

JAN 26 2005

JUDICIARY

HOUSE FILE 2149
BY UPMEYER

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

A BILL FOR

1 An Act relating to expert witness standards in a medical
2 malpractice action.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF 2149

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1 Section 1. Section 147.139, Code 2005, is amended to read
2 as follows:

3 147.139 EXPERT WITNESS STANDARDS.

4 If the standard of care given by a ~~physician-and-surgeon~~
5 ~~licensed-pursuant-to-chapter-148,-or-osteopathic-physician-and~~
6 ~~surgeon-licensed-pursuant-to-chapter-150A,-or-a-dentist~~
7 ~~licensed-pursuant-to-chapter-153,~~ health care provider as
8 defined in subsection 2 is at issue, the court shall only
9 allow a person to qualify as an expert witness and to testify
10 on the issue of the appropriate standard of care if the
11 ~~person's-medical-or-dental-qualifications-relate-directly-to~~
12 ~~the-medical-problem-or-problems-at-issue-and-the-type-of~~
13 ~~treatment-administered-in-the-case~~ person is licensed as a
14 health care provider in this state and the person meets the
15 following criteria:

16 1. If the party against whom or on whose behalf the
17 testimony is offered is a specialist, the expert witness
18 shall:

19 a. Be a specialist in the same specialty as the health
20 care provider against whom or on whose behalf the testimony is
21 offered or a specialist in a similar specialty that includes
22 the evaluation, diagnosis, or treatment of the medical
23 condition that is the subject of the claim and have prior
24 experience treating similar patients.

25 b. Have devoted professional time during the three years
26 immediately preceding the date of the occurrence that is the
27 basis for the action to any of the following:

28 (1) The active clinical practice of, or consulting with
29 respect to, the same or similar specialty that includes the
30 evaluation, diagnosis, or treatment of the medical condition
31 that is the subject of the claim and have prior experience
32 treating similar patients.

33 (2) Instruction of students in an accredited health
34 professional school or accredited residency or clinical
35 research program in the same or similar specialty.

1 (3) A clinical research program that is affiliated with an
2 accredited health professional school or accredited residency
3 or clinical research program in the same or similar specialty.

4 2. If the health care provider against whom or on whose
5 behalf the testimony is offered is a general practitioner, the
6 expert witness must have devoted professional time during the
7 five years immediately preceding the date of the occurrence
8 that is the basis for the action to any of the following:

9 a. The active clinical practice or consultation as a
10 general practitioner.

11 b. The instruction of students in an accredited health
12 professional school or accredited residency program in the
13 general practice of medicine.

14 c. A clinical research program that is affiliated with an
15 accredited medical school or teaching hospital and that is in
16 the general practice of medicine.

17 3. If the health care provider against whom or on whose
18 behalf the testimony is offered is a health care provider
19 other than a specialist or a general practitioner, the expert
20 witness must have devoted professional time during the three
21 years immediately preceding the date of the occurrence that is
22 the basis for the action to any of the following:

23 a. The active clinical practice of, or consulting with
24 respect to, the same or similar health profession as the
25 health care provider against whom or on whose behalf the
26 testimony is offered.

27 b. The instruction of students in an accredited health
28 professional school or accredited residency program in the
29 same or similar health profession in which the health care
30 provider against whom or on whose behalf the testimony is
31 offered.

32 c. A clinical research program that is affiliated with an
33 accredited medical school or teaching hospital and that is in
34 the same or similar health profession as the health care
35 provider against whom or on whose behalf the testimony is

1 offered.

2 4. For purposes of this section, "health care provider"
3 means a physician or surgeon licensed pursuant to chapter 148,
4 an osteopathic physician or surgeon licensed pursuant to
5 chapter 150A, or a dentist licensed pursuant to chapter 153.

6 EXPLANATION

7 This bill relates to expert witness standards in a medical
8 malpractice case.

9 The bill provides that if the standard of care given by a
10 health care provider defined as a physician or surgeon
11 licensed pursuant to Code chapter 148, an osteopathic
12 physician or surgeon licensed pursuant to Code chapter 150A,
13 or a dentist licensed pursuant to Code chapter 153 is at issue
14 in a medical malpractice case, the court shall only allow a
15 health care provider who is licensed in this state to qualify
16 as an expert witness and to testify on the issue of the
17 appropriate standard of care if the health care provider meets
18 certain professional practice and educational criteria
19 including instructional criteria, depending upon whether the
20 party against whom or on whose behalf the testimony is offered
21 is a specialist, a general practitioner, or a health care
22 professional other than a specialist or a general
23 practitioner.

24 Current law relating to expert witness standards in a
25 medical malpractice action allows a person to testify as an
26 expert witness and to testify on the appropriate standard of
27 care if the person's medical or dental qualifications relate
28 directly to the medical problem at issue and the type of
29 treatment provided.

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