April 3, 2003

S 802. MEDICAL MALPRACTICE WITNESSES/DISCOVERY. *TO REDUCE THE COSTS OF MEDICAL MALPRACTICE ACTIONS BY LIMITING THE NUMBER OF EXPERT MEDICAL WITNESSES AND BY LIMITING DISCOVERY*. Amends GS 1A-1, Rule 26(f1) to require in medical malpractice cases that the court in the discovery conference 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. Requires for each designated expert witness, a written report signed by the witness containing a complete statement of opinions to be expressed and basis and reasons therefore and other specified information. Establishes duty to supplement report if necessary and prohibits testimony that is inconsistent with or "goes beyond" the report. Prohibits deposition of expert witnesses except in exceptional circumstances as found by the court. Makes other conforming changes. Effective Oct. 1, 2003, and applies to actions filed on or after that date.

Intro. by Soles.

Ref. to	GS 1A

September 16, 2003

S 802. MED. PROVIDER INS./CIVIL JUSTICE REFORM ACT (NEW). Intro. 4/3/03. Senate committee substitute makes the following changes to 1st edition. Senate committee substitute completely rewrites bill to make substantial changes in medical malpractice litigation and liability rules and insurance for providers of medical services. The committee substitute is in three parts: Part I deals with quality of patient care, protection of patient-physician relationships, and certain discliplinary procedures; Part II deals with litigation reforms; and Part III deals with liability insurance.

Part I. Adds new GS 131E-101(8) to provide a definition of "quality assurance committee" as generally a committee, agency or dep't of a professional organization, medical staff, or peer review corporation or organization formed for the purpose of evaluating the quality, cost of, or necessity for health care services. Adds new GS 131E-107(b) to provide that proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces, and the materials prepared for or considered by the committee, are not public records within the meaning of GS 132-1 and shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services that results from matters that are the subject of review by the committee. Amends GS 131E-95(b), 90-21.22A(b), 122C-191(e)(2), and 122C-30(2) to provide that proceedings, records, and materials produced or considered by a medical review or quality assurance committee relating to (a) a root cause analysis or other analyses of systemic performance issues in the delivery of health care, (b) self-assessment of health care quality, (c) preventative, corrective, or remedial actions considered or taken to address quality issues, and (d) incident reports used for quality assurance or risk management purposes are confidential and not subject to discovery or use in a civil action. Adds new GS Ch. 8C, Rule 413, to provide that statements by a health care provider apologizing for an adverse outcome in medical treatment, offers to undertake corrective or remedial treatment or actions, and gratuitous acts to assist affected persons shall not be admissible to prove negligence or culpable conduct by the health care provider in an action brought under GS Ch. 90, art. 1B. Effective Oct. 1, 2004, adds new GS 90-21.12D to require that if a trial court dismisses an action for noncompliance with GS 1A-1, Rule 9(j), or imposes sanctions pursuant to GS 1A-1, Rule 11, against an attorney in a medical malpractice action, the court shall report the dismissal or imposition of sanctions and the name of the attorney to the State Bar within 30 days. The State Bar is to conduct an investigation of the matter within 90 days of receiving the report, and is to report to the General Assembly annually on its actions regarding reports of attorneys with a history of multiple violations. Effective Oct. 1, 2004, adds new GS 90-14.13(e) to require the NC Medical Board to keep a cumulative total of all reports by individual physicians. Within 90 days of determining that a physician has 3 or more reports, the Board shall conduct an investigation to determine whether disciplinary sanctions or other measures are warranted. The Board is to publish the results of its investigation. Annually, the Board is to report to the General Assembly regarding the Board's response to reports of physicians with a history of multiple awards of damages and settlements. Effective Oct. 1, 2004, adds new GS 90-21.14(b1) to provide that if, because of the limit of liability in this section, an action is dismissed or the person against whom an action is brought is found not be liable, the court shall, upon motion of the defendant, impose appropriate monetary sanctions against the plaintiff's attorney under Rule 11, including court costs and attorneys' fees.

Part II. Effective Oct. 1, 2004, adds new GS 90-21.18A to provide that a medical director of a licensed nursing home shall not be named a defendant in an action under art. 1B unless the patient was under the direct care of the medical director or the allegations involve willful or intentional misconduct or gross negligence of the medical director in a supervisory or consulting role. Effective Oct. 1, 2004, adds new GS 90-21.12B to provide that civil actions for damages for personal injury or death arising out of the furnishing or failure to furnish patient care services other than professional services by a health care provider in connection with the performance of medical, dental, or other health care shall be brought in accordance with GS 90-21.11, 90-21.12A, 90-21.12C, 90-

21.12D, 90-21.18A, and 90-21.18B, but shall not be subject to the requirements of GS 1A-1, Rule 9(j). Effective Oct. 1, 2004, amends GS 1-289 (stay of execution of money judgment pending appeal) to require that court is to set the amount of the undertaking necessary to stay the judgment after a hearing and a consideration of (a) the amount of the judgment, (b), the amount of limits of all applicable liability policies of the judgment debtor, and (c) the aggregate net worth of the judgment debtor. Effective Oct. 1, 2004, amends GS 1A-1, Rule 9(j), to provide that failure of the pleading to specifically state that all medical records pertaining to the alleged injury then available to the plaintiff after reasonable inquiry have been reviewed by the plaintiff's expert witnesses is grounds for dismissing the action. Effective Oct. 1, 2004, and expiring Oct. 1, 2011, amends GS 1A-1, Rule 26(f1) to require, in medical malpractice cases, a written report prepared and signed by each expert witness. The report shall contain the expert's opinions to be expressed and the bases therefor, the witness's qualifications and publications written during the last 10 years, and the amount paid to the witness for testifying. The expert's direct testimony shall not be inconsistent with or go beyond the scope of the expert report, as supplemented. The parties shall not depose expert witnesees unless the court orders otherwise. Effective Oct. 1, 2004, and expiring Oct. 1, 2001, amends GS 1A-1, Rule 53, to require compulsory reference on the issue of liability in actions brought under GS Ch. 90, art. 1B, but preserves the right to jury trial in such actions. In such actions, the court shall appoint 3 referees, 1 to be randomly selected from 5 names submitted by the plaintiff, 1 to be similarly selected from 5 names submitted by the defendant, and 1 as agreed upon by the plaintiff and defendant. If no agreement can be reached on the third person, the court shall select a retired superior court judge or other person with dispute resolution experience. The third referee shall serve as chair. The report and findings of the referees shall be by majority vote. Effective Oct. 1, 2004, adds new GS 90-21.12C to provide as follows: (1) the report of the referees in a malpractice action shall be admissible as prima facie evidence on the issue of liability but the parties may offer other evidence on the issue; (2) the jury may give the referees' report such weight as it deems proper but is not bound by the report; (3) after the close of evidence and final arguments, plaintiff and defendant shall submit to the court in a sealed report the amount of damages for which they contend, if defendant is found liable; the jury may award only the amount submitted by the plaintiff or that submitted by the defendant, the jury may not return a verdict for any other amount; (4) in any action where the jury finds no liability after the referees also made a finding of no liability, the defendant shall be awarded court costs and attorneys' fees incurred after the filing of the report and findings; in any action where the defendant is found liable by the jury after the referees also made a finding of liability, the plaintiff shall be awarded court costs and attorneys' fees incurred after the report and findings. Effective Oct. 1, 2004, adds new GS Ch. 9C, Rule 414, to provide that in any action brought against a health care provider pursuant to GS Ch. 90, art. 1B, evidence offered to prove past medical expenses may include all bills reasonably paid or incurred and a statement of the amounts actually necessary to satisfy the bills that have been incurred. Evidence of source of payment shall not be admissible. Effective Oct. 1, 2004, amends GS 1-17(b) to provide that an action arising from birth-related injuries must be commenced within 10 years of the last act of the defendant giving rise to the cause of action. Adds new GS 90-21.18B to provide for the deferred payment of economic damages in certain medical negligence actions. After a hearing and at the request of either party, the court shall award deferred payment of future economic damages in excess of $100,000, plus the cost of medical care for the next 12 months, plus certain costs and attorney's fees. As a condition to authorizing periodic payment of future economic damages, the court shall require the defendant to post adequate bond or security. The judgment shall designate the recipient of the future payments and their amounts. Liability for future deferred payments terminates on the plaintiff's death, but the court may modify the judgment to provide that damages for loss of future earnings shall not be reduced or terminated on the plaintiff's death.

Part III. Effective Jan. 1, 2005, adds new GS 58-40-32 providing that no insurer or a health care provider may charge a rate that is excessive, inadequate, or unfairly discriminatory. In considering whether a rate is excessive, etc., the Comm'r of Insurance shall give no consideration to the degree of competition, but the Comm'r shall consider whether the rate mathematically relects the insurer's investment income. Every insurer that desires to change any rate must file a complete rate application with the Comm'r. Effective Jan. 1, 2005, amends GS 58-40-25 to provide that an insurer that provides professional malpractice insurance to health care providers may use regional or countrywide expense or loss experience and other regional or countrywide data only upon written approval by the Comm'r. Enacts new GS Ch. 90, art. 40, to establish the North Carolina Health Care Excess Liability Fund. Fund is to be governed by a 9-member board of directors as designated in the act. Sources of the fund are the Hospital Excess Liability Sub-Fund, the Nursing Home Excess Liability Sub-Fund, and the Health Care Provider Excess Liability Sub-Fund. Establishes rules for participation in the Fund, including minimum limits of liability insurance that must be carried by health care providers in order to participate in the Fund. All health care providers are subject to an annual assessment to support the Fund, as determined by the Board. Provides for payments from the Fund of liability awards that exceed the amount of a health care provider's liability insurance, subject to certain maximum award limits. Appropriates from General Fund $20 million for 2004-05 to the North Carolina Health Care Excess Liability Fund. Appropriates from the General Fund $5 million for 2004-05 to Dep't of Health and Human Services to make incentive grants to physicians who are practicing obstetrics, or

providing emergency department services, in rural and underserved areas of the state. The grants shall be used solely to subsidize the costs associated with obtaining or maintaining liability insurance. Directs the Comm'r of Insurance, Industrial Comm'n, and the Dep't of Health and Human Services to jointly study the advisability of creating a system of no-fault compensation, with schedules of amounts of awards and limitations, for injuries from care in nursing homes, homes for the elderly, and other long-term care facilities. Directs the Legislative Research Comm'n to study issues related to the collateral source rule, including whether evidence of collateral sources of payments of expenses recoverable in negligence actions should be admissible and considered by the jury.