

# House Amendment 8325

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1 1 Amend House File 2716 as follows:  
1 2 #1. Page 1, by inserting before line 1 the  
1 3 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 #2. Page 1, by striking line 1 and inserting the  
2 7 following:  
2 8 <Sec. 3. NEW SECTION. 147.141 CONFIDENTIALITY  
2 9 OF>.  
2 10 #3. Page 1, by striking line 19 and inserting the  
2 11 following:  
2 12 <Sec. 4. NEW SECTION. 147.142 INITIAL DISCLOSURE  
2 13 OF>.  
2 14 #4. By striking page 2, line 31, through page 4,  
2 15 line 6, and inserting the following:  
2 16 <Sec.     . NEW SECTION. 147.143 NOTICE OF CLAIM  
2 17 AND CERTIFICATE OF MERIT REQUIREMENT.  
2 18 1. At least thirty days prior to filing a civil  
2 19 action for personal injury or wrongful death against a  
2 20 licensed health care provider, based upon the alleged  
2 21 negligence of the licensed health care provider in the  
2 22 practice of that profession, a plaintiff shall serve  
2 23 by certified mail, return receipt requested, a notice  
2 24 of claim upon the licensed health care provider. The

2 25 notice of claim shall include a statement of the  
2 26 theory of liability upon which the cause of action is  
2 27 based and include a list of all persons to whom  
2 28 notices have been sent, together with a certificate of  
2 29 merit, if necessary, as specified in subsection 2.  
2 30 2. a. The certificate of merit shall be signed  
2 31 under oath by an expert who, in the three years  
2 32 preceding the allegedly negligent act, either  
2 33 practiced or instructed in the same or substantially  
2 34 similar field of medicine as the defendant.  
2 35 b. The certificate of merit shall contain  
2 36 information relating to all of the following:  
2 37 (1) The expert's familiarity with the applicable  
2 38 standard of care.  
2 39 (2) The expert's qualifications.  
2 40 (3) The expert's statement that the appropriate  
2 41 standard of care was breached by the health care  
2 42 provider named in the complaint.  
2 43 (4) The expert's statement of the actions that the  
2 44 health care provider should have taken or failed to  
2 45 take to have complied with the standard of care.  
2 46 (5) A statement of the manner in which the breach  
2 47 of the standard of care was the cause of the injury  
2 48 alleged in the complaint.  
2 49 c. A separate certificate of merit shall be  
2 50 completed for each defendant named in the notice of  
3 1 claim.  
3 2 d. If a plaintiff or plaintiff's counsel asserts  
3 3 in good faith that the plaintiff has insufficient time  
3 4 to obtain a certificate of merit prior to the  
3 5 expiration of the period of limitation in subsection  
3 6 1, the plaintiff shall provide notice of intent to  
3 7 provide a certificate of merit to the defendant within  
3 8 sixty days of the date the defendant receives the  
3 9 notice of the claim.  
3 10 3. Notwithstanding subsection 2, if a plaintiff  
3 11 believes that a certificate of merit is not necessary  
3 12 because the plaintiff's cause of action against a  
3 13 health care provider is based upon a well-established  
3 14 legal theory of liability which does not require  
3 15 expert testimony supporting a breach of the applicable  
3 16 standard of care, the plaintiff shall file a statement  
3 17 setting forth the basis for the alleged liability of  
3 18 the health care provider in lieu of the certificate of  
3 19 merit.  
3 20 4. Except as otherwise provided in this section,  
3 21 the applicable statute of limitations in a civil cause  
3 22 of action against a health care provider upon whom a  
3 23 notice of claim is served pursuant to this section  
3 24 shall be tolled from the date the notice of claim is  
3 25 mailed.  
3 26 5. If the plaintiff fails to provide a notice of  
3 27 claim and a certificate of merit, or a statement of  
3 28 the legal theory upon which the claim is based, the  
3 29 claim shall be dismissed with prejudice.  
3 30 6. For purposes of this section, "health care  
3 31 provider" means a physician or surgeon, osteopath,  
3 32 osteopathic physician or surgeon, dentist, podiatric  
3 33 physician, optometrist, pharmacist, chiropractor, or  
3 34 nurse licensed in this state, a hospital licensed  
3 35 pursuant to chapter 135B, or a health care facility  
3 36 licensed pursuant to chapter 135C.>  
3 37 ~~#5.~~ Page 5, by striking lines 5 through 21.  
3 38 ~~#6.~~ By renumbering as necessary.  
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3 42 \_\_\_\_\_  
3 43 UPMEYER of Hancock  
3 44 HF 2716.502 81  
rh/je/1389