

SENATE BILL 323

D3
SB 636/16 – JPR

9lr2954

By: **Senator Cassilly**

Introduced and read first time: January 30, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Malpractice – Discovery**

3 FOR the purpose of clarifying that the discovery available as to the basis of a certain
4 certificate of a qualified expert in a claim filed with the Health Care Alternative
5 Dispute Resolution Office includes a deposition of the attesting expert; establishing
6 that a defendant in a claim filed with the Office may seek discovery as to the basis
7 of the certificate filed by the claimant or plaintiff without prejudice to later discovery
8 if the attesting expert is designated as a trial expert; prohibiting a deposition of a
9 defendant health care provider from being required until the claimant has filed and
10 served a certain certificate of a qualified expert; providing for the application of this
11 Act; and generally relating to discovery in health care malpractice actions.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 3–2A–04(b) and 3–2A–05(b)
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2018 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Courts and Judicial Proceedings**

20 3–2A–04.

21 (b) Unless the sole issue in the claim is lack of informed consent:

22 (1) (i) 1. Except as provided in item (ii) of this paragraph, a claim
23 or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or
24 plaintiff fails to file a certificate of a qualified expert with the Director attesting to
25 departure from standards of care, and that the departure from standards of care is the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 proximate cause of the alleged injury, within 90 days from the date of the complaint; and

2 2. The claimant or plaintiff shall serve a copy of the
3 certificate on all other parties to the claim or action or their attorneys of record in
4 accordance with the Maryland Rules; and

5 (ii) In lieu of dismissing the claim or action, the panel chairman or
6 the court shall grant an extension of no more than 90 days for filing the certificate required
7 by this paragraph, if:

8 1. The limitations period applicable to the claim or action has
9 expired; and

10 2. The failure to file the certificate was neither willful nor the
11 result of gross negligence.

12 (2) (i) A claim or action filed after July 1, 1986, may be adjudicated in
13 favor of the claimant or plaintiff on the issue of liability, if the defendant disputes liability
14 and fails to file a certificate of a qualified expert attesting to compliance with standards of
15 care, or that the departure from standards of care is not the proximate cause of the alleged
16 injury, within 120 days from the date the claimant or plaintiff served the certificate of a
17 qualified expert set forth in paragraph (1) of this subsection on the defendant.

18 (ii) If the defendant does not dispute liability, a certificate of a
19 qualified expert is not required under this subsection.

20 (iii) The defendant shall serve a copy of the certificate on all other
21 parties to the claim or action or their attorneys of record in accordance with the Maryland
22 Rules.

23 (3) (i) The attorney representing each party, or the party proceeding
24 pro se, shall file the appropriate certificate with a report of the attesting expert attached.

25 (ii) Discovery is available as to the basis of the certificate,
26 **INCLUDING A DEPOSITION OF THE ATTESTING EXPERT.**

27 **(iii) THE DEFENDANT MAY SEEK DISCOVERY AS TO THE BASIS OF**
28 **THE CERTIFICATE FILED BY THE CLAIMANT OR PLAINTIFF WITHOUT PREJUDICE TO**
29 **LATER DISCOVERY IF THE ATTESTING EXPERT IS DESIGNATED AS A TRIAL EXPERT.**

30 (4) A health care provider who attests in a certificate of a qualified expert
31 or who testifies in relation to a proceeding before an arbitration panel or a court concerning
32 compliance with or departure from standards of care may not devote annually more than
33 20 percent of the expert's professional activities to activities that directly involve testimony
34 in personal injury claims.

35 (5) An extension of the time allowed for filing a certificate of a qualified

1 expert under this subsection shall be granted for good cause shown.

2 (6) In the case of a claim or action against a physician, the Director shall
3 forward copies of the certificates filed under paragraphs (1) and (2) of this subsection to the
4 State Board of Physicians.

5 (7) For purposes of the certification requirements of this subsection for any
6 claim or action filed on or after July 1, 1989:

7 (i) A party may not serve as a party's expert; and

8 (ii) The certificate may not be signed by:

9 1. A party;

10 2. An employee or partner of a party; or

11 3. An employee or stockholder of any professional
12 corporation of which the party is a stockholder.

13 3-2A-05.

14 (b) (1) The provisions of §§ 3-212 through 3-217 of this title are applicable to
15 proceedings under this subtitle.

16 (2) (I) Except for the provisions of the Maryland Rules relating to time
17 for the completion of discovery, the provisions of the Maryland Rules relating to discovery
18 are applicable to proceedings under this subtitle.

19 (II) **A DEPOSITION OF A DEFENDANT HEALTH CARE PROVIDER**
20 **MAY NOT BE REQUIRED UNTIL THE CLAIMANT HAS FILED THE CERTIFICATE OF A**
21 **QUALIFIED EXPERT REQUIRED UNDER § 3-2A-04(B) OF THIS SUBTITLE AND SERVED**
22 **THE CERTIFICATE ON ALL OTHER PARTIES TO THE CLAIM OR ACTION OR ON THE**
23 **ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND RULES.**

24 (III) All discovery in any action under this subtitle shall be completed
25 within 270 days from the date on which all defendants have been served, unless extended
26 by the panel chairman for good cause shown.

27 (3) Properly authenticated hospital records and the records of treating
28 health care providers are admissible without the necessity of calling the physician, subject
29 to reasonable notice and the right of the opposing party to depose.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
31 apply only prospectively and may not be applied or interpreted to have any effect on or
32 application to any claim filed before the effective date of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2019.