

House Study Bill 674

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON UPMAYER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to medical malpractice actions.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 6410YC 81
4 rh/je/5

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1 1 Section 1. Section 147.139, Code 2005, is amended to read
1 2 as follows:
1 3 147.139 EXPERT WITNESS STANDARDS.
1 4 If the standard of care given by a physician ~~and or~~ surgeon
1 5 licensed pursuant to chapter 148, or osteopathic physician ~~and~~
1 6 ~~or~~ surgeon licensed pursuant to chapter 150A, or a dentist
1 7 licensed pursuant to chapter 153, is at issue, the court shall
1 8 only allow a person to qualify as an expert witness and to
1 9 testify on the issue of the appropriate standard of care ~~if~~
~~1 10 the person's medical or dental qualifications relate directly~~
~~1 11 to the medical problem or problems at issue and the type of~~
~~1 12 treatment administered in the case, breach of the standard of~~
~~1 13 care, or proximate cause if all of the following~~
~~1 14 qualifications are established:~~
1 15 a. ~~The expert is licensed to practice medicine,~~
1 16 ~~osteopathic medicine, or dentistry and in the three years~~
1 17 ~~preceding the allegedly negligent act, engaged in the active~~
1 18 ~~practice of medicine, osteopathic medicine, or dentistry, or~~
1 19 ~~was a qualified instructor at an accredited university of~~
1 20 ~~medicine and surgery, osteopathic medicine and surgery, or~~
1 21 ~~dentistry.~~
1 22 b. ~~The expert practices in the same or substantially~~
1 23 ~~similar specialty as the defendant.~~
1 24 c. ~~If the defendant is board certified in a specialty, the~~
1 25 ~~expert is also certified in that specialty by a board~~
1 26 ~~recognized by the American board of medical specialties and is~~
1 27 ~~licensed and in good standing in each state of licensure, and~~
1 28 ~~has not had the expert's license revoked or suspended in the~~
1 29 ~~past five years.~~
1 30 Sec. 2. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
1 31 APOLOGY.
1 32 In any civil action for personal injury or wrongful death
1 33 or in any arbitration proceeding relating to such a civil
1 34 action against any physician or surgeon licensed pursuant to
1 35 chapter 148, osteopathic physician or surgeon licensed
2 1 pursuant to chapter 150A, or dentist licensed pursuant to
2 2 chapter 153, based upon the alleged negligence of the licensee
2 3 in the practice of that profession or occupation, any
2 4 statement, affirmation, gesture, or conduct expressing
2 5 apology, sympathy, commiseration, condolence, compassion, or a
2 6 general sense of benevolence that was made by a physician and
2 7 surgeon, osteopathic physician and surgeon, or dentist to the
2 8 patient, relative of the patient, or decision maker for the
2 9 patient that relates to the discomfort, pain, suffering,
2 10 injury, or death of the patient as a result of an
2 11 unanticipated outcome of medical care is inadmissible as
2 12 evidence of an admission of liability or as evidence of an
2 13 admission against interest.
2 14 Sec. 3. NEW SECTION. 147.141 NOTICE OF CLAIM AND
2 15 CERTIFICATE OF MERIT REQUIREMENT.
2 16 1. At least thirty days prior to filing a civil action for
2 17 personal injury or wrongful death against a licensed health
2 18 care provider, based upon the alleged negligence of the
2 19 licensed health care provider in the practice of that

2 20 profession, a plaintiff shall serve by certified mail, return
2 21 receipt requested, a notice of claim upon the licensed health
2 22 care provider. The notice of claim shall include a statement
2 23 of the theory of liability upon which the cause of action is
2 24 based and include a list of all persons to whom notices have
2 25 been sent, together with a certificate of merit, if necessary,
2 26 as specified in subsection 2.

2 27 2. a. The certificate of merit shall be signed under oath
2 28 by an expert who, in the three years preceding the allegedly
2 29 negligent act, either practiced or instructed in the same or
2 30 substantially similar field of medicine as the defendant.

2 31 b. The certificate of merit shall contain information
2 32 relating to all of the following:

2 33 (1) The expert's familiarity with the applicable standard
2 34 of care.

2 35 (2) The expert's qualifications.

3 1 (3) The expert's statement that the appropriate standard
3 2 of care was breached by the health care provider named in the
3 3 complaint.

3 4 (4) The expert's statement of the actions that the health
3 5 care provider should have taken or failed to take to have
3 6 complied with the standard of care.

3 7 (5) A statement of the manner in which the breach of the
3 8 standard of care was the cause of the injury alleged in the
3 9 complaint.

3 10 c. A separate certificate of merit shall be completed for
3 11 each defendant named in the notice of claim.

3 12 d. If a plaintiff or plaintiff's counsel asserts in good
3 13 faith that the plaintiff has insufficient time to obtain a
3 14 certificate of merit prior to the expiration of the period of
3 15 limitation in subsection 1, the plaintiff shall provide notice
3 16 of intent to provide a certificate of merit to the defendant
3 17 within sixty days of the date the defendant receives the
3 18 notice of the claim.

3 19 3. Notwithstanding subsection 2, if a plaintiff believes
3 20 that a certificate of merit is not necessary because the
3 21 plaintiff's cause of action against a health care provider is
3 22 based upon a well-established legal theory of liability which
3 23 does not require expert testimony supporting a breach of the
3 24 applicable standard of care, the plaintiff shall file a
3 25 statement setting forth the basis for the alleged liability of
3 26 the health care provider in lieu of the certificate of merit.

3 27 4. Except as otherwise provided in this section, the
3 28 applicable statute of limitations in a civil cause of action
3 29 against a health care provider upon whom a notice of claim is
3 30 served pursuant to this section shall be tolled from the date
3 31 the notice of claim is mailed.

3 32 5. If the plaintiff fails to provide a notice of claim and
3 33 a certificate of merit, or a statement of the legal theory
3 34 upon which the claim is based, the claim shall be dismissed
3 35 with prejudice.

4 1 6. For purposes of this section, "health care provider"
4 2 means a physician or surgeon, osteopath, osteopathic physician
4 3 or surgeon, dentist, podiatric physician, optometrist,
4 4 pharmacist, chiropractor, or nurse licensed in this state, a
4 5 hospital licensed pursuant to chapter 135B, or a health care
4 6 facility licensed pursuant to chapter 135C.

4 7 EXPLANATION

4 8 This bill relates to evidentiary and procedural
4 9 requirements in an action for medical malpractice.

4 10 The bill provides that if the standard of care given by a
4 11 physician or surgeon licensed pursuant to Code chapter 148, an
4 12 osteopathic physician or surgeon licensed pursuant to Code
4 13 chapter 150A, or a dentist licensed pursuant to Code chapter
4 14 153, is at issue in a medical malpractice case, the court
4 15 shall only allow a health care provider who is licensed in
4 16 this state to qualify as an expert witness and to testify on
4 17 the issue of the appropriate standard of care, breach of that
4 18 standard, or proximate cause if the health care provider meets
4 19 certain professional practice and educational criteria.
4 20 Current law relating to expert witness standards in a medical
4 21 malpractice action allows a person to testify as an expert
4 22 witness and to testify on the appropriate standard of care if
4 23 the person's medical or dental qualifications relate directly
4 24 to the medical problem at issue and the type of treatment
4 25 involved.

4 26 The bill provides that any statement, affirmation, gesture,
4 27 or conduct expressing apology, sympathy, commiseration,
4 28 condolence, compassion, or a general sense of benevolence that
4 29 was made by a physician or surgeon, osteopathic physician or
4 30 surgeon, or dentist to the patient, relative of the patient,

4 31 or decision maker for the patient that relates to the
4 32 discomfort, pain, suffering, injury, or death of the patient
4 33 as a result of an unanticipated outcome of medical care is
4 34 inadmissible as evidence of an admission of liability or as
4 35 evidence of an admission against interest.

5 1 The bill provides that at least 30 days prior to filing a
5 2 civil action for personal injury or wrongful death against a
5 3 health care provider, based upon the alleged negligence of the
5 4 licensed health care provider in the practice of that
5 5 profession, a plaintiff shall serve by certified mail, return
5 6 receipt requested, a notice of claim upon the licensed health
5 7 care provider. The notice of claim shall include a statement
5 8 of the theory of liability upon which the cause of action is
5 9 based and include a list of all persons to whom notices have
5 10 been sent, together with a certificate of merit.

5 11 The bill requires that the certificate of merit shall meet
5 12 certain requirements and specifies certain information that a
5 13 qualified expert who provides information in the certificate
5 14 of merit shall provide. The bill provides that a separate
5 15 certificate of merit shall be completed for each defendant
5 16 named in the complaint, and that if a plaintiff or plaintiff's
5 17 counsel asserts in good faith that the plaintiff has
5 18 insufficient time to obtain a certificate of merit prior to
5 19 the expiration of the 30-day limitation period, the plaintiff
5 20 shall provide notice of intent to provide a certificate of
5 21 merit to the defendant within 60 days of the date the
5 22 defendant receives the notice of the claim. If a plaintiff
5 23 believes that a certificate of merit is not necessary because
5 24 the plaintiff's cause of action against a health care provider
5 25 is based upon a well-established legal theory of liability
5 26 which does not require expert testimony supporting a breach of
5 27 the applicable standard of care, the plaintiff shall file a
5 28 statement setting forth the basis for the alleged liability of
5 29 the health care provider in lieu of the certificate of merit.

5 30 The bill further provides that the applicable statute of
5 31 limitations in a civil cause of action against a health care
5 32 provider upon whom a notice of claim is served shall be tolled
5 33 from the date the notice of claim is mailed. In addition, if
5 34 the plaintiff fails to provide a notice of claim and a
5 35 certificate of merit, or a statement of the legal theory upon
6 1 which the claim is based, the claim shall be dismissed with
6 2 prejudice.

6 3 For purposes of the bill, "health care provider" means a
6 4 physician or surgeon, osteopath, osteopathic physician or
6 5 surgeon, dentist, podiatric physician, optometrist,
6 6 pharmacist, chiropractor, or nurse licensed in Iowa, a
6 7 hospital licensed pursuant to Code chapter 135B, or a health
6 8 care facility licensed pursuant to Code chapter 135C.

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