

House Amendment 8322

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1 1 Amend House File 2716 as follows:
1 2 ~~#1.~~ By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <Section 1. Section 147.139, Code 2005, is amended
1 5 to read as follows:
1 6 147.139 EXPERT WITNESS STANDARDS.
1 7 If the standard of care given by a physician ~~and or~~
1 8 surgeon licensed pursuant to chapter 148, or
1 9 osteopathic physician ~~and or~~ surgeon licensed pursuant
1 10 to chapter 150A, or a dentist licensed pursuant to
1 11 chapter 153, is at issue, the court shall only allow a
1 12 person to qualify as an expert witness and to testify
1 13 on the issue of the appropriate standard of care ~~if~~
~~1 14 the person's medical or dental qualifications relate~~
~~1 15 directly to the medical problem or problems at issue~~
~~1 16 and the type of treatment administered in the case,~~
~~1 17 breach of the standard of care, or proximate cause if~~
~~1 18 all of the following qualifications are established:~~
1 19 1. The expert is licensed to practice medicine,
1 20 osteopathic medicine, or dentistry and in the three
1 21 years preceding the allegedly negligent act, engaged
1 22 in the active practice of medicine, osteopathic
1 23 medicine, or dentistry, or was a qualified instructor
1 24 at an accredited university of medicine and surgery,
1 25 osteopathic medicine and surgery, or dentistry.
1 26 2. The expert practices in the same or
1 27 substantially similar specialty as the defendant.
1 28 3. If the defendant is board certified in a
1 29 specialty, the expert is also certified in that
1 30 specialty by a board recognized by the American board
1 31 of medical specialties and is licensed and in good
1 32 standing in each state of licensure, and has not had
1 33 the expert's license revoked or suspended in the past
1 34 five years.
1 35 Sec. 2. NEW SECTION. 147.140 EVIDENCE OF REGRET
1 36 OR APOLOGY.
1 37 In any civil action for personal injury or wrongful
1 38 death or in any arbitration proceeding relating to
1 39 such a civil action against any physician or surgeon
1 40 licensed pursuant to chapter 148, osteopathic
1 41 physician or surgeon licensed pursuant to chapter
1 42 150A, or dentist licensed pursuant to chapter 153,
1 43 based upon the alleged negligence of the licensee in
1 44 the practice of that profession or occupation, any
1 45 statement, affirmation, gesture, or conduct expressing
1 46 apology, sympathy, commiseration, condolence,
1 47 compassion, or a general sense of benevolence that was
1 48 made by a physician and surgeon, osteopathic physician
1 49 and surgeon, or dentist to the patient, relative of
1 50 the patient, or decision maker for the patient that
2 1 relates to the discomfort, pain, suffering, injury, or
2 2 death of the patient as a result of an unanticipated
2 3 outcome of medical care is inadmissible as evidence of
2 4 an admission of liability or as evidence of an
2 5 admission against interest.
2 6 Sec. 3. NEW SECTION. 147.141 NOTICE OF CLAIM AND
2 7 CERTIFICATE OF MERIT REQUIREMENT.
2 8 1. At least thirty days prior to filing a civil
2 9 action for personal injury or wrongful death against a
2 10 licensed health care provider, based upon the alleged
2 11 negligence of the licensed health care provider in the
2 12 practice of that profession, a plaintiff shall serve
2 13 by certified mail, return receipt requested, a notice
2 14 of claim upon the licensed health care provider. The
2 15 notice of claim shall include a statement of the
2 16 theory of liability upon which the cause of action is
2 17 based and include a list of all persons to whom
2 18 notices have been sent, together with a certificate of
2 19 merit, if necessary, as specified in subsection 2.
2 20 2. a. The certificate of merit shall be signed
2 21 under oath by an expert who, in the three years
2 22 preceding the allegedly negligent act, either
2 23 practiced or instructed in the same or substantially
2 24 similar field of medicine as the defendant.

2 25 b. The certificate of merit shall contain
2 26 information relating to all of the following:
2 27 (1) The expert's familiarity with the applicable
2 28 standard of care.
2 29 (2) The expert's qualifications.
2 30 (3) The expert's statement that the appropriate
2 31 standard of care was breached by the health care
2 32 provider named in the complaint.
2 33 (4) The expert's statement of the actions that the
2 34 health care provider should have taken or failed to
2 35 take to have complied with the standard of care.
2 36 (5) A statement of the manner in which the breach
2 37 of the standard of care was the cause of the injury
2 38 alleged in the complaint.
2 39 c. A separate certificate of merit shall be
2 40 completed for each defendant named in the notice of
2 41 claim.
2 42 d. If a plaintiff or plaintiff's counsel asserts
2 43 in good faith that the plaintiff has insufficient time
2 44 to obtain a certificate of merit prior to the
2 45 expiration of the period of limitation in subsection
2 46 1, the plaintiff shall provide notice of intent to
2 47 provide a certificate of merit to the defendant within
2 48 sixty days of the date the defendant receives the
2 49 notice of the claim.
3 50 3. Notwithstanding subsection 2, if a plaintiff
3 1 believes that a certificate of merit is not necessary
3 2 because the plaintiff's cause of action against a
3 3 health care provider is based upon a well-established
3 4 legal theory of liability which does not require
3 5 expert testimony supporting a breach of the applicable
3 6 standard of care, the plaintiff shall file a statement
3 7 setting forth the basis for the alleged liability of
3 8 the health care provider in lieu of the certificate of
3 9 merit.
3 10 4. Except as otherwise provided in this section,
3 11 the applicable statute of limitations in a civil cause
3 12 of action against a health care provider upon whom a
3 13 notice of claim is served pursuant to this section
3 14 shall be tolled from the date the notice of claim is
3 15 mailed.
3 16 5. If the plaintiff fails to provide a notice of
3 17 claim and a certificate of merit, or a statement of
3 18 the legal theory upon which the claim is based, the
3 19 claim shall be dismissed with prejudice.
3 20 6. For purposes of this section, "health care
3 21 provider" means a physician or surgeon, osteopath,
3 22 osteopathic physician or surgeon, dentist, podiatric
3 23 physician, optometrist, pharmacist, chiropractor, or
3 24 nurse licensed in this state, a hospital licensed
3 25 pursuant to chapter 135B, or a health care facility
3 26 licensed pursuant to chapter 135C.>
3 27 ~~#2.~~ Title page, by striking lines 1 through 3 and
3 28 inserting the following: <An Act relating to medical
3 29 malpractice actions.>
3 30 ~~#3.~~ By renumbering as necessary.
3 31
3 32
3 33
3 34 _____
3 35 UPMEYER of Hancock
3 36 HF 2716.701 81
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