

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 789

(Delegate Zirkin, *et al.*)

Judiciary

---

Health Care Malpractice Claims - Certificates of Qualified Experts

---

This bill requires a party to file a certificate of a qualified expert for each defendant in a health care malpractice claim.

The bill applies only prospectively and does not apply to a claim or action filed before October 1, 2006.

---

Fiscal Summary

**State Effect:** None. The change is procedural in nature and would not directly affect governmental finances.

**Local Effect:** See above.

**Small Business Effect:** Minimal.

---

Analysis

**Bill Summary:** A claim or action must be dismissed as to a defendant if the claimant or plaintiff fails to file for that defendant, within 90 days from the date of the complaint, a certificate of a qualified expert attesting to: (1) the departure from the standards of care; (2) that the departure from the standards of care is the proximate cause of the alleged injury; (3) the certifying expert's basis for alleging what the specific standard of care is; (4) the expert's qualifications to testify to the standard of care; (5) the specific standard of care; (6) how the standard was breached; and (7) the specific injury that gave rise to the complaint.

A claim or action may be adjudicated in favor of the claimant or plaintiff as to a defendant if the defendant disputes liability and fails to file a certificate of a qualified expert as required.

**Current Law:** Unless the sole issue in the claim is lack of informed consent, a person claiming damages due to a medical injury must file a certificate of a qualified expert, within 90 days from the date of the complaint, attesting to departure from the standards of care and that the departure is the proximate cause of the alleged injury. Failure to file results in dismissal of the case, without prejudice. In lieu of dismissing the claim or action, the panel chairman or the court must grant an extension of up to 90 days for filing the certificate under specified circumstances.

In *D'Angelo v. St. Agnes Healthcare, Inc.*, 157 Md. App. 631, cert. denied 384 Md. 158 (2004), the Court of Special Appeals held that the circuit court did not err in dismissing a health care malpractice claim because the two certificates of qualified experts offered by the plaintiffs failed to individually name the defendants and, therefore, did not meet these requirements. In so doing, the court rejected the plaintiff's contention that the expert's certificate is not required to name the licensed professional against whom the claims are brought. *Id.*, at 647. The court noted that the certificates failed to attest that *any* of the defendants had caused the harm to the plaintiff due to a deviation from the appropriate standard of care. *Id.*, at 652 (emphasis original).

A claim or action may be adjudicated in favor of the claimant or plaintiff as to a defendant if the defendant disputes liability and fails to file a certificate of a qualified expert attesting to the compliance with standards of care, or that the departure from those standards is not the proximate cause of the alleged injury, within 120 days from the date that the claimant or plaintiff served the claimant's or plaintiff's certificate of a qualified expert on the defendant. If the defendant does not dispute liability, a certificate is not required.

Within 15 days after the date that discovery must be completed, a party must file a supplemental certificate of a qualified expert for each defendant that attests to: (1) the basis for alleging the specific standard of care; (2) the expert's qualifications; and (3) the standard of care.

For the plaintiff, the supplemental certificate must also attest to: (1) the specific injury; (2) how the standard of care was breached; (3) what the defendant should have done; and (4) the inference that the breach proximately caused the plaintiff's injury. For the defendant, the supplemental certificate must also attest to: (1) how the defendant complied with the standard of care; (2) what the defendant did to meet that standard; and

(3) if applicable, that the breach did not proximately cause the plaintiff's injury. Failure to file by the plaintiff may result in dismissal without prejudice. Failure to file by the defendant may result in a ruling by the court for the plaintiff on the issue of liability.

**Background:** A health care provider who attests in a certificate of a qualified expert or testifies about the merits of a claim or defense as a qualified expert may not devote more than 20% of the expert's professional activities that directly involve testimony in personal injury claims.

For actions filed on or after January 1, 2005, a health care provider who attests in a certificate of a qualified expert or testifies concerning a defendant's compliance with or departure from standards of care must: (1) have clinical experience, provided consultation relating to clinical practice, or taught medicine in the defendant's specialty or related field or in the field of health care in which the defendant provided care or treatment within five years of the incident; and (2) be board certified in the same specialty if the defendant is board certified in a specialty, unless the defendant was providing care or treatment to the plaintiff unrelated to the area in which the defendant is board certified or the health care provider taught medicine in the same or similar field.

---

### **Additional Information**

**Prior Introductions:** Provisions similar to this bill were included in SB 221 and HB 301 of 2005. SB 221 was heard in the Senate Judicial Proceedings Committee and HB 301 was heard in the House Judiciary Committee. No further action was taken on either bill.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2006  
nas/jr

---

Analysis by: T. Ryan Wilson

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510