

HOUSE BILL 495

D3

7lr2348

By: **Delegate Anderson**

Introduced and read first time: February 6, 2007

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Action or Claim for Medical Injury – Attesting Experts – Reports**

3 FOR the purpose of repealing a requirement that a report of each party's attesting
4 expert for certain certificates concerning a medical injury be filed in an action or
5 claim for a medical injury; and generally relating to repealing a certain
6 requirement to file certain reports by experts concerning a medical injury under
7 certain circumstances.

8 BY repealing and reenacting, without amendments,
9 Article – Courts and Judicial Proceedings
10 Section 3–2A–04(a)(1)(i) and (b)(1) and (2)
11 Annotated Code of Maryland
12 (2006 Replacement Volume)

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 3–2A–04(b)(3)
16 Annotated Code of Maryland
17 (2006 Replacement Volume)

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

20 **Article – Courts and Judicial Proceedings**

21 3–2A–04.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) (i) A person having a claim against a health care provider for
2 damage due to a medical injury shall file the claim with the Director and, if the claim
3 is against a physician, the Director shall forward copies of the claim to the State Board
4 of Physicians.

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

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

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

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

18 1. The limitations period applicable to the claim or
19 action has expired; and

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

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

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

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

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

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

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