

House Bill 1399

By: Representatives Porter of the 119th, Bordeaux of the 125th, Parrish of the 102nd, Skipper of the 116th, Campbell of the 39th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to depositions and discovery, and Article 3 of Chapter 9 of Title 24 of the Official
3 Code of Georgia Annotated, relating to examination of witnesses, so as to change certain
4 provisions relating to medical malpractice civil actions; to create provisions regarding expert
5 opinions in medical malpractice civil actions; to change provisions relating to opinions of
6 experts; to create provisions concerning discovery, scheduling of matters and trials,
7 participation in alternative dispute resolution, and attorney fees and expenses in medical
8 malpractice civil actions; to provide for related matters; to provide for an effective date and
9 applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
13 depositions and discovery, is amended by adding a new Code section to read as follows:

14 "9-11-37.1.

15 (a) The provisions of this Code section and this article shall apply to any civil action in
16 which the plaintiff alleges medical malpractice as defined in Code Section 9-3-70;
17 provided, however, where there is any conflict between the provisions of this Code section
18 and other provisions of this article, the provisions of this Code section shall control the
19 proceedings.

20 (b) Within 30 days of the filing of the last answer in the civil action, the parties shall
21 submit a joint scheduling order specifically setting forth the time period in which
22 discovery, including the designation and depositions of all expert witnesses, shall be
23 completed and setting a date certain for the filing of a consolidated pretrial order. Said
24 scheduling order may be amended by agreement of the parties or order of the court. If the
25 parties are unable to agree to a joint scheduling order, each party may file, within 30 days
26 of the filing of the last answer in the civil action, a proposed scheduling order. Thereafter,

1 the trial court shall enter a scheduling order for the completion of discovery, including the
2 designation and depositions of all expert witnesses, and the filing of a consolidated pretrial
3 order. Nothing contained in this Code section shall prohibit any party from conducting any
4 discovery authorized by Georgia law prior to the entry of the scheduling order required by
5 this subsection.

6 (c) Within 30 days after the close of discovery, lead counsel for the parties shall confer to
7 discuss, in good faith, settlement of the civil action including whether or not to participate
8 in an alternative dispute resolution process. If a party to a civil action, counsel for a party,
9 or an insurer of a party fails to confer in good faith, any party or counsel for a party may
10 notify the trial judge to whom the civil action is assigned of such failure to confer in good
11 faith. The trial judge shall then determine whether a party, counsel for a party, or an
12 insurer of a party has failed to act in good faith and, if so, may enter an order requiring the
13 parties to participate, in good faith, in an alternative dispute resolution process.
14 Additionally, if a party, counsel for a party, or an insurer of a party is found by the court
15 to have failed to act in good faith pursuant to this subsection, the court in which the civil
16 action is pending may make such orders in regard to the failure to participate in good faith
17 as are just and, among others, may order the party, counsel for a party, or the insurer of a
18 party to pay to the moving party the reasonable expenses incurred in obtaining an order
19 concerning the failure to act in good faith, including attorney fees; provided, however, the
20 court may order the party, counsel for a party, or the insurer of a party who failed to act in
21 good faith to pay all expenses related to participation in an alternative dispute resolution
22 process, unless the court finds that the failure was substantially justified or that other
23 circumstances make an award of expenses or attorney fees unjust. The court may apportion
24 the reasonable expenses and attorney fees incurred in relation to any order among the
25 parties, counsel for a party, or any insurer of a party in a just manner. The trial court shall
26 at all times have the discretion to order the parties to participate in a nonbinding alternative
27 dispute resolution process including mediation.

28 (d) If any party requests a special setting for trial then the trial court shall specially set the
29 civil action for a date certain for trial. The civil action shall be set for trial no later than two
30 years after the filing of the last answer in the civil action unless otherwise ordered by the
31 court.

32 (e) All parties shall be given a minimum of 45 days' notice of the special setting of any
33 civil action for trial pursuant to subsection (d) of this Code section.

34 (f) If any party files a notice of appeal as allowed by law, the time periods set forth in this
35 Code section shall be stayed and shall recommence running on the date that the record is
36 returned from any appellate court to the trial court following any such appeal."

1 in this subsection, the term 'health care provider' means a professional who is licensed
2 under Chapter 4 of Title 26 or Chapter 9, 11, 11A, 26, 30, 33, 34, or 44 of Title 34.

3 (d) Any expert who testifies about whether a defendant complied with or deviated from
4 the standard of care shall be subject to direct or cross-examination on the expert's personal
5 practices in the area of conduct at issue.

6 (e) This Code section shall not apply to Code Section 9-11-9.1 and shall not be construed
7 to alter the competency requirements of any expert testifying by affidavit for purposes of
8 Code Section 9-11-9.1.

9 (f) For each defendant whose conduct is at issue, the plaintiff shall identify at least one
10 expert who meets the requirements of subsection (a) of this Code section no later than eight
11 months after the filing of the last defendant's answer; provided, however, that the court
12 shall be authorized to extend the time for the identification of an expert witness upon good
13 cause shown.

14 (g) Nothing in this Code section shall be construed to prohibit the plaintiff from
15 identifying additional expert witnesses as to the standard of care of any defendant beyond
16 the eight-month period set forth in subsection (f) of this Code section.

17 (h) If the plaintiff fails to designate an expert as required by subsection (f) of this Code
18 section, then the civil action as to that defendant shall be dismissed without prejudice by
19 the trial court.

20 (i) Any objection to the qualifications of an expert witness designated by the plaintiff as
21 required by subsection (f) of this Code section shall be asserted pursuant to the
22 requirements of subsection (b) of this Code section. If the court rules that the expert does
23 not meet the criteria of subsection (a) of this Code section, then the court shall issue an
24 order requiring the plaintiff to identify an expert meeting the requirements of subsection
25 (a) of this Code section within a time period determined by the court which shall not be less
26 than 45 days. If the plaintiff fails to do so, the civil action as to that defendant shall be
27 dismissed without prejudice.

28 (j) An order dismissing any defendant or the entire civil action pursuant to subsection (h)
29 or (i) of this Code section shall be subject to review by direct appeal pursuant to Code
30 Section 5-6-34 upon the filing of a timely notice of appeal following the entry of the order.
31 If such an order is appealed, the statute of limitations, the statute of repose, and the
32 six-month renewal period shall be tolled until the civil action is remitted to the trial court."

33 **SECTION 4.**

34 This Act shall become effective on July 1, 2004, and shall apply to any civil action arising
35 on or after July 1, 2004.

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SECTION 5.

2 All laws and parts of laws in conflict with this Act are repealed.