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

Read first time 02/17/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to expert witnesses in actions under chapter 7.70
2 RCW; and adding new sections to chapter 7.70 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 7.70 RCW
5 to read as follows:

6 (1) In an action against a health care provider under this chapter,
7 an expert may not provide testimony at trial, or execute a certificate
8 of merit required under this chapter, unless the expert meets the
9 following criteria:

10 (a) Has expertise in the medical condition at issue in the action;
11 and

12 (b) At the time of the occurrence of the incident at issue in the
13 action, was either:

14 (i) Engaged in active practice in the same or similar area of
15 practice or specialty as the defendant; or

16 (ii) Teaching at an accredited medical school or an accredited or
17 affiliated academic or clinical training program in the same or similar
18 area of practice or specialty as the defendant, including instruction
19 regarding the particular condition at issue.

1 (2) Upon motion of a party, the court may waive the requirements of
2 subsection (1) of this section and allow an expert who does not meet
3 those requirements to testify at trial or execute a certificate of
4 merit required under this chapter if the court finds that:

5 (a) Extensive efforts were made by the party to locate an expert
6 who meets the criteria under subsection (1) of this section, but none
7 was willing and available to testify; and

8 (b) The proposed expert is qualified to be an expert witness by
9 virtue of the person's training, experience, and knowledge.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 7.70 RCW
11 to read as follows:

12 An expert opinion provided in the course of an action against a
13 health care provider under this chapter must be corroborated by
14 admissible evidence, such as, but not limited to, treatment or practice
15 protocols or guidelines developed by medical specialty organizations,
16 objective academic research, clinical trials or studies, or widely
17 accepted clinical practices.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 7.70 RCW
19 to read as follows:

20 In any action under this chapter, each side shall presumptively be
21 entitled to only two independent experts on an issue, except upon a
22 showing of good cause. Where there are multiple parties on a side and
23 the parties cannot agree as to which independent experts will be called
24 on an issue, the court, upon a showing of good cause, shall allow
25 additional experts on an issue to be called as the court deems
26 appropriate.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 7.70 RCW
28 to read as follows:

29 In an action under this chapter, all parties shall submit a
30 pretrial expert report pursuant to time frames provided in court rules.
31 The expert report must disclose the identity of all expert witnesses
32 and state the nature of the opinions the expert witnesses will present
33 as testimony at trial. Further depositions of these expert witnesses
34 is prohibited. The testimony that an expert witness may present at
35 trial is limited in nature to the opinions disclosed to the court as

1 part of the pretrial expert report. The legislature respectfully
2 requests that the supreme court adopt rules to implement the provisions
3 of this section.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 7.70 RCW
5 to read as follows:

6 (1) In an action against an individual health care provider under
7 this chapter for personal injury or wrongful death in which the injury
8 is alleged to have been caused by an act or omission that violates the
9 accepted standard of care, the plaintiff must file a certificate of
10 merit at the time of commencing the action.

11 (2) The certificate of merit must be executed by a health care
12 provider who meets the qualifications of an expert under section 1 of
13 this act. If there is more than one defendant in the action, the
14 person commencing the action must file a certificate of merit for each
15 defendant.

16 (3) The certificate of merit must contain a statement that the
17 person executing the certificate of merit believes, based on the
18 information known at the time of executing the certificate of merit,
19 that there is a reasonable probability that the defendant's conduct did
20 not follow the accepted standard of care required to be exercised by
21 the defendant.

22 (4) Upon motion of the plaintiff, the court may grant an additional
23 period of time to file the certificate of merit, not to exceed ninety
24 days, if the court finds there is good cause for the extension.

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