

SENATE BILL 1037

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By: **Senator Ramirez**

Introduced and read first time: February 10, 2017

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Malpractice Qualified Expert – Limitation on Testimony in**
3 **Personal Injury Claims – Repeal**

4 FOR the purpose of repealing the requirement that a health care provider who attests in a
5 certificate of a qualified expert or who testifies in relation to a proceeding before an
6 arbitration panel or a court concerning compliance with or departure from standards
7 of care devote no more than a certain percentage of the provider's professional
8 activities to activities that directly involve testimony in personal injury claims; and
9 generally relating to qualified experts in health care malpractice claims.

10 BY repealing and reenacting, with amendments,
11 Article – Courts and Judicial Proceedings
12 Section 3–2A–04(b)
13 Annotated Code of Maryland
14 (2013 Replacement Volume and 2016 Supplement)

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

17 **Article – Courts and Judicial Proceedings**

18 3–2A–04.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

7 1. The limitations period applicable to the claim or action has
8 expired; and

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

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

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

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

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

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

25 (4) [A health care provider who attests in a certificate of a qualified expert
26 or who testifies in relation to a proceeding before an arbitration panel or a court concerning
27 compliance with or departure from standards of care may not devote annually more than
28 20 percent of the expert's professional activities to activities that directly involve testimony
29 in personal injury claims.

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

32 [(6)] (5) In the case of a claim or action against a physician, the Director
33 shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection
34 to the State Board of Physicians.

1 **[(7)] (6)** For purposes of the certification requirements of this subsection
2 for any claim or action filed on or after July 1, 1989:

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

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

5 1. A party;

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

7 3. An employee or stockholder of any professional
8 corporation of which the party is a stockholder.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2017.