONS.  
8

9 The General Assembly of North Carolina enacts:

10 Section 1. G.S. 1A-1, Rule 9(j) reads as rewritten:

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

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

19 (2) The pleading specifically asserts that the medical care has been  
20 reviewed by a person that the complainant will seek to have qualified as

1 an expert witness by motion under Rule 702(e) of the Rules of Evidence  
2 and who is willing to testify that the medical care did not comply with  
3 the applicable standard of care, and the motion is filed with the  
4 complaint; or

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

7 Upon motion by the complainant prior to the expiration of the applicable statute of  
8 limitations, a resident or presiding judge of the superior court of ~~the~~ a county in which  
9 venue for the cause of action arose is proper may allow a motion to extend the statute of  
10 limitations for a period not to exceed 120 days to file a complaint in a medical  
11 malpractice action in order to comply with this Rule, upon a determination that good  
12 cause exists for the granting of the motion and that the ends of justice would be served by  
13 an extension. The plaintiff shall provide, at the request of the defendant, proof of  
14 compliance with this subsection through up to ten written interrogatories, the answers to  
15 which shall be verified by the expert required under this subsection. These  
16 interrogatories do not count against the interrogatory limit under Rule 33."

17 Section 2. G.S. 1A-1, Rule 41(b) reads as rewritten:

18 "(b) Involuntary dismissal; effect thereof. – For failure of the plaintiff to prosecute  
19 or to comply with these rules or any order of court, a defendant may move for dismissal  
20 of an action or of any claim therein against him. After the plaintiff, in an action tried by  
21 the court without a jury, has completed the presentation of his evidence, the defendant,  
22 without waiving his right to offer evidence in the event the motion is not granted, may  
23 move for a dismissal on the ground that upon the facts and the law the plaintiff has shown  
24 no right to relief. The court as trier of the facts may then determine them and render  
25 judgment against the plaintiff or may decline to render any judgment until the close of all  
26 the evidence. If the court renders judgment on the merits against the plaintiff, the court  
27 shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal  
28 otherwise specifies, a dismissal under this section and any dismissal not provided for in  
29 this rule, other than a dismissal for lack of jurisdiction, for improper venue, ~~or~~ for failure  
30 to join a necessary party, or for failure to comply with Rule 9(j), operates as an  
31 adjudication upon the merits. If the court specifies that the dismissal of an action  
32 commenced within the time prescribed therefor, or any claim therein, is without  
33 prejudice, it may also specify in its order that a new action based on the same claim may  
34 be commenced within one year or less after such dismissal."

35 Section 3. This act becomes effective October 1, 1999, and applies to  
36 judgments entered on or after that date.