

1 (b) That the attorney has consulted with at least one qualified
2 expert who the attorney reasonably believes is knowledgeable in the
3 relevant issues involved in the particular action and who:

4 (i) Holds a license, certificate, or registration issued by this
5 state or another state in the same profession as that of the defendant
6 and who practices in the same specialty or subspecialty as the
7 defendant; or

8 (ii) Has expertise in those areas requiring expert testimony in an
9 action against a health care facility;

10 (c) The identity of the expert and the expert's license,
11 certification, or registration;

12 (d) That the expert is willing and available to testify to
13 admissible facts or opinions; and

14 (e) That the attorney has concluded on the basis of such review and
15 consultation that there is reasonable and meritorious cause for the
16 filing of such action.

17 (3) Where a certificate is required under this section, and where
18 there are multiple defendants, the certificate or certificates must
19 state the attorney's conclusion that on the basis of review and expert
20 consultation, there is reasonable and meritorious cause for the filing
21 of such action as to each defendant.

22 (4) The provisions of this section shall not be applicable to a pro
23 se plaintiff until such a time as an attorney appears on the
24 plaintiff's behalf.

25 (5) Violation of this section shall be grounds for either dismissal
26 of the case or sanctions against the attorney, or both, as the court
27 deems appropriate.

28 NEW SECTION. **Sec. 2.** Section 1 of this act applies to all actions
29 for damages arising out of professional negligence filed on or after
30 the effective date of this section.

31 **PART 2--EQUAL ACCESS TO MEDICAL WITNESSES**

32 **Sec. 3.** RCW 5.60.060 and 1995 c 240 s 1 are each amended to read
33 as follows:

34 (1) A husband shall not be examined for or against his wife,
35 without the consent of the wife, nor a wife for or against her husband
36 without the consent of the husband; nor can either during marriage or

1 afterward, be without the consent of the other, examined as to any
2 communication made by one to the other during marriage. But this
3 exception shall not apply to a civil action or proceeding by one
4 against the other, nor to a criminal action or proceeding for a crime
5 committed by one against the other, nor to a criminal action or
6 proceeding against a spouse if the marriage occurred subsequent to the
7 filing of formal charges against the defendant, nor to a criminal
8 action or proceeding for a crime committed by said husband or wife
9 against any child of whom said husband or wife is the parent or
10 guardian, nor to a proceeding under chapter 70.96A or 71.05 RCW:
11 PROVIDED, That the spouse of a person sought to be detained under
12 chapter 70.96A or 71.05 RCW may not be compelled to testify and shall
13 be so informed by the court prior to being called as a witness.

14 (2) An attorney or counselor shall not, without the consent of his
15 or her client, be examined as to any communication made by the client
16 to him or her, or his or her advice given thereon in the course of
17 professional employment.

18 (3) A member of the clergy or a priest shall not, without the
19 consent of a person making the confession, be examined as to any
20 confession made to him or her in his or her professional character, in
21 the course of discipline enjoined by the church to which he or she
22 belongs.

23 (4) Subject to the limitations under RCW 70.96A.140 or 71.05.250,
24 a physician or surgeon or osteopathic physician or surgeon shall not,
25 without the consent of his or her patient, be examined in a civil
26 action as to any information acquired in attending such patient, which
27 was necessary to enable him or her to prescribe or act for the patient,
28 except as follows:

29 (a) In any judicial proceedings regarding a child's injury,
30 neglect, or sexual abuse or the cause thereof; and

31 (b) (~~Ninety~~) One hundred twenty days after filing an action for
32 personal injuries or wrongful death, the claimant shall be deemed to
33 waive the physician-patient privilege. Waiver of the physician-patient
34 privilege for any one physician or condition constitutes a waiver of
35 the privilege as to all physicians or conditions, subject to such
36 limitations as a court may impose pursuant to court rules. Where the
37 privilege has been waived under this section, ex parte interviews with
38 such physicians may be conducted in the same manner as with any other
39 witness.

1 (5) A public officer shall not be examined as a witness as to
2 communications made to him or her in official confidence, when the
3 public interest would suffer by the disclosure.

4 (6)(a) A peer support group counselor shall not, without consent of
5 the law enforcement officer making the communication, be compelled to
6 testify about any communication made to the counselor by the officer
7 while receiving counseling. The counselor must be designated as such
8 by the sheriff, police chief, or chief of the Washington state patrol,
9 prior to the incident that results in counseling. The privilege only
10 applies when the communication was made to the counselor while acting
11 in his or her capacity as a peer support group counselor. The
12 privilege does not apply if the counselor was an initial responding
13 officer, a witness, or a party to the incident which prompted the
14 delivery of peer support group counseling services to the law
15 enforcement officer.

16 (b) For purposes of this section, "peer support group counselor"
17 means a:

18 (i) Law enforcement officer, or civilian employee of a law
19 enforcement agency, who has received training to provide emotional and
20 moral support and counseling to an officer who needs those services as
21 a result of an incident in which the officer was involved while acting
22 in his or her official capacity; or

23 (ii) Nonemployee counselor who has been designated by the sheriff,
24 police chief, or chief of the Washington state patrol to provide
25 emotional and moral support and counseling to an officer who needs
26 those services as a result of an incident in which the officer was
27 involved while acting in his or her official capacity.

28 **Sec. 4.** RCW 70.02.050 and 1993 c 448 s 4 are each amended to read
29 as follows:

30 (1) A health care provider may disclose health care information
31 about a patient without the patient's authorization to the extent a
32 recipient needs to know the information, if the disclosure is:

33 (a) To a person who the provider reasonably believes is providing
34 health care to the patient;

35 (b) To any other person who requires health care information for
36 health care education, or to provide planning, quality assurance, peer
37 review, or administrative, legal, financial, or actuarial services to
38 the health care provider; or for assisting the health care provider in

1 the delivery of health care and the health care provider reasonably
2 believes that the person:

3 (i) Will not use or disclose the health care information for any
4 other purpose; and

5 (ii) Will take appropriate steps to protect the health care
6 information;

7 (c) To any other health care provider reasonably believed to have
8 previously provided health care to the patient, to the extent necessary
9 to provide health care to the patient, unless the patient has
10 instructed the health care provider in writing not to make the
11 disclosure;

12 (d) To any person if the health care provider reasonably believes
13 that disclosure will avoid or minimize an imminent danger to the health
14 or safety of the patient or any other individual, however there is no
15 obligation under this chapter on the part of the provider to so
16 disclose;

17 (e) Oral, and made to immediate family members of the patient, or
18 any other individual with whom the patient is known to have a close
19 personal relationship, if made in accordance with good medical or other
20 professional practice, unless the patient has instructed the health
21 care provider in writing not to make the disclosure;

22 (f) To a health care provider who is the successor in interest to
23 the health care provider maintaining the health care information;

24 (g) For use in a research project that an institutional review
25 board has determined:

26 (i) Is of sufficient importance to outweigh the intrusion into the
27 privacy of the patient that would result from the disclosure;

28 (ii) Is impracticable without the use or disclosure of the health
29 care information in individually identifiable form;

30 (iii) Contains reasonable safeguards to protect the information
31 from redisclosure;

32 (iv) Contains reasonable safeguards to protect against identifying,
33 directly or indirectly, any patient in any report of the research
34 project; and

35 (v) Contains procedures to remove or destroy at the earliest
36 opportunity, consistent with the purposes of the project, information
37 that would enable the patient to be identified, unless an institutional
38 review board authorizes retention of identifying information for
39 purposes of another research project;

1 (h) To a person who obtains information for purposes of an audit,
2 if that person agrees in writing to:

3 (i) Remove or destroy, at the earliest opportunity consistent with
4 the purpose of the audit, information that would enable the patient to
5 be identified; and

6 (ii) Not to disclose the information further, except to accomplish
7 the audit or report unlawful or improper conduct involving fraud in
8 payment for health care by a health care provider or patient, or other
9 unlawful conduct by the health care provider;

10 (i) To an official of a penal or other custodial institution in
11 which the patient is detained;

12 (j) To provide directory information, unless the patient has
13 instructed the health care provider not to make the disclosure;

14 (k) In the case of a hospital or health care provider to provide,
15 in cases reported by fire, police, sheriff, or other public authority,
16 name, residence, sex, age, occupation, condition, diagnosis, or extent
17 and location of injuries as determined by a physician, and whether the
18 patient was conscious when admitted; or

19 (l) Made after a deemed waiver of the physician-patient privilege
20 under RCW 5.60.060(4)(b).

21 (2) A health care provider shall disclose health care information
22 about a patient without the patient's authorization if the disclosure
23 is:

24 (a) To federal, state, or local public health authorities, to the
25 extent the health care provider is required by law to report health
26 care information; when needed to determine compliance with state or
27 federal licensure, certification or registration rules or laws; or when
28 needed to protect the public health;

29 (b) To federal, state, or local law enforcement authorities to the
30 extent the health care provider is required by law;

31 (c) Pursuant to compulsory process in accordance with RCW
32 70.02.060.

33 (3) All state or local agencies obtaining patient health care
34 information pursuant to this section shall adopt rules establishing
35 their record acquisition, retention, and security policies that are
36 consistent with this chapter.

37 NEW SECTION. Sec. 5. Sections 3 and 4 of this act do not apply to
38 claims, hearings, appeals, or any other proceedings under Title 51 RCW.

PART 3--LIMITATION OF ACTIONS

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Sec. 6. RCW 4.16.190 and 1993 c 232 s 1 are each amended to read as follows:

If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

This section does not apply to any civil action for damages for injury occurring as a result of health care.

NEW SECTION. **Sec. 7.** A new section is added to chapter 4.16 RCW to read as follows:

Any civil action for damages for injury occurring as a result of health care provided after June 25, 1976, and before the effective date of this act that has not accrued before the effective date of this act and that was previously tolled by RCW 4.16.190 accrues on the effective date of this act.

Sec. 8. RCW 4.16.350 and 1988 c 144 s 2 are each amended to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, ~~((podiatrist))~~ podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment,

1 including, in the event such employee or agent is deceased, his estate
2 or personal representative; or

3 (3) An entity, whether or not incorporated, facility, or
4 institution employing one or more persons described in subsection (1)
5 of this section, including, but not limited to, a hospital, clinic,
6 health maintenance organization, or nursing home; or an officer,
7 director, employee, or agent thereof acting in the course and scope of
8 his employment, including, in the event such officer, director,
9 employee, or agent is deceased, his estate or personal representative;
10 based upon alleged professional negligence shall be commenced within
11 three years of the act or omission alleged to have caused the injury or
12 condition, or one year of the time the patient or his representative
13 discovered or reasonably should have discovered that the injury or
14 condition was caused by said act or omission, whichever period expires
15 later, except that in no event shall an action be commenced more than
16 eight years after said act or omission: PROVIDED, That the time for
17 commencement of an action is tolled upon proof of fraud, intentional
18 concealment, or the presence of a foreign body not intended to have a
19 therapeutic or diagnostic purpose or effect.

20 (~~For purposes of this section, notwithstanding RCW 4.16.190, the~~
21 ~~knowledge of a custodial parent or guardian shall be imputed to a~~
22 ~~person under the age of eighteen years, and such imputed knowledge~~
23 ~~shall operate to bar the claim of such minor to the same extent that~~
24 ~~the claim of an adult would be barred under this section. Any action~~
25 ~~not commenced in accordance with this section shall be barred.~~

26 ~~For purposes of this section, with respect to care provided after~~
27 ~~June 25, 1976, and before August 1, 1986, the knowledge of a custodial~~
28 ~~parent or guardian shall be imputed as of April 29, 1987, to persons~~
29 ~~under the age of eighteen years.))~~

30 This section does not apply to a civil action based on intentional
31 conduct brought against those individuals or entities specified in this
32 section by a person for recovery of damages for injury occurring as a
33 result of childhood sexual abuse as defined in RCW 4.16.340(5).

34 **PART 4--MANDATORY MEDIATION**

35 **Sec. 9.** RCW 7.70.110 and 1993 c 492 s 420 are each amended to read
36 as follows:

