

SUBSTITUTE FOR  
HOUSE BILL NO. 4571

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending sections 2169, 2912b, 2912d, 2912e, and 5856 (MCL  
600.2169, 600.2912b, 600.2912d, 600.2912e, and 600.5856), sections  
2169, 2912d, and 2912e as amended and section 2912b as added by  
1993 PA 78 and section 5856 as amended by 2004 PA 87.

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 and, ~~meets the~~  
5 ~~following criteria:~~  
6       ~~—— (a) If the party against whom or on whose behalf the testimony~~  
7 ~~is offered is a specialist, specializes at the time of the~~

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

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

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

**FOLLOWING, AS APPLICABLE:**

**(A) IF THE PARTY AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS OFFERED IS A GENERAL PRACTITIONER, ACTIVE CLINICAL PRACTICE AS A GENERAL PRACTITIONER WITH MORE THAN A DE MINIMIS EXPERIENCE IN THE AREA RELEVANT TO THE CLAIM.**

**(B) IF THE PARTY AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS OFFERED IS A SPECIALIST, THE ACTIVE CLINICAL PRACTICE OF THAT SPECIALTY OR THE SPECIALTY THE PARTY WAS PRACTICING AT THE TIME OF THE OCCURRENCE.**

**(C) IF THE PARTY AGAINST WHOM OR ON WHOSE BEHALF THE TESTIMONY IS OFFERED IS BOARD CERTIFIED BY THE AMERICAN BOARD OF MEDICAL SPECIALTIES OR THE AMERICAN OSTEOPATHIC ASSOCIATION, THE ACTIVE CLINICAL PRACTICE OF THAT BOARD CERTIFIED SPECIALTY OR THE BOARD**

1 CERTIFIED SPECIALTY THE PARTY WAS PRACTICING AT THE TIME OF THE  
2 OCCURRENCE.

3 (D) ~~(ii) The instruction of students in an accredited health~~  
4 ~~professional school or accredited residency or clinical research~~  
5 ~~program in the same health profession in which the party against~~  
6 ~~whom or on whose behalf the testimony is offered is licensed and,~~  
7 ~~if that party is a specialist, an accredited health professional~~  
8 ~~school or accredited residency or clinical research program in the~~  
9 ~~same specialty~~ **THE RELEVANT SPECIALTY.**

10 ~~—— (c) If the party against whom or on whose behalf the testimony~~  
11 ~~is offered is a general practitioner, the expert witness, during~~  
12 ~~the year immediately preceding the date of the occurrence that is~~  
13 ~~the basis for the claim or action, devoted a majority of his or her~~  
14 ~~professional time to either or both of the following:~~

15 ~~—— (i) Active clinical practice as a general practitioner.~~

16 ~~—— (ii) Instruction of students in an accredited health~~  
17 ~~professional school or accredited residency or clinical research~~  
18 ~~program in the same health profession in which the party against~~  
19 ~~whom or on whose behalf the testimony is offered is licensed.~~

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

23 (a) The educational and professional training of the expert  
24 witness.

25 (b) The area of specialization of the expert witness.

26 (c) The length of time the expert witness has been engaged in  
27 the active clinical practice or instruction of the health

1 profession or the specialty.

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

3 **(E) THE CERTIFICATION, IF ANY, OF THE EXPERT WITNESS.**

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

7 (4) In an action alleging medical malpractice, an expert  
8 witness shall not testify on a contingency fee basis. A person who  
9 violates this subsection is guilty of a misdemeanor **PUNISHABLE BY**  
10 **IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN**  
11 **\$10,000.00, OR BOTH.**

12 (5) In an action alleging medical malpractice, all of the  
13 following limitations apply: ~~to discovery conducted by opposing~~  
14 ~~counsel to determine whether or not an expert witness is qualified.~~

15 (a) ~~Tax returns~~ **FINANCIAL RECORDS** of the ~~AN~~ expert witness are  
16 ~~not~~ **THAT RELATE TO THE EXPERT'S INCOME FROM ACTING AS AN EXPERT**  
17 **WITNESS ARE** discoverable **ONLY BY LEAVE OF COURT.**

18 (b) ~~Family members~~ **INFORMATION POSSESSED BY A FAMILY MEMBER** of  
19 ~~the AN~~ expert witness ~~shall not be deposed~~ concerning the amount of  
20 time the expert witness spends engaged in the practice of his or  
21 her health profession **IS NOT DISCOVERABLE UNLESS THE FAMILY MEMBER**  
22 **IS OR WAS EMPLOYED BY THE EXPERT WITNESS OR AN ENTITY THAT EMPLOYS**  
23 **THE EXPERT WITNESS.**

24 (c) A personal diary or calendar belonging to the ~~AN~~ expert  
25 witness is not discoverable. As used in this subdivision, "personal  
26 diary or calendar" means a diary or calendar that does not include  
27 listings or records of professional activities.

1           Sec. 2912b. (1) Except as otherwise provided in this section,  
2 a person shall not ~~commence~~**FILE** an action alleging medical  
3 malpractice against a health professional or health facility unless  
4 ~~the person has given~~ the health professional or health facility **HAS**  
5 **BEEN PROVIDED** written notice **OF INTENT TO FILE A CLAIM** under this  
6 section not less than ~~182~~**105** days before the action is commenced.

7           (2) The notice of intent to file a claim required under  
8 subsection (1) shall be mailed to the last known professional  
9 business address or residential address of the health professional  
10 or health facility ~~who~~**THAT** is the subject of the claim. Proof of  
11 the mailing constitutes prima facie evidence of compliance with  
12 this section. If no last known professional business or residential  
13 address can reasonably be ascertained, notice may be mailed to the  
14 health facility where the care that is the basis for the claim was  
15 rendered.

16           (3) The ~~182-day~~**105-DAY** notice period required in subsection  
17 (1) is shortened to 91 days if all of the following conditions  
18 exist:

19           (a) The claimant has previously filed the ~~182-day~~**105-DAY**  
20 notice required in subsection (1) against other health  
21 professionals or health facilities involved in the claim.

22           (b) The ~~182-day~~**105-DAY** notice period has expired as to the  
23 health professionals or health facilities described in subdivision  
24 (a).

25           (c) The claimant has filed a complaint and commenced an action  
26 alleging medical malpractice against 1 or more of the health  
27 professionals or health facilities described in subdivision (a).

1 (d) The claimant did not identify ~~and could not reasonably~~  
2 ~~have identified~~ a health professional or health facility to which  
3 notice must be sent under subsection (1) as a potential party to  
4 the action before filing the complaint.

5 (4) The notice given to a health professional or health  
6 facility under this section shall contain a statement of ~~at least~~  
7 ~~all of the~~ following:

8 (a) The factual basis for the claim.

9 (b) The applicable standard of practice or care alleged by the  
10 claimant.

11 (c) The manner in which it is ~~claimed~~ **ALLEGED** that the  
12 applicable standard of practice or care was breached by the health  
13 professional or health facility.

14 (d) The alleged action that should have been taken to achieve  
15 compliance with the alleged standard of practice or care.

16 (e) ~~The~~ **IF THE HEALTH PROFESSIONAL IS NOT EMPLOYED BY, OR THE**  
17 **HEALTH FACILITY IS NOT OPERATED BY, A GOVERNMENTAL ENTITY, A**  
18 **DESCRIPTION OF THE** manner in which ~~it is alleged the~~ **ALLEGED** breach  
19 of the standard of practice ~~or care was the~~ **A** proximate cause of  
20 the injury claimed in the notice.

21 **(F) IF THE HEALTH PROFESSIONAL IS EMPLOYED BY, OR THE HEALTH**  
22 **FACILITY IS OPERATED BY, A GOVERNMENTAL ENTITY, A DESCRIPTION OF**  
23 **THE MANNER IN WHICH THE ALLEGED BREACH OF THE STANDARD OF PRACTICE**  
24 **WAS THE PROXIMATE CAUSE OF THE INJURY CLAIMED IN THE NOTICE.**

25 **(G)** ~~(f)~~ The names of all health professionals and health  
26 facilities the claimant is notifying under this section in relation  
27 to the claim.

(5) Within 56 days after ~~giving~~ **RECEIVING A WRITTEN REQUEST FROM A HEALTH PROFESSIONAL OR HEALTH FACILITY THAT HAS RECEIVED A** notice under this section, the claimant shall allow the health professional or health facility ~~receiving the notice~~ access to all of the medical records related to the claim that are in the claimant's control ~~,—~~ **OR POSSESSION** and shall furnish releases for any medical records related to the claim that are not in the claimant's control ~~,—but~~ **OR POSSESSION** of which the claimant has knowledge. Subject to section ~~6013(9)~~ **6013(11)**, within 56 days after receipt of notice under this section, the health professional or health facility shall allow the claimant access to all medical records related to the claim that are in the control **OR POSSESSION** of the health professional or health facility. This subsection does not restrict a health professional or health facility receiving notice under this section from communicating with other health professionals or health facilities and acquiring medical records as permitted in section 2912f. This subsection does not restrict a patient's right of access to his or her medical records under any other provision of law.

(6) After the initial notice is given to a health professional or health facility under this section, the tacking or addition of successive ~~182-day~~ **105-DAY** periods is not allowed, irrespective of how many additional notices are subsequently filed for that claim and irrespective of the number of health professionals or health facilities notified.

(7) Within ~~154~~ **77** days after receipt of notice under this section, the health professional or health facility against whom

1 the claim is made shall furnish to the claimant or his or her  
2 authorized representative a written response that contains a  
3 statement of ~~each of the~~ following:

4 (a) The factual basis for the defense to the claim.

5 (b) The standard of practice or care that the health  
6 professional or health facility claims to be applicable to the  
7 action, **IDENTIFYING ANY SPECIALTY AND BOARD CERTIFICATION THE**  
8 **HEALTH PROFESSIONAL OR HEALTH FACILITY CLAIMS TO BE APPLICABLE TO**  
9 **THE ACTION**, and that the health professional or health facility  
10 complied with that standard.

11 (c) The manner in which it is claimed by the health  
12 professional or health facility that there was compliance with the  
13 applicable standard of practice or care.

14 (d) ~~The~~ **IF THE HEALTH PROFESSIONAL IS NOT EMPLOYED BY OR THE**  
15 **HEALTH FACILITY IS NOT OPERATED BY A GOVERNMENTAL ENTITY, A**  
16 **DESCRIPTION OF THE** manner in which the health professional or  
17 health facility ~~contends that the alleged negligence of the health~~  
18 ~~professional or health facility was not the proximate cause of the~~  
19 ~~claimant's alleged injury or alleged damage~~ **COMPLIED WITH THE**  
20 **STANDARD OF PRACTICE OR HOW THE ALLEGED BREACH OF THE STANDARD OF**  
21 **PRACTICE WAS NOT A PROXIMATE CAUSE OF THE INJURY CLAIMED IN THE**  
22 **NOTICE, OR BOTH.**

23 (E) **IF THE HEALTH PROFESSIONAL IS EMPLOYED BY OR THE HEALTH**  
24 **FACILITY IS OPERATED BY A GOVERNMENTAL ENTITY, A DESCRIPTION OF THE**  
25 **MANNER IN WHICH THE HEALTH PROFESSIONAL OR HEALTH FACILITY COMPLIED**  
26 **WITH THE STANDARD OF PRACTICE OR HOW THE ALLEGED BREACH OF THE**  
27 **STANDARD OF PRACTICE WAS NOT THE PROXIMATE CAUSE OF THE INJURY**

1 CLAIMED IN THE NOTICE, OR BOTH.

2 (8) If the claimant does not receive the written response  
3 required under subsection (7) within the required ~~154-day~~ **77-DAY**  
4 time period, the claimant may commence an action alleging medical  
5 malpractice upon the expiration of the ~~154-day~~ **77-DAY** period **AND**  
6 **ALL OBJECTIONS TO THE NOTICE OR ITS CONTENTS ARE WAIVED.**

7 (9) If at any time during the applicable notice period under  
8 this section a health professional or health facility receiving  
9 notice under this section informs the claimant in writing that the  
10 health professional or health facility does not intend to settle  
11 the claim within the applicable notice period, the claimant may  
12 commence an action alleging medical malpractice against the health  
13 professional or health facility, ~~so long as IF~~ the claim is not  
14 barred by the statute of limitations.

15 (10) AN OBJECTION TO THE FORM OR CONTENT OF A NOTICE OF INTENT  
16 GIVEN UNDER SUBSECTION (1) SHALL BE MADE BY MOTION AT THE TIME THE  
17 HEALTH PROFESSIONAL OR HEALTH FACILITY FILES ITS FIRST RESPONSE TO  
18 THE COMPLAINT. AN OBJECTION TO THE FORM OR CONTENT OF A WRITTEN  
19 RESPONSE FURNISHED UNDER SUBSECTION (7) SHALL BE MADE BY MOTION  
20 FILED WITHIN 28 DAYS AFTER SERVICE OF THE DEFENDANT'S FIRST  
21 RESPONSIVE PLEADING.

22 (11) IF AN OBJECTION IS NOT FILED UNDER SUBSECTION (10) WITHIN  
23 THE ALLOWABLE PERIOD, ALL OBJECTIONS TO THE NOTICE OF INTENT OR  
24 RESPONSE ARE WAIVED. A MOTION OBJECTING TO A NOTICE OF INTENT OR  
25 RESPONSE SHALL ASSERT EACH SPECIFIC DEFECT BEING CLAIMED.

26 (12) IF THE TRIAL COURT DETERMINES THAT A NOTICE OF INTENT OR  
27 RESPONSE DOES NOT COMPLY WITH THIS SECTION, THE SPECIFIC BASIS FOR

1 THAT DETERMINATION SHALL BE SET FORTH BY THE COURT AND THE COURT  
 2 SHALL ALLOW THE CLAIMANT, HEALTH PROFESSIONAL, OR HEALTH FACILITY  
 3 14 DAYS TO AMEND THE NOTICE OF INTENT OR RESPONSE TO CORRECT THE  
 4 ALLEGED DEFECT. AN AMENDED NOTICE OF INTENT OR RESPONSE UNDER THIS  
 5 SUBSECTION RELATES BACK TO THE DATE THE ORIGINAL NOTICE OF INTENT  
 6 OR RESPONSE WAS MAILED.

7 Sec. 2912d. (1) Subject to ~~subsection~~ **SUBSECTIONS (2) AND (3),**  
 8 **TO COMPLY WITH SECTION 2912B(1) OR (3), AS APPLICABLE,** the  
 9 plaintiff in an action alleging medical malpractice ~~or, if the~~  
 10 ~~plaintiff is represented by an attorney, the plaintiff's attorney~~  
 11 shall file with the complaint ~~an affidavit~~ **1 OR MORE AFFIDAVITS** of  
 12 merit signed by a health professional ~~who the plaintiff's attorney~~  
 13 ~~reasonably believes meets~~ **REASONABLY BELIEVED BY THE PLAINTIFF TO**  
 14 **MEET** the requirements for an expert witness under section 2169. The  
 15 affidavit of merit shall ~~certify that the health professional has~~  
 16 ~~reviewed the notice and all medical records supplied to him or her~~  
 17 ~~by the plaintiff's attorney concerning the allegations contained in~~  
 18 ~~the notice and shall contain a statement of each of the following:~~  
 19 ~~—— (a) The applicable standard of practice or care.~~  
 20 ~~—— (b) The health professional's opinion that the applicable~~  
 21 ~~standard of practice or care was breached by the health~~  
 22 ~~professional or health facility receiving the notice.~~  
 23 ~~—— (c) The actions that should have been taken or omitted by the~~  
 24 ~~health professional or health facility in order to have complied~~  
 25 ~~with the applicable standard of practice or care.~~  
 26 ~~—— (d) The manner in which the breach of the standard of practice~~  
 27 ~~or care was the proximate cause of the injury alleged in the~~

1 ~~notice.~~ DO ALL OF THE FOLLOWING:

2 (A) CERTIFY THAT THE EXPERT HAS REVIEWED THE COMPLAINT AND ALL  
3 MEDICAL RECORDS SUPPLIED TO HIM OR HER CONCERNING THE ALLEGATIONS  
4 CONTAINED IN THE COMPLAINT.

5 (B) SPECIFICALLY IDENTIFY EACH OF THE RECORDS REVIEWED.

6 (C) STATE AN EXPERT OPINION THAT THE STANDARD OF PRACTICE OR  
7 CARE THAT IS ALLEGED BY THE PLAINTIFF TO BE APPLICABLE TO THE  
8 ACTION WAS BREACHED BY THE DEFENDANT OR DEFENDANTS.

9 (D) STATE THE MANNER IN WHICH THE EXPERT ASSERTS THAT THERE  
10 WAS NONCOMPLIANCE WITH THE APPLICABLE STANDARD OF PRACTICE OR CARE.

11 (E) IDENTIFY EACH SPECIALTY AND BOARD CERTIFICATION THE EXPERT  
12 ASSERTS IS RELEVANT TO THE ACTION.

13 (F) STATE THE MANNER IN WHICH THE EXPERT CONTENTS THAT THE  
14 ALLEGED INJURY OR DAMAGE TO THE PLAINTIFF WAS PROXIMATELY CAUSED BY  
15 THE CARE AND TREATMENT THAT IS THE SUBJECT OF THE COMPLAINT.

16 (2) Upon motion of a party for good cause shown, the court in  
17 which the complaint is filed ~~may~~ **SHALL** grant ~~the plaintiff or, if~~  
18 ~~the plaintiff is represented by an attorney, the plaintiff's~~  
19 ~~attorney~~ an additional ~~28~~ **56** days in which to file the affidavit **OF**  
20 **MERIT** required ~~under~~ **BY** subsection (1).

21 (3) If the defendant in an action alleging medical malpractice  
22 ~~fails~~ **HAS FAILED** to allow access to medical records **OR TO FURNISH A**  
23 **RESPONSE TO THE PLAINTIFF'S NOTICE OF INTENT** within the **APPLICABLE**  
24 time period set forth in section ~~2912b(6)~~ **2912B**, the affidavit  
25 ~~required under subsection (1)~~ **may be filed within PLAINTIFF HAS** 91  
26 days after the ~~filing of the complaint~~ **IS FILED TO FILE THE**  
27 **AFFIDAVIT OF MERIT REQUIRED BY SUBSECTION (1).**

1           (4) IF THE PLAINTIFF FILES AN AMENDED COMPLAINT THAT SETS  
2 FORTH CLAIMS ARISING OUT OF THE SAME CONDUCT, TRANSACTION, OR  
3 OCCURRENCE SET FORTH, OR ATTEMPTED TO BE SET FORTH, IN THE ORIGINAL  
4 COMPLAINT, AN ADDITIONAL AFFIDAVIT OF MERIT UNDER THIS SECTION NEED  
5 NOT BE FILED UNLESS ORDERED BY THE COURT.

6           (5) AN OBJECTION TO AN AFFIDAVIT OF MERIT SHALL BE RAISED IN A  
7 MOTION FILED WITHIN 63 DAYS AFTER THE PLAINTIFF'S COMPLAINT AND  
8 AFFIDAVIT OF MERIT ARE SERVED. AN OBJECTION TO AN AFFIDAVIT OF  
9 MERIT THAT IS NOT INCLUDED IN A TIMELY FILED MOTION IS WAIVED. AN  
10 OBJECTION THAT THE HEALTH CARE PROFESSIONAL WHO SIGNED THE  
11 AFFIDAVIT DOES NOT MEET THE SPECIALTY REQUIREMENTS OF SECTION 2169  
12 IS WAIVED IF THE DEFENDANT DID NOT IDENTIFY THE RELEVANT SPECIALTY  
13 OR BOARD CERTIFICATION AS REQUIRED BY SECTION 2912B(7)(B).

14           (6) IF THE COURT DETERMINES THAT THE PLAINTIFF HAS NOT FULLY  
15 COMPLIED WITH THIS SECTION, THE PLAINTIFF SHALL BE GIVEN 56 DAYS TO  
16 FILE 1 OR MORE AFFIDAVITS THAT CORRECT THE DEFICIENCIES IDENTIFIED  
17 BY THE COURT. THE FILING OF THE AFFIDAVITS RELATES BACK TO THE DATE  
18 OF FILING THE ORIGINAL COMPLAINT.

19           (7) IF 1 OR MORE AFFIDAVITS ARE FILED UNDER SUBSECTION (6),  
20 THE DEFENDANT MAY RENEW ITS OBJECTIONS BY FILING A MOTION WITHIN 14  
21 DAYS AFTER SERVICE OF THE AFFIDAVITS. IF THE COURT FINDS THAT THE  
22 AFFIDAVIT OR AFFIDAVITS FILED UNDER SUBSECTION (6) ARE DEFECTIVE,  
23 THE COURT SHALL DISMISS THE ACTION.

24           Sec. 2912e. (1) In an action alleging medical malpractice,  
25 within 21 days after the plaintiff has filed an affidavit in  
26 compliance with section 2912d, the defendant shall file an answer  
27 to the complaint. ~~Subject to subsection (2), the defendant or, if~~

~~the defendant is represented by an attorney, the defendant's attorney shall file, not later than 91 days after the plaintiff or the plaintiff's attorney files the affidavit required under section 2912d, an affidavit of meritorious defense signed by a health professional who the defendant's attorney reasonably believes meets the requirements for an expert witness under section 2169. The~~

**ANSWER MAY BE VERIFIED BY THE DEFENDANT OR MAY BE ACCOMPANIED BY AN AFFIDAVIT OF MERITORIOUS DEFENSE SIGNED BY THE DEFENDANT OR AN EXPERT REASONABLY BELIEVED BY THE DEFENDANT TO MEET THE REQUIREMENTS FOR AN EXPERT WITNESS UNDER SECTION 2169. A VERIFIED ANSWER OR AFFIDAVIT UNDER THIS SUBSECTION SHALL COMPLY WITH SUBSECTION (2).**

**(2) A VERIFIED ANSWER OR affidavit of meritorious defense shall ~~certify~~ DO ALL OF THE FOLLOWING:**

**(A) CERTIFY** ~~that the health professional~~ **DEFENDANT OR EXPERT, AS APPLICABLE,** has reviewed the complaint and all medical records supplied to him or her ~~by the defendant's attorney concerning~~ **THAT ARE RELEVANT TO** the allegations contained in the complaint. ~~and shall contain a statement of each of the following:~~

~~—— (a) The factual basis for each defense to the claims made against the defendant in the complaint.~~

**(B) SPECIFICALLY IDENTIFY EACH OF THE RECORDS REVIEWED.**

**(C)** ~~(b) The~~ **STATE THE** standard of practice or care that the health professional or health facility named as a defendant in the complaint **DEFENDANT** claims to be applicable to the action. ~~and that the health professional or health facility complied with that standard.~~

1           (D) ~~(c) The STATE THE manner in which it is claimed by the~~  
2 ~~health professional or health facility named as a defendant in the~~  
3 ~~complaint~~ **THE EXPERT OR THE DEFENDANT ALLEGES** that there was  
4 compliance with the applicable standard of practice or care.

5           (E) **IDENTIFY EACH SPECIALTY AND BOARD CERTIFICATION THE EXPERT**  
6 **OR THE DEFENDANT ALLEGES IS RELEVANT TO THE ACTION.**

7           (F) ~~(d) The STATE THE manner in which the health professional~~  
8 ~~or health facility named as a defendant in the complaint~~ **EXPERT OR**  
9 **THE DEFENDANT** contends that the alleged injury or ~~alleged~~ damage to  
10 the plaintiff ~~is not related to~~ **WAS NOT PROXIMATELY CAUSED BY** the  
11 care and treatment ~~rendered~~ **THAT IS THE SUBJECT OF THE COMPLAINT.**

12           (3) **SUBJECT TO SUBSECTIONS (4) AND (5), WITHIN 56 DAYS AFTER**  
13 **FILING AN ANSWER UNDER SUBSECTION (1), IF THE DEFENDANT HAS FILED A**  
14 **VERIFIED ANSWER OR AN AFFIDAVIT OF MERITORIOUS DEFENSE SIGNED BY**  
15 **THE DEFENDANT, THE DEFENDANT SHALL FILE AN AFFIDAVIT OF MERITORIOUS**  
16 **DEFENSE THAT COMPLIES WITH SUBSECTION (2) AND IS SIGNED BY AN**  
17 **EXPERT WHO IS REASONABLY BELIEVED BY THE DEFENDANT TO MEET THE**  
18 **REQUIREMENTS FOR AN EXPERT WITNESS UNDER SECTION 2169.**

19           (4) ~~(2)~~ If the plaintiff in an action alleging medical  
20 malpractice fails to allow access to medical records as required  
21 under section ~~2912b(6)~~ **2912B**, the affidavit ~~required under~~  
22 ~~subsection (1) may be filed within~~ **DEFENDANT HAS** 91 days after  
23 ~~filing an~~ **THE answer to the complaint IS FILED TO FILE THE**  
24 **AFFIDAVIT OF MERITORIOUS DEFENSE REQUIRED BY SUBSECTION (3).**

25           (5) **ON MOTION OF A DEFENDANT FOR GOOD CAUSE SHOWN, THE COURT**  
26 **SHALL GRANT THE DEFENDANT AN ADDITIONAL 56 DAYS IN WHICH TO FILE**  
27 **THE AFFIDAVIT OF MERITORIOUS DEFENSE REQUIRED BY SUBSECTION (3).**

1           (6) IF A DEFENDANT FILES AN AMENDED ANSWER THAT SETS FORTH  
2 DEFENSES ARISING OUT OF THE SAME CONDUCT, TRANSACTION, OR  
3 OCCURRENCE SET FORTH, OR ATTEMPTED TO BE SET FORTH, IN THE ORIGINAL  
4 ANSWER, AN ADDITIONAL AFFIDAVIT OF MERITORIOUS DEFENSE UNDER  
5 SUBSECTION (3) NEED NOT BE FILED UNLESS ORDERED BY THE COURT.

6           (7) AN OBJECTION TO AN AFFIDAVIT OF MERITORIOUS DEFENSE FILED  
7 UNDER SUBSECTION (3) SHALL BE RAISED IN A MOTION FILED WITHIN 63  
8 DAYS AFTER THE AFFIDAVIT OF MERITORIOUS DEFENSE IS FILED. AN  
9 OBJECTION TO AN AFFIDAVIT OF MERITORIOUS DEFENSE FILED UNDER  
10 SUBSECTION (3) THAT IS NOT INCLUDED IN A TIMELY FILED MOTION IS  
11 WAIVED.

12           (8) IF THE COURT DETERMINES BASED ON A TIMELY FILED MOTION  
13 THAT THE DEFENDANT HAS NOT FULLY COMPLIED WITH SUBSECTION (3), THE  
14 DEFENDANT SHALL BE GIVEN 56 DAYS TO FILE 1 OR MORE AFFIDAVITS OF  
15 MERITORIOUS DEFENSE THAT COMPLY WITH SUBSECTION (3) TO CORRECT THE  
16 DEFICIENCIES IDENTIFIED BY THE COURT. THE FILING OF THE AFFIDAVITS  
17 RELATES BACK TO THE DATE OF FILING THE ORIGINAL ANSWER. IF THE  
18 COURT FINDS THAT THE AFFIDAVIT OR AFFIDAVITS FILED UNDER THIS  
19 SUBSECTION ARE DEFECTIVE, THE COURT SHALL ENTER JUDGMENT FOR THE  
20 PLAINTIFF.

21           Sec. 5856. The statutes of limitations or repose **OR ANY TIME**  
22 **PERIODS FOR FILING AN ACTION** are tolled in any of the following  
23 circumstances:

24           (a) ~~At~~ **NOTWITHSTANDING SECTION 2912B OR 2912D, AT** the time the  
25 complaint is filed, if a copy of the summons and complaint are  
26 served on the defendant within the time set forth in the ~~supreme~~  
27 **MICHIGAN** court rules.

1 (b) At the time jurisdiction over the defendant is otherwise  
2 acquired.

3 (c) At the time notice is given ~~in compliance with~~ **WITHIN** the  
4 applicable notice period under section 2912b, if during ~~that~~ **THE**  
5 **APPLICABLE NOTICE** period a claim would be barred ~~by the statute of~~  
6 ~~limitations or repose; but in this case~~ **AS UNTIMELY. IF THIS**  
7 **SUBDIVISION APPLIES**, the statute is tolled ~~not longer than the~~  
8 ~~number of days equal to the number of days remaining in the~~  
9 ~~applicable notice period after the date notice is given~~ **FOR 182**  
10 **DAYS BEGINNING THE DAY THE NOTICE IS GIVEN UNDER SECTION 2912B.**