

House Bill 221 (AS PASSED HOUSE AND SENATE)

By: Representatives Heard of the 104th and Willard of the 49th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated,
2 relating to pleadings and motions, so as to change certain provisions regarding when an
3 affidavit is required to accompany an action for damages alleging professional malpractice;
4 to provide procedures for the filing of an affidavit under certain circumstances; to provide
5 for the timing of a defendant's answer under certain circumstances; to correct a
6 cross-reference; to provide for an effective date and applicability; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 3 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to
11 pleadings and motions, is amended by revising Code Section 9-11-9.1, relating to the
12 affidavit required to accompany charges of professional malpractice, as follows:

13 "9-11-9.1.

14 (a) In any action for damages alleging professional malpractice against:

15 (1) A a professional licensed by the State of Georgia and listed in subsection ~~(d)~~(g) of
16 this Code section;

17 (2) A domestic or foreign partnership, corporation, professional corporation, business
18 trust, general partnership, limited partnership, limited liability company, limited liability
19 partnership, association, or any other legal entity alleged to be liable based upon the
20 action or inaction of a professional licensed by the State of Georgia and listed in
21 subsection (g) of this Code section; or ~~against any~~

22 (3) Any licensed health care facility alleged to be liable based upon the action or inaction
23 of a health care professional licensed by the State of Georgia and listed in subsection
24 ~~(d)~~(g) of this Code section,

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

4 (b) The contemporaneous affidavit filing requirement pursuant to subsection (a) of this
5 Code section shall not apply to any case in which the period of limitation will expire or
6 there is a good faith basis to believe it will expire on any claim stated in the complaint
7 within ten days of the date of filing the complaint and, because of time constraints, the
8 plaintiff has alleged that an affidavit of an expert could not be prepared. In such cases, if
9 the attorney for the plaintiff files with the complaint an affidavit in which the attorney
10 swears or affirms that his or her law firm was not retained by the plaintiff more than 90
11 days prior to the expiration of the period of limitation on the plaintiff's claim or claims, the
12 plaintiff shall have 45 days after the filing of the complaint to supplement the pleadings
13 with the affidavit. The trial court shall not extend such time for any reason without consent
14 of all parties. If either affidavit is not filed within the periods specified in this Code
15 section, or it is determined that the law firm of the attorney who filed the affidavit
16 permitted in lieu of the contemporaneous filing of an expert affidavit or any attorney who
17 appears on the pleadings was retained by the plaintiff more than 90 days prior to the
18 expiration of the period of limitation, the complaint shall be dismissed for failure to state
19 a claim.

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

24 (d) If a complaint alleging professional malpractice is filed without the contemporaneous
25 filing of an affidavit as permitted by subsection (b) of this Code section, the defendant shall
26 not be required to file an answer to the complaint until 30 days after the filing of the
27 affidavit of an expert, and no discovery shall take place until after the filing of the answer.

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

36 ~~(c)~~(f) If a plaintiff fails to file an affidavit as required by this Code section and the
37 defendant raises the failure to file such an affidavit by motion to dismiss filed

1 contemporaneously with its initial responsive pleading, such complaint shall not be subject
 2 to the renewal provisions of Code Section 9-2-61 after the expiration of the applicable
 3 period of limitation, unless a court determines that the plaintiff had the requisite affidavit
 4 within the time required by this Code section and the failure to file the affidavit was the
 5 result of a mistake.

6 ~~(d)~~(g) The professions to which this Code section ~~applies~~ shall apply are:

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

33 SECTION 2.

34 Said article is further amended by revising subsection (a) of Code Section 9-11-9.2, relating
 35 to medical authorization forms and review of protected health information, as follows:

