
Judiciary Committee

HB 2840

Title: An act relating to expert witness qualifications in action under chapter 7.70 RCW.

Brief Description: Establishing the necessary qualifications for expert witness testimony under chapter 7.70 RCW.

Sponsors: Representatives Schual-Berke, Linville and Morrell.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes minimum qualifications for expert witnesses in medical malpractice actions.

Hearing Date: 1/27/04

Staff: Edie Adams (786-7180).

Background:

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action:

- The health care provider failed to follow the required standard of care;
- The health care provider promised that the injury suffered would not occur; or
- The injury resulted from health care to which the patient did not consent.

Failure to follow the standard of care means that the health care provider failed to exercise the degree of care expected of a reasonably prudent provider of the same field at that time, and acting in the same or similar circumstances.

In a medical malpractice action, the plaintiff has the burden of proof to establish all necessary elements. Expert witnesses are generally required in a medical malpractice action to establish the standard of care of a reasonably prudent health care provider and to prove that the failure to exercise that standard of care was the proximate cause of the patient's injury. However, an expert witness is not needed to establish the standard of care if the conduct in question is within the common knowledge of the jury. For example, unintentionally leaving a foreign object in a patient after surgery or amputating the wrong limb may not require expert testimony to establish the standard of care.

Statutory law dealing with medical malpractice actions does not establish qualifications for experts in medical malpractice cases. However, court rule provides requirements for the use of

expert witnesses in any trial, including medical malpractice cases. Under Evidence Rule 702, a person may testify as an expert if the person is qualified by "knowledge, skill, experience, training, or education."

Summary of Bill:

An expert in a medical malpractice action must meet the following qualifications in order to testify at trial or execute a certificate of merit, if required:

- Has a recognized expertise in any area of practice or specialty at issue in the action, as demonstrated by devotion of a substantial period of the expert's practice to that area of practice or specialty;
- Was licensed in Washington at the time of the occurrence of the incident at issue in the action; and
- At the time of the incident, was either: (1) engaged in active practice in the same area of practice or specialty as the defendant; or (2) teaching in the same area of practice or specialty as the defendant, including instruction regarding the particular condition at issue in the action.

The court may allow use of an expert witness who does not meet these qualifications if the court finds that:

- Extensive efforts were made to locate an expert meeting the qualifications, but none was willing and able to testify; and
- The proposed expert is qualified to be an expert witness by virtue of his or her training, experience, and knowledge.

An expert opinion provided during the course of a medical malpractice action must be corroborated by objective evidence. Examples of objective evidence are provided, including treatment or practice protocols or guidelines developed by medical specialty organizations, objective academic research, or clinical trials.

Appropriation: None.

Fiscal Note: Not requested.

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