

HOUSE BILL REPORT

EHB 1926

As Passed House:

March 18, 2003

Title: An act relating to expert witnesses in actions under chapter 7.70 RCW.

Brief Description: Limiting the use of expert witnesses.

Sponsors: By Representatives Lantz, Clibborn, Moeller, Schual-Berke, Cody, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Veloria, Conway, Simpson, Sommers and Haigh.

Brief History:

Committee Activity:

Judiciary: 2/21/03, 2/27/03 [DP].

Floor Activity:

Passed House: 3/18/03, 97-0.

Brief Summary of Engrossed Bill

- Limits to one per issue the number of expert witnesses each side may have in civil actions for injuries resulting from medical care. Additional experts are allowed upon a showing of good cause.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Derek Green (786-5793), Bill Perry (786-7123).

Background:

A health care provider may be held civilly liable for injuries to patients resulting from health care services. A patient's claim must allege one of the following:

- (1) the patient's injury resulted from a health care provider's failure to follow accepted standards of care, as measured against reasonably prudent, similarly situated

- health care providers within the state;
- (2) the health care provider promised the patient the injury would not occur; or
 - (3) the patient did not consent to the procedure causing the injury or was not properly informed about the facts of the procedure.

For any of these claims, the burden of proof is upon the plaintiff to prove all necessary elements. Expert witnesses are generally required in medical malpractice suits to establish the standard of care of a reasonably prudent health care provider, and also to prove whether the failure to exercise that standard of care was the proximate cause of the patient's injury. Expert witnesses may also be used in other circumstances in which a jury would not be expected to have the technical knowledge or experience required to evaluate facts and evidence, such as understanding the extent of an injury. Expert witnesses are not required to establish a standard of care if the conduct in question is within the common knowledge of the jury. For example, unintentionally leaving foreign objects in a patient after surgery or amputating the wrong limb may not require expert testimony to establish a violation of the standard of care.

The regulations on a party's ability to use expert witnesses varies by state and court. Under Washington's Rules of Civil Procedure, courts have some discretion to limit the number of expert witnesses and can reject witnesses if they do not meet the standards of an expert. Prior to trial, the opposing party is entitled to depose any experts and other witnesses expected to testify. In this regard, Washington's practice is similar to that of the Federal Rules of Civil Procedure.

Summary of Engrossed Bill:

The number of expert witnesses allowed per side in civil actions for injuries occurring as a result of medical care is limited to one per issue, and one for proving a standard of care, except upon a showing of good cause. In the event that multiple parties on the same side of an action cannot agree on one expert for an issue, the court will allow more than one expert upon a showing of good cause.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is one step in addressing medical malpractice issues. Costs of litigation are one reason why malpractice rates are rising for doctors.

(With concerns) Lowering expenses on litigation would benefit both sides in a lawsuit, but limiting experts to one per side per issue is concerning, especially if there are multiple parties on one side. Other options worth considering are limiting experts to one per party, restricting discovery of experts, or allowing two experts per issue. The bill does not specify what an "independent expert" witness is.

Testimony Against: None.

Testified: (In support) Representative Lantz, prime sponsor; and Loren Finley.

(With concerns) Mike Glenn, Olympic Medical Center; Lisa Thatcher, Washington State Hospital Association; Mike Glenn, Olympic Medical Center; James McMahan, Washington Casualty Company; Carol Johnston, Washington State Trial Lawyers Association; and Cliff Webster, Washington State Medical Association.