

THE HOUSE OF REPRESENTATIVES  
Monday, February 23, 2009

House Bill No. 1570

HOUSE BILL NO. 1570 - By: SCHWARTZ of the House.

An Act relating to torts; requiring that certain affidavit be attached to petition in any civil action for professional negligence; providing requirements for affidavit; providing consequences if action is filed without affidavit; authorizing extension of time to file affidavit; providing consequences if affidavit is not filed during extension period; requiring plaintiff to provide certain information to defendant; providing consequences if plaintiff fails to comply; providing for codification; and providing an effective date.

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

1           SECTION 1.   NEW LAW   A new section of law to be codified in the Oklahoma  
2 Statutes as Section 60 of Title 76, unless there is created a duplication in numbering,  
3 reads as follows:

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

7                   a.       the plaintiff has consulted and reviewed the facts of the claim with a  
8                               qualified expert,

1           b.     the plaintiff has obtained a written opinion from a qualified expert  
2                     that clearly identifies the plaintiff and includes the determination of  
3                     the expert that, based upon a review of the available material  
4                     including, but not limited to, applicable medical records, facts or other  
5                     relevant material, a reasonable interpretation of the facts supports a  
6                     finding that the acts or omissions of the defendant against whom the  
7                     action is brought constituted professional negligence, and  
8           c.     on the basis of the review and consultation of the qualified expert, the  
9                     plaintiff has concluded that the claim is meritorious and based on good  
10                    cause.

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

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

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

18           3. The written opinion from the qualified expert shall state the acts or omissions of  
19     the defendant or defendants that the expert then believes constituted professional  
20     negligence and shall include reasons explaining why the acts or omissions constituted  
21     professional negligence. The written opinion from the qualified expert shall not be

1 admissible at trial for any purpose nor shall any inquiry be permitted with regard to the  
2 written opinion for any purpose either in discovery or at trial.

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

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

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

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

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

4           SECTION 2. This act shall become effective November 1, 2009.

5           COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-19-09 - DO PASS.