

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1649

By: Paddack

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5
6 AS INTRODUCED

7 An Act relating to torts; requiring specified
8 affidavit in certain actions; specifying contents of
9 certain affidavit; requiring dismissal of certain
10 action; allowing extension of time under certain
11 circumstances; requiring dismissal under certain
12 circumstances; providing for codification; and
13 providing an effective date.

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 111 of Title 76, unless there is
17 created a duplication in numbering, reads as follows:

18 A. 1. In any civil action for professional negligence, except
19 as provided in subsection B of this section, the plaintiff shall
20 attach to the petition an affidavit attesting that:

21 a. the plaintiff has consulted and reviewed the facts of
22 the claim with a qualified expert,

23 b. the plaintiff has obtained a written opinion from a
24 qualified expert that clearly identifies the plaintiff
and includes the expert's determination that, based

1 upon a review of the available material including, but
2 not limited to, applicable medical records, facts or
3 other relevant material, a reasonable interpretation
4 of the facts supports a finding that the acts or
5 omissions of the defendant against whom the action is
6 brought constituted professional negligence, and

7 c. on the basis of the qualified expert's review and
8 consultation, the plaintiff has concluded that the
9 claim is meritorious and based on good cause.

10 2. If the civil action for professional negligence is filed:

11 a. without an affidavit being attached to the petition,
12 as required in paragraph 1 of this subsection, and

13 b. no extension of time is subsequently granted by the
14 court, pursuant to subsection B of this section,

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

17 3. The written opinion from the qualified expert shall state
18 the acts or omissions of the defendant or defendants that the expert
19 then believes constituted professional negligence and shall include
20 reasons explaining why the acts or omissions constituted
21 professional negligence. The written opinion from the qualified
22 expert shall not be admissible at trial for any purpose nor shall
23 any inquiry be permitted with regard to the written opinion for any
24 purpose either in discovery or at trial.

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

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

13 C. 1. Upon written request of any defendant in a civil action
14 for professional negligence, the plaintiff shall, within ten (10)
15 business days after receipt of such request, provide the defendant
16 with:

- 17 a. a copy of the written opinion of a qualified expert
18 mentioned in an affidavit filed pursuant to subsection
19 A or B of this section, and
- 20 b. an authorization from the plaintiff in a form that
21 complies with applicable state and federal laws,
22 including the Health Insurance Portability and
23 Accountability Act of 1996, for the release of any and
24 all medical records related to the plaintiff for a

1 period commencing five (5) years prior to the incident
2 that is at issue in the civil action for professional
3 negligence.

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

8 SECTION 2. This act shall become effective November 1, 2008.

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