

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1200

(Delegate Barve, *et al.*)

Judiciary

Civil Proceedings and Medical Injury Claims - Venue, Witnesses, and Evidence

This bill makes various changes affecting the venue and evidence in a health care malpractice action. The bill alters the standard for admissibility of expert testimony in a civil action. The bill also subjects a physician who is licensed by and residing in another state to disciplinary proceedings relating to testifying in a health care malpractice action or attesting to a certificate of a qualified expert.

The bill takes effect June 1, 2005. The bill does not apply to a cause of action arising before June 1, 2005.

Fiscal Summary

State Effect: Any change in State activities caused by the bill's venue requirements would not materially affect State finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The venue of a health care malpractice claim is the county where the cause of action arose.

A court, on its own motion or the motion of a party, must employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses or future loss of earnings.

In a civil action, if a court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness determined by the court to be qualified as an expert by knowledge, skill, experience, training, or education may testify concerning the evidence or fact in issue in the form of an opinion or otherwise only if: (1) the testimony is based on sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case. If a court considers it necessary or on motion by a party, the court may hear evidence regarding the criteria for expert witness testimony. If the court does so, the court must hear the evidence out of the jury's presence.

The bill repeals the provision making admissible in a health care malpractice action an admission of liability or fault that is part of an apology or expression of regret.

A physician licensed by and residing in another jurisdiction, while testifying as or attesting to compliance with or departures from standards of care for purposes of a certificate of qualified expert, is practicing medicine for purposes of discipline by the State Board of Physicians. Subject to applicable hearing requirements, the board, on affirmative vote of a majority of a quorum, may issue findings and a report concerning a physician licensed in another jurisdiction who falsely testifies or falsely offers an opinion as a medical expert regarding medical diagnosis, healing, treatment, or surgery.

Current Law: Generally, a civil action must be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. A corporation may also be sued where it maintains its principal offices in the State.

A court may, on its own motion or the motion of a party, employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses and future loss of earnings. Unless otherwise agreed by the parties, the costs are divided by the parties.

Under the Maryland Rules, expert testimony may be admitted in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making its determination, the court must determine: (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education; (2) the appropriateness of the expert testimony on the particular subject; and (3) whether a sufficient factual basis exists to support the expert testimony.

An apology or an expression of regret made on behalf of a health care provider is inadmissible as evidence of an admission of liability or as evidence of an admission

against interest. An admission of liability or fault that is part of, or in addition to, an apology or expression of regret is admissible.

The Board of Physicians, on affirmative vote of a majority of a quorum, may reprimand a licensee, place a licensee on probation, or suspend or revoke a license for violations of prescribed standards. Providing testimony or attesting to a certificate of qualified expert is not grounds for discipline.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Health Claims Alternative Dispute Resolution Office, Department of Health and Mental Hygiene, Maryland Insurance Administration, Office of the Attorney General, Department of Legislative Services

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mp/jr

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