

JAN 3 1 2006
HUMAN RESOURCES

HOUSE FILE 2189
BY UPMEYER

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

A BILL FOR

1 An Act creating a certificate of merit in a medical malpractice
2 action.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2189

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
22 there is a reasonable and meritorious case for the filing of
23 such 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. Where a certificate of merit is required pursuant to
17 this section, a separate certificate and expert report shall
18 be filed as to each defendant named in the complaint and shall
19 be 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 case in which the period of limitation
22 will expire or there is a good faith basis to believe it will
23 expire on a claim stated within ten days of the date of filing
24 and the plaintiff asserts in good faith that because of such
25 time constraints compliance with the requirements was not
26 possible. In such cases, the plaintiff shall have forty-five
27 days after the filing of the complaint to supplement the
28 pleadings with the certificate of merit and expert report.

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

33 6. If the plaintiff or the plaintiff's counsel files a
34 certificate of merit that does not meet the requirements of
35 subsection 1 or a report that does not meet the requirements

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

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

11 EXPLANATION

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

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

34 The bill further provides that the certificate of merit
35 shall be submitted with a written report from the expert

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

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

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

35 The bill provides that if a certificate of merit is not

1 filed within the period specified in this bill, the complaint
2 is subject to dismissal for failure to state a claim upon
3 which relief can be granted.

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

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