

# HOUSE BILL 340

D3

11r1551

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By: **Delegates Dumais and Simmons**

Introduced and read first time: February 2, 2011

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice – Certificate and Report of Qualified Expert –**  
3 **Objection**

4 FOR the purpose of establishing when objections to a certificate of a qualified expert or  
5 expert report are required to be filed in health care malpractice cases; requiring  
6 a party to file a legally sufficient certificate of a qualified expert and report  
7 within a certain time after an arbitration panel chairman or the court rules a  
8 certificate or report is legally insufficient; and generally relating to health care  
9 malpractice.

10 BY repealing and reenacting, without amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 3–2A–04(a)(1)(i)  
13 Annotated Code of Maryland  
14 (2006 Replacement Volume and 2010 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Courts and Judicial Proceedings  
17 Section 3–2A–04(b)  
18 Annotated Code of Maryland  
19 (2006 Replacement Volume and 2010 Supplement)

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

22 **Article – Courts and Judicial Proceedings**

23 3–2A–04.

24 (a) (1) (i) A person having a claim against a health care provider for  
25 damage due to a medical injury shall file the claim with the Director and, if the claim

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 is against a physician, the Director shall forward copies of the claim to the State Board  
2 of Physicians.

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

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

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

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

16 1. The limitations period applicable to the claim or  
17 action has expired; and

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

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

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

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

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

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

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

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

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

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

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

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

15 1. A party;

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

17 3. An employee or stockholder of any professional  
18 corporation of which the party is a stockholder.

19 **(8) (I) ANY OBJECTION TO THE SUFFICIENCY OF A**  
20 **CERTIFICATE OF A QUALIFIED EXPERT OR REPORT SHALL BE FILED WITHIN 14**  
21 **DAYS AFTER THE FILING OF THE CERTIFICATE OR REPORT.**

22 **(II) IF THE PANEL CHAIRMAN OR THE COURT RULES THAT A**  
23 **PARTY'S CERTIFICATE OF A QUALIFIED EXPERT OR REPORT IS LEGALLY**  
24 **INSUFFICIENT, THE PARTY SHALL FILE A LEGALLY SUFFICIENT CERTIFICATE**  
25 **AND REPORT OF AN ATTESTING EXPERT WITHIN 30 DAYS AFTER THE ENTRY OF**  
26 **THE ORDER.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 June 1, 2011.