

Torts; malpractice; qualifications of expert witnesses for medical malpractice action; amend requirements.

TORTS: Malpractice; TORTS: Civil procedure; OCCUPATIONS: Health care professions; OCCUPATIONS: Physicians; HEALTH: Other; CIVIL PROCEDURE: Evidence

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2169 (MCL 600.2169), as amended by 1993 PA
78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2169. (1) In an action alleging medical malpractice,
2 ~~a person~~ AN INDIVIDUAL shall not give expert testimony on the
3 appropriate standard of practice or care unless the ~~person~~
4 INDIVIDUAL is licensed as a health professional in this state or
5 another state and meets ALL OF the following criteria:
6 (a) If the party against whom or on whose behalf the testi-
7 mony is offered is a specialist, ~~specializes~~ at the time of the
8 occurrence that is the basis for the action AND AT THE TIME OF
9 THE TESTIMONY, THE EXPERT WITNESS MUST BE BOARD CERTIFIED in the
10 same specialty as the party against whom or on whose behalf the

1 testimony is offered. ~~However, if~~ THIS REQUIREMENT APPLIES
2 REGARDLESS OF WHETHER the party against whom or on whose behalf
3 the testimony is offered is a specialist who is board certified.
4 ~~, the expert witness must be a specialist who is board certified~~
5 ~~in that specialty.~~

6 (b) Subject to subdivision (c), during the year immediately
7 preceding the date of the occurrence that is the basis for the
8 claim or action, THE EXPERT WITNESS devoted a majority of his or
9 her professional time to either or both of the following:

10 (i) The active clinical practice of the same health profes-
11 sion in which the party against whom or on whose behalf the tes-
12 timony is offered is licensed and, if that party is a specialist,
13 the active clinical practice of that specialty.

14 (ii) The instruction of students in an accredited health
15 professional school or accredited residency or clinical research
16 program in the same health profession in which the party against
17 whom or on whose behalf the testimony is offered is licensed and,
18 if that party is a specialist, an accredited health professional
19 school or accredited residency or clinical research program in
20 the same specialty.

21 (c) If the party against whom or on whose behalf the testi-
22 mony is offered is a general practitioner, ~~the expert witness,~~
23 during the year immediately preceding the date of the occurrence
24 that is the basis for the claim or action, THE EXPERT WITNESS
25 devoted a majority of his or her professional time to either or
26 both of the following:

1 (i) Active clinical practice as a general practitioner.

2 (ii) Instruction of students in an accredited health
3 professional school or accredited residency or clinical research
4 program in the same health profession in which the party against
5 whom or on whose behalf the testimony is offered is licensed.

6 (2) In determining the qualifications of an expert witness
7 in an action alleging medical malpractice, the court shall, at a
8 minimum, evaluate all of the following:

9 (a) The educational and professional training of the expert
10 witness.

11 (b) The area of specialization of the expert witness AND
12 WHETHER THE EXPERT WITNESS WAS BOARD CERTIFIED AT THE TIME OF THE
13 OCCURRENCE THAT IS THE BASIS FOR THE ACTION AND IS CURRENTLY
14 BOARD CERTIFIED.

15 (c) The length of time the expert witness has been engaged
16 in the active clinical practice or instruction of the health pro-
17 fession or the specialty.

18 (d) The relevancy of the expert witness's testimony.

19 (3) This section does not limit the power of the trial court
20 to disqualify an expert witness on grounds other than the quali-
21 fications set forth in this section.

22 (4) In an action alleging medical malpractice, an expert
23 witness shall not testify on a contingency fee basis. A person
24 who violates this subsection is guilty of a misdemeanor.

25 (5) In an action alleging medical malpractice, all of the
26 following limitations apply to discovery conducted by opposing

1 counsel to determine whether or not an expert witness is
2 qualified:

3 (a) Tax returns of the expert witness are not discoverable.

4 (b) Family members of the expert witness shall not be
5 deposed concerning the amount of time the expert witness spends
6 engaged in the practice of his or her health profession.

7 (c) A personal diary or calendar belonging to the expert
8 witness is not discoverable. As used in this subdivision,
9 "personal diary or calendar" means a diary or calendar that does
10 not include listings or records of professional activities.

11 (6) AS USED IN THIS SECTION, "BOARD CERTIFIED" MEANS THAT
12 TERM AS DEFINED IN SECTION 2701 OF THE PUBLIC HEALTH CODE, 1978
13 PA 368, MCL 333.2701.