

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1570

By: Schwartz

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5
6 AS INTRODUCED

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

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

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

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

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

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

11 c. on the basis of the review and consultation of the
12 qualified expert, the plaintiff has concluded that the
13 claim is meritorious and based on good cause.

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

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

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

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

21 3. The written opinion from the qualified expert shall state
22 the acts or omissions of the defendant or defendants that the expert
23 then believes constituted professional negligence and shall include
24 reasons explaining why the acts or omissions constituted

1 professional negligence. The written opinion from the qualified
2 expert shall not be admissible at trial for any purpose nor shall
3 any inquiry be permitted with regard to the written opinion for any
4 purpose either in discovery or at trial.

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

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

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

21 a. a copy of the written opinion of a qualified expert
22 mentioned in an affidavit filed pursuant to subsection
23 A or B of this section, and
24

1 b. an authorization from the plaintiff in a form that
2 complies with applicable state and federal laws,
3 including the Health Insurance Portability and
4 Accountability Act of 1996, for the release of any and
5 all medical records related to the plaintiff for a
6 period commencing five (5) years prior to the incident
7 that is at issue in the civil action for professional
8 negligence.

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

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

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15 52-1-5915 MMP 12/23/08
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