

THE MAGNET™

NORTH CAROLINA'S SOURCE FOR IMPORTANT PHYSICIAN INFORMATION



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Your North Carolina Claims Support

In this and future issues of the MAGnet, we will be introducing the individuals who work on your behalf to serve and defend you.

Cheryl Kayes

NC Litigation Analyst:

To Cheryl Kayes, working with physicians is a gift. Sometimes, it's a gift that keeps on giving.

"Long after a case is resolved, I will occasionally get a postcard or phone call, out of the blue, from a doctor I've helped who just wants to say hello," says the Litigation Analyst for MAG Mutual in North Carolina. "I appreciate that these 'gifts' come back to me. It makes my job so worth it."



"I always want to feel like I've done the best I could with each case."

A 14-year resident of Raleigh, Cheryl came to MAG Mutual in 2003 after working for another insurance company in both risk management and claims. She's also experienced the healthcare side of the business, having worked as a nurse and nurse manager and as director of risk management for a healthcare system. So she's well prepared to help physicians who face a claim.

"The first thing I tell a doctor is that the past is the past," she says. "You can't turn back time. And from this point forward, I will help you through the process."

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North Carolina Legislature Overrides Veto to Pass Tort Reform

The North Carolina House and Senate recently voted to override a veto by Gov. Beverly Perdue on SB 33, a medical liability reform bill. This bill contains several significant provisions, which include:

- **Caps noneconomic damages.** The bill caps noneconomic damages in medical liability cases to \$500,000 for all claims brought by all parties arising out of the same professional services. The cap does not apply to cases in which the plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death, and the defendant's acts were grossly negligent, fraudulent, intentional or malicious.
- **Higher burden of proof for emergency medical conditions.** Plaintiffs must now prove by "clear and convincing evidence" any alleged negligence that arises out of the treatment of an "emergency medical condition."
- **Separate trials for liability phase and damage phase.** In any case in which the plaintiff seeks damages greater than \$150,000, at the request of either party, the court must order a separate trial for liability and damages. Evidence of compensatory damages will not be admissible until after a jury has determined the defendant is liable. This will remove much of the sympathy that jurors have when there is a bad outcome, but no negligence. It will also improve judicial economy as the damages trial is not necessary if the jury finds that the defendant did not breach the standard of care.
- **Shorter statute of limitations for minors.** The bill also shortens the statute of limitations for medical negligence claims made on behalf of minors. Now, if a patient is under 10 at the time of the alleged negligence, the patient will have three years or until his or her 10th birthday to file suit. If the patient is over 10, the patient will have three years to file suit. (This is not applicable if the minor is abused,

(Continued on page 2)

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Clinical Guideline Updates

According to the ECRI Institute, three medical organizations updated clinical guidelines in June.

- The American College of Obstetricians and Gynecologists made recommendations on using prophylactic antibiotics during labor and delivery based on a review of evidence as well as concerns about emerging antibiotic resistance.
- The American Society of Gastrointestinal Endoscopy and the Society for Healthcare Epidemiology of America updated their guideline on reprocessing flexible gastrointestinal endoscopes.
- The American Urological Association Education and Research Inc. issued an updated guideline on managing benign prostatic hyperplasia.

Sign up to receive news from ECRI by visiting <http://www.magmutual.com/insurance/mm-ecri.html>. [↗](#)

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neglected or in state custody.) This provision is much shorter than the previous limitations, which was anytime before the minor turned 19.

- **Lower appeal bonds.** Now a judge may authorize an appeal bond that is less than the amount of the actual verdict, as long as the lesser amount is reasonable. This allows a party to appeal a judgment without having to post a bond for the entire amount of the judgment.
- **Tougher expert requirements.** Experts who sign affidavits stating that there was a deviation from the standard of care are now required to review all reasonably available records pertaining to the alleged malpractice. Previously, the expert could base his or her opinion on a description of the care provided by the plaintiff's counsel.
- **Standard of care strengthened.** The new version of the standard of care requires consideration of the circumstances in which the care was rendered. [↗](#)

North Carolina Legislature Also Passes HB 542

In addition to SB 33, North Carolina also passed HB 542, "Tort Reform for Citizens and Businesses." The law allows a plaintiff to introduce evidence of past medical expenses only for the amount paid and evidence of the amounts necessary to satisfy bills that have been incurred but not yet paid. This provision will likely reduce the amount of damages claimed as medical bills, which are often written off or dramatically reduced by the health care provider. The source of payment (such as health insurance) is still inadmissible.

HB 542 also tightens the rules with respect to expert witness testimony. An expert witness may only give testimony if all of the following requirements are satisfied:

1. The testimony is based on sufficient facts or data.
2. The testimony is the product of reliable principles and methods.
3. The witness has applied the principles and methods reliably to the facts of the case.

These requirements will help to exclude questionable expert testimony. [↗](#)

MAG Mutual Going Strong: A.M. Best Rating Upgrade to A, \$16.5 Million 2011 Dividend!



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