

House Bill 56

By: Representative Powell of the 29th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 9, 24, 31, and 51 of the Official Code of Georgia Annotated, relating
2 respectively to civil practice; evidence; health; and torts, so as to provide for substantive and
3 comprehensive revision of provisions regarding civil practice, evidentiary matters, and
4 liability in tort actions; to change provisions regarding venue in actions with joint defendants;
5 to provide for legislative findings; to change provisions relating to affidavits accompanying
6 charges of professional malpractice; to create provisions relating to affidavits required to be
7 filed in certain actions involving medical malpractice; to change provisions relating to
8 signing of pleadings and other documents, representations to the court, and sanctions; to
9 change provisions relating to failure to make discovery, sanctions, and expenses; to provide
10 that certain statements of apology by health care providers shall not be admissible as
11 evidence in civil actions; to change provisions relating to opinions of experts; to create
12 provisions regarding expert opinions in medical malpractice civil actions; to change a
13 cross-reference in provisions relating to disclosure of certain information to persons
14 undergoing certain surgical or diagnostic procedures; to provide for a standard of care for
15 emergency department physicians; to create provisions relating to apportioning damages in
16 medical malpractice actions; to provide for related matters; to provide for an effective date
17 and applicability; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 SECTION 1.

20 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
21 striking Code Section 9-10-31, relating to actions against certain codefendants residing in
22 different counties, and inserting in lieu thereof the following:

23 "9-10-31.

24 (a) The General Assembly finds that Paragraph IV of Section II of Article VI of the
25 Georgia Constitution permits a trial and entry of judgment against a resident of Georgia in
26 a county other than the county of the defendant's residence only if the Georgia resident

defendant is a joint obligor, joint tortfeasor, joint promisor, copartner, or joint trespasser
and therefore this Code section shall apply to all pending actions filed on or after July 1,
1999.

(b) Joint or joint and several tort-feasors, obligors, or promisors, or joint trespassers, or joint contractors or copartners, residing in different counties, may be subject to an action as such in the same action in any county in which one or more of the defendants reside. If, however, the court determines prior to the commencement of trial that: who are joint or joint and several tort-feasors, obligors, or promisors, or joint trespassers, or joint contractors or copartners reside.

(1) The plaintiff has brought the action in bad faith against all defendants residing in the county in which the action is brought; or

(2) As a matter of law, no defendant residing in the county in which the action is brought is a proper party;

the action shall be transferred to the county and court which the plaintiff elects in which venue is proper. The burden of proof on the issue of venue shall be on the party claiming improper venue by a preponderance of evidence.

(b)(c) If all defendants who reside in the county in which an action is pending are discharged from liability before the commencement of trial or upon the return of a verdict by the jury or the court hearing the case without a jury, a nonresident defendant may require that the case be transferred to a county and court in which venue would otherwise be proper. If venue would be proper in more than one county, the plaintiff may elect from among the counties in which venue is proper the county and the court in which the action shall proceed.

(c) If all defendants who reside in the county in which the action is pending are discharged from liability after the commencement of trial, the case may be transferred to a county and court in which venue would otherwise lie only if all parties consent to such transfer.

(d) For purposes of this Code section, trial shall be deemed to have commenced upon the jury being sworn or, in the instance of a trial without a jury, upon the first witness being sworn.

(e)(d) Nothing in this Code section shall be deemed to alter or amend the pleading requirements of Chapter 11 of this title relating to the filing of complaints or answers.

(f) This Code section shall apply to actions filed on or after July 1, 1999."

SECTION 2.

34 Said title is further amended by striking Code Section 9-11-9.1, relating to affidavit to
35 accompany charge of professional malpractice, in its entirety and inserting in lieu thereof the
36 following:

1 "9-11-9.1.

2 (a) In any action for damages alleging professional malpractice against a professional
3 licensed by the State of Georgia and listed in subsection (f) of this Code section or against
4 any licensed health care facility alleged to be liable based upon the action or inaction of a
5 health care professional licensed by the State of Georgia and listed in subsection (f) of this
6 Code section, the plaintiff shall be required to file with the complaint an affidavit of an
7 expert competent to testify, which affidavit shall set forth specifically at least one negligent
8 act or omission claimed to exist and the factual basis for each such claim.

9 (b) The contemporaneous filing requirement of subsection (a) of this Code section shall
10 not apply to any case in which the period of limitation will expire or there is a good faith
11 basis to believe it will expire on any claim stated in the complaint within ten days of the
12 date of filing and, because of such time constraints, the plaintiff has alleged that an
13 affidavit of an expert could not be prepared. In such cases, the plaintiff shall have 45 days
14 after the filing of the complaint to supplement the pleadings with the affidavit. The trial
15 court may, on motion, after hearing and for good cause extend such time as it shall
16 determine justice requires. If an affidavit is not filed within the period specified in this
17 subsection or as extended by the trial court and the defendant against whom an affidavit
18 should have been filed alleges, by motion to dismiss filed contemporaneously with its
19 initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the
20 complaint is subject to dismissal for failure to state a claim.

21 (c) This Code section shall not be construed to extend any applicable period of limitation,
22 except that if the affidavit is filed within the period specified in this Code section, the filing
23 of the affidavit after the expiration of the statute of limitations shall be considered timely
24 and shall provide no basis for a statute of limitations defense.

25 (d) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom
26 it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its
27 initial responsive pleading, that said affidavit is defective, the plaintiff's complaint is
28 subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged
29 defect by amendment pursuant to Code Section 9-11-15 within 30 days of service of the
30 motion alleging that the affidavit is defective. The trial court may, in the exercise of its
31 discretion, extend the time for filing said amendment or response to the motion, or both,
32 as it shall determine justice requires.

33 (e) If a plaintiff fails to file an affidavit as required by this Code section and the defendant
34 raises the failure to file such an affidavit by motion to dismiss filed contemporaneously
35 with its initial responsive pleading, such complaint shall not be subject to the renewal
36 provisions of Code Section 9-2-61 after the expiration of the applicable period of
37 limitation, unless a court determines that the plaintiff had the requisite affidavit within the

time required by this Code section and the failure to file the affidavit was the result of a mistake.

(f) The professions to which this Code section applies are:

- (1) Architects;
 - (2) Attorneys at law;
 - (3) Certified public accountants;
 - (4) Chiropractors;
 - (5) Clinical social workers;
 - (6) Dentists;
 - (7) Dietitians;
 - (8)(4) Land surveyors; or
 - (9) Medical doctors;
 - (10) Marriage and family therapists;
 - (11) Nurses;
 - (12) Occupational therapists;
 - (13) Optometrists;
 - (14) Osteopathic physicians;
 - (15) Pharmacists;
 - (16) Physical therapists;
 - (17) Physicians' assistants;
 - (18) Professional counselors;
 - (19)(5) Professional engineers;
 - (20) Podiatrists;
 - (21) Psychologists;
 - (22) Radiological technicians;
 - (23) Respiratory therapists; or
 - (24) Veterinarians."

SECTION 3.

Said title is further amended by adding a new Code Section 9-11-9.2 to read as follows:

"9-11-9.2.

31 (a) In any action for damages alleging medical malpractice against a professional licensed
32 by the State of Georgia and listed in subsection (j) of this Code section, a professional
33 corporation or other legal entity that provides health care services through a professional
34 licensed by the State of Georgia and listed in subsection (j) of this Code section, or against
35 any licensed health care facility alleged to be liable based upon the action or inaction of a
36 health care professional licensed by the State of Georgia and listed in subsection (j) of this

1 Code section, the plaintiff shall be required to file with the complaint an affidavit of an
2 expert competent to testify under Code Section 24-9-67.1, which affidavit shall set forth
3 specifically at least one negligent act or omission claimed to exist and the factual basis for
4 each such claim.

5 (b) The contemporaneous filing requirement of subsection (a) of this Code section shall
6 not apply to any case in which the period of limitation will expire or there is a good faith
7 basis to believe it will expire on any claim stated in the complaint within 30 days of filing
8 of the complaint. In such cases, the plaintiff shall have 90 days after the filing of the
9 complaint to supplement the pleadings with the affidavit. The trial court, may, on motion,
10 after hearing and for good cause order an extension of no greater than 45 days for filing an
11 affidavit as justice requires or the plaintiff and the defendant may agree by consent to an
12 extension of time for filing an affidavit.

13 (c)(1) Within 30 days of service of a complaint which is not accompanied by an affidavit
14 the defendant, if an individual, shall be required to produce his or her curriculum vitae,
15 resume, or other complete statement of education, licensure, and certifications. The
16 failure to produce information required by this paragraph shall toll the time to file the
17 affidavit until such time as the information is produced.

18 (2) The plaintiff shall also be permitted to serve with the complaint a limited request for
19 production on any defendant designating for production, inspection, and copying a
20 certified copy of all records and any written or recorded results or reproductions of
21 diagnostic studies or procedures performed, including radiographs, pathology slides, fetal
22 monitoring strips, or videotapes of tests or procedures in the custody or possession of the
23 defendant.

24 (d) If an affidavit is filed after the filing of a complaint, the defendant shall not be required
25 to file an answer to the complaint and affidavit until 30 days after the filing of the affidavit
26 and no discovery shall take place until after the filing of the answer except for obtaining
27 records and items requested by the plaintiff in the custody or possession of the defendant
28 under subsection (c) of this Code section.

29 (e) If an affidavit is not filed within the period specified in this Code section or as
30 extended by the trial court or as agreed upon by the plaintiff and the defendant and the
31 defendant against whom an affidavit should have been filed alleges, by a motion to dismiss
32 filed within 30 days of the time the affidavit was required to be filed that the plaintiff has
33 failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state
34 a claim.

35 (f) This Code section shall not be construed to extend any applicable period of limitation,
36 except that if the affidavit is filed within the period specified in this Code section and the
37 complaint is filed within the applicable period of limitation, the filing of the affidavit after

1 the expiration of the statute of limitations shall be considered timely and shall provide no
2 basis for a statute of limitations defense.

3 (g) If a plaintiff files an affidavit which is allegedly defective for any reason other than a
4 claim that after deposing the affiant he or she does not meet the requirements of Code
5 Section 24-9-67.1, and the defendant to whom it pertains alleges, with specificity, by a
6 motion to dismiss filed contemporaneously with its initial responsive pleading, that said
7 affidavit is defective, the plaintiff's complaint is subject to dismissal, except that the
8 plaintiff may cure the alleged defect by amendment pursuant to Code Section 9-11-15
9 within 30 days of service of the motion alleging that the affidavit is defective.

10 (h) A defendant who, after deposing the affiant, alleges that an affidavit is defective
11 because the affiant does not meet the requirements of Code Section 24-9-67.1 shall file a
12 motion to dismiss within 30 days after the date the deposition is filed with the court or
13 delivered to the party taking the deposition by an authorized officer or court reporter
14 pursuant to subparagraph (f)(1)(A) of Code Section 9-11-30 or at such other time as may
15 be ordered by the court in a scheduling order or pretrial order. In any order holding that the
16 affiant does not meet the requirements of Code Section 24-9-67.1, the court shall state with
17 specificity the reasons the affiant does not meet those requirements and what requirements
18 the court deems necessary for an expert to qualify under that Code section. The plaintiff
19 shall then have 60 days from the date of the order to submit the affidavit of another expert,
20 during which time discovery shall be stayed. If the plaintiff fails to submit an affidavit
21 within 60 days of the date of the order, the case against that defendant shall be dismissed
22 with prejudice. The trial court may, in the exercise of its discretion, extend the time for
23 filing any amendment, affidavit, or response to the motion for a period of no greater than
24 45 days as it shall determine justice requires or the plaintiff and the defendant may agree
25 by consent to an extension of time for filing an affidavit.

26 (i) If a plaintiff fails to file an affidavit as required by this Code section and the defendant
27 raises the failure to file such an affidavit by motion to dismiss filed within 30 days of the
28 time the affidavit was required to be filed, such complaint shall not be subject to the
29 renewal provisions of Code Section 9-2-61 after the expiration of the applicable period of
30 limitation, unless a court determines that the plaintiff had the requisite affidavit within the
31 time required by this Code section and the failure to file the affidavit was the result of a
32 mistake.

33 (j) The professions to which this Code section applies are:

- 34 (1) Chiropractors;
- 35 (2) Clinical social workers;
- 36 (3) Dentists;
- 37 (4) Dietitians;

- (5) Medical doctors;
 - (6) Marriage and family therapists;
 - (7) Nurses;
 - (8) Occupational therapists;
 - (9) Optometrists;
 - (10) Osteopathic physicians;
 - (11) Pharmacists;
 - (12) Physical therapists;
 - (13) Physicians' assistants;
 - (14) Professional counselors;
 - (15) Podiatrists;
 - (16) Psychologists;
 - (17) Radiological technicians;
 - (18) Respiratory therapists; or
 - (19) Veterinarians."

SECTION 4.

Said title is further amended by striking Code Section 9-11-11, relating to signing of pleadings and verification, and inserting in lieu thereof the following:

"9-11-11.

(a) **Signature.** Every pleading of a party represented by an attorney and other document shall be signed by at least one attorney of record in his the attorney's individual name; whose or, if the party is not represented by an attorney, shall be signed by the party. Each pleading or document shall state the signer's address shall be stated and telephone number, if any. A party who is not represented by an attorney shall sign his pleading and state his address. The signature of an attorney constitutes a certificate by him that he has read the pleading and that it is not interposed for delay.

(b) Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned pleading or document shall be stricken unless omission of the signature is corrected within 30 days of notifying the attorney or party in writing.

(e) The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished.

(b) Representation to court. By presenting to the court, whether by signing, filing, or submitting, a pleading or other document an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief:

- (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) The allegations and other factual contentions have evidentiary support or, if specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The denials of factual contentions are warranted on the evidence or, if specifically identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subsection (b) of this Code section has been violated, the court shall, subject to this subsection, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection (b) of this Code section or are responsible for the violation. In the event any attorney, representing the insured, to whom the provisions of this subsection may apply is an employee of the insurance company, the provisions of this subsection shall also apply to the insurance company.

(d) Inapplicability to discovery. Subsections (a) and (b) of this Code section do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Code Sections 9-11-26 through 9-11-37."

SECTION 5.

Said title is further amended by striking paragraph (2) of subsection (a) of Code Section 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:

"(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the ~~reasons for objection shall be stated in lieu of an answer~~ objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to answer an interrogatory."

SECTION 6.

Said title is further amended by striking subsection (c) of Code Section 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:

"(c) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as the party served can locate, the records from which the answer can be ascertained."

SECTION 7.

Said title is further amended by striking paragraph (2) of subsection (b) of Code Section 9-11-34, relating to the production of documents and things and entry upon land for inspection and other purposes, and inserting in lieu thereof the following:

"(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the ~~reasons for objection shall be stated~~ objecting party shall state the reasons for objection and shall respond to the extent the request is not objectionable. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested."

SECTION 8.

Said title is amended further by striking paragraph (4) of subsection (a) and subsections (b) and (d) of Code Section 9-11-37, relating to failure to make discovery, motion to compel, sanctions, and expenses, and inserting in their respective places the following:

"(4) AWARD OF EXPENSES OF MOTION.

1 (A) If the motion is granted, the court shall, after opportunity for hearing, require the
2 party or deponent whose conduct necessitated the motion or the party or the attorney
3 advising ~~such conduct or both of them~~ the party to pay to the moving party the
4 reasonable expenses incurred in obtaining the order, including attorney´s fees, unless
5 the court finds that the opposition to the motion was substantially justified or that other
6 circumstances make an award of expenses unjust. In the event any attorney,
7 representing the insured, to whom the provisions of this subparagraph may apply is an
8 employee of the insurance company, the provisions of this subparagraph shall also
9 apply to the insurance company.

10 (B) If the motion is denied, the court shall, after opportunity for hearing, require the
11 moving party or the attorney advising the ~~motion or both of them~~ party to pay to the
12 party or deponent who opposed the motion the reasonable expenses incurred in
13 opposing the motion, including attorney´s fees, unless the court finds that the making
14 of the motion was substantially justified or that other circumstances make an award of
15 expenses unjust. In the event any attorney, representing the insured, to whom the
16 provisions of this subparagraph may apply is an employee of the insurance company,
17 the provisions of this subparagraph shall also apply to the insurance company.

18 (C) If the motion is granted in part and denied in part, the court may apportion the
19 reasonable expenses incurred in relation to the motion among the parties and persons
20 in a just manner."

21 "(b) *Failure to comply with order.*

22 (1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails
23 to be sworn or to answer a question after being directed to do so by the court in the
24 county in which the deposition is being taken, the failure may be considered a contempt
25 of that court.

26 (2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director,
27 or managing agent of a party or a person designated under paragraph (6) of subsection
28 (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on
29 behalf of a party fails to obey an order to provide or permit discovery, including an order
30 made under subsection (a) of this Code section or Code Section 9-11-35, the court in
31 which the action is pending may make such orders in regard to the failure as are just and,
32 among others, the following:

33 (A) An order that the matters regarding which the order was made or any other
34 designated facts shall be taken to be established for the purposes of the action in
35 accordance with the claim of the party obtaining the order;

- 1 (B) An order refusing to allow the disobedient party to support or oppose designated
2 claims or defenses, or prohibiting him or her from introducing designated matters in
3 evidence;
- 4 (C) An order striking out pleadings or parts thereof, or staying further proceedings until
5 the order is obeyed, or dismissing the action or proceeding or any part thereof, or
6 rendering a judgment by default against the disobedient party;
- 7 (D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as
8 a contempt of court the failure to obey any orders except an order to submit to a
9 physical or mental examination; or
- 10 (E) Where a party has failed to comply with an order under subsection (a) of Code
11 Section 9-11-35 requiring him or her to produce another for examination, such orders
12 as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party
13 failing to comply shows that he or she is unable to produce such person for
14 examination.

15 In lieu of any of the foregoing orders, or in addition thereto, the court shall require the
16 party failing to obey the order or the attorney advising ~~him, or both, the party~~ to pay the
17 reasonable expenses, including attorney's fees, caused by the failure, unless the court
18 finds that the failure was substantially justified or that other circumstances make an
19 award of expenses unjust. In the event any attorney, representing the insured, to whom
20 the provisions of this paragraph may apply is an employee of the insurance company, the
21 provisions of this paragraph shall also apply to the insurance company."

22 "(d) *Failure of party to attend at own deposition or serve answers to interrogatories or*
23 *respond to request for inspection.*

24 (1) If a party or an officer, director, or managing agent of a party or a person designated
25 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code
26 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to
27 take his or her deposition, after being served with a proper notice, or fails to serve
28 answers or objections to interrogatories submitted under Code Section 9-11-33, after
29 proper service of the interrogatories, or fails to serve a written response to a request for
30 inspection submitted under Code Section 9-11-34, after proper service of the request, the
31 court in which the action is pending on motion may make such orders in regard to the
32 failure as are just; and, among others, it may take any action authorized under
33 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or
34 in addition thereto, the court shall require the party failing to act or the attorney advising
35 ~~him, or both, the party~~ to pay the reasonable expenses, including attorney's fees, caused
36 by the failure, unless the court finds that the failure was substantially justified or that
37 other circumstances make an award of expenses unjust. In the event any attorney,

representing the insured, to whom the provisions of this paragraph may apply is an employee of the insurance company, the provisions of this paragraph shall also apply to the insurance company.

(2) The failure to act described in the provisions of this chapter which relate to depositions and discovery may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection (c) of Code Section 9-11-26."

SECTION 9.

9 Title 24 of the Official Code of Georgia Annotated, relating to evidence, is amended by
10 inserting after 24-3-37 a new Code Section 24-3-37.1 to read as follows:

"24-3-37.1.

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

(1) 'Health care provider' means any person licensed under Chapter 4 of Title 26 or Chapter 9, 11, 11A, 26, 30, 33, 34, 35, 39, or 44 of Title 43 or any hospital, nursing home, home health agency, institution, or medical facility licensed or defined under Chapter 7 of Title 31. The term shall also include any corporation, professional corporation, partnership, limited liability company, limited liability partnership, authority, or other entity comprised of such health care providers.

(2) 'Unanticipated outcome' means the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an expected or intended result of such medical treatment or procedure.

(b) In any claim or civil action brought by or on behalf of an alleged victim of an unanticipated outcome of medical care, any oral or written statements, affirmations, gestures, activities, or conduct expressing benevolence, regret, apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee or agent of a health care provider to the patient, a relative of the patient, or a representative of the patient and which relate to the unanticipated outcome shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.

(c) Notwithstanding the provisions of subsection (b) of this Code section, any oral statements, affirmation, gestures, activities, or conduct, including an excited utterance as provided in Code Section 24-3-3, which also include a statement or statements concerning negligence or culpable conduct pertaining to an unanticipated outcome, is admissible to prove liability of the person who made the oral statement, affirmation, gesture, activity, or conduct."

SECTION 10.

2 Said title is further amended by striking Code Section 24-9-67, relating to opinions of
3 experts, and inserting in lieu thereof the following:

4 "24-9-67.

5 Except as provided in Code Section 24-9-67.1, the The opinions of experts on any question
6 of science, skill, trade, or like questions shall always be admissible; and such opinions may
7 be given on the facts as proved by other witnesses."

SECTION 11.

9 Said title is further amended by adding a new Code Section 24-9-67.1 to read as follows:

10 "24-9-67.1.

11 (a) In a civil action for medical malpractice as defined in Code Section 9-3-70, the
12 opinions of an expert as to the standard of care of the defendant whose conduct is at issue
13 shall be admissible only if, at the time the act or omission is alleged to have occurred, the
14 expert witness:

15 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
16 and was practicing or teaching or some combination thereof his or her profession during
17 at least three of the last five years immediately preceding such time; and

18 (2) Except as provided in paragraph (4) of this subsection:

19 (A) Is a member of the same profession;

20 (B) Is a medical doctor testifying as to the standard of care of a defendant who is a
21 doctor of osteopathy; or

22 (C) Is a doctor of osteopathy testifying as to the standard of care of a defendant who
23 is a medical doctor; and

24 (3) Meets at least one of the following criteria:

25 (A) The expert shares at least one specialty certification with the defendant;

26 (B) Within 15 years of the time of the act or omission, the expert has had experience
27 in the diagnosis or treatment of the condition at issue, the performance of the procedure
28 or procedures at issue, or the provision of the services at issue; or

29 (C) Within 15 years of the time of the act or omission, the expert has had experience
30 in an area of practice or specialty that diagnoses, treats, or cares for patients under
31 similar conditions or circumstances as are at issue.

32 (4) Notwithstanding any other provision of this Code section, an expert who is a
33 physician and, as a result of having supervised, taught, or instructed nurses, nurse
34 practitioners, certified registered nurse anesthetists, nurse midwives, physician assistants,
35 physical therapists, occupational therapists, or medical support staff, has knowledge of
36 the standard of care of that health care provider under the circumstances at issue shall be

1 competent to testify as to the standard of that health care provider. However, a nurse,
2 nurse practitioner, certified registered nurse anesthetist, nurse midwife, physician
3 assistant, physical therapist, occupational therapist, or medical support staff shall not be
4 competent to testify as to the standard of care of a physician.

5 (b) Any objection to the qualification of the expert witness to provide such testimony shall:

6 (1) Be made no later than 30 days after the date the deposition is filed with the court or
7 delivered to the party taking the deposition by an authorized officer or court reporter
8 pursuant to subparagraph (f)(1)(A) of Code Section 9-11-30 or at such other time as may
9 be ordered by the court in a scheduling order or pretrial order or as otherwise ordered by
10 the court;

11 (2) Be made by written motion; and

12 (3) Set forth with specificity the factual and legal basis of the objection.

13 (c) Nothing contained in this Code section shall prevent a defendant physician from
14 testifying as an expert on his or her behalf."

15 SECTION 12.

16 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking
17 subsection (d) of Code Section 31-9-6.1, relating to disclosure of certain information to
18 persons undergoing certain surgical or diagnostic procedures, and inserting in lieu thereof
19 the following:

20 "(d) A failure to comply with the requirements of this Code section shall not constitute a
21 separate cause of action but may give rise to an action for medical malpractice as defined
22 in Code Section 9-3-70 and as governed by other provisions of this Code relating to such
23 actions; and any such action shall be brought against the responsible physician or any
24 hospital, ambulatory surgical treatment center, professional corporation, or partnership of
25 which the responsible physician is an employee or partner and which is responsible for
26 such physician's acts, or both, upon a showing:

27 (1) That the patient suffered an injury which was proximately caused by the surgical or
28 diagnostic procedure;

29 (2) That information concerning the injury suffered was not disclosed as required by this
30 Code section; and

31 (3) That a reasonably prudent patient would have refused the surgical or diagnostic
32 procedure or would have chosen a practical alternative to such proposed surgical or
33 diagnostic procedure if such information had been disclosed;

34 provided, however, that, as to an allegation of negligence for failure to comply with the
35 requirements of this Code section, the expert's affidavit required by Code Section ~~9-11-9.1~~
36 9-11-9.2 shall set forth that the patient suffered an injury which was proximately caused

1 by the surgical or diagnostic procedure and that such injury was a material risk required to
2 be disclosed under this Code section."

3 **SECTION 13.**

4 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
5 a new Code Section 51-2-5.1 to read as follows:

6 "51-2-5.1.

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

8 (1) 'Emergency room physician' means a physician who provides emergency health care
9 services in a hospital emergency room and who does not have an ongoing
10 physician-patient relationship with the emergency room patient.

11 (2) 'Hospital' means those institutions and facilities included in paragraphs (1) and (2)
12 of Code Section 31-7-1.

13 (3) 'Independent contractor' means an emergency room physician who is not an
14 employee or agent of the hospital in connection with the emergency health care services
15 rendered to the emergency room patient.

16 (b) A hospital shall not be liable for civil damages as a result of an act or omission by an
17 emergency room physician who is an independent contractor of the hospital if the hospital
18 provides notice that such emergency room physician is an independent contractor and if
19 the emergency room physician is insured as described under subsection (f) of this Code
20 section. The hospital shall be responsible for exercising reasonable care in granting
21 privileges to practice in the hospital, for reviewing those privileges on a regular basis, and
22 for taking appropriate steps to revoke or restrict privileges in appropriate circumstances.
23 The hospital shall not be otherwise liable for the acts or omissions of an emergency room
24 physician who is an independent contractor.

25 (c) The notice required in subsection (b) of this Code section shall be:

26 (1) Posted conspicuously in all entrances and admitting areas of the hospital, consisting
27 of a sign at least two feet high and two feet wide, with print at least two inches high;
28 (2) Published at least annually in a newspaper of general circulation in the area; and
29 (3) In substantially the following form: (Name of hospital) shall not be responsible for
30 the actions of emergency room physicians who are independent contractors of (name of
31 hospital). The emergency room physicians are independent contractors and are not
32 employees of the hospital.

33 (d) The notice required in subsection (b) of this Code section shall be sufficient if it meets
34 the requirements of subsection (c) of this Code section, even if the patient does not receive
35 the notice.

(e) This Code section does not preclude liability for civil damages that are the proximate result of the hospital's independent negligence or intentional misconduct.

(f) A hospital shall not be protected from liability under this Code section unless the emergency room physician who is an independent contractor has liability insurance coverage of \$1 million per individual claim, and \$3 million aggregate, available to claimants, and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

(g) The degree of care and skill required of an emergency room physician shall be that degree of care and skill ordinarily employed by the profession generally under similar conditions and like surrounding circumstances including, but not limited to, any emergent circumstances.

(h) In deciding whether an emergency room physician met the standard of care and skill of his or her profession when treating a patient in an emergency room setting, a jury shall consider all relevant evidence describing what the emergency room physician faced when treating the patient. Such evidence may include, but is not limited to, the following:

- (1) Whether any emergency circumstances were involved with the patient's condition;
 - (2) Whether the emergency room physician had access to the patient's prior medical history;
 - (3) Whether there was a physician-patient relationship between the emergency room physician and the patient predating the emergency care at issue; and
 - (4) All other circumstances affecting the emergency room physician's ability to provide care in the emergency room at that time and place."

SECTION 14.

Said title is further amended by adding a new Code Section 51-2-5.2 to read as follows:

"51-2-5.2.

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

(1) 'Emergency department' means a department or facility of a hospital located on the main hospital campus that is held out to the public, by name, posted signs, advertising, or other means, as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

(2) 'Emergency department physician' means a physician whose area of practice at the hospital in question is limited exclusively to providing emergency health care services in the emergency department of the hospital and who is credentialed by the hospital as an emergency department physician.

(3) 'Emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result imminently in:

- (A) Placing the life of the individual in serious jeopardy;
 - (B) Serious permanent impairment to bodily functions; or
 - (C) Serious permanent dysfunction of any bodily organ.

This term shall not include any condition of a pregnant woman in active labor.

(4) 'Hospital' means a facility which has a valid permit or provisional permit issued by the Department of Human Resources under Chapter 7 of Title 31 and which operates a dedicated emergency department that provides care or assistance, including but not limited to emergency care to individuals seeking medical treatment.

(b) The degree of care and skill required of an emergency department physician in providing medical care and treatment of an emergency medical condition shall be that degree of care and skill ordinarily employed by the profession generally under similar conditions and like surrounding circumstances.

(c) In deciding whether an emergency department physician complied with the standard of care and skill of his or her profession when treating a patient for an emergency medical condition in a hospital emergency department, a jury shall consider all relevant evidence describing what the emergency department physician faced when treating the patient. Such evidence may include, but not be limited to, the following:

- (1) Whether the emergency department physician had access to the patient's prior medical history;
 - (2) Whether there was a physician-patient relationship between the emergency department physician and the patient predating the emergency care at issue; and
 - (3) All other circumstances affecting the emergency department physician's ability to provide care at that time and place.

(d) A cause of action alleging ordinary negligence by an emergency department physician in the care and treatment of an emergency medical condition within the first two hours after presentation of the patient to the hospital emergency department must be proven by clear and convincing evidence."

SECTION 15.

Said title is further amended by adding a new Code Section 51-12-34 to read as follows:

"51-12-34.

(a) Where a medical malpractice action is brought against more than one person for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to

1 be awarded, if any, may apportion its award of damages among the persons who are liable
2 and whose degree of fault is greater than that of the injured party according to the degree
3 of fault of each person. Damages, if apportioned by the trier of fact as provided in this
4 subsection, shall be the liability of each person against whom such damages are awarded,
5 shall not be a joint liability among the persons liable, and shall not be subject to any right
6 of contribution.

(b) In all medical malpractice cases where an action is brought against more than one person for injury to person or property and a trier of fact returns an award of damages against more than one person and that award of damages is a joint liability among the persons liable, any person against whom the award was returned shall have the right to request that the trier of fact undertake a postverdict apportionment of damages among all persons found liable. Such a postverdict apportionment of damages shall determine the responsibility of each person held liable for the total award for purposes of contribution under subsection (c) of this Code section. When this procedure is invoked, the trial court shall have discretion to permit the presentation of additional argument or evidence to the trier of fact on the question of apportionment of damages.

17 (c) If a judgment in a medical malpractice case is entered jointly against several persons
18 and is paid off by one of them, the others shall be liable to such person for contribution for
19 their respective pro rata shares of the judgment unless the trier of fact makes a postverdict
20 apportionment of damages under subsection (b) of this Code section in which case the
21 liability of the persons to one another under this Code section shall be determined by the
22 postverdict apportionment of damages.

23 (d) Notwithstanding the provisions of this Code section and any other provisions of law
24 which might be construed to the contrary, the plaintiff shall not be entitled to receive any
25 damages if the plaintiff is 50 percent or more responsible for the injury or damages
26 claimed.

27 (e) This Code section shall not affect venue provisions regarding joint actions."

SECTION 16.

29 This Act shall become effective on July 1, 2005, and shall apply to any cause of action
30 arising on or after July 1, 2005.

SECTION 17.

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