FOCUS

Rule 9(j)

by John Jensen and Jonathan Sauls

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In 1995, amid the hue and cry from powerful and well-financed lobbyists lamenting a purported medical malpractice crisis, the General Assembly adopted Rule 9(j) of the North Carolina Rules of Civil Procedure. Enacted under the rubric of preventing frivolous medical malpractice actions, Rule 9(j) mandates that a qualified health care provider review the medical care provided to the patient and be willing to testify that there was a breach in the applicable standard of care as a condition precedent to filing a medical negligence action.

Not surprisingly, the procedural hurdles erected by Rule 9(j) (and the concurrent amendment of Rule 702 of the North Carolina Rules of Evidence) were hailed by insurers, physicians and defense lawyers as a remedy for the perceived epidemic of frivolous medical malpractice lawsuits. As experience has shown, however, Rule 9(j) routinely operates to bar meritorious claims of injured patients. In addition, it has sparked an explosion in the number of motions, hearings and appeals, substantially increasing the cost of medical negligence cases for both sides as litigants grapple over the scope of Rule 9(j) and its application in a given case. Rule 9(j) is unfair and unjust, and it constitutes a significant barrier to justice for those citizens of North Carolina who are injured at the hands of negligent health care providers.

Rule 9(j) Requirements

Rule 9(j) provides, in pertinent part, that:

Any complaint alleging medical malpractice by a health care provider as defined in G.S. 90-21.11 in failing to comply with the applicable standard of care under G.S. 21.12 **shall be dismissed** unless:

(1) The pleading specifically asserts that the medical care has been reviewed by a person who is reasonably expected to qualify as an expert witness under Rule 702 of the Rules of Evidence and who is willing to testify that the medical care did not comply with the applicable standard of care.[1]

Although set forth as a pleading requirement, Rule 9(j) imposes an affirmative burden on a distinct class of plaintiffs to identify a qualified expert witness before an action can even be commenced. Failure to satisfy this burden of pre-suit review will result in dismissal of the action, regardless of the underlying merits of the suit. Sometimes, the injured party will simply refrain from filing suit altogether, thereby avoiding almost certain dismissal for failing to satisfy the requirements of Rule 9(j).[2]

Review of "Medical Care" Unjustly Limited

Rule 9(j) requires that a qualified expert witness review the "medical care." Unfortunately, the surrogate for a comprehensive pre-suit review of the "medical care" is usually limited to an examination of the medical records that were generated by the very health care provider whose treatment is at issue. As any lawyer engaged in medical malpractice cases can attest, medical records frequently are incomplete, illegible or inaccurate. They may or may not include references to the specific care that is the subject of the claim. Health care providers—particularly those who may be subject to a claim—are often reluctant to provide complete copies of medical records. Multiple requests for specific records are not uncommon. Even then, an injured patient cannot be assured of having received all of the records pre-suit, since the discovery provisions of the Rules of Civil Procedure and the coercive power of the court are not readily available in advance of a complaint being filed.

Assuming the completeness of the medical records, an injured patient must further contend with their accuracy. If a health care provider has made an error in the treatment of a patient, is it reasonable to expect that it will always be recorded in the medical record? Health care providers are not immune to the same pressures and frailties that impact others, and it is naïve to assume that medical errors are not omitted from the medical chart or recast in a light more favorable to the health care provider.[3] Yet prior to filing suit, the medical records often are the only evidence of the "medical care" being rendered to the patient that is available for review by an expert.

The fact remains that deficient medical records significantly impair the ability of injured patients to comply with Rule 9(j) and effectively immunize from liability those health care providers who are successful in hiding their mistakes.

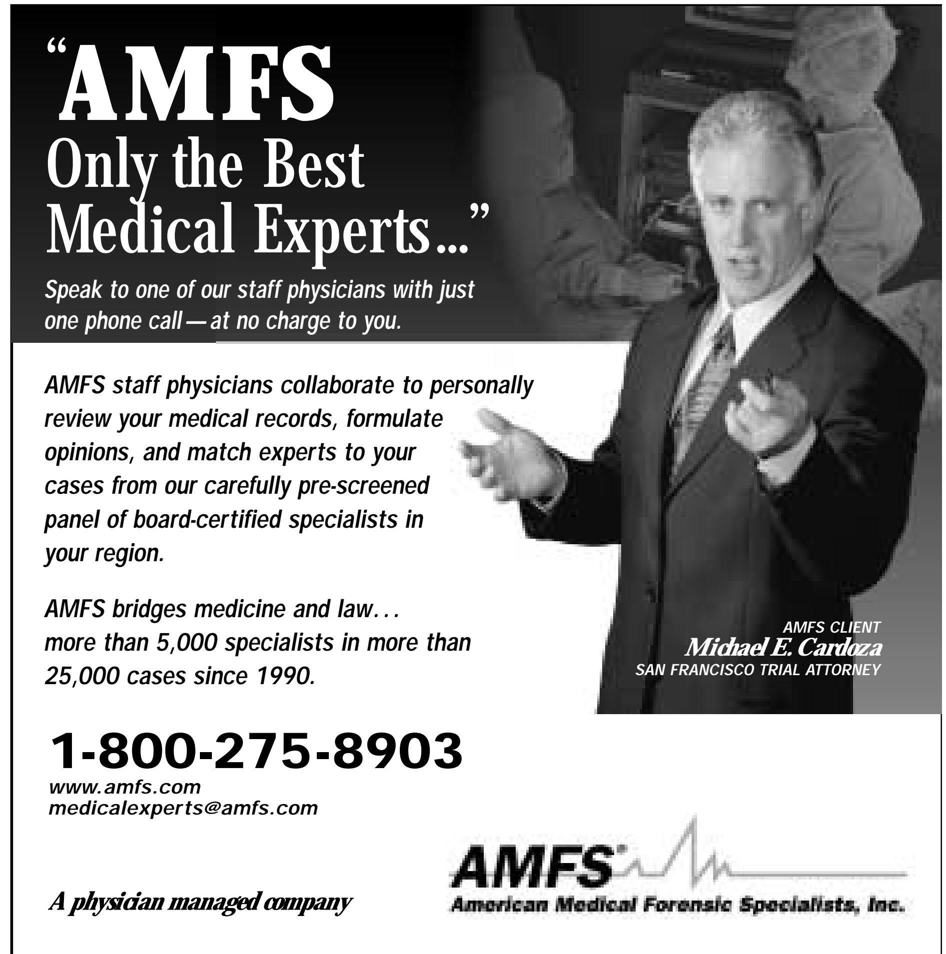
In a given case, the existence of negligence may turn on the presence of a single entry in a voluminous medical record numbering hundreds or thousands of pages. When the records are complete, this process is akin to looking for a needle in a haystack. Looking for the needle, however, will be futile if the health care provider never puts it in the haystack in the first place.[4]

For instance, it is not unusual to encounter operative reports containing a single paragraph purportedly summarizing a surgical procedure that took hours to complete, records of vital signs that cannot be reconciled with the patient's known clinical status, or nurses' notes where no observations are recorded for unusually long intervals. Whether these examples of incomplete and inaccurate records are the result of mere oversight or intentional conduct is immaterial. The fact remains that deficient medical records significantly impair the ability of injured patients to comply with Rule 9(j) and effectively immunize from liability those health care providers who are successful in hiding their mistakes.

Prior to filing suit, the patient has access only to the medical records. A thorough review of the medical care, however, often requires far more than examining just the medical records. The deposition testimony of the defendant and other health care providers involved in rendering care is indispensable in developing a complete understanding of the care that was provided and the mistakes that were made. As a practical matter, the testimony of the physician, nurse, or other health care provider may be the critical link necessary to understanding exactly what happened.

Generally, however, an injured plaintiff cannot compel sworn testimony unless there is an action pending. Attempts have been made to utilize Rule 27 of the North Carolina Rules of Civil Procedure as a means of deposing the target health care provider or others whose testimony would enable an expert reviewer to determine if the applicable standard of care had been breached.[5] Although these depositions may be essential to the ability of an injured patient to obtain a favorable pre-suit review by an expert witness—and thereby satisfy the stringent requirements of Rule 9(j)—our courts consistently have been unwilling to allow plaintiffs to engage in pre-suit discovery from the potential defendant.

In addition to medical records and sworn testimony, a truly comprehensive review of the medical care requires examination of documents revealed through the course of discovery that will not have been previously available to the injured patient. These documents may bear directly on the negligence of the defendant and include incident reports,[6] written statements, policies and procedures,[7] and even additional medical records.[8] These documents can be difficult to obtain even after suit has been filed,



and the coercive power of the court is often required to compel defendants to produce them. Accordingly, despite these items potentially being necessary for a Rule 9(j) review, the plaintiff is not afforded access to these materials prior to commencing an action.

Without the benefit of meaningful pretrial discovery and confronted with the very real and persistent problem of recalcitrant health care providers who refuse to provide complete and accurate medical records, many victims of medical negligence are unable to overcome the formidable obstacles erected by Rule 9(j). These citizens are cast by statute into an unjust Catch-22 situation; in the absence of complete information relating to their medical care—much of which is unavailable to them before filing suit—they are unable to identify an expert witness who will testify that there was a breach in the applicable standard of care. Under Rule 9(j) requirements, however, they are prohibited from bringing their action without this review. Ironically, it is the commencement of the action that would afford plaintiffs the opportunity to obtain the necessary information for the expert witness relating to the medical care.

It is patently unjust to impose upon victims of medical negligence an affirmative obligation essentially to prove their case in advance of filing suit—an obligation that is not imposed upon any other plaintiff who seeks justice in the courts of North Carolina. The importance of full discovery to the fair adjudication of a claim cannot be overstated. The rules and cases are replete with provisions underscoring the importance of discovery to the trial process. For example, Rule 56(f) of the North Carolina Rules of Civil Procedure allows the court to continue a motion for summary judgment where a party demonstrates that additional depositions or discovery are necessary to oppose the motion.[9] As enumerated by the North Carolina Supreme Court, "[o]rdinarily it is error for a court to hear and rule on a motion for summary judgment when discovery procedures, which might lead to the production of evidence relevant to the motion, are still pending."[10] The discovery process and "[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation."[11]

If these and other safeguards are important *after* a complaint is filed, they cannot be less important when discovery has not even begun. Pre-suit certification under Rule 9(j), which requires a victim of medical malpractice to prove negligence without the benefit of any discovery whatsoever, simply cannot be reconciled with the concepts of notice pleading and liberal discovery that apply to every other plaintiff who seeks relief in our courts.

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Compounding the Cost of Litigation

Aside from barring some victims of medical negligence from seeking relief in court, Rule 9(j) has dramatically increased the cost of pursuing medical malpractice cases. Even before the enactment of Rule 9(j), medical malpractice cases were among the most complex and expensive personal in-

Telling the Story . . .

Imagine waiting many sleepless nights hoping for a phone call. Your husband is 54 years old and suffers from congenital heart disease. He is an ideal candidate for a heart transplant, but you must wait for one to become available. It is hard to wish for the call, because you know that your husband's life depends on someone else's death.

Finally, the call comes. The operation lasts twelve hours, but when the surgeon emerges from the operating room, he tells you it went well—you should see your husband, then go home and rest.

When you return to the hospital at 7:00 a.m., no one makes eye contact and the surgeon refuses to see you. Your husband is dead. You're told it was a "complication." All you can do is bury your husband and try to piece your life back together.

Six months later, you get an anonymous call. The caller says that he works for the hospital and your husband did not have to die. He tells you that the cardiac intensive care unit was understaffed by 50 percent. When a nurse came to do a routine electrocardiogram on your husband, she disconnected the atrial pacemaker. Just as she disconnected the pacemaker, she was called to another room, and she forgot to reattach it. The new heart went out of control and your husband died.

You try to speak to the hospital and the surgeon, but no one will speak with you. You try to get the medical records, but are told that they cannot be located. Finally, you call a lawyer. The lawyer asks the hospital for the records, but is told that they are in the risk management department. After six months, some of the records are

jury cases. Medical reviews by qualified expert witnesses routinely cost hundreds of dollars per hour. Moreover, given the interplay between Rule 9(j) and Rule 702(b) of the North Carolina Rules of Evidence, it is imperative that plaintiffs select expert witnesses who specialize in the same or similar specialty as the health care provider against whom the testimony is being offered. If a medical negligence action involves multiple medical specialties, then the plaintiff is obliged from the outset to retain experts in several distinct fields, increasing the cost of the litigation significantly. Thus, the cost of complying with Rule 9(j) is prohibitively expensive for many medical negligence victims, forcing many potential plaintiffs to abandon meritorious claims for lack of funds.

The expense is even more acute in cases involving multiple specialties. For example, in a catastrophic birth injury case, it may be unclear from the medical records pre-suit which of a myriad of health care providers is responsible for causing injury. In such cases, it is not uncommon for care to be rendered by obstetricians, anesthesiologists, pediatricians, family physicians, labor and delivery nurses, family nurse practitioners, or other specialties. The plaintiff is required to retain experts in all these various fields, at a cost of many thousands of dollars, for the singular purpose of satisfying Rule 9(j). In these and similar cases, it is rare that the culpable health care provider can be identified with sufficient particularity to permit the plaintiff to rely upon a single expert review. The consequence is that plaintiffs and their counsel spend enormous amounts of money on experts whose participation may not be needed once the case is developed in discovery.

Supporters of Rule 9(j) argue that its requirements affect only the timing of expenditures for expert reviews, since medical negligence plaintiffs are required to present expert testimony at trial in order to prove their case. This argument is flawed, however, because it fails to account for the qualitative difference between a pre-suit review and identification of expert witnesses who are intended to give testimony at trial. Given the inherent limitations on the materials available for an expert reviewing the medical care pre-suit, it is sometimes the case that a certifying expert becomes unnecessary and is not among those experts who are ultimately designated to testify at trial. In other words, once discovery is obtained from the defendant health care providers, certain defendant providers may be dismissed from the lawsuit, thereby obviating the need for experts in that particular specialty.

The tremendous expense of Rule 9(j) can also be measured in the volume of discovery, motions, hearings and appeals devoted to 9(j) issues. Ostensibly designed to shield health care providers from frivolous lawsuits, Rule 9(j) has become a sword in the hands of zealous defense lawyers. Virtually every medical malpractice case that is filed is met with an opening salvo of overreaching discovery loosely disguised as an attempt to gauge compliance with Rule 9(j).[12]

Form Over Substance

The implementation of Rule 9(j) has also elevated form over substance. Aggressive defense lawyers, eager to dispose of claims based on technical defects rather than to litigate them on their merits, have actively pursued every conceivable basis for dismissing cases under Rule 9(j). The consequence of this persistent exercise has been the generation of an extensive body of case law addressing various 9(j) issues. Ironically, most of these appellate cases do not involve an inquiry into the underlying merits of the plaintiff's claim; instead, they involve inquiry into such issues as: (1) the manner in which the certification is plead;[13] (2) the type of claims for which certification is required;[14] (3) whether service of a Rule 9(j) extension of the statute of limita-

finally produced. However, when the lawyer asks for the staffing records, he is told that a patient has no right to those records.

Experts review the few records that the hospital produces, but there is no mention of understaffing; there is no mention of the EKG; there is no mention of the atrial pacemaker. The experts tell you that based upon the available records, they cannot give an opinion as to the merits of your case.

Despite your valid questions, Rule 9(j) of the North Carolina Rules of Civil Procedure will keep you from getting any answers. Because of this barrier to justice, you cannot file suit without first having the "medical care" in question reviewed by a qualified expert witness who will testify that your case is meritorious. But before filing an action, you do not have the coercive power of the court behind you forcing the hospital and doctors to provide all the medical records and, more importantly, testimony about what happened. Your experts have no evidence to go on.

In a final effort to overcome this hurdle, your lawyer tries to take depositions before filing an action, but that attempt is denied. He then files a lawsuit without a 9(j) certification. The trial judge, although sympathetic to your plight, must dismiss your claim—and with it, your chance to find the truth.

—by Hoyt G. Tessener

tions is required;[15] (4) the appropriate county or judge for obtaining a Rule 9(j) extension of the statute of limitations;[16] and (5) the sufficiency of the materials furnished to the 9(j) expert.[17]

Most people would agree that a claim could not, by definition, be frivolous when one or more qualified physicians has examined the medical care and determined that it falls below the standard of care. If such an opinion can only be obtained after the complaint is filed and discovery is conducted, however, is the claim any less meritorious?

Supporters tout rule 9(j) as a necessary barrier to the cascade of frivolous lawsuits that would inevitably be filed in its absence by plaintiff's lawyers chasing lottery-like verdicts.[18] Of course, it is a simple matter to assert broadly that frivolous medical negligence actions abound; it is far more difficult to identify cases that support this assertion. Most people would agree that a claim could not, by definition, be frivolous when one or more qualified physicians has examined the medical care and determined that it falls below the standard of care. If such an opinion can only be obtained after the complaint is filed and discovery is conducted, however, is the claim any less meritorious? Rule 9(j) operates not only to bar frivolous claims, but also meritorious ones, as well.

It should also be noted that *all* attorneys, regardless of the nature of a claim, are statutorily obliged by Rule 11 of the North Carolina Rules of Civil Procedure to file only those pleadings that are well grounded in fact and supported by existing law or its good faith extension.[19] Failure to comply with this obligation may result in dismissal of the action and the imposition of sanctions against the attorney. The case law relating to Rule 11 is instructive on the principles that should govern all claims.

We agree with plaintiff's attorneys that Rule 11 was instituted to prevent abuse of the legal system, and that our General Assembly never intended to constrain or discourage counsel from the appropriate, well-reasoned pursuit of just results for their clients. Case law clearly supports the fact that just because a plaintiff is eventually unsuccessful in her claim does not mean the claim was inappropriate or unreasonable. Any other reading of the law would compromise every attorney's ability to pursue a claim where the status of the law is subject to dispute, and it would force litigants to refrain from arguing all but the most clear-cut of issues. We do not believe this is what our legislature intended.[20]

Anderson v. Assimos: Bringing Down the Barrier

On October 2, 2001, the North Carolina Court of Appeals took the first important step in restoring to all medical negligence victims the opportunity to have their voices heard in the courts of our state. In *Anderson v. Assimos*, the court of appeals held that the certification requirement of Rule 9(j) "is unconstitutional in that it unduly restricts [plaintiff's] access to the courts and violates the equal protection clause of the state and federal constitutions."[21] Assessing the impact of Rule 9(j) on the open courts provision of Article I, § 18 of the North Carolina Constitution, the court held that:

> This certification requirement impairs, unduly burdens, and in some instances, where the injured party is unable to timely find an expert or is without funds to employ such an expert or find an attorney who is willing to advance the funds to employ an expert, prohibits the filing of any medical malpractice claim. Even if an expert is obtained, Rule 9(j) places in the hands of that expert the right to decide if the injured party may proceed into court with her claim. It is for the courts of this state to adjudicate in a meaningful time and manner the merits of an injured party's claim after granting a hearing appropriate to the nature of the case.[22]

In addition to unconstitutionally denying access to the courts, the Anderson Court determined Rule 9(j) to violate the equal protection guarantees of the state and federal constitutions. Because it places medical malpractice plaintiffs in a separate and distinct class and affects the fundamental right of access to the courts, Rule 9(j) can only be sustained "if it serves a compelling state interest and the statute is narrowly drawn to promote that interest."[23] While Rule 9(j) ostensibly is intended to prevent frivolous lawsuits, the court noted the absence of any evidence supporting "the claim that Rule 9(j) alleviates that problem or that the problem is not also present in the context of non-medical [mal]practice actions."[24]

The *Anderson* decision is an important victory for citizens who have been injured by medical malpractice, but further challenges await us. The North Carolina Supreme Court is slated to take up the constitutionality of Rule 9(j) soon and, as expected, scores of physician, insurance and business groups have joined the fray. Consistent with our mission of serving the citizens of North Carolina who have been injured by the wrongful acts of others, we must continue to alert judges, lawmakers, and the public to the injustice of Rule 9(j) and persist in our efforts to restore to all injured parties the right to have their voices heard. ■

[1] N.C. Gen. Stat. § 1A-1, Rule 9(j) (emphasis added).

[2] In the event that "[t]he pleading alleges facts establishing negligence under the existing common-law doctrine of res ipsa loquitor," certification of a pre-suit review by an expert witness is not required. N.C. Gen. Stat. § 1A-1, Rule 9(j)(3). It should be noted, however, that the vast majority of medical malpractice actions cannot be plead as res ipsa claims. *See* Bowlin v. Duke Univ., 108 N.C. App. 145, 149-50, 423 S.E.2d 320, 323 (1992), *disc. rev. denied*, 333 N.C. 461, 427 S.E.2d 618 (1993) ("This Court has consistently reaffirmed that res ipsa loquitor is inappropriate in the usual medical malpractice case, where the question of injury and the facts in evidence are peculiarly in the province of expert opinion.").

[3] In a recent study regarding the reporting of surgical errors, it was noted that although 45.8 percent of the patients in the study suffered an adverse event, and 21.2 percent of those patients experienced a "serious" adverse event, almost 80 percent of the adverse events or errors observed in the study were not

officially recognized and recorded. In addition, none of the events resulted in identifiable action on either a personal or institutional level. Thomas J. Krizek, M.D., *Surgical Error: Ethical Issues of Adverse Events*, 135 Arch. Surg. 1359 (November 2000). *See also* Jeff E. Essen, *Medical Negligence in North Carolina: Past & Present*, TRIAL BRIEFS, (April 2001) at 5 (citing studies that "suggest that three-fourths of all medical errors are not documented in patient charts.").

[4] The experience of the authors in deposing health care providers suggests that neither they nor their counsel subscribe to the notion that medical records are all-inclusive. Health care providers frequently testify about procedures, examinations, tests or other medical care performed by them that never find their way to the patient's medical chart.

[5] Rule 27(a)(1) of the North Carolina Rules of Civil Procedure allows a person to file a verified petition seeking a pre-suit deposition where the petition shows, *inter alia*, that the petitioner "is presently unable to bring it or cause it to be brought" and describes "the facts which he desires to establish by the proposed testimony." Rule 27(a)(3) further provides that "[i]f the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice," the court shall enter an order permitting the pre-suit deposition.

[6] Defendants frequently refuse to produce incident reports asserting a litany of objections and privileges. These objections are often unfounded. If an incident report is prepared in the ordinary course of business or as a result of a hospital policy or procedure relating to the reporting of such incidents, the incident report should be discoverable. *See* Cook v. Wake County Hosp. System, Inc., 125 N.C. App. 618, 482 S.E.2d 546 (1997) (holding that an accident report was discoverable because it was prepared based on the hospital's accident reporting policy, which existed to serve a number of non-litigation, business purposes); Willis v. Duke Power Co., 291 N.C. 19, 229 S.E.2d 191 (1976) (holding that materials prepared in the ordinary course of business are not protected from discovery by the anticipation of litigation doctrine).

[7] Institutional health care providers will often adopt or promulgate policies or procedures governing the conduct of doctors and allied health professionals practicing at their institution. These materials may bear directly on the standard of care applicable to the health care provider.

[8] The experience of the authors is that discovery commonly yields additional medical records beyond those that were provided by the defendant prior to suit. This situation occurs with sufficient regularity that the authors routinely direct a request for admission to the defendant health care provider asking that he admit or deny that the records attached to the request for admission are all of the medical records for the given time period.

[9] Rule 56(f) of the North Carolina Rules of Civil Procedure provides as follows: "Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

[10] Conover v. Newton, 297 N.C. 506, 512, 256 S.E.2d 216, 220 (1979); *see also* Ipock v. Gilmore, 73 N.C. App. 182, 190, 326 S.E.2d 271, 277, *disc. rev. denied*, 314 N.C. 116, 332 S.E.2d 481 (1985) (holding that trial court abused its discretion in medical malpractice action by denying plaintiffs' request for continuance of defendants' summary judgment motion and noting that "[s]ufficient time for the completion of discovery is one major goal of Rule 56(f).").

[11] Hickman v. Taylor, 329 U.S. 495, 507, 67 S.Ct. 385, 392, 91 L.Ed. 451 (1947).

[12] Rule 9(j) states, in part, that "[t]he plaintiff shall provide, at the request of the defendant, proof of compliance with this subsection through up to ten written interrogatories, the answers to which shall be verified by the expert required under this subsection." Despite the clear discovery process authorized by Rule 9(j), defendants commonly seek to depose the 9(j) expert in advance of the plaintiff's designation of expert witnesses. While most superior court judges recognize that this discovery is not authorized by the Rules of Civil Procedure, the authors are aware of limited instances where such discovery has been permitted over the plaintiff's objection. Even more common than seeking a deposition of the 9(j) expert is the defense counsel practice of asking excessively broad interrogatories that seek responses well beyond those required to demonstrate proof of compliance with Rule 9(j).

[13] *See, e.g.,* Thigpen v. Ngo, ___ N.C. ___, ___ S.E.2d ___ (Feb. 1, 2002) (holding that once a party receives and exhausts a 120-day extension of time to comply with the expert certification requirement, party cannot amend complaint to plead expert certification).

[14] Waters v. Jarman, 144 N.C. App. 98, 547 S.E.2d 142, *disc. rev. denied*, 354 N.C. 68, 553 S.E.2d 213 (2001) (holding that corporate negligence claims against institutional health care provider do not require expert review); Lewis v. Setty, 130 N.C. App.

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606, 503 S.E.2d 673 (1998) (holding that 9(j) certification not required for claim of ordinary negligence based on removal of plaintiff from exam table to wheelchair, which did not involve the rendering of professional medical services).

[15] Timour v. Pitt County Memorial Hosp., Inc., 131 N.C. App. 548, 508 S.E.2d 329 (1998), *aff'd,* 351 N.C. 47, 519 S.E.2d 316 (1999) (holding that Rule 9(j) does not require plaintiff to serve on potential defendants notice of Rule 9(j) extension of time to file medical malpractice complaint).

[16] Stewart v. Southeastern Regional Medical Center, 142 N.C. App. 456, 543 S.E.2d 517, 353 N.C. 733, 552 S.E.2d 169 (2001) (holding that Rule 9(j) extension entered in one county was effective as against all defendants, including those residing in other counties). Notably, the defendants in *Stewart* waited thirteen months before filing their motions to dismiss based on an alleged failure to comply with Rule 9(j).

[17] Hylton v. Koontz, 138 N.C. App. 511, 530 S.E.2d 108 (2000) (holding that a qualified medical expert witness's review of hypothetical medical facts that were presented by the plaintiff's attorney satisfies Rule 9(j)'s requirement that the "medical care" be reviewed prior to filing a complaint).

[18] Although clearly designed for its public relations effect, the authors never cease to be amazed by the attempt to link frivolous lawsuits to plaintiff's lawyers purportedly out to recover financial windfalls for their clients and themselves. As an initial matter, any jury verdict in favor of a plaintiff raises serious questions about the frivolity of the claim. There are ample opportunities over the life of a case for it to be dismissed by the court if it is truly lacking foundation in law or fact. In addition, plaintiff's lawyers do not render verdicts; juries do. Blaming plaintiff's lawyers for inflating jury awards in specific cases is no more valid than accusing defense lawyers of deflating them in others. In fact, in a recent study conducted of each closed medical malpractice claim in the United States, including million-dollar verdicts, the Center for Justice & Democracy (a non-profit, non-partisan public interest group) found that the average medical malpractice claim payment was only $42,607.03 as of the year 2000; a decade earlier, the average was just $39,093.31. *See* J. Robert Hunter, Actuarial Analysis of Medical Malpractice Insurance Conducted on Behalf of Center for Justice & Democracy, October 13, 2001 (study available at <**www.centerjd.org**>). These figures do not support the fears regarding an explosion in claim severity. Moreover, the study found that medical malpractice, as a percentage of national health care expenditures, is at an all-time low of .55 percent. *Id.*

[19] N.C.R. Civ. P. 11 provides that "[t]he signature of an attorney or party constitutes a certificate by him that he has read the pleading . . .; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

[20] Grover v. Norris, 137 S.E.2d 487, 495, 529 S.E.2d 231, 235-36 (2000).

[21] ___ N.C. App. ___, 553 S.E.2d 63, 67 (2001).

[22] Anderson, 553 S.E.2d at 68.

[23] *Id.*

[24] *Id.*

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