

CHAPTER 107

MEDICAL MALPRACTICE ACTIONS

S.F. 465

AN ACT relating to medical malpractice claims, including noneconomic damage awards and expert witnesses, and including applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 135P.1, subsections 1 and 2, Code 2017, are amended to read as follows:

1. “Adverse health care incident” means an objective and definable outcome arising from or related to patient care that results in the death or serious physical injury of a patient.

2. “Health care provider” means a physician or osteopathic physician licensed under chapter 148, a physician assistant licensed under and practicing under a supervising physician pursuant to chapter 148C, a podiatrist licensed under chapter 149, or a chiropractor licensed under chapter 151, a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed pursuant to under chapter 152 or 152E, a dentist licensed under chapter 153, an optometrist licensed under chapter 154, a pharmacist licensed under chapter 155A, or any other person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

Sec. 2. **NEW SECTION. 147.136A Noneconomic damage awards against health care providers.**

1. For purposes of this section:

a. “Health care provider” means a physician or an osteopathic physician licensed under chapter 148, a chiropractor licensed under chapter 151, a podiatrist licensed under chapter 149, a physician assistant licensed and practicing under a supervising physician under chapter 148C, a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under chapter 152 or 152E, a dentist licensed under chapter 153, an optometrist licensed under chapter 154, a pharmacist licensed under chapter 155A, a hospital as defined in section 135B.1, a health care facility as defined in section 135C.1, a health facility as defined in section 135P.1, a professional corporation under chapter 496C that is owned by persons licensed to practice a profession listed in this paragraph, or any other person or entity who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or in the practice of a profession.

b. “Noneconomic damages” means damages arising from pain, suffering, inconvenience, physical impairment, mental anguish, emotional pain and suffering, loss of chance, loss of consortium, or any other nonpecuniary damages.

c. “Occurrence” means the event, incident, or happening, and the acts or omissions incident thereto, which proximately caused injuries or damages for which recovery is claimed by the patient or the patient’s representative.

2. The total amount recoverable in any civil action for noneconomic damages for personal injury or death, whether in tort, contract, or otherwise, against a health care provider shall be limited to two hundred fifty thousand dollars for any occurrence resulting in injury or death of a patient regardless of the number of plaintiffs, derivative claims, theories of liability, or defendants in the civil action, unless the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death, which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for the injuries sustained.

3. The limitation on damages contained in this section shall not apply as to a defendant if that defendant’s actions constituted actual malice.

Sec. 3. Section 147.139, Code 2017, is amended to read as follows:

147.139 Expert witness standards.

If the standard of care given by a ~~physician and surgeon or an osteopathic physician and surgeon licensed pursuant to chapter 148, or a dentist licensed pursuant to chapter 153~~ health care provider, as defined in [section 147.136A](#), is at issue, the court shall only allow a person the plaintiff designates as an expert witness to qualify as an expert witness and to testify on the issue of the appropriate standard of care ~~if the person's medical or dental qualifications relate directly to the medical problem or problems at issue and the type of treatment administered in the case.~~ or breach of the standard of care if all of the following are established by the evidence:

1. The person is licensed to practice in the same or a substantially similar field as the defendant, is in good standing in each state of licensure, and in the five years preceding the act or omission alleged to be negligent, has not had a license in any state revoked or suspended.

2. In the five years preceding the act or omission alleged to be negligent, the person actively practiced in the same or a substantially similar field as the defendant or was a qualified instructor at an accredited university in the same field as the defendant.

3. If the defendant is board-certified in a specialty, the person is certified in the same or a substantially similar specialty by a board recognized by the American board of medical specialties or the American osteopathic association.

4. If the defendant is a licensed physician or osteopathic physician under [chapter 148](#), the person is a physician or osteopathic physician licensed in this state or another state.

Sec. 4. **NEW SECTION. 147.140 Expert witness — certificate of merit affidavit.**

1. a. In any action for personal injury or wrongful death against a health care provider based upon the alleged negligence in the practice of that profession or occupation or in patient care, which includes a cause of action for which expert testimony is necessary to establish a prima facie case, the plaintiff shall, prior to the commencement of discovery in the case and within sixty days of the defendant's answer, serve upon the defendant a certificate of merit affidavit signed by an expert witness with respect to the issue of standard of care and an alleged breach of the standard of care. The expert witness must meet the qualifying standards of [section 147.139](#).

b. A certificate of merit affidavit must be signed by the expert witness and certify the purpose for calling the expert witness by providing under the oath of the expert witness all of the following:

(1) The expert witness's statement of familiarity with the applicable standard of care.

(2) The expert witness's statement that the standard of care was breached by the health care provider named in the petition.

c. A plaintiff shall serve a separate certificate of merit affidavit on each defendant named in the petition.

2. An expert witness's certificate of merit affidavit does not preclude additional discovery and supplementation of the expert witness's opinions in accordance with the rules of civil procedure.

3. The parties shall comply with the requirements of [section 668.11](#) and all other applicable law governing certification and disclosure of expert witnesses.

4. The parties by agreement or the court for good cause shown and in response to a motion filed prior to the expiration of the time limits specified in [subsection 1](#) may provide for extensions of the time limits. Good cause shall include but not be limited to the inability to timely obtain the plaintiff's medical records from health care providers when requested prior to filing the petition.

5. If the plaintiff is acting pro se, the plaintiff shall have the expert witness sign the certificate of merit affidavit or answers to interrogatories referred to in [this section](#) and the plaintiff shall be bound by those provisions as if represented by an attorney.

6. Failure to substantially comply with [subsection 1](#) shall result, upon motion, in dismissal with prejudice of each cause of action as to which expert witness testimony is necessary to establish a prima facie case.

7. For purposes of [this section](#), "health care provider" means the same as defined in [section 147.136A](#).

Sec. 5. APPLICABILITY. This Act applies to causes of action that accrue on or after the effective date of this Act.

Approved May 5, 2017