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Major Provisions of SB 33

Cap on noneconomic damages

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- Applies to med mal cases.
- \$500,000, indexed to inflation
- No defendant pays more in noneconomic damages than the cap.
- No plaintiff receives more in noneconomic damages than the cap.
- Cap *does not apply* if:
 - ▣ plaintiff suffers disfigurement, loss of use of part of the body, permanent injury or death; **and**
 - ▣ the defendant's conduct was in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice
- Cap has *no effect* on recovery for economic harm such as medical expenses and lost wages.



Emergency Care

3

- Currently no distinction made for claims arising from emergency medical conditions, unless Good Samaritan
- SB33 creates special rules for claims arising from emergency medical conditions
- Part A of the EMTALA definition
 - ▣ serious jeopardy = emergency
 - ▣ “women with contractions” and not time to transfer \neq emergency
- No liability, unless ordinary negligence is proved by “clear and convincing” evidence
- Protection is not limited to the ER



Appeal Bonds

4

- Appeal of a civil judgment generally requires an “undertaking” or bond to protect the other party.
- Previously set as the full amount of the judgment.
- SB33 gives judges flexibility, and requires consideration of all relevant factors, including:
 - ▣ The amount of the judgment
 - ▣ The available insurance
 - ▣ The net worth of the defendant physician



Bifurcation of Trials

5

- Applies to all civil actions where plaintiff is seeking damages of more than \$150,000
- Any party can obtain separate trial phases
 - ▣ Phase I – Was the doctor negligent?
 - ▣ Phase II – How severe was the injury? (same jury)
- Addresses classic jury error equating bad outcome with professional negligence
- Improves efficiency in cases where jury finds no negligence on the part of medical provider
- Exception if a judge finds good cause for a single trial

Strengthen 9(j) Expert Review

6

- Before any medical malpractice case is filed, current law requires plaintiffs to obtain qualified expert opinion of deviation from standard of care (i.e., Rule 9(j))
- Case law allows plaintiffs lawyer to present hypothetical facts to the 9(j) expert without reviewing available records
- SB33 repeals that case law, and requires the Rule 9(j) expert to review all the reasonably available medical records



Time Limits on Malpractice Claims

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The limitations of G.S. § 1-15(c) apply, except for:

- Minors under 10 years - Sue within regular time limits or before age 10, whichever is later.
- Abused or neglected minors - Sue within 3 years of adjudication or before age 10, whichever is later.
- Minors in the custody of the State, a county or an approved child placing agency - Sue within 1 year after the minor is no longer in custody, or before age 10, whichever is later.

