

HOUSE BILL 470

D3

5lr2188

By: **Delegate Dumais**

Introduced and read first time: February 9, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice – Certificates and Reports of Qualified Experts**

3 FOR the purpose of establishing certain procedures for determining the legal sufficiency of
4 certain certificates of qualified experts and their reports in certain health care
5 malpractice claims or actions; providing for the application of this Act; and generally
6 relating to certain certificates of qualified experts and certain reports by attesting
7 experts in health care malpractice claims and actions.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 3–2A–04(b) and 3–2A–06D
11 Annotated Code of Maryland
12 (2013 Replacement Volume and 2014 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 3–2A–04.

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

18 (1) (i) 1. Except as provided in item (ii) of this paragraph, a claim
19 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or
20 plaintiff fails to file a certificate of a qualified expert with the Director attesting to
21 departure from standards of care, and that the departure from standards of care is the
22 proximate cause of the alleged injury, within 90 days from the date of the complaint; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

7 1. The limitations period applicable to the claim or action has
8 expired; and

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

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

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

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

22 (3) (i) The attorney representing each party, or the party proceeding
23 pro se, shall file the appropriate certificate with a report of the attesting expert attached.

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

25 (4) A health care provider who attests in a certificate of a qualified expert
26 or who testifies in relation to a proceeding before an arbitration panel or a court concerning
27 compliance with or departure from standards of care may not devote annually more than
28 20 percent of the expert's professional activities to activities that directly involve testimony
29 in personal injury claims.

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

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

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

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

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

5 1. A party;

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

7 3. An employee or stockholder of any professional
8 corporation of which the party is a stockholder.

9 **(8) (I) A MOTION OBJECTING TO THE LEGAL SUFFICIENCY OF A**
10 **CERTIFICATE OF A QUALIFIED EXPERT OR REPORT OF THE ATTESTING EXPERT**
11 **SHALL BE FILED WITHIN 30 DAYS AFTER THE SERVICE OF THE CERTIFICATE OR THE**
12 **REPORT.**

13 **(II) IF THE PANEL CHAIRMAN OR THE COURT RULES THAT THE**
14 **CERTIFICATE OF A QUALIFIED EXPERT OR REPORT OF THE ATTESTING EXPERT IS**
15 **LEGALLY SUFFICIENT, NO FURTHER COLLATERAL ATTACKS AS TO THE LEGAL**
16 **SUFFICIENCY OF THE CERTIFICATE OR REPORT MAY BE ALLOWED.**

17 **(III) IF THE PANEL CHAIRMAN OR THE COURT RULES THAT A**
18 **PARTY'S CERTIFICATE OF A QUALIFIED EXPERT OR REPORT OF THE ATTESTING**
19 **EXPERT IS LEGALLY INSUFFICIENT, THE PARTY SHALL FILE A LEGALLY SUFFICIENT**
20 **CERTIFICATE AND REPORT WITHIN 30 DAYS AFTER ENTRY OF THE ORDER.**

21 **(IV) SUBPARAGRAPH (II) OF THIS PARAGRAPH DOES NOT**
22 **PRECLUDE A PARTY FROM SUBSEQUENTLY CHALLENGING BY MOTION OR AT TRIAL:**

23 **1. THE QUALIFICATIONS OF THE EXPERT;**

24 **2. THE APPROPRIATENESS OF THE EXPERT'S**
25 **TESTIMONY ON A PARTICULAR SUBJECT;**

26 **3. WHETHER A SUFFICIENT FACTUAL BASIS EXISTS TO**
27 **SUPPORT THE EXPERT'S TESTIMONY IN ACCORDANCE WITH THE MARYLAND RULES;**
28 **OR**

29 **4. THE ADMISSIBILITY OF THE EXPERT'S TESTIMONY ON**
30 **ANY OTHER APPROPRIATE GROUNDS.**

1 3-2A-06D.

2 (a) (1) This section applies only to an initial complaint filed on or after January
3 1, 2005, for which a certificate of a qualified expert is required to be filed in accordance with
4 § 3-2A-04 of this subtitle.

5 (2) This section does not apply if the defendant admits liability.

6 (b) (1) Within 15 days after the date that discovery is required to be completed,
7 a party shall file with the court a supplemental certificate of a qualified expert, for each
8 defendant, that attests to:

9 (i) The certifying expert's basis for alleging what is the specific
10 standard of care;

11 (ii) The certifying expert's qualifications to testify to the specific
12 standard of care;

13 (iii) The specific standard of care;

14 (iv) For the plaintiff:

15 1. The specific injury complained of;

16 2. How the specific standard of care was breached;

17 3. What specifically the defendant should have done to meet
18 the specific standard of care; and

19 4. The inference that the breach of the standard of care
20 proximately caused the plaintiff's injury; and

21 (v) For the defendant:

22 1. How the defendant complied with the specific standard of
23 care;

24 2. What the defendant did to meet the specific standard of
25 care; and

26 3. If applicable, that the breach of the standard of care did
27 not proximately cause the plaintiff's injury.

28 (2) An extension of the time allowed for filing a supplemental certificate
29 under this section shall be granted for good cause shown.

1 (3) The facts required to be included in the supplemental certificate of a
2 qualified expert shall be considered necessary to show entitlement to relief sought by a
3 plaintiff or to raise a defense by a defendant.

4 (c) Subject to the provisions of this section:

5 (1) If a plaintiff fails to file a supplemental certificate of a qualified expert
6 for a defendant, on motion of the defendant the court may dismiss, without prejudice, the
7 action as to that defendant; or

8 (2) If the defendant fails to file a supplemental certificate of a qualified
9 expert, on motion of the plaintiff the court may adjudicate in favor of the plaintiff on the
10 issue of liability as to that defendant.

11 (d) (1) The Maryland Rules apply to filing and serving a copy of a certificate
12 required under this section and in motions relating to a violation of this section.

13 (2) Nothing contained in this section prohibits or limits a party from
14 moving for summary judgment in accordance with the Maryland Rules.

15 (e) For purposes of the certification requirements of this section:

16 (1) A party may not serve as a party's expert; and

17 (2) The certificate may not be signed by:

18 (i) A party;

19 (ii) An employee or partner of a party; or

20 (iii) An employee or stockholder of any professional corporation of
21 which the party is a stockholder.

22 **(F) (1) A MOTION OBJECTING TO THE LEGAL SUFFICIENCY OF A**
23 **SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT SHALL BE FILED WITHIN 30**
24 **DAYS AFTER THE SERVICE OF THE CERTIFICATE.**

25 **(2) IF THE PANEL CHAIRMAN OR THE COURT RULES THAT THE**
26 **SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT IS LEGALLY SUFFICIENT, NO**
27 **FURTHER COLLATERAL ATTACKS AS TO THE LEGAL SUFFICIENCY OF THE**
28 **SUPPLEMENTAL CERTIFICATE MAY BE ALLOWED.**

29 **(3) IF THE PANEL CHAIRMAN OR THE COURT RULES THAT A PARTY'S**
30 **SUPPLEMENTAL CERTIFICATE OF A QUALIFIED EXPERT IS LEGALLY INSUFFICIENT,**
31 **THE PARTY SHALL FILE A LEGALLY SUFFICIENT SUPPLEMENTAL CERTIFICATE**
32 **WITHIN 30 DAYS AFTER ENTRY OF THE ORDER.**

1 **(4) PARAGRAPH (2) OF THIS SUBSECTION DOES NOT PRECLUDE A**
2 **PARTY FROM SUBSEQUENTLY CHALLENGING BY MOTION OR AT TRIAL:**

3 **(I) THE QUALIFICATIONS OF THE EXPERT;**

4 **(II) THE APPROPRIATENESS OF THE EXPERT'S TESTIMONY ON A**
5 **PARTICULAR SUBJECT;**

6 **(III) WHETHER A SUFFICIENT FACTUAL BASIS EXISTS TO**
7 **SUPPORT THE EXPERT'S TESTIMONY IN ACCORDANCE WITH THE MARYLAND RULES;**
8 **OR**

9 **(IV) THE ADMISSIBILITY OF THE EXPERT'S TESTIMONY ON ANY**
10 **OTHER APPROPRIATE GROUNDS.**

11 **[(f)](G)** (1) The clerk of the court shall forward to the Department of
12 Health and Mental Hygiene copies of the certificates filed under this section.

13 (2) In the case of a complaint against a physician, the Department of
14 Health and Mental Hygiene shall forward to the State Board of Physicians copies of the
15 supplemental certificate of a qualified expert filed under this section.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
17 apply only prospectively and may not be applied or interpreted to have any effect on or
18 application to any case filed before the effective date of this Act.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2015.