

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80248-LD-97 (4/9)

Short Title: Medical Malpractice Witnesses/Discovery. (Public)

Sponsors: Representative Nesbitt.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE COSTS OF MEDICAL MALPRACTICE ACTIONS BY
LIMITING THE NUMBER OF EXPERT MEDICAL WITNESSES AND BY
LIMITING DISCOVERY.

The General Assembly of North Carolina enacts:

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

"(f1) Medical malpractice discovery conference. – ~~In~~ For a medical malpractice action as defined in G.S. 90-21.11, ~~upon~~ to the extent that any provision of this subsection conflicts with any other provision of this rule or Rule 16, this subsection applies. Upon the case in the medical malpractice action coming at issue or the filing of a responsive pleading or motion requiring a determination by the court, the judge shall, within 30 days, direct the attorneys for the parties to appear for a discovery conference. At the conference the court may consider the matters set out in Rule 16, and shall:

...

(2) Limit the number of expert witnesses each party expects to present at trial to not more than two per medical specialty unless exceptional circumstances are found by the court to justify additional experts. Establish an appropriate schedule for designating expert witnesses, consistent with a discovery schedule pursuant to subdivision (3), to be complied with by all parties to the action such that there is a deadline for designating all expert witnesses within an appropriate time for all parties to implement discovery mechanisms with regard to the designated expert witnesses;(3). As to each expert designated, the designation shall be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the

1 opinions; the qualifications of the witness, including a list of all
2 publications authorized by the witness within the preceding 10 years;
3 the compensation the witness is to be paid for the study and testimony;
4 and a listing of any other cases in which the witness has testified as an
5 expert at trial or by deposition within the preceding four years. The
6 party shall supplement the expert's report if the party learns that in
7 some material respect the report is incomplete or incorrect. The
8 expert's direct testimony shall not be inconsistent with or go beyond
9 the fair scope of the expert report as supplemented. The parties shall
10 not depose expert witnesses, unless exceptional circumstances are
11 found by the court.

12 ..."

13 **SECTION 2.** G.S. 1A-1, Rule 16(a), reads as rewritten:

14 "(a) In any ~~action~~, action other than a medical malpractice action as defined in
15 G.S. 90-21.11, the judge may in his discretion direct the attorneys for the parties to
16 appear before him for a conference to ~~consider~~consider:

- 17 (1) The simplification and formulation of the issues;
- 18 (2) The necessity or desirability of amendments to the pleadings;
- 19 (3) The possibility of obtaining admissions of fact and of documents
20 ~~which that~~ will avoid unnecessary proof;
- 21 (4) The limitation of the number of expert witnesses;
- 22 (5) The advisability or necessity of a reference of the case, either in whole
23 or in part;
- 24 (6) Matters of which the court is to be asked to take judicial notice;
- 25 (7) Such other matters as may aid in the disposition of the action.

26 If a conference is held, the judge may make an order ~~which that~~ recites the action
27 taken at the conference, the amendments allowed to the pleadings, and the agreements
28 made by the parties as to any of the matters considered, and ~~which that~~ limits the issues
29 for trial to those not disposed of by admissions or agreements of counsel; and such order
30 when entered controls the subsequent course of the action, unless modified at the trial to
31 prevent manifest injustice. If any issue for trial as stated in the order is not raised by the
32 pleadings in accordance with the provisions of Rule 8, upon motion of any party, the
33 order shall require amendment of the pleadings."

34 **SECTION 3.** This act becomes effective October 1, 2003, and applies to
35 actions filed on or after that date.

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37 The General Assembly of North Carolina enacts: