



IN THE GENERAL ASSEMBLY STATE OF _____

An Act

To provide for the regulation of expert witnesses in medical injury actions

1 Be it enacted by the People of the State of _____, represented in the General Assembly.

2

3 **Section 1. Expert Witness Qualifications.** In any action for injury or death against a
4 physician, as defined in the (relevant state negligence statute), whether in contract or in
5 tort, arising out of the provision of or failure to provide health care services, a person may
6 qualify as an expert witness on the issue of the appropriate medical standard of care if the
7 witness:

8 (a) is licensed in this state, or some other state, as a doctor of medicine or osteopathy;

9 (b) is trained and experienced in the same discipline or school of practice as the
10 defendant or has specialty expertise in the disease process or procedure performed
11 in the case;

12 (c) is certified by a board recognized by the American Board of Medical Specialties
13 or the American Osteopathic Association, or by a board with equivalent
14 standards; and

15 (d) within five years of the date of the alleged occurrence or omission giving rise to
16 the claim, was in active medical practice in the same discipline or school of
17 practice as the defendant or has devoted a substantial portion of his time teaching
18 at an accredited medical school or in university-based research in relation to the
19 medical care and type of treatment at issue.

1 **Section 2. Medical Board Oversight of Medical Expert Witnesses.** A person who is
2 licensed in another state and who testifies as an expert witness in this state in any action
3 for injury or death against a physician, whether in contract or tort, arising out of the
4 provision of or failure to provide health care services, shall be deemed to have a
5 temporary license to practice medicine in this state for the purpose of providing such
6 testimony and shall be subject to the authority of the Board of Medicine and the
7 provisions of (the state medical discipline statute).

8
9 **Section 3. Payment of Medical Expert Witnesses.**

10 (a) In an action for injury or death against a physician, whether in contract or tort,
11 arising out of the provision of or failure to provide health care services, the court
12 may allow cross-examination of a medical expert witness as to:

- 13 (1) the amount of compensation that the witness has or will receive for the
14 witness' consultation and testimony;
15 (2) the frequency of the physician's expert witness activities;
16 (3) the proportion of the witness' professional time devoted to and income
17 derived from such activities; and
18 (4) the frequency with which the witness testifies for either plaintiffs or
19 defendants.

20 (b) A medical expert witness shall not testify on a contingency fee basis. A person
21 who violates this section shall be guilty of unprofessional conduct, as provided by
22 (the state medical discipline statute).

23
24 **Section 4. Disclosure of Expert Testimony.**

25 (a) In any action for injury or death against a physician, whether in contract or tort,
26 arising out of the provision of or failure to provide health care services, a party

1 shall disclose to other parties the identity of any person who may be used at trial
2 to present evidence.

3 (b) the disclosure required by section 4(a) shall, with respect to a witness who is
4 retained or specially employed to provide expert testimony in the case or whose
5 duties as an employee of the party regularly involve giving expert testimony.
6 This disclosure shall be accompanied by a written report prepared and signed by
7 the witness detailing:

- 8 (1) a complete statement of all opinions to be expressed and the basis and
9 reasons therefore;
- 10 (2) the data or other information considered by the witness in forming the
11 opinions;
- 12 (3) any exhibits to be used as a summary of or support for the opinions;
- 13 (4) the qualifications of the witness, including a list of all publications authored
14 by the witness within the preceding ten years;
- 15 (5) the compensation to be paid for the study and testimony; and
- 16 (6) a listing of any other cases in which the witness has testified as an expert at
17 trial or by deposition within the preceding four years.

18

19 **Section 5 Exclusion of Medical Evidence.** In any action for injury or death against a
20 physician, whether in contract or in tort, arising out of the provision of or failure to
21 provide health care services, medical evidence shall not be admissible in court that:

22 (a) has been obtained pursuant to an agreement with a third party who receives a
23 contingency fee for:

- 24 (1) providing a medical expert for review of medical injury claims;
- 25 (2) locating medical expert witnesses; or
- 26 (3) arranging the provision of medical expert testimony; or

1 (b) is provided by a medical expert witness who has agreed to provide medical
2 testimony on a contingency fee basis.

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4 **Section 6. Effective Date.** This Act shall become effective immediately upon being
5 enacted into law.