

Legislative Analysis



NON-LICENSED DEFENDANTS IN MEDICAL MALPRACTICE CASES

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House Bill 5671

Sponsor: Rep. John Walsh

Committee: Judiciary

Complete to 6-6-12

A SUMMARY OF HOUSE BILL 5671 AS INTRODUCED 5-23-12

The bill would amend the Revised Judicature Act to require that a person giving expert testimony meet certain criteria in order to testify in medical malpractice cases against or on behalf of a party that is not a licensed health professional. Additionally, the bill outlines the conditions under which a civil action for medical malpractice may be maintained.

Expert Testimony

Currently, a person cannot give expert testimony in a medical malpractice case unless they possess certain qualifications. The person must be a licensed health professional and must specialize in the same specialty as the party in the malpractice case. If the party is board certified, the person giving expert testimony must have the same board certification. The person giving expert testimony must have devoted a majority of his or her professional time to either an active clinical practice or the instruction of students in an accredited health professional school, residency, or clinical research program.

House Bill 5671 would add a separate set of prerequisites for medical malpractice cases against parties who are not licensed medical professionals. Those who would provide testimony in these cases would have to specialize in the same specialty as the party against whom or on whose behalf the testimony is offered. The person also must have devoted a majority of his or her professional time to either an active clinical practice or the instruction of students in an accredited health professional school, residency, or clinical research program.

Criteria for Civil Actions

Under Section 2192 of the RJA, civil actions for medical malpractice may currently be maintained against any person who holds himself or herself out to be a member of a state licensed profession. The bill would expand these criteria to allow cases against any person who holds himself or herself out to be a licensed health care professional, licensed health facility or agency, or an employee or agent of a licensed health facility or agency who is engaging or otherwise assisting in medical care and treatment regardless of whether the person is engaging in the practice of a health profession in a sole proprietorship, partnership, professional corporation, or other business entity. The bill defines "person" for the purposes of Section 2192 as an individual, partnership, corporation, association, governmental entity or other legal entity.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the judiciary. To the extent that additional malpractice cases may be filed under the bill, courts may face higher costs due to an increase in case load. There are no data to indicate how many new cases would be filed because of this bill.

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