

PERMITTING EITHER PARTY TO REQUIRE BIFURCATION OF MEDICAL MALPRACTICE ACTIONS

Bifurcation means dividing a case into two distinct trial parts: part one, in which the jury determines liability; and part two, in which the jury determines damages. The second trial part occurs only if the jury finds liability in the first trial part. The same judge presides over, and the same jury decides, both trial parts.

Under current North Carolina law [G.S. 1A-1, Rule 42 (2010)] trial courts have the discretion to bifurcate a trial “in furtherance of convenience or to avoid prejudice.” The public policy considerations supporting bifurcation of medical malpractice trials are well established; however, despite the many advantages of bifurcation, trial courts rarely exercise the discretion to bifurcate in medical malpractice actions. Thus, evidence related to the liability and damages issues are presented at the same time in most medical malpractice trials.

North Carolina law should be changed to permit either party in a medical malpractice action to request bifurcation. Trial courts should be required to order bifurcation if it is requested. The proposed change would enable either party to “opt-in” and obtain the known benefits of bifurcation, which include the following: a) simplification of the liability issue; b) exclusion of facts irrelevant to the liability issue; and c) shorter trials.

a) The liability issue is simplified in bifurcated medical malpractice trials. For example, treating physicians who treated the plaintiff after an injury - but who have no opinions regarding the care that allegedly caused the injury - are not necessary witnesses in the first trial part. Likewise, jurors need not pore over the stacks of medical records and bills documenting the treatment that a plaintiff received after an injury when the only issue being decided in the first trial part is whether the defendant physician caused the injury.

b) Facts irrelevant to the liability issue are not presented during the first part of a bifurcated trial. Evidence relating solely to monetary damages is not relevant to the question of whether a defendant physician is liable for medical malpractice. Jurors are able to assess the liability issue more objectively if they are not distracted by the sympathy created by damages evidence. Moreover, jurors in bifurcated trials are better able to follow current jury instructions, which provide that “sympathy is to play no role in [the jury’s] verdict.”

c) Finally, bifurcated trials save taxpayer resources, judicial time and the personnel costs associated with a lengthy trial. A bifurcated trial on the liability issue is shorter than a non-bifurcated trial on the combined issues of liability and damages. And, if the jury finds no liability, there is no second trial part. Even if a jury finds liability, a bifurcated trial on the liability issue followed by a bifurcated trial on the damages issue is not longer than a non-bifurcated trial on the combined issues of liability and damages. In other words, bifurcation is a win-win option.