

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 9

Short Title: Medical Malpractice Damages/Attorneys' Fees. (Public)

Sponsors: Senators Pittenger; Allran, Apodaca, Ballantine, Bingham, Blake, Brock, Carpenter, Carrington, Forrester, Foxx, Hoyle, Rucho, Shubert, Smith, Stevens, Tillman, and Webster.

Referred to: Rules and Operations of the Senate.

February 5, 2003

A BILL TO BE ENTITLED

AN ACT TO MODIFY MEDICAL MALPRACTICE ACTIONS BY ESTABLISHING A CAP ON THE AWARD FOR NONECONOMIC COMPENSATORY DAMAGES, BY AUTHORIZING THE PERIODIC PAYMENT OF FUTURE DAMAGES IN LIEU OF A LUMP-SUM PAYMENT, AND BY ESTABLISHING MAXIMUM LIMITS FOR ATTORNEYS' FEES THAT ARE TO BE PAID ON A CONTINGENCY FEE BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1B of Chapter 90 of the General Statutes is amended by adding the following new sections:

"§ 90-21.18. Liability limit for noneconomic damages.

(a) In any medical malpractice action against a health care provider, the plaintiff shall be entitled to recover noneconomic damages. The amount of noneconomic damages shall not exceed two hundred fifty thousand dollars (\$250,000) per plaintiff.

(b) As used in this section, 'noneconomic damages' means damages to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary, compensatory damage. 'Noneconomic damages' does not include punitive damages as defined in G.S. 1D-5.

"§ 90-21.19. Periodic payment of future damages authorized.

(a) In any medical malpractice action against a health care provider, a superior court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment when the award equals or exceeds fifty thousand dollars (\$50,000) in future damages. In entering a judgment ordering the payment of future damages by periodic payments, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for future damages. As a condition to authorizing periodic payments

1 of future damages, the court shall require the judgment debtor who is not adequately
2 insured to post security adequate to assure full payment of damages awarded by the
3 judgment. Upon termination of periodic payments of future damages, the court shall
4 order the return of any remaining security to the judgment debtor.

5 (b) The judgment ordering the payment of future damages by periodic payments
6 shall specify the recipient of the payments, the dollar amount of the payments, the
7 interval between payments, and the number of payments or the period of time over
8 which payments shall be made. The judgment ordering the payment of future damages
9 by periodic payments is subject to modification only in the event of the death of the
10 judgment creditor.

11 (c) In the event that the court finds that the judgment debtor has exhibited a
12 continuing pattern of failing to make the payments, as specified in subsection (b) of this
13 section, the court shall find the judgment debtor in contempt of court and, in addition to
14 the required periodic payments, shall order the judgment debtor to pay the judgment
15 creditor all damages caused by the failure to make the periodic payments, including
16 court costs and attorneys' fees.

17 (d) Money damages awarded for loss of future earnings shall not be reduced or
18 payments terminated by reason of the death of the judgment creditor, but shall be paid
19 to persons to whom the judgment creditor owed a duty of support, as provided by law,
20 immediately prior to the judgment creditor's death. The court that rendered the original
21 judgment, may, upon petition of any party in interest, modify the judgment to award and
22 apportion the unpaid future damages in accordance with this subsection.

23 (e) Following the occurrence or expiration of all obligations specified in the
24 judgment ordering the payment of future damages by periodic payments, any obligation
25 of the judgment debtor to make further payments shall cease, and any security given
26 under subsection (a) of this section shall revert to the judgment debtor.

27 (f) As used in this section:

28 (1) 'Future damages' includes compensatory damages for future medical
29 treatment, care, or custody; loss of future earnings; loss of bodily
30 function in the future; or future pain and suffering of the judgment
31 creditor.

32 (2) 'Periodic payments' means the payment of money or delivery of other
33 property to the judgment creditor at regular intervals.

34 **"§ 90-21.19A. Limit attorneys' fees paid on contingency fee basis.**

35 (a) No attorney shall contract for or collect a contingency fee for representing
36 any person seeking damages in connection with a medical malpractice action against a
37 health care provider in excess of the following limits:

38 (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000)
39 recovered.

40 (2) Thirty-three and one-third percent (33 1/3%) of the next fifty thousand
41 dollars (\$50,000) recovered.

42 (3) Twenty-five percent (25%) of the next five hundred thousand dollars
43 (\$500,000) recovered.

1 (4) Fifteen percent (15%) of any amount for which the recovery exceeds
2 six hundred thousand dollars (\$600,000).

3 (b) The limits under subsection (a) of this section apply regardless of whether the
4 recovery is by settlement, arbitration, or judgment, or whether the person for whom the
5 recovery is made is a responsible adult, an infant, or a person of unsound mind.

6 (c) If periodic payments are awarded to the plaintiff under G.S. 90-21.19, the
7 court shall place a total value on these payments based upon the projected life
8 expectancy of the plaintiff and include this amount in computing the total award from
9 which attorney's fees are calculated under this section.

10 (d) As used in this section, 'amount recovered' means the net sum recovered after
11 deducting any disbursements or costs incurred in connection with prosecution or
12 settlement of the claim. Amount recovered includes any punitive damages awarded in
13 accordance with Chapter 1D of the General Statutes. Costs of medical care incurred by
14 the plaintiff and the attorney's office-overhead costs or charges are not deductible
15 disbursements or costs for purposes of this section."

16 **SECTION 2.** This act becomes effective October 1, 2003, and applies to
17 judgments in medical malpractice actions that are entered on or after that date and
18 applies to contingency fee contracts in medical malpractice actions that are entered into
19 on or after that date.