

JAN 25 2008
JUDICIARY

HOUSE FILE 2133
BY HUTTER

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

A BILL FOR

1 An Act relating to the filing of a certificate of merit in a
2 medical malpractice action.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2133

1 Section 1. NEW SECTION. 147.140 CERTIFICATE OF MERIT.

2 1. In an action for damages for personal injury against a
3 health care provider licensed to practice or operate in this
4 state, based on the alleged negligence of the licensee in the
5 practice of the profession or occupation, or upon the alleged
6 negligence of the hospital in patient care, the plaintiff
7 shall file, simultaneous with the filing of the complaint, a
8 certificate of merit attesting to the following:

9 a. The plaintiff or plaintiff's attorney has consulted and
10 reviewed the facts of the case with an expert who the
11 plaintiff or the plaintiff's attorney reasonably believes
12 meets the following requirements:

13 (1) The expert is knowledgeable regarding the relevant
14 issues involved in the particular action.

15 (2) The expert is qualified by knowledge, skill,
16 experience, training, or education to testify as an expert in
17 the field of the alleged malpractice pursuant to section
18 147.139.

19 (3) The expert has no financial or personal interest in
20 the outcome of the case under review.

21 b. The expert has determined in a written report that a
22 reasonable and meritorious case exists for the filing of such
23 action.

24 2. The written report from the expert shall be attached to
25 the certificate of merit and shall contain all of the
26 following:

27 a. The name and address of the expert and sufficient facts
28 to support the conclusion that the expert is qualified by
29 knowledge, skill, experience, training, or education to
30 testify as an expert against the health care provider.

31 b. A statement that the expert's determination is based
32 upon an examination of the plaintiff, or an independent and
33 thorough review of all of the applicable medical records and,
34 if reasonably available, a physical examination of the
35 plaintiff.

1 c. A description of the appropriate standard of care that
2 is expected of a reasonably competent health care provider in
3 the same class to which the health care provider belongs,
4 acting in the same or similar circumstances.

5 d. In the opinion of the expert, expressed with a
6 reasonable degree of medical certainty, that the appropriate
7 standard of care was breached by the health care provider
8 named in the complaint.

9 e. The factual basis for the expert's opinion.

10 f. A statement of the actions that the health care
11 provider should have taken or failed to take to have complied
12 with the standard of care.

13 g. A statement of the manner in which the breach of the
14 standard of care was the cause of the injury alleged in the
15 complaint.

16 3. If a certificate of merit is required pursuant to this
17 section, a separate certificate and expert report shall be
18 filed as to each defendant named in the complaint and shall be
19 filed as to each defendant named at a later time.

20 4. The contemporaneous filing requirement of subsection 1
21 shall not apply to a personal injury case, for which the
22 period of limitation will expire or where there is a good
23 faith basis to believe the period of limitation will expire,
24 within ten days of the date of filing of the complaint and the
25 plaintiff asserts in good faith that because of such time
26 constraints compliance with the requirements was not possible.
27 In such cases, the plaintiff shall have forty-five days after
28 the filing of the complaint to supplement the pleadings with
29 the certificate of merit and expert report.

30 5. If a certificate of merit is not filed within the
31 period specified in this section, the complaint is subject to
32 dismissal for failure to state a claim upon which relief can
33 be granted.

34 6. If the plaintiff or the plaintiff's counsel files a
35 certificate of merit that does not meet the requirements of

1 subsection 1 or a report that does not meet the requirements
2 of subsection 2, the defendant to whom such certificate
3 pertains may file a motion to dismiss which shall specify the
4 grounds or basis by which the certificate or the report does
5 not meet the requirements of this section.

6 7. For the purposes of this section, "health care
7 provider" means a physician or surgeon, osteopath, osteopathic
8 physician or surgeon, dentist, podiatric physician,
9 optometrist, pharmacist, chiropractor, or nurse licensed to
10 practice that profession in this state, or a hospital licensed
11 for operation in this state.

12 EXPLANATION

13 This bill relates to the filing of a certificate of merit
14 in a medical malpractice action.

15 The bill provides that in an action for damages for
16 personal injury against a health care provider, defined as a
17 physician or surgeon, osteopath, osteopathic physician or
18 surgeon, dentist, podiatric physician, optometrist,
19 pharmacist, chiropractor, or nurse licensed to practice that
20 profession in this state, or a hospital licensed for operation
21 in this state, based on the alleged negligence of the licensee
22 in the practice of the profession or occupation, or upon the
23 alleged negligence of the hospital in patient care, the
24 plaintiff shall file, simultaneous with the filing of the
25 complaint, a certificate of merit. The certificate of merit
26 shall state that the plaintiff or plaintiff's attorney has
27 consulted and reviewed the facts of the case with an expert
28 who the plaintiff or the plaintiff's attorney reasonably
29 believes is knowledgeable regarding the relevant issues
30 involved in the particular action; that the expert is
31 qualified by knowledge, skill, experience, training, or
32 education to testify as an expert; and that the expert has no
33 financial or personal interest in the outcome of the case
34 under review.

35 The bill further provides that the certificate of merit

1 shall be submitted with a written report from the expert
2 stating there is a reasonable and meritorious case for the
3 filing of such action and shall include the name and address
4 of the expert and sufficient facts to support the conclusion
5 that the expert is qualified; a statement that the expert's
6 determination is based upon an examination of the plaintiff,
7 or an independent and thorough review of all of the applicable
8 medical records and, if reasonably available, a physical
9 examination of the plaintiff; a description of the appropriate
10 standard of care that is expected of a reasonably competent
11 health care provider in the same class to which the health
12 care provider belongs, acting in the same or similar
13 circumstances; a statement that in the opinion of the expert,
14 expressed with a reasonable degree of medical certainty, that
15 the appropriate standard of care was breached by the health
16 care provider named in the complaint; the factual basis for
17 the expert's opinion; a statement of the actions that the
18 health care provider should have taken or failed to take to
19 have complied with the standard of care; and a statement of
20 the manner in which the breach of the standard of care was the
21 cause of the injury alleged in the complaint.

22 The bill further provides that a separate certificate and
23 expert report shall be filed as to each defendant named in the
24 complaint.

25 The bill provides that the requirement that a plaintiff
26 file a certificate of merit with the filing of the complaint
27 in the action shall not apply to a case in which the period of
28 limitation will expire, or there is a good faith basis to
29 believe the period of limitation will expire within 10 days of
30 the date of filing of the complaint and the plaintiff asserts
31 in good faith that because of such time constraints compliance
32 with the requirements was not possible. In such cases, the
33 plaintiff shall have 45 days after the filing of the complaint
34 to supplement the pleadings with the certificate of merit and
35 expert report.

1 The bill provides that if a certificate of merit is not
2 filed within the period specified in the bill, the complaint
3 is subject to dismissal for failure to state a claim upon
4 which relief can be granted.

5 The bill provides that if the plaintiff files a certificate
6 of merit or an accompanying report that does not meet the
7 requirements of the bill, the defendant to whom such
8 certificate pertains may file a motion to dismiss which shall
9 specify the grounds or basis by which the certificate does not
10 meet the requirements of this section.

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