

# SENATE BILL 127

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SB 887/11 – JPR

5lr1404

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By: **Senator Gladden**

Introduced and read first time: January 28, 2015

Assigned to: Judicial Proceedings

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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 a  
6 party to file a legally sufficient certificate of a qualified expert and report within a  
7 certain time after an arbitration panel chairman or the court rules a certificate or  
8 report is legally insufficient; and generally relating to health care malpractice.

9 BY repealing and reenacting, without amendments,  
10 Article – Courts and Judicial Proceedings  
11 Section 3–2A–04(a)(1)(i)  
12 Annotated Code of Maryland  
13 (2013 Replacement Volume and 2014 Supplement)

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 (2013 Replacement Volume and 2014 Supplement)

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

21 **Article – Courts and Judicial Proceedings**

22 3–2A–04.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 against a physician, the Director shall forward copies of the claim to the State Board of  
2 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 claim  
5 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or  
6 plaintiff fails to file a certificate of a qualified expert with the Director attesting to  
7 departure from standards of care, and that the departure from standards of care is the  
8 proximate cause of the alleged injury, within 90 days from the date of the complaint; and

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

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

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

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

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

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

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

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

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

33 (4) A health care provider who attests in a certificate of a qualified expert  
34 or who testifies in relation to a proceeding before an arbitration panel or a court concerning  
35 compliance with or departure from standards of care may not devote annually more than

1 20 percent of the expert's professional activities to activities that directly involve testimony  
2 in personal injury claims.

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

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

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

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

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

12 1. A party;

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

14 3. An employee or stockholder of any professional  
15 corporation of which the party is a stockholder.

16 **(8) (I) A PARTY SHALL FILE ANY OBJECTION TO THE SUFFICIENCY**  
17 **OF A CERTIFICATE OF A QUALIFIED EXPERT OR REPORT WITHIN 14 DAYS AFTER THE**  
18 **CERTIFICATE OR REPORT IS FILED.**

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
25 1, 2015.