
By: **Delegates Zirkin, Barve, Donoghue, Jones, McConkey, Morhaim, and Shank**

Introduced and read first time: February 8, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Claims - Certificates of Qualified Experts**

3 FOR the purpose of requiring a claimant or plaintiff to file a certificate of a qualified
4 expert attesting to certain information for each defendant in a health care
5 malpractice claim or action under certain circumstances; requiring that a health
6 care malpractice claim or action be dismissed, without prejudice, as to a
7 defendant if the claimant or plaintiff fails to file a certificate of a qualified
8 expert under certain circumstances; providing that a health care malpractice
9 claim or action may be adjudicated in favor of a claimant or plaintiff on the issue
10 of liability, as to a defendant, if the defendant fails to file a certificate of a
11 qualified expert under certain circumstances; providing for the application of
12 this Act; clarifying language; and generally relating to filing certificates of
13 qualified experts in a health care malpractice claim or action.

14 BY repealing and reenacting, with amendments,
15 Article - Courts and Judicial Proceedings
16 Section 3-2A-04(b)
17 Annotated Code of Maryland
18 (2002 Replacement Volume and 2005 Supplement)

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

21 **Article - Courts and Judicial Proceedings**

22 3-2A-04.

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

24 (1) (i) 1. A PARTY SHALL FILE A CERTIFICATE OF A QUALIFIED
25 EXPERT DESCRIBED IN THIS SUBSECTION FOR EACH DEFENDANT;

26 2. Except as provided in subparagraph (ii) of this paragraph,
27 a claim or action filed after July 1, 1986, shall be dismissed, without prejudice, AS TO

1 A DEFENDANT if the claimant or plaintiff fails to file FOR THAT DEFENDANT, WITHIN
 2 90 DAYS FROM THE DATE OF THE COMPLAINT, a certificate of a qualified expert with
 3 the Director attesting to [departure] THE FOLLOWING:

4 A. DEPARTURE from standards of care[, and that];

5 B. THAT the departure from standards of care is the
 6 proximate cause of the alleged injury[, within 90 days from the date of the
 7 complaint];

8 C. THE CERTIFYING EXPERT'S BASIS FOR ALLEGING WHAT IS
 9 THE SPECIFIC STANDARD OF CARE;

10 D. THE CERTIFYING EXPERT'S QUALIFICATIONS TO TESTIFY
 11 TO THE SPECIFIC STANDARD OF CARE;

12 E. THE SPECIFIC STANDARD OF CARE;

13 F. HOW THE SPECIFIC STANDARD OF CARE WAS BREACHED;

14 G. WHAT SPECIFICALLY THE DEFENDANT SHOULD HAVE
 15 DONE TO MEET THE SPECIFIC STANDARD OF CARE; AND

16 H. THE SPECIFIC INJURY COMPLAINED OF; AND

17 [2.] 3. The claimant or plaintiff shall serve a copy of the
 18 certificate on all other parties to the claim or action or their attorneys of record in
 19 accordance with the Maryland Rules; and

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

23 1. The limitations period applicable to the claim or action has
 24 expired; and

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

27 (2) (i) A claim or action filed after July 1, 1986, may be adjudicated in
 28 favor of the claimant or plaintiff on the issue of liability, AS TO A DEFENDANT if the
 29 defendant disputes liability and fails to file a certificate of a qualified expert attesting
 30 to compliance with standards of care, or that the departure from standards of care is
 31 not the proximate cause of the alleged injury, within 120 days from the date the
 32 claimant or plaintiff served the certificate of a qualified expert set forth in paragraph
 33 (1) of this subsection on the defendant.

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

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

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

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

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

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

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

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

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

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

22 1. A party;

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

24 3. An employee or stockholder of any professional
25 corporation of which the party is a stockholder.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed to apply only prospectively and may not be applied or interpreted to have
28 any effect on or application to any claim or action filed before the effective date of this
29 Act.

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2006.