

House Bill 1472

By: Representatives Keen of the 146th, Burmeister of the 96th, Cooper of the 30th, Rice of the 64th, Fleming of the 79th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, and
2 Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to substantially
3 revise provisions relating to civil practice and liability in civil actions; to change provisions
4 relating to the effect of discharge from liability of all resident defendants in a civil action
5 against codefendants residing in different counties; to change the time at which civil actions
6 may be voluntarily dismissed; to provide for settlement offers in certain civil actions and
7 provide for award of litigation costs against a party who receives a judgment significantly
8 less favorable than a settlement offer rejected by that party; to provide that the prevailing
9 party in a tort action shall generally be entitled to recover attorney's fees; to provide for
10 certain rules applicable to health care liability claims, including provisions relating to prior
11 notice of claims, required release of medical information, nonstatement of damages claimed
12 in pleadings, and limitations on theories of recovery; to provide for a Georgia Medical
13 Disclosure Panel for the purpose of developing standards of disclosure with respect to risks
14 and hazards of medical procedures and for the administrative attachment, membership, and
15 functioning of the panel; to provide for conformity with such disclosure standards and the
16 effect of conformity and nonconformity; to change provisions relative to liability of certain
17 providers of emergency health care; to provide for limitations on the amount of damages
18 recoverable in health care liability cases; to require disclosure of expert reports and provide
19 for the qualifications of expert witnesses in health care liability cases; to change provisions
20 relating to apportionment of liability and damages against multiple parties in tort cases and
21 provide that a claimant who bears the majority of responsibility for an injury may not
22 recover; to provide a procedure for the designation of responsible third parties in tort actions
23 and the effect of such designations; to provide for other matters related to the foregoing; to
24 provide for an effective date and applicability; to repeal conflicting laws; and for other
25 purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

- 1 (3) An action by or against a governmental unit;
- 2 (4) A domestic relations action;
- 3 (5) An action to collect workers' compensation benefits; or
- 4 (6) An action filed in a magistrate court.
- 5 (d) This Code section does not limit or affect the ability of any person to:
- 6 (1) Make an offer to settle or compromise a claim that does not comply with this Code
- 7 section; or
- 8 (2) Offer to settle or compromise a claim to which this Code section does not apply.
- 9 (e) An offer to settle or compromise that is not made under this Code section or an offer
- 10 to settle or compromise made in an action to which this Code section does not apply does
- 11 not entitle the offering party to recover litigation costs under this Code section.
- 12 (f) A settlement offer under this Code section must:
- 13 (1) Be in writing;
- 14 (2) State that it is made under this Code section;
- 15 (3) State the terms by which the claims may be settled;
- 16 (4) State the deadline by which the settlement offer must be accepted; and
- 17 (5) Be served on all parties to whom the settlement offer is made.
- 18 (g) If a settlement offer is made and rejected and the judgment rendered is significantly
- 19 less favorable to the rejecting party than was the settlement offer, the offering party shall
- 20 recover litigation costs from the rejecting party.
- 21 (h) A judgment will be significantly less favorable to the rejecting party if:
- 22 (1) The rejecting party is a claimant and the judgment is less than 80 percent of the
- 23 rejected offer; or
- 24 (2) The rejecting party is a defendant and the judgment is more than 120 percent of the
- 25 rejected offer.
- 26 (i) The litigation costs that may be recovered by the offering party under this Code section
- 27 are limited to those litigation costs incurred by the offering party after the date the rejecting
- 28 party rejected the settlement offer.
- 29 9-15-17.
- 30 Subject to the provisions of Code Sections 9-15-14 through 9-15-16, the prevailing party
- 31 in a tort claim shall be entitled to recover, as an additional cost, the reasonable value of
- 32 attorney's fees incurred in the defense or prosecution of the action. Upon motion of any
- 33 party, at any time, the trial court shall inquire into the financial ability of either party to pay
- 34 an award under this Code section. If, in the opinion of the trial court either party is not able
- 35 to pay such an award, a bond for costs shall be ordered to be posted by the party or parties,
- 36 in an amount and form to be determined by the court. Failure to post a required bond within

1 60 days of the court order shall result in a dismissal without prejudice against the party who
 2 fails to post any required bond."

3 **SECTION 4.**

4 Said Title 9 is further amended by adding a new Chapter 16 to read as follows:

5 "CHAPTER 16

6 9-16-1.

7 The General Assembly finds that certain aspects of Georgia's current civil justice system
 8 are adversely affecting patient access to health care services, quality patient care, and
 9 cost-efficient health care; that the health care liability system is a costly, volatile, and
 10 unpredictable mechanism for resolving claims of health care liability and compensating
 11 injured patients, and is a deterrent to the sharing of information among health care
 12 professionals which sharing would improve patient safety and quality of care. The General
 13 Assembly further finds that in the public interest, it continues to be the responsibility of the
 14 state to take measures to facilitate an environment which promotes competition among
 15 current health and liability insurers, encourages additional competitors to enter the market,
 16 to contain health insurance and professional liability insurance costs and thereby provide
 17 reasonable assurance of affordable health and professional liability insurance for the benefit
 18 of all Georgians. It is the purpose of this chapter to implement reasonable, comprehensive,
 19 and effective health care liability reforms designed to:

- 20 (1) Improve the availability of health care services in cases in which health care liability
 21 actions have been shown to be a factor in the decreased availability of services;
 22 (2) Reduce the incidence of defensive use of unnecessary tests and procedures; and
 23 reduce the rate of increase of the future cost of health care liability insurance, all of which
 24 contribute to the escalation of health care costs;
 25 (3) Ensure that persons with meritorious health care injury claims receive fair and
 26 equitable compensation, including reasonable noneconomic damages;
 27 (4) Improve the fairness and cost-effectiveness of our current judicial liability system to
 28 resolve disputes over, and provide compensation for, health care liability by reducing
 29 uncertainty in the amount of compensation provided to injured individuals; and
 30 (5) Provide an increased sharing of information in the health care system which will
 31 reduce unintended injury and improve patient care.

32 9-16-2.

33 (a) As used in this chapter, the term:

- 1 (1) 'Affiliate' means a person who, directly or indirectly through one or more
2 intermediaries, controls, is controlled by, or is under common control with a specified
3 person, including any direct or indirect parent or subsidiary.
- 4 (2) 'Claimant' means a person, including a decedent's estate, who seeks or has sought
5 recovery of damages in a health care liability claim. All persons claiming to have
6 sustained damages as the result of the bodily injury or death of a single person are
7 considered a single claimant.
- 8 (3) 'Control' means the possession, directly or indirectly, of the power to direct or cause
9 the direction of the management and policies of the person, whether through ownership
10 of equity or securities, by contract, or otherwise.
- 11 (4) 'Court' means any federal or state court.
- 12 (5) 'Department' means the Department of Community Health.
- 13 (6) 'Disclosure panel' means the Georgia Medical Disclosure Panel.
- 14 (7) 'Economic damages' includes special damages and loss of income but does not
15 include general damages or damages for pain and suffering.
- 16 (8) 'Emergency medical care' means bona fide emergency services provided after the
17 sudden onset of a medical or traumatic condition manifesting itself by acute symptoms
18 of sufficient severity, including severe pain, such that the absence of immediate medical
19 attention could reasonably be expected to result in placing the patient's health in serious
20 jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily
21 organ or part. The term does not include medical care or treatment that occurs after the
22 patient is stabilized and is capable of receiving medical treatment as a nonemergency
23 patient or care that is unrelated to the original medical emergency.
- 24 (9) 'Emergency medical services provider' means any person providing emergency
25 medical care.
- 26 (10) 'Gross negligence' has the meaning assigned by Code Section 51-1-4.
- 27 (11) 'Health care' means any act or treatment performed or furnished, or that should have
28 been performed or furnished, by any health care provider for, to, or on behalf of a patient
29 during the patient's medical care, treatment, or confinement.
- 30 (12) 'Health care institution' includes:
- 31 (A) An ambulatory surgical center;
- 32 (B) A personal care home licensed under Chapter 7 of Title 31;
- 33 (C) An institution providing emergency medical services;
- 34 (D) A hospice;
- 35 (E) A hospital;
- 36 (F) A hospital system;
- 37 (G) An intermediate care facility for the mentally retarded; and

- 1 (H) A nursing home.
- 2 (13) 'Health care liability claim' means a cause of action against a health care provider
3 or physician for treatment, lack of treatment, or other claimed departure from accepted
4 standards of medical care, health care, or safety or professional or administrative services
5 directly related to health care, which departure from standards proximately results in
6 injury to or death of a claimant.
- 7 (14) 'Health care provider' means:
- 8 (A) Any person, partnership, professional association, corporation, facility, or
9 institution duly licensed, certified, registered, or chartered by the State of Georgia to
10 provide health care, including but not limited to:
- 11 (i) A registered nurse;
12 (ii) A dentist;
13 (iii) A podiatrist;
14 (iv) A pharmacist;
15 (v) A chiropractor;
16 (vi) An optometrist; or
17 (vii) A health care institution; and
- 18 (B) Any person who is:
- 19 (i) An officer, director, shareholder, member, partner, manager, owner, or affiliate
20 of a health care provider or physician; or
21 (ii) An employee, independent contractor, or agent of a health care provider or
22 physician acting in the course and scope of the employment or contractual
23 relationship.
- 24 (15) 'Hospice' means a facility licensed as such under the 'Georgia Hospice Law,' Article
25 9 of Chapter 7 of Title 31.
- 26 (16) 'Hospital' means a facility licensed as such under Chapter 7 of Title 31.
- 27 (17) 'Hospital system' means a system of hospitals located in this state that are under the
28 common governance or control of a corporate parent.
- 29 (18) 'Medical care' means any act defined as the practice of medicine under Code Section
30 43-34-20.
- 31 (19) 'Noneconomic damages' means damages other than economic damages.
- 32 (20) 'Nursing home' means a facility licensed as such under Chapter 7 of Title 31.
- 33 (21) 'Pharmacist' means a person licensed as such under Chapter 4 of Title 26.
- 34 (22) 'Physician' means an individual licensed to practice medicine in this state, a
35 professional association organized by an individual physician or group of physicians, or
36 a partnership or limited liability partnership formed by a group of physicians.

1 (23) 'Professional or administrative services' means those duties or services that a
2 physician or health care provider is required to provide as a condition of maintaining the
3 physician's or health care provider's license, accreditation status, or certification to
4 participate in state or federal health care programs.

5 (24) 'Representative' means the spouse, parent, guardian, trustee, authorized attorney, or
6 other authorized legal agent of the patient or claimant.

7 (b) Any legal term or word of art used in this chapter, not otherwise defined in this
8 chapter, shall have such meaning as is consistent with the common law.

9 9-16-3.

10 (a) In the event of a conflict between this chapter and another law, including a rule of
11 procedure or evidence or court rule, this chapter controls to the extent of the conflict.

12 (b) The superior courts shall not adopt local rules in conflict with this chapter.

13 (c) This chapter does not waive sovereign immunity from suit or from liability.

14 9-16-4.

15 (a) Any person or his authorized agent asserting a health care liability claim shall give
16 written notice of such claim by certified mail, return receipt requested, to each physician
17 or health care provider against whom such claim is being made at least 60 days before the
18 filing of a suit in any court of this state based upon a health care liability claim. The notice
19 must be accompanied by the authorization form for release of protected health information
20 as required under Code Section 9-16-5.

21 (b) In such pleadings as are subsequently filed in any court, each party shall state that it
22 has fully complied with the provisions of this Code section and Code Section 9-16-5 and
23 shall provide such evidence thereof as the judge of the court may require to determine if
24 the provisions of this chapter have been met.

25 (c) Notice given as provided in this chapter shall toll the applicable statute of limitations
26 to and including a period of 75 days following the giving of the notice and this tolling shall
27 apply to all parties and potential parties.

28 (d) All parties shall be entitled to obtain complete and unaltered copies of the patient's
29 medical records from any other party within 45 days from the date of receipt of a written
30 request for such records; provided, however, that the receipt of a medical authorization in
31 the form required by Code Section 9-16-5 executed by the claimant shall be considered
32 compliance by the claimant with this subsection.

33 (e) For the purposes of this Code section, a request for the medical records of a deceased
34 person or a person who is incompetent shall be deemed to be valid if accompanied by an

1 authorization in the form required by Code Section 9-16-5 signed by a parent, spouse, or
2 adult child of the deceased or incompetent person.

3 9-16-5.

4 (a) Notice of a health care claim under Code Section 9-16-4 must be accompanied by a
5 medical authorization in the form specified by this Code section. Failure to provide this
6 authorization along with the notice of health care claim shall abate all further proceedings
7 against the physician or health care provider receiving the notice until 60 days following
8 receipt by the physician or health care provider of the required authorization.

9 (b) If the authorization required by this Code section is modified or revoked, the physician
10 or health care provider to whom the authorization has been given shall have the option to
11 abate all further proceedings until 60 days following receipt of a replacement authorization
12 that must comply with the form specified by this Code section.

13 (c) The medical authorization required by this Code section shall be in the following form
14 and shall be construed in accordance with the 'Standards for Privacy of Individually
15 Identifiable Health Information' (45 C.F.R. Parts 160 and 164):

16 'AUTHORIZATION FORM FOR RELEASE OF PROTECTED
17 HEALTH INFORMATION

18 A. I, _____(name of patient or authorized representative), hereby authorize
19 _____(name of physician or other health care provider to whom the notice of health
20 care claim is directed) to obtain and disclose (within the parameters set out below) the
21 protected health information described below for the following specific purposes:

- 22 1. To facilitate the investigation and evaluation of the health care claim described in the
23 accompanying Notice of Health Care Claim; or
- 24 2. Defense of any litigation arising out of the claim made the basis of the accompanying
25 Notice of Health Care Claim.

26 B. The health information to be obtained, used, or disclosed extends to and includes the
27 verbal as well as the written and is specifically described as follows:

- 28 1. The health information in the custody of the following physicians or health care
29 providers who have examined, evaluated, or treated _____ (patient) in connection
30 with the injuries alleged to have been sustained in connection with the claim asserted in
31 the accompanying Notice of Health Care Claim:

32 (Here list the name and current address of all treating physicians or health care
33 providers.)

1 This authorization shall extend to any additional physicians or health care providers that
 2 may in the future evaluate, examine, or treat _____ (patient) for injuries alleged
 3 in connection with the claim made the basis of the attached Notice of Health Care Claim;

4 2. The health information in the custody of the following physicians or health care
 5 providers who have examined, evaluated, or treated _____ (patient) during a period
 6 commencing five years prior to the incident made the basis of the accompanying Notice
 7 of Health Care Claim:

8 (Here list the name and current address of such physicians or health care providers, if
 9 applicable.)

10 C. Excluded Health Information - the following constitutes a list of physicians or health
 11 care providers possessing health care information concerning _____ (patient) to
 12 which this authorization does not apply because I contend that such health care information
 13 is not relevant to the damages being claimed or to the physical, mental, or emotional
 14 condition of _____ (patient) arising out of the claim made the basis of the
 15 accompanying Notice of Health Care Claim:

16 (Here state 'none' or list the name of each physician or health care provider to whom this
 17 authorization does not extend and the inclusive dates of examination, evaluation, or
 18 treatment to be withheld from disclosure.)

19 D. The persons or class of persons to whom the health information of _____ (patient)
 20 will be disclosed or who will make use of said information are:

21 1. Any and all physicians or health care providers providing care or treatment to
 22 _____ (patient);

23 2. Any liability insurance entity providing liability insurance coverage or defense to any
 24 physician or health care provider to whom Notice of Health Care Claim has been given
 25 with regard to the care and treatment of _____ (patient);

26 3. Any consulting or testifying experts employed by or on behalf of _____ (name
 27 of physician or health care provider to whom Notice of Health Care Claim has been
 28 given) with regard to the matter set out in the Notice of Health Care Claim accompanying
 29 this authorization.

30 4. Any attorneys (including secretarial, clerical, or paralegal staff) employed by or on
 31 behalf of _____ (name of physician or health care provider to whom Notice of Health
 32 Care Claim has been given) with regard to the matter set out in the Notice of Health Care
 33 Claim accompanying this authorization; and

34 5. Any court or jury relating to any suit filed seeking damages arising out of the medical
 35 care or treatment of _____ (patient).

1 E. This authorization shall expire upon resolution of the claim asserted or at the conclusion
 2 of any litigation instituted in connection with the subject matter of the Notice of Health
 3 Care Claim accompanying this authorization, whichever occurs sooner.

4 F. I understand that, without exception, I have the right to revoke this authorization in
 5 writing. I further understand the consequence of any such revocation as set out in Code
 6 Section 9-16-4 of the Official Code of Georgia Annotated.

7 G. I understand that the signing of this authorization is not a condition for continued
 8 treatment, payment, enrollment, or eligibility for health plan benefits.

9 H. I understand that information used or disclosed pursuant to this authorization may be
 10 subject to disclosure by the recipient and may no longer be protected by federal HIPAA
 11 privacy regulations.

12 _____

13 Signature of Patient/Representative

14 _____

15 Date

16 _____

17 Name of Patient/ Representative

18 _____

19 Description of Representative's Authority'

20 9-16-6.

21 The complaint in a suit based on a health care liability claim shall not specify an amount
 22 of money claimed as damages. This Code section does not prevent a party from mentioning
 23 the total dollar amount claimed in examining prospective jurors on voir dire or in argument
 24 to the court or jury.

25 9-16-7.

26 In a suit against a physician or health care provider involving a health care liability claim
 27 that is based on the failure of the physician or health care provider to disclose or adequately
 28 disclose the risks and hazards involved in the medical care or surgical procedure rendered
 29 by the physician or health care provider, the only theory on which recovery may be
 30 obtained is that of negligence in failing to disclose the risks or hazards that could have
 31 influenced a reasonable person in making a decision to give or withhold consent.

1 9-16-8.

2 (a) The Georgia Medical Disclosure Panel is created to determine which risks and hazards
3 related to medical care and surgical procedures must be disclosed by health care providers
4 or physicians to their patients or persons authorized to consent for their patients and to
5 establish the general form and substance of such disclosure.

6 (b) The disclosure panel established herein is attached for administrative purposes to the
7 department. The department, at the request of the disclosure panel, shall provide
8 administrative assistance to the panel; and the department at the request of the disclosure
9 panel shall coordinate administrative responsibilities in order to avoid unnecessary
10 duplication of facilities and services. The panel shall be subject, except where inconsistent,
11 to the rules and procedures of the department; however, the duties and responsibilities of
12 the panel as set forth in this chapter shall be exercised solely by the disclosure panel, and
13 the Board of Community Health shall have no authority or responsibility with respect to
14 same.

15 (c) The disclosure panel shall be composed of nine members, with three members licensed
16 to practice law in this state and six members licensed to practice medicine in this state.
17 Members of the disclosure panel shall be appointed by the Governor, with the initial
18 members appointed three for a term of two years, three for a term of four years, and three
19 for a term of six years, with each such group of three consisting of one member licensed
20 to practice law and two members licensed to practice medicine.

21 (d) At the expiration of the term of each initial member of the disclosure panel so
22 appointed, the Governor shall appoint a successor, and such successor shall serve for a term
23 of six years. Each member shall serve until his or her successor is appointed and qualified.
24 Any member who is absent without the consent of a majority of the disclosure panel
25 present at such meeting for three consecutive meetings may be removed by the Governor
26 at the request of the disclosure panel submitted in writing and signed by the chairman. The
27 Governor shall fill any vacancy by appointment for the remainder of the unexpired portion
28 of the term.

29 (e) Members of the disclosure panel are not entitled to compensation for their services, but
30 each panelist is entitled to reimbursement from funds of the department for any necessary
31 expense incurred in the performance of his or her duties on the panel, including necessary
32 travel expenses.

33 (f) Meetings of the panel shall be held at the call of the chairman or on petition of at least
34 three members of the panel.

35 (g) At the first meeting of the panel each year after its members assume their positions, the
36 panelists shall select one of the panel members to serve as chairman and one of the panel
37 members to serve as vice chairman, and each such officer shall serve for a term of one year.

1 The chairman shall preside at meetings of the panel, and in his absence, the vice chairman
2 shall preside.

3 (h) Employees of the department shall serve as the staff for the panel.

4 9-16-9.

5 (a) To the extent feasible, the panel shall identify and make a thorough examination of all
6 medical treatments and surgical procedures in which physicians and health care providers
7 may be involved in order to determine which of those treatments and procedures do and
8 do not require disclosure of the risks and hazards to the patient or person authorized to
9 consent for the patient.

10 (b) The panel shall prepare separate lists of those medical treatments and surgical
11 procedures that do and do not require disclosure and, for those treatments and procedures
12 that do require disclosure, shall establish the degree of disclosure required and the form in
13 which the disclosure will be made.

14 (c) Lists prepared under subsection (b) of this Code section together with written
15 explanations of the degree and form of disclosure shall be published in the regulations of
16 the department.

17 (d) At least annually, or at such other period as the panel may determine from time to time,
18 the panel will identify and examine any new medical treatments and surgical procedures
19 that have been developed since its last determinations, shall assign them to the proper list,
20 and shall establish the degree of disclosure required and the form in which the disclosure
21 will be made. The panel will also examine such treatments and procedures for the purpose
22 of revising lists previously published. These determinations shall be published in the
23 regulations of the department.

24 9-16-10.

25 Before a patient or a person authorized to consent for a patient gives consent to any
26 medical care or surgical procedure that appears on the disclosure panel's list as requiring
27 disclosure, the physician or health care provider shall disclose to the patient or person
28 authorized to consent for the patient the risks and hazards involved in that kind of care or
29 procedure. A physician or health care provider shall be considered to have complied with
30 the requirements of this Code section if disclosure is made as provided in Code Section
31 9-16-11.

32 9-16-11.

33 Consent to medical care that appears on the disclosure panel's list as requiring disclosure
34 shall be considered effective under this chapter if it is given in writing and signed by the

1 patient or a person authorized to give the consent and by a competent witness and if the
2 written consent specifically states the risks and hazards that are involved in the medical
3 care or surgical procedure in the form and to the degree required by the disclosure panel
4 provided in Code Section 9-16-9.

5 9-16-12.

6 (a) No suit shall be brought or maintained against a physician or health care provider who
7 has complied with Code Section 9-16-11 involving a health care liability claim that is
8 based on the negligent failure of the physician or health care provider to disclose or
9 adequately disclose the risks and hazards involved in the medical care or surgical procedure
10 rendered by the physician or health care provider.

11 (b) If medical care or surgical procedure is rendered with respect to which the disclosure
12 panel has made no determination either way regarding a duty of disclosure, the physician
13 or health care provider is under the duty otherwise imposed by law.

14 9-16-13.

15 In a suit involving a health care liability claim against a physician or health care provider
16 for injury to or death of a patient arising out of the provision of emergency medical care
17 in a hospital emergency department or obstetrical unit or in a surgical suite immediately
18 following the evaluation or treatment of a patient in a hospital emergency department, the
19 claimant bringing the suit may prove that the treatment or lack of treatment by the
20 physician or health care provider departed from accepted standards of medical care or
21 health care only if the claimant shows by a preponderance of the evidence that the
22 physician or health care provider, with willful and wanton negligence, deviated from the
23 degree of care and skill that is reasonably expected of an ordinarily prudent physician or
24 health care provider in the same or similar circumstances.

25 9-16-14.

26 (a) In an action for damages that involves a claim of negligence arising from the provision
27 of emergency medical care in a hospital emergency department or obstetrical unit or in a
28 surgical suite immediately following the evaluation or treatment of a patient in a hospital
29 emergency department, the court shall instruct the jury to consider, together with all other
30 relevant matters:

31 (1) Whether the person providing care did or did not have the patient's medical history
32 or was able or unable to obtain a full medical history, including the knowledge of
33 preexisting medical conditions, allergies, and medications;

1 (2) The presence or lack of a preexisting physician-patient relationship or health care
2 provider-patient relationship;

3 (3) The circumstances constituting the emergency; and

4 (4) The circumstances surrounding the delivery of the emergency medical care.

5 (b) The provisions of subsection (a) of this Code section do not apply to medical care or
6 treatment:

7 (1) That occurs after the patient is stabilized and is capable of receiving medical
8 treatment as a nonemergency patient;

9 (2) That is unrelated to the original medical emergency; or

10 (3) That is related to an emergency caused in whole or in part by the negligence of the
11 defendant.

12 9-16-15.

13 (a) In an action on a health care liability claim where final judgment is rendered against
14 a physician or health care provider other than a health care institution, the limit of civil
15 liability for noneconomic damages of the physician or health care provider other than a
16 health care institution, inclusive of all persons and entities for which vicarious liability
17 theories may apply, shall be limited to an amount not to exceed \$250,000.00 for each
18 claimant, regardless of the number of defendant physicians or health care providers other
19 than a health care institution against whom the claim is asserted or the number of separate
20 causes of action on which the claim is based.

21 (b) In an action on a health care liability claim where final judgment is rendered against
22 a single health care institution, the limit of civil liability for noneconomic damages,
23 inclusive of all persons and entities for which vicarious liability theories may apply, shall
24 be limited to an amount not to exceed \$250,000.00 for each claimant.

25 (c) In an action on a health care liability claim where final judgment is rendered against
26 more than one health care institution, the limit of civil liability for noneconomic damages
27 for each health care institution, inclusive of all persons and entities for which vicarious
28 liability theories may apply, shall be limited to an amount not to exceed \$250,000.00 for
29 each claimant and the limit of civil liability for noneconomic damages for all health care
30 institutions, inclusive of all persons and entities for which vicarious liability theories may
31 apply, shall be limited to an amount not to exceed \$500,000.00 for each claimant.

32 (d) In a wrongful death or survival action on a health care liability claim where final
33 judgment is rendered against a physician or health care provider, the limit of civil liability
34 for all damages, including exemplary damages, shall be limited to an amount not to exceed
35 \$500,000.00 for each claimant, regardless of the number of defendant physicians or health

1 care providers against whom the claim is asserted or the number of separate causes of
2 action on which the claim is based.

3 (e) Subsections (a) through (c) of this Code section do not apply to the amount of damages
4 awarded on a health care liability claim for the expenses of necessary medical, hospital,
5 and custodial care received before judgment or required in the future for treatment of the
6 injury.

7 (f) The liability of any insurer shall not exceed the liability of the insured.

8 (g) In any action on a health care liability claim that is tried by a jury in any court in this
9 state, the following shall be included in the court's written instructions to the jurors:

10 (1) 'Do not consider, discuss, nor speculate whether or not liability, if any, on the part of
11 any party is or is not subject to any limit under applicable law.'; and

12 (2) 'A finding of negligence may not be based solely on evidence of a bad result to the
13 claimant in question, but a bad result may be considered by you, along with other
14 evidence, in determining the issue of negligence. You are the sole judges of the weight,
15 if any, to be given to this kind of evidence.'

16 9-16-16.

17 (a) As used in this Code section, the term:

18 (1) 'Affected parties' means the claimant and the physician or health care provider who
19 are directly affected by an act or agreement required or permitted by this Code section
20 and does not include other parties to an action who are not directly affected by that
21 particular act or agreement.

22 (2) 'Claim' means a health care liability claim.

23 (3) 'Defendant' means a physician or health care provider against whom a health care
24 liability claim is asserted. The term includes a third-party defendant, cross-defendant, or
25 counterclaim defendant.

26 (4) 'Expert' means:

27 (A) With respect to a person giving opinion testimony regarding whether a physician
28 departed from accepted standards of medical care or the causal relationship between the
29 injury, harm, or damages claimed and the alleged departure from the applicable
30 standards of care, an expert qualified to testify under the requirements of Code Section
31 9-16-17; or

32 (B) With respect to a person giving opinion testimony regarding whether a health care
33 provider departed from accepted standards of health care or the causal relationship
34 between the injury, harm, or damages claimed and the alleged departure from the
35 applicable standards of care, an expert qualified to testify under the requirements of
36 Code Section 9-16-18.

1 (5) 'Expert report' means a written report by an expert qualified to testify under the
2 requirements of Code Section 9-16-17 or 9-16-18 that provides a fair summary of the
3 expert's opinions as of the date of the report regarding applicable standards of care, the
4 manner in which the care rendered by the physician or health care provider failed to meet
5 the standards, and the causal relationship between that failure and the injury, harm, or
6 damages claimed.

7 (b) In a health care liability claim, a claimant shall, not later than 120 days after the date
8 the claim was filed, serve on each party or the party's attorney one or more expert reports,
9 with a curriculum vitae of each expert listed in the report for each physician or health care
10 provider against whom a liability claim is asserted. The date for serving the report may be
11 extended by written agreement of the affected parties.

12 (c) If, as to a defendant physician or health care provider, an expert report has not been
13 served within the period specified by subsection (b) of this Code section, the court, on the
14 motion of the affected physician or health care provider, shall, subject to subsection (d) of
15 this Code section, enter an order that:

16 (1) Awards to the affected physician or health care provider reasonable attorney's fees
17 and costs of court incurred by the physician or health care provider; and

18 (2) Dismisses the claim with respect to the physician or health care provider, with
19 prejudice to the refiling of the claim.

20 (d) Notwithstanding any other provision of this Code section, a claimant may satisfy any
21 requirement of this Code section for serving an expert report by serving reports of separate
22 experts regarding different physicians or health care providers or regarding different issues
23 arising from the conduct of a physician or health care provider, such as issues of liability
24 and causation. Nothing in this Code section shall be construed to mean that a single expert
25 must address all liability and causation issues with respect to all physicians or health care
26 providers or with respect to both liability and causation issues for a physician or health care
27 provider.

28 (e) Nothing in this Code section shall be construed to require the serving of an expert
29 report regarding any issue other than an issue relating to liability or causation.

30 (f) Notwithstanding any other provision of this Code section, after a claim is filed all
31 claimants, collectively, may take not more than two depositions before the expert report
32 is served as required by subsection (b) of this Code section.

33 9-16-17.

34 (a) In a suit involving a health care liability claim against a physician for injury to or death
35 of a patient, a person may qualify as an expert witness on the issue of whether the
36 physician departed from accepted standards of medical care or the causal relationship

1 between the alleged departure from accepted standards of medical care and the injury,
2 harm, or damages claimed only if the person is a physician who:

3 (1) Is practicing medicine at the time such testimony is given or was practicing medicine
4 at the time the claim arose;

5 (2) Has knowledge of accepted standards of medical care for the diagnosis, care, or
6 treatment of the illness, injury, or condition involved in the claim; and

7 (3) Is qualified on the basis of training or experience to offer an expert opinion regarding
8 those accepted standards of medical care.

9 (b) For the purpose of this Code section, 'practicing medicine' or 'medical practice'
10 includes, but is not limited to, training residents or students at an accredited school of
11 medicine or serving as a consulting physician to other physicians who provide direct
12 patient care, upon the request of such other physicians.

13 (c) In determining whether a witness is qualified on the basis of training or experience, the
14 court shall consider whether, at the time the claim arose or at the time the testimony is
15 given, the witness:

16 (1) Is board certified or has other substantial training or experience in an area of medical
17 practice relevant to the claim; and

18 (2) Is actively practicing medicine and rendering medical care services relevant to the
19 claim.

20 (d) The court shall apply the criteria specified in subsections (a), (b), and (c) of this Code
21 section in determining whether an expert is qualified to offer expert testimony on the issue
22 of whether the physician departed from accepted standards of medical care or whether a
23 claimant has complied with the requirements of subsection (b) of Code Section 9-16-16.

24 (e) A pretrial objection to the qualifications of a witness under this Code section must be
25 made not later than the later of 21 days after the date the objecting party receives a copy
26 of the witness's opinion and curriculum vitae or 21 days after the date of the witness's
27 deposition. If circumstances arise after the date on which the objection must be made that
28 could not have been reasonably anticipated by a party before that date and that the party
29 believes in good faith provide a basis for an objection to a witness's qualifications, and if
30 an objection was not made previously, this subsection does not prevent the party from
31 making an objection as soon as practicable under the circumstances. The court shall
32 conduct a hearing to determine whether the witness is qualified as soon as practicable after
33 the filing of an objection and, if possible, before trial. If the objecting party is unable to
34 object in time for the hearing to be conducted before the trial, the hearing shall be
35 conducted outside the presence of the jury. This subsection does not prevent a party from
36 examining or cross-examining a witness at trial about the witness's qualifications.

1 (f) This Code section does not prevent a physician who is a defendant from qualifying as
2 an expert.

3 9-16-18.

4 (a) As used in this Code section, the term 'practicing health care' includes:

5 (1) Training health care providers in the same field as the defendant health care provider
6 at an accredited educational institution; or

7 (2) Serving as a consulting health care provider and being licensed, certified, or
8 registered in the same field as the defendant health care provider.

9 (b) In a suit involving a health care liability claim against a health care provider other than
10 a physician, a person may qualify as an expert witness on the issue of whether the health
11 care provider departed from accepted standards of care or the causal relationship between
12 the alleged departure from accepted standards of health care and the injury, harm, or
13 damages claimed only if the person:

14 (1) Is practicing health care in a field of practice that involves the same type of care or
15 treatment as that delivered by the defendant health care provider, if the defendant health
16 care provider is an individual, at the time the testimony is given or was practicing that
17 type of health care at the time the claim arose;

18 (2) Has knowledge of accepted standards of care for health care providers for the
19 diagnosis, care, or treatment of the illness, injury, or condition involved in the claim; and

20 (3) Is qualified on the basis of training or experience to offer an expert opinion regarding
21 those accepted standards of health care or whether a claimant has complied with the
22 requirements of subsection (b) of Code Section 9-16-16.

23 (c) In determining whether a witness is qualified on the basis of training or experience, the
24 court shall consider whether, at the time the claim arose or at the time the testimony is
25 given, the witness:

26 (1) Is certified by a licensing agency of one or more states of the United States or a
27 national professional certifying agency, or has other substantial training or experience,
28 in the area of health care relevant to the claim; and

29 (2) Is actively practicing health care and rendering health care services relevant to the
30 claim.

31 (d) The court shall apply the criteria specified in subsections (a), (b), and (c) of this Code
32 section in determining whether an expert is qualified to offer expert testimony on the issue
33 of whether the defendant health care provider departed from accepted standards of health
34 care or whether a claimant has complied with the requirements of subsection (b) of Code
35 Section 9-16-16.

1 (e) This Code section does not prevent a health care provider who is a defendant, or an
2 employee of the defendant health care provider, from qualifying as an expert.

3 (f) A pretrial objection to the qualifications of a witness under this Code section must be
4 made not later than the later of 21 days after the date the objecting party receives a copy
5 of the witness's opinion and curriculum vitae or 21 days after the date of the witness's
6 deposition. If circumstances arise after the date on which the objection must be made that
7 could not have been reasonably anticipated by a party before that date and that the party
8 believes in good faith provide a basis for an objection to a witness's qualifications, and if
9 an objection was not made previously, this subsection does not prevent the party from
10 making an objection as soon as practicable under the circumstances. The court shall
11 conduct a hearing to determine whether the witness is qualified as soon as practicable after
12 the filing of an objection and, if possible, before trial. If the objecting party is unable to
13 object in time for the hearing to be conducted before the trial, the hearing shall be
14 conducted outside the presence of the jury. This subsection does not prevent a party from
15 examining or cross-examining a witness at trial about the witness's qualifications.

16 SECTION 5.

17 Said Title 51 is further amended by striking Article 2 of Chapter 12, relating to damages
18 against joint tort-feasors, and inserting in its place a new Article 2 to read as follows:

19 "ARTICLE 2

20 51-12-30.

21 In all cases, a person who maliciously procures an injury to be done to another, whether an
22 actionable wrong or a breach of contract, is a joint wrongdoer and may be subject to an
23 action either alone or jointly with the person who actually committed the injury.

24 51-12-31.

25 ~~Except as provided in Code Section 51-12-33, where an action is brought jointly against~~
26 ~~several trespassers, the plaintiff may recover damages for the greatest injury done by any~~
27 ~~of the defendants against all of them. In its verdict, the jury may specify the particular~~
28 ~~damages to be recovered of each defendant. Judgment in such a case must be entered~~
29 ~~severally.~~

30 (a) The judge or jury in every tort action, as to each cause of action asserted, shall
31 determine the percentage of responsibility, stated in whole numbers, for the following
32 persons with respect to each person's causing or contributing to cause in any way the harm
33 for which recovery of damages is sought, whether by negligent act or omission, by any

1 defective or unreasonably dangerous product, by other conduct or activity that violates an
 2 applicable legal standard, or by any combination of these:

3 (1) Each claimant;

4 (2) Each defendant;

5 (3) Each settling person; and

6 (4) Each designated responsible third party.

7 (b) Damages apportioned by the trier of fact as provided in this Code section shall be the
 8 liability of each person against whom they are awarded, shall not be a joint liability among
 9 the persons liable, and shall not be subject to any right of contribution.

10 (c) Notwithstanding the provisions of this Code section and any other provisions of law
 11 which might be construed to the contrary, a claimant shall not be entitled to receive any
 12 damages if the claimant is 50 percent or more responsible for the injury or damages
 13 claimed.

14 (d) This Code section shall not affect venue provisions regarding joint actions.

15 51-12-32.

16 ~~(a) Except as provided in Code Section 51-12-33, where a tortious act does not involve~~
 17 ~~moral turpitude, contribution among several trespassers may be enforced just as if an action~~
 18 ~~had been brought against them jointly. Without the necessity of being charged by action~~
 19 ~~or judgment, the right of a joint trespasser to contribution from another or others shall~~
 20 ~~continue unabated and shall not be lost or prejudiced by compromise and settlement of a~~
 21 ~~claim or claims for injury to person or property or for wrongful death and release~~
 22 ~~therefrom.~~

23 ~~(b) If judgment is entered jointly against several trespassers and is paid off by one of them,~~
 24 ~~the others shall be liable to him for contribution.~~

25 ~~(c) Without the necessity of being charged by an action or judgment, the right of~~
 26 ~~indemnity, express or implied, from another or others shall continue unabated and shall not~~
 27 ~~be lost or prejudiced by compromise and settlement of a claim or claims for injury to~~
 28 ~~person or property or for wrongful death and release therefrom.~~

29 (a) A defendant in a tort action may seek to designate a person as a responsible third party
 30 by filing a motion to designate that person as a responsible third party. The motion must
 31 be filed on or before the 60th day before the trial date unless the court finds good cause to
 32 allow the motion to be filed at a later date.

33 (b) Nothing in this Code section affects the filing of cross-claims or counterclaims.

34 (c) If a person is designated under this Code section as a responsible third party, a claimant
 35 is not barred by limitations from seeking to join that person, even though such joinder

1 would otherwise be barred by limitations, if the claimant seeks to join that person not later
2 than 60 days after that person is designated as a responsible third party.

3 (d) A court shall grant a motion to designate the named person as a responsible third party
4 unless another party files an objection to the motion on or before the 15th day after the date
5 the motion is served.

6 (e) If an objection to the motion is timely filed, the court shall grant the motion to
7 designate the person as a responsible third party unless the objecting party establishes:

8 (1) The defendant did not plead sufficient facts concerning the alleged responsibility of
9 the person; and

10 (2) After having been granted leave to amend its motion, the defendant failed to plead
11 sufficient facts concerning the alleged responsibility of the person.

12 (f) By granting a motion to designate a person as a responsible third party, the person
13 named in the motion is designated as a responsible third party for purposes of this article
14 without further action by the court or any party.

15 (g) The filing or granting of a motion to designate a person as a responsible third party or
16 a finding of fault against the person:

17 (1) Does not by itself impose liability on the person; and

18 (2) May not be used in any other proceeding, on the basis of res judicata, collateral
19 estoppel, or any other legal theory, to impose liability on the person.

20 (h) Notwithstanding any other provision of this Code section, if, not later than 60 days
21 after the filing of the defendant's original answer, the defendant alleges in an answer filed
22 with the court that an unknown person committed a criminal act that was a cause of the loss
23 or injury that is the subject of the lawsuit, the court shall grant a motion for leave to
24 designate the unknown person as a responsible third party if:

25 (1) The court determines that the defendant has pleaded facts sufficient for the court to
26 determine that there is a reasonable probability that the act of the unknown person was
27 criminal; and

28 (2) The defendant has stated in the answer all identifying characteristics of the unknown
29 person known at the time of the answer.

30 (i) An unknown person designated as a responsible third party under subsection (h) of this
31 Code section shall be identified on all pleadings as 'Jane Doe' or 'John Doe' until the
32 person's identity is known.

33 (j) After adequate time for discovery, a party may move to dismiss the designation of a
34 responsible third party on the ground that there is no evidence that the designated person
35 is responsible for any portion of the claimant's alleged injury or damage. The court shall
36 grant the motion to dismiss unless a defendant produces sufficient evidence to raise a

1 genuine issue of fact regarding the designated person's responsibility for the claimant's
2 injury or damage.

3 51-12-33.

4 ~~(a) Where an action is brought against more than one person for injury to person or~~
5 ~~property and the plaintiff is himself to some degree responsible for the injury or damages~~
6 ~~claimed, the trier of fact, in its determination of the total amount of damages to be awarded,~~
7 ~~if any, may apportion its award of damages among the persons who are liable and whose~~
8 ~~degree of fault is greater than that of the injured party according to the degree of fault of~~
9 ~~each person. Damages, if apportioned by the trier of fact as provided in this Code section,~~
10 ~~shall be the liability of each person against whom they are awarded, shall not be a joint~~
11 ~~liability among the persons liable, and shall not be subject to any right of contribution.~~

12 ~~(b) Subsection (a) of this Code section shall not affect venue provisions regarding joint~~
13 ~~actions.~~

14 ~~(c) This Code section shall apply only to causes of action arising on or after July 1, 1987."~~

15 **SECTION 6.**

16 This Act shall become effective on July 1, 2004. Unless otherwise specifically provided in
17 this Act, the provisions of this Act shall apply only with respect to causes of action arising
18 on or after July 1, 2004, and any cause of action arising prior to that date shall continue to
19 be governed by prior law.

20 **SECTION 7.**

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