

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 565

By: Gumm

AS INTRODUCED

An Act relating to public health and safety; amending Sections 3 and 5, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2004, Sections 1-1708.1C and 1-1708.1E), which relate to definitions and medical liability actions; modifying definition; specifying ground for certain dismissal; requiring Administrative Director of the Courts to maintain certain registry; requiring Administrative Director of the Courts to make certain report; requiring Oklahoma Bar Association to impose certain sanctions under specified circumstances; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 3, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-1708.1C), is amended to read as follows:

Section 1-1708.1C As used in the Affordable Access to Health Care Act, the following words, terms, or phrases shall have the following meanings, unless the context otherwise clearly indicates:

1. "Health care provider" means any person or other entity who is licensed pursuant to the provisions of this title or Title 59 ~~or Title 63~~ of the Oklahoma Statutes, or pursuant to the laws of another state, to render health care services in the practice of a profession or in the ordinary course of business;

2. "Health care services" means any services provided by a health care provider, or by an individual working for or under the supervision of a health care provider, that relate to the diagnosis, assessment, prevention, treatment or care of any human illness, disease, injury or condition;

3. "Medical liability action" means any civil action involving, or contingent upon, personal injury or wrongful death brought against a health care provider based on professional negligence;

4. "Noneconomic damages" means all subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental anguish, emotional distress, loss of enjoyment of life, loss of society and companionship, loss of consortium, injury to reputation and humiliation; provided, however, "noneconomic damages" do not include exemplary damages, as defined in Section 9.1 of Title 23 of the Oklahoma Statutes;

5. "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of health care services, provided that such services are within the scope of services for which the health care provider is licensed, certified, or otherwise authorized to render by the laws of this state, and which are not within any restriction imposed by a hospital or the licensing agency of the health care provider; and

6. "Qualified expert" means ~~a health care provider~~ an individual licensed to practice medicine in this state who has knowledge of standards of care for the diagnosis, assessment, prevention, treatment or care of the illness, disease, injury or condition involved in the medical liability action. In a case involving a claim for negligent credentialing or corporate negligence, a "qualified expert" means a physician or administrator who has or has had responsibility for credentialing or served on a medical staff committee involved in a credentialing process at the licensed health care entity.

SECTION 2. AMENDATORY Section 5, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-1708.1E), is amended to read as follows:

Section 1-1708.1E A. 1. In any medical liability action, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

- a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,
- b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the expert's determination that, based upon a review of the available medical records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the health care provider against whom the action is brought constituted professional negligence, and
- c. on the basis of the qualified expert's review and consultation, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. If a medical liability action is filed:

- a. without an affidavit being attached to the petition, as required in paragraph 1 of this subsection, and
- b. no extension of time is subsequently granted by the court, pursuant to subsection B of this section,

the court shall, upon motion of the defendant, dismiss the action as frivolous without prejudice to its refiling.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant(s) that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

B. 1. The court may, upon application of the plaintiff for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the plaintiff has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection A of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action as frivolous without prejudice to its refiling.

C. 1. Upon written request of any defendant in a medical liability action, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant with:

- a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection A or B of this section, and
- b. an authorization from the plaintiff in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the medical liability action.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action as frivolous without prejudice to its refiling.

D. The Administrative Director of the Courts shall maintain a registry of attorneys who have had any cases dismissed as frivolous

pursuant to this section. The Administrative Director of the Courts shall forward to the Oklahoma Bar Association the names of attorneys who have had three (3) or more cases dismissed as frivolous pursuant to this section. The Oklahoma Bar Association shall impose sanctions on such attorneys including, but not limited to, prohibiting such attorneys from bringing an action pursuant to the Affordable Access to Health Care Act for a period of not less than ten (10) years.

SECTION 3. This act shall become effective November 1, 2005.

50-1-148

TEK

6/13/2015 8:49:28 AM