

MAR 9 2006
Place On Calendar

HOUSE FILE 2726
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 674)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to medical malpractice actions.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

HF 2726

1 Section 1. Section 147.139, Code 2005, is amended to read
2 as follows:

3 147.139 EXPERT WITNESS STANDARDS.

4 If the standard of care given by a physician and or surgeon
5 licensed pursuant to chapter 148, or osteopathic physician and
6 or surgeon licensed pursuant to chapter 150A, or a dentist
7 licensed pursuant to chapter 153, is at issue, the court shall
8 only allow a person to qualify as an expert witness and to
9 testify on the issue of the appropriate standard of care if
10 the-person's-medical-or-dental-qualifications-relate-directly
11 to-the-medical-problem-or-problems-at-issue-and-the-type-of
12 treatment-administered-in-the-case, breach of the standard of
13 care, or proximate cause if all of the following
14 qualifications are established:

15 1. The expert is licensed to practice medicine,
16 osteopathic medicine, or dentistry and in the three years
17 preceding the allegedly negligent act, engaged in the active
18 practice of medicine, osteopathic medicine, or dentistry, or
19 was a qualified instructor at an accredited university of
20 medicine and surgery, osteopathic medicine and surgery, or
21 dentistry.

22 2. The expert practices in the same or substantially
23 similar specialty as the defendant.

24 3. If the defendant is board certified in a specialty, the
25 expert is also certified in that specialty by a board
26 recognized by the American board of medical specialties and is
27 licensed and in good standing in each state of licensure, and
28 has not had the expert's license revoked or suspended in the
29 past five years.

30 Sec. 2. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
31 APOLOGY.

32 In any civil action for personal injury or wrongful death
33 or in any arbitration proceeding relating to such a civil
34 action against any physician or surgeon licensed pursuant to
35 chapter 148, osteopathic physician or surgeon licensed

1 pursuant to chapter 150A, or dentist licensed pursuant to
2 chapter 153, based upon the alleged negligence of the licensee
3 in the practice of that profession or occupation, any
4 statement, affirmation, gesture, or conduct expressing
5 apology, sympathy, commiseration, condolence, compassion, or a
6 general sense of benevolence that was made by a physician and
7 surgeon, osteopathic physician and surgeon, or dentist to the
8 patient, relative of the patient, or decision maker for the
9 patient that relates to the discomfort, pain, suffering,
10 injury, or death of the patient as a result of an
11 unanticipated outcome of medical care is inadmissible as
12 evidence of an admission of liability or as evidence of an
13 admission against interest.

14 Sec. 3. NEW SECTION. 147.141 NOTICE OF CLAIM AND
15 CERTIFICATE OF MERIT REQUIREMENT.

16 1. At least thirty days prior to filing a civil action for
17 personal injury or wrongful death against a licensed health
18 care provider, based upon the alleged negligence of the
19 licensed health care provider in the practice of that
20 profession, a plaintiff shall serve by certified mail, return
21 receipt requested, a notice of claim upon the licensed health
22 care provider. The notice of claim shall include a statement
23 of the theory of liability upon which the cause of action is
24 based and include a list of all persons to whom notices have
25 been sent, together with a certificate of merit, if necessary,
26 as specified in subsection 2.

27 2. a. The certificate of merit shall be signed under oath
28 by an expert who, in the three years preceding the allegedly
29 negligent act, either practiced or instructed in the same or
30 substantially similar field of medicine as the defendant.

31 b. The certificate of merit shall contain information
32 relating to all of the following:

33 (1) The expert's familiarity with the applicable standard
34 of care.

35 (2) The expert's qualifications.

1 (3) The expert's statement that the appropriate standard
2 of care was breached by the health care provider named in the
3 complaint.

4 (4) The expert's statement of the actions that the health
5 care provider should have taken or failed to take to have
6 complied with the standard of care.

7 (5) A statement of the manner in which the breach of the
8 standard of care was the cause of the injury alleged in the
9 complaint.

10 c. A separate certificate of merit shall be completed for
11 each defendant named in the notice of claim.

12 d. If a plaintiff or plaintiff's counsel asserts in good
13 faith that the plaintiff has insufficient time to obtain a
14 certificate of merit prior to the expiration of the period of
15 limitation in subsection 1, the plaintiff shall provide notice
16 of intent to provide a certificate of merit to the defendant
17 within sixty days of the date the defendant receives the
18 notice of the claim.

19 3. Notwithstanding subsection 2, if a plaintiff believes
20 that a certificate of merit is not necessary because the
21 plaintiff's cause of action against a health care provider is
22 based upon a well-established legal theory of liability which
23 does not require expert testimony supporting a breach of the
24 applicable standard of care, the plaintiff shall file a
25 statement setting forth the basis for the alleged liability of
26 the health care provider in lieu of the certificate of merit.

27 4. Except as otherwise provided in this section, the
28 applicable statute of limitations in a civil cause of action
29 against a health care provider upon whom a notice of claim is
30 served pursuant to this section shall be tolled from the date
31 the notice of claim is mailed.

32 5. If the plaintiff fails to provide a notice of claim and
33 a certificate of merit, or a statement of the legal theory
34 upon which the claim is based, the claim shall be dismissed
35 with prejudice.

1 6. For purposes of this section, "health care provider"
2 means a physician or surgeon, osteopath, osteopathic physician
3 or surgeon, dentist, podiatric physician, optometrist,
4 pharmacist, chiropractor, or nurse licensed in this state, a
5 hospital licensed pursuant to chapter 135B, or a health care
6 facility licensed pursuant to chapter 135C.

7 EXPLANATION

8 This bill relates to evidentiary and procedural
9 requirements in an action for medical malpractice.

10 The bill provides that if the standard of care given by a
11 physician or surgeon licensed pursuant to Code chapter 148, an
12 osteopathic physician or surgeon licensed pursuant to Code
13 chapter 150A, or a dentist licensed pursuant to Code chapter
14 153, is at issue in a medical malpractice case, the court
15 shall only allow a health care provider who is licensed in
16 this state to qualify as an expert witness and to testify on
17 the issue of the appropriate standard of care, breach of that
18 standard, or proximate cause if the health care provider meets
19 certain professional practice and educational criteria.
20 Current law relating to expert witness standards in a medical
21 malpractice action allows a person to testify as an expert
22 witness and to testify on the appropriate standard of care if
23 the person's medical or dental qualifications relate directly
24 to the medical problem at issue and the type of treatment
25 involved.

26 The bill provides that any statement, affirmation, gesture,
27 or conduct expressing apology, sympathy, commiseration,
28 condolence, compassion, or a general sense of benevolence that
29 was made by a physician or surgeon, osteopathic physician or
30 surgeon, or dentist to the patient, relative of the patient,
31 or decision maker for the patient that relates to the
32 discomfort, pain, suffering, injury, or death of the patient
33 as a result of an unanticipated outcome of medical care is
34 inadmissible as evidence of an admission of liability or as
35 evidence of an admission against interest.

1 The bill provides that at least 30 days prior to filing a
2 civil action for personal injury or wrongful death against a
3 health care provider, based upon the alleged negligence of the
4 licensed health care provider in the practice of that
5 profession, a plaintiff shall serve by certified mail, return
6 receipt requested, a notice of claim upon the licensed health
7 care provider. The notice of claim shall include a statement
8 of the theory of liability upon which the cause of action is
9 based and include a list of all persons to whom notices have
10 been sent, together with a certificate of merit.

11 The bill requires that the certificate of merit shall meet
12 certain requirements and specifies certain information that a
13 qualified expert who provides information in the certificate
14 of merit shall provide. The bill provides that a separate
15 certificate of merit shall be completed for each defendant
16 named in the complaint, and that if a plaintiff or plaintiff's
17 counsel asserts in good faith that the plaintiff has
18 insufficient time to obtain a certificate of merit prior to
19 the expiration of the 30-day limitation period, the plaintiff
20 shall provide notice of intent to provide a certificate of
21 merit to the defendant within 60 days of the date the
22 defendant receives the notice of the claim. If a plaintiff
23 believes that a certificate of merit is not necessary because
24 the plaintiff's cause of action against a health care provider
25 is based upon a well-established legal theory of liability
26 which does not require expert testimony supporting a breach of
27 the applicable standard of care, the plaintiff shall file a
28 statement setting forth the basis for the alleged liability of
29 the health care provider in lieu of the certificate of merit.

30 The bill further provides that the applicable statute of
31 limitations in a civil cause of action against a health care
32 provider upon whom a notice of claim is served shall be tolled
33 from the date the notice of claim is mailed. In addition, if
34 the plaintiff fails to provide a notice of claim and a
35 certificate of merit, or a statement of the legal theory upon

1 which the claim is based, the claim shall be dismissed with
2 prejudice.

3 For purposes of the bill, "health care provider" means a
4 physician or surgeon, osteopath, osteopathic physician or
5 surgeon, dentist, podiatric physician, optometrist,
6 pharmacist, chiropractor, or nurse licensed in Iowa, a
7 hospital licensed pursuant to Code chapter 135B, or a health
8 care facility licensed pursuant to Code chapter 135C.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

*Upmeyer
Tomenga
Ruckman
Hunter
Smith*

HSB 674
HUMAN RESOURCES

HOUSE FILE SF 02726
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON UPMEYER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to medical malpractice actions.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

1 Section 1. Section 147.139, Code 2005, is amended to read
2 as follows:

3 147.139 EXPERT WITNESS STANDARDS.

4 If the standard of care given by a physician and or surgeon
5 licensed pursuant to chapter 148, or osteopathic physician and
6 or surgeon licensed pursuant to chapter 150A, or a dentist
7 licensed pursuant to chapter 153, is at issue, the court shall
8 only allow a person to qualify as an expert witness and to
9 testify on the issue of the appropriate standard of care ~~if~~
10 ~~the person's medical or dental qualifications relate directly~~
11 ~~to the medical problem or problems at issue and the type of~~
12 ~~treatment administered in the case, breach of the standard of~~
13 ~~care, or proximate cause if all of the following~~
14 qualifications are established:

15 a. The expert is licensed to practice medicine,
16 osteopathic medicine, or dentistry and in the three years
17 preceding the allegedly negligent act, engaged in the active
18 practice of medicine, osteopathic medicine, or dentistry, or
19 was a qualified instructor at an accredited university of
20 medicine and surgery, osteopathic medicine and surgery, or
21 dentistry.

22 b. The expert practices in the same or substantially
23 similar specialty as the defendant.

24 c. If the defendant is board certified in a specialty, the
25 expert is also certified in that specialty by a board
26 recognized by the American board of medical specialties and is
27 licensed and in good standing in each state of licensure, and
28 has not had the expert's license revoked or suspended in the
29 past five years.

30 Sec. 2. NEW SECTION. 147.140 EVIDENCE OF REGRET OR
31 APOLOGY.

32 In any civil action for personal injury or wrongful death
33 or in any arbitration proceeding relating to such a civil
34 action against any physician or surgeon licensed pursuant to
35 chapter 148, osteopathic physician or surgeon licensed

1 pursuant to chapter 150A, or dentist licensed pursuant to
2 chapter 153, based upon the alleged negligence of the licensee
3 in the practice of that profession or occupation, any
4 statement, affirmation, gesture, or conduct expressing
5 apology, sympathy, commiseration, condolence, compassion, or a
6 general sense of benevolence that was made by a physician and
7 surgeon, osteopathic physician and surgeon, or dentist to the
8 patient, relative of the patient, or decision maker for the
9 patient that relates to the discomfort, pain, suffering,
10 injury, or death of the patient as a result of an
11 unanticipated outcome of medical care is inadmissible as
12 evidence of an admission of liability or as evidence of an
13 admission against interest.

14 Sec. 3. NEW SECTION. 147.141 NOTICE OF CLAIM AND
15 CERTIFICATE OF MERIT REQUIREMENT.

16 1. At least thirty days prior to filing a civil action for
17 personal injury or wrongful death against a licensed health
18 care provider, based upon the alleged negligence of the
19 licensed health care provider in the practice of that
20 profession, a plaintiff shall serve by certified mail, return
21 receipt requested, a notice of claim upon the licensed health
22 care provider. The notice of claim shall include a statement
23 of the theory of liability upon which the cause of action is
24 based and include a list of all persons to whom notices have
25 been sent, together with a certificate of merit, if necessary,
26 as specified in subsection 2.

27 2. a. The certificate of merit shall be signed under oath
28 by an expert who, in the three years preceding the allegedly
29 negligent act, either practiced or instructed in the same or
30 substantially similar field of medicine as the defendant.

31 b. The certificate of merit shall contain information
32 relating to all of the following:

33 (1) The expert's familiarity with the applicable standard
34 of care.

35 (2) The expert's qualifications.

1 (3) The expert's statement that the appropriate standard
2 of care was breached by the health care provider named in the
3 complaint.

4 (4) The expert's statement of the actions that the health
5 care provider should have taken or failed to take to have
6 complied with the standard of care.

7 (5) A statement of the manner in which the breach of the
8 standard of care was the cause of the injury alleged in the
9 complaint.

10 c. A separate certificate of merit shall be completed for
11 each defendant named in the notice of claim.

12 d. If a plaintiff or plaintiff's counsel asserts in good
13 faith that the plaintiff has insufficient time to obtain a
14 certificate of merit prior to the expiration of the period of
15 limitation in subsection 1, the plaintiff shall provide notice
16 of intent to provide a certificate of merit to the defendant
17 within sixty days of the date the defendant receives the
18 notice of the claim.

19 3. Notwithstanding subsection 2, if a plaintiff believes
20 that a certificate of merit is not necessary because the
21 plaintiff's cause of action against a health care provider is
22 based upon a well-established legal theory of liability which
23 does not require expert testimony supporting a breach of the
24 applicable standard of care, the plaintiff shall file a
25 statement setting forth the basis for the alleged liability of
26 the health care provider in lieu of the certificate of merit.

27 4. Except as otherwise provided in this section, the
28 applicable statute of limitations in a civil cause of action
29 against a health care provider upon whom a notice of claim is
30 served pursuant to this section shall be tolled from the date
31 the notice of claim is mailed.

32 5. If the plaintiff fails to provide a notice of claim and
33 a certificate of merit, or a statement of the legal theory
34 upon which the claim is based, the claim shall be dismissed
35 with prejudice.

1 6. For purposes of this section, "health care provider"
2 means a physician or surgeon, osteopath, osteopathic physician
3 or surgeon, dentist, podiatric physician, optometrist,
4 pharmacist, chiropractor, or nurse licensed in this state, a
5 hospital licensed pursuant to chapter 135B, or a health care
6 facility licensed pursuant to chapter 135C.

7 EXPLANATION

8 This bill relates to evidentiary and procedural
9 requirements in an action for medical malpractice.

10 The bill provides that if the standard of care given by a
11 physician or surgeon licensed pursuant to Code chapter 148, an
12 osteopathic physician or surgeon licensed pursuant to Code
13 chapter 150A, or a dentist licensed pursuant to Code chapter
14 153, is at issue in a medical malpractice case, the court
15 shall only allow a health care provider who is licensed in
16 this state to qualify as an expert witness and to testify on
17 the issue of the appropriate standard of care, breach of that
18 standard, or proximate cause if the health care provider meets
19 certain professional practice and educational criteria.

20 Current law relating to expert witness standards in a medical
21 malpractice action allows a person to testify as an expert
22 witness and to testify on the appropriate standard of care if
23 the person's medical or dental qualifications relate directly
24 to the medical problem at issue and the type of treatment
25 involved.

26 The bill provides that any statement, affirmation, gesture,
27 or conduct expressing apology, sympathy, commiseration,
28 condolence, compassion, or a general sense of benevolence that
29 was made by a physician or surgeon, osteopathic physician or
30 surgeon, or dentist to the patient, relative of the patient,
31 or decision maker for the patient that relates to the
32 discomfort, pain, suffering, injury, or death of the patient
33 as a result of an unanticipated outcome of medical care is
34 inadmissible as evidence of an admission of liability or as
35 evidence of an admission against interest.

1 The bill provides that at least 30 days prior to filing a
2 civil action for personal injury or wrongful death against a
3 health care provider, based upon the alleged negligence of the
4 licensed health care provider in the practice of that
5 profession, a plaintiff shall serve by certified mail, return
6 receipt requested, a notice of claim upon the licensed health
7 care provider. The notice of claim shall include a statement
8 of the theory of liability upon which the cause of action is
9 based and include a list of all persons to whom notices have
10 been sent, together with a certificate of merit.

11 The bill requires that the certificate of merit shall meet
12 certain requirements and specifies certain information that a
13 qualified expert who provides information in the certificate
14 of merit shall provide. The bill provides that a separate
15 certificate of merit shall be completed for each defendant
16 named in the complaint, and that if a plaintiff or plaintiff's
17 counsel asserts in good faith that the plaintiff has
18 insufficient time to obtain a certificate of merit prior to
19 the expiration of the 30-day limitation period, the plaintiff
20 shall provide notice of intent to provide a certificate of
21 merit to the defendant within 60 days of the date the
22 defendant receives the notice of the claim. If a plaintiff
23 believes that a certificate of merit is not necessary because
24 the plaintiff's cause of action against a health care provider
25 is based upon a well-established legal theory of liability
26 which does not require expert testimony supporting a breach of
27 the applicable standard of care, the plaintiff shall file a
28 statement setting forth the basis for the alleged liability of
29 the health care provider in lieu of the certificate of merit.

30 The bill further provides that the applicable statute of
31 limitations in a civil cause of action against a health care
32 provider upon whom a notice of claim is served shall be tolled
33 from the date the notice of claim is mailed. In addition, if
34 the plaintiff fails to provide a notice of claim and a
35 certificate of merit, or a statement of the legal theory upon

1 which the claim is based, the claim shall be dismissed with
2 prejudice.

3 For purposes of the bill, "health care provider" means a
4 physician or surgeon, osteopath, osteopathic physician or
5 surgeon, dentist, podiatric physician, optometrist,
6 pharmacist, chiropractor, or nurse licensed in Iowa, a
7 hospital licensed pursuant to Code chapter 135B, or a health
8 care facility licensed pursuant to Code chapter 135C.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35