

BENEFITS OF S.B. 33: MEDICAL LIABILITY REFORMS

I. A reasonable limit on noneconomic damages.

Medical patients who are injured through negligence should be fully and fairly compensated for their injuries, including their economic losses. But damage awards for noneconomic losses are inherently subjective. Because such awards are arbitrary, they are unpredictable – which pushes up the cost of liability insurance. And higher insurance costs drive up medical expenses for everyone. A reasonable limit of \$250,000 in noneconomic damages per patient would help ensure rational trial outcomes, reduce the cost of insurance, address defensive medicine, and promote patient access to health care, especially in rural areas and urban centers. Across America, 23 states have enacted similar limits on noneconomic damage awards. All told, 35 states (more than two-thirds) limit medical liability awards in some way.

II. A sensible division of medical liability trials into two phases.

State law should require judges to divide, or “bifurcate,” medical liability trials into two phases upon the request of either party. Trials would be conducted more efficiently and juries could more properly weigh the separate issues of liability and damages under a sensible system that divides liability trials into two phases. Divided trials go faster, which saves public resources. There’s no harm to the plaintiff patient, either. If the jury finds that the medical provider was negligent, it would award appropriate damages.

III. Periodic payments of actual future economic damages.

Juries in medical liability cases often award future economic damages for the patient’s predicted future medical costs and income losses, paid upfront. But predictions of future damages often turn out to be wrong, in which case the medical provider has been forced unfairly to pay for damages that never occur. North Carolina should join the 36 other states that allow periodic payment of future economic damages until death. This approach is fairer, more objective, and more methodical. Payment is guaranteed through a trust or an annuity, so there is no financial risk to the patient.

IV. Equitable alternatives for appeal bonds.

Under current state law, if a medical care provider wishes to exercise his or her legal right to appeal a verdict, the provider must first post a bond for the entire amount of the award, even though it might get reversed on appeal. This is unfair and unnecessary, and it can prevent providers from exercising their right of appeal. State law should allow defendant medical providers to post appeal bonds in the amount of the judgment or the maximum payment under their liability insurance, whichever is less. Either way, the plaintiff patient still would be assured of receiving payment of the required bond.

V. A more rational standard for emergency care.

By law, emergency room doctors must treat every patient who shows up, facing life-and-death crises involving critically ill patients whose medical histories they don’t know. They often must make split-second decisions with limited information and few good options. Reflecting these realities, state law should require plaintiffs to prove a greater deviation from the standard of care.