

SENATE BILL 642

D3

71r2384

By: **Senator Raskin**

Introduced and read first time: February 2, 2007

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Health Care Malpractice – Certificate of a Qualified Expert**

3 FOR the purpose of eliminating the requirement that an attorney for a party or the
4 party pro se in a health care malpractice claim or action shall file a certain
5 report in addition to a certificate of a qualified expert; and generally relating to
6 the certificate of a qualified expert in a health care malpractice action.

7 BY repealing and reenacting, with amendments,
8 Article – Courts and Judicial Proceedings
9 Section 3–2A–04(b)
10 Annotated Code of Maryland
11 (2006 Replacement Volume)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article – Courts and Judicial Proceedings**

15 3–2A–04.

16 (b) Unless the sole issue in the claim is lack of informed consent:

17 (1) (i) 1. Except as provided in subparagraph (ii) of this
18 paragraph, a claim or action filed after July 1, 1986, shall be dismissed, without
19 prejudice, if the claimant or plaintiff fails to file a certificate of a qualified expert with
20 the Director attesting to departure from standards of care, and that the departure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 from standards of care is the proximate cause of the alleged injury, within 90 days
2 from the date of the complaint;

3 2. The claimant or plaintiff shall serve a copy of the
4 certificate on all other parties to the claim or action or their attorneys of record in
5 accordance with the Maryland Rules; and

6 (ii) In lieu of dismissing the claim or action, the panel chairman
7 or the court shall grant an extension of no more than 90 days for filing the certificate
8 required by this paragraph, if:

9 1. The limitations period applicable to the claim or
10 action has expired; and

11 2. The failure to file the certificate was neither willful
12 nor the result of gross negligence.

13 (2) (i) A claim or action filed after July 1, 1986, may be adjudicated
14 in favor of the claimant or plaintiff on the issue of liability, if the defendant disputes
15 liability and fails to file a certificate of a qualified expert attesting to compliance with
16 standards of care, or that the departure from standards of care is not the proximate
17 cause of the alleged injury, within 120 days from the date the claimant or plaintiff
18 served the certificate of a qualified expert set forth in paragraph (1) of this subsection
19 on the defendant.

20 (ii) If the defendant does not dispute liability, a certificate of a
21 qualified expert is not required under this subsection.

22 (iii) The defendant shall serve a copy of the certificate on all
23 other parties to the claim or action or their attorneys of record in accordance with the
24 Maryland Rules.

25 (3) (i) The attorney representing each party, or the party
26 proceeding pro se, shall file the appropriate certificate [with a report of the attesting
27 expert attached].

28 (ii) Discovery is available as to the basis of the certificate.

29 (4) A health care provider who attests in a certificate of a qualified
30 expert or who testifies in relation to a proceeding before an arbitration panel or a court
31 concerning compliance with or departure from standards of care may not devote

1 annually more than 20 percent of the expert's professional activities to activities that
2 directly involve testimony in personal injury claims.

3 (5) An extension of the time allowed for filing a certificate of a
4 qualified expert under this subsection shall be granted for good cause shown.

5 (6) In the case of a claim or action against a physician, the Director
6 shall forward copies of the certificates filed under paragraphs (1) and (2) of this
7 subsection to the State Board of Physicians.

8 (7) For purposes of the certification requirements of this subsection for
9 any claim or action filed on or after July 1, 1989:

10 (i) A party may not serve as a party's expert; and

11 (ii) The certificate may not be signed by:

12 1. A party;

13 2. An employee or partner of a party; or

14 3. An employee or stockholder of any professional
15 corporation of which the party is a stockholder.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2007.