

ENGROSSED

House Bill No. 1570

As Amended

ENGROSSED HOUSE BILL NO. 1570 - By: Schwartz and McCullough of the House and Paddack of the Senate.

[torts - civil action - professional negligence - codification - effective date]

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

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

A. 1. In any civil action for professional negligence, 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 determination of the expert that, based upon a review of the available material including, but not limited to, applicable medical records, facts or other relevant material, a

1 reasonable interpretation of the facts supports a
2 finding that the acts or omissions of the defendant
3 against whom the action is brought constituted
4 professional negligence, and

5 c. on the basis of the review and consultation of the
6 qualified expert, the plaintiff has concluded that the
7 claim is meritorious and based on good cause.

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

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

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

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

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

1 all medical records related to the plaintiff for a
2 period commencing five (5) years prior to the incident
3 that is at issue in the civil action for professional
4 negligence.

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-31-09 - DO
11 PASS, As Amended and Coauthored.