

HOUSE BILL No. 4723

May 8, 2007, Introduced by Reps. Green, Rick Jones, Stahl, Hildenbrand, Opsommer, Meltzer, Stakoe, Marleau, Agema and Huizenga and referred to the Committee on Judiciary.

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, a
2 person shall not give expert testimony on the appropriate standard
3 of practice or care unless the person is licensed as a health
4 professional in this state, ~~or another state~~ **INCLUDING, BUT NOT**
5 **LIMITED TO, BEING LICENSED UNDER A LIMITED LICENSE THAT ALLOWS THE**
6 **PERSON TO TESTIFY AS AN EXPERT WITNESS,** and **THE PERSON ALSO** meets
7 the following criteria:

8 (a) If the party against whom or on whose behalf the testimony
9 is offered is a specialist, specializes at the time of the

1 occurrence that is the basis for the action in the same specialty
2 as the party against whom or on whose behalf the testimony is
3 offered. However, if the party against whom or on whose behalf the
4 testimony is offered is a specialist who is board certified, the
5 ~~expert-witness~~ must be a specialist who is board certified in that
6 specialty.

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

11 (i) The active clinical practice of the same health profession
12 in which the party against whom or on whose behalf the testimony is
13 offered is licensed and, if that party is a specialist, the active
14 clinical practice of that specialty.

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

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

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

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

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

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

10 (b) The area of specialization of the ~~expert~~-witness.

11 (c) The length of time the ~~expert~~-witness has been engaged in
12 the active clinical practice or instruction of the health
13 profession or the specialty.

14 (d) The relevancy of the ~~expert~~-witness's testimony.

15 **(E) THE AMOUNT OF TIME SPENT BY THE WITNESS PROVIDING**
16 **TESTIMONY AS AN EXPERT WITNESS DURING THE YEAR IMMEDIATELY**
17 **PRECEDING THE DATE OF THE WITNESS'S TESTIMONY IN THE ACTION.**

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

21 (4) In an action alleging medical malpractice, an expert
22 witness shall not testify on a contingency fee basis. **AN EXPERT**
23 **WITNESS SHALL NOT BE COMPENSATED FOR HIS OR HER TESTIMONY AT A RATE**
24 **THAT EXCEEDS THE RATE FOR COMPARABLE TIME AND EXPERTISE.** A person
25 who violates this subsection is guilty of a misdemeanor.

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

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

2 (a) Tax returns of the ~~expert~~-witness are not discoverable.

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

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