

HOUSE BILL No. 5948

April 18, 2006, Introduced by Reps. Pastor, Garfield, Gosselin, Taub, Brandenburg, Shaffer, Acciavatti and Walker and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2912i.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2912I. (1) SUBJECT TO SUBSECTION (2), THE PLAINTIFF IN AN
2 ACTION ALLEGING MALPRACTICE AGAINST A PROFESSIONAL SHALL FILE WITH
3 THE COMPLAINT AN AFFIDAVIT OF MERIT SIGNED BY AN INDIVIDUAL WHO THE
4 PLAINTIFF OR, IF THE PLAINTIFF IS REPRESENTED BY AN ATTORNEY, THE
5 PLAINTIFF'S ATTORNEY REASONABLY BELIEVES MEETS THE REQUIREMENTS OF
6 SUBSECTION (3). THE AFFIANT SHALL STATE IN THE AFFIDAVIT OF MERIT
7 ALL OF THE FOLLOWING:

8 (A) THAT HE OR SHE HAS REVIEWED ALL RECORDS SUPPLIED BY THE
9 PLAINTIFF OR THE PLAINTIFF'S ATTORNEY CONCERNING THE CONDUCT THAT

1 IS THE SUBJECT OF THE AFFIDAVIT.

2 (B) THE APPLICABLE STANDARD OF PRACTICE OR CARE.

3 (C) HIS OR HER OPINION THAT THE APPLICABLE STANDARD OF
4 PRACTICE OR CARE WAS BREACHED BY THE SUBJECT PROFESSIONAL.

5 (D) THE ACTIONS THAT SHOULD HAVE BEEN TAKEN OR OMITTED BY THE
6 SUBJECT PROFESSIONAL TO HAVE COMPLIED WITH THE APPLICABLE STANDARD
7 OF PRACTICE OR CARE.

8 (E) THE MANNER IN WHICH THE BREACH OF THE STANDARD OF PRACTICE
9 OR CARE WAS THE PROXIMATE CAUSE OF THE ALLEGED INJURY TO THE
10 PLAINTIFF.

11 (2) ON MOTION OF A PARTY FOR GOOD CAUSE SHOWN, THE COURT IN
12 WHICH THE COMPLAINT IS FILED MAY GRANT THE PLAINTIFF AN ADDITIONAL
13 28 DAYS IN WHICH TO FILE THE AFFIDAVIT REQUIRED UNDER SUBSECTION
14 (1).

15 (3) TO QUALIFY TO SIGN AN AFFIDAVIT UNDER SUBSECTION (1), AN
16 INDIVIDUAL SHALL MEET ALL OF THE FOLLOWING REQUIREMENTS:

17 (A) BE LICENSED IN THIS STATE OR ANOTHER STATE IN THE SAME
18 PROFESSION AS THE SUBJECT PROFESSIONAL.

19 (B) IF THE SUBJECT PROFESSIONAL IS A SPECIALIST, HAVE
20 SPECIALIZED AT THE TIME OF THE CONDUCT THAT IS THE SUBJECT OF THE
21 AFFIDAVIT IN THE SAME SPECIALTY AS THE SUBJECT PROFESSIONAL.

22 (C) DURING THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE
23 CONDUCT THAT IS THE SUBJECT OF THE AFFIDAVIT, HAVE DEVOTED A
24 MAJORITY OF HIS OR HER PROFESSIONAL TIME TO 1 OR MORE OF THE
25 FOLLOWING:

26 (i) THE ACTIVE PRACTICE OF THE SAME PROFESSION OF WHICH THE
27 SUBJECT PROFESSIONAL IS A MEMBER AND, IF THE SUBJECT PROFESSIONAL

1 IS A SPECIALIST, THE ACTIVE PRACTICE OF THAT SPECIALTY.

2 (ii) THE INSTRUCTION OF STUDENTS IN AN ACCREDITED PROFESSIONAL
3 SCHOOL OR ACCREDITED PROGRAM THAT PROVIDES STUDENTS WITH PRACTICAL
4 EXPERIENCE IN THE SAME PROFESSION OF WHICH THE SUBJECT PROFESSIONAL
5 IS A MEMBER AND, IF THE SUBJECT PROFESSIONAL IS A SPECIALIST, AN
6 ACCREDITED PROFESSIONAL SCHOOL OR ACCREDITED PROGRAM THAT PROVIDES
7 STUDENTS WITH PRACTICAL EXPERIENCE IN THE SAME SPECIALTY.

8 (iii) THE CONDUCT OF RESEARCH IN THE SAME PROFESSION OF WHICH
9 THE SUBJECT PROFESSIONAL IS A MEMBER AND, IF THE SUBJECT
10 PROFESSIONAL IS A SPECIALIST, THE CONDUCT OF RESEARCH IN THE SAME
11 SPECIALTY.

12 (4) AS USED IN THIS SECTION:

13 (A) "PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS OR WHO PROFESSES
14 OR HOLDS HIMSELF OR HERSELF OUT TO BE A MEMBER OF A PROFESSION
15 LICENSED UNDER THE LAWS OF THIS STATE, OTHER THAN AN INDIVIDUAL
16 AGAINST WHOM A MEDICAL MALPRACTICE CLAIM MAY BE BROUGHT.

17 (B) "SUBJECT PROFESSIONAL" MEANS THE PROFESSIONAL WHOSE
18 CONDUCT IS ALLEGED IN THE AFFIDAVIT TO HAVE BREACHED THE APPLICABLE
19 STANDARD OF PRACTICE OR CARE.