

HOUSE BILL No. 5029

July 28, 1989, Introduced by Reps. Hickner, DeMars, Porreca, Dolan, Nye, Rocca, Crandall, Gnodtke and Miller and referred to the Committee on Judiciary.

A bill to amend sections 2912d and 2912e of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," as added by Act No. 178 of the Public Acts of 1986, being sections 600.2912d and 600.2912e of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2912d and 2912e of Act No. 236 of the
2 Public Acts of 1961, as added by Act No. 178 of the Public Acts
3 of 1986, being sections 600.2912d and 600.2912e of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 2912d. (1) In an action alleging medical malpractice,
6 the complaint shall be accompanied either by security for costs
7 or by an affidavit, as required by this section.

8 (2) Subject to subsection (4), the plaintiff in an action
9 alleging medical malpractice ~~shall be~~ IS in compliance with

1 subsection (1) if the plaintiff posts a bond with surety or any
2 other equivalent security approved by the court, including cash
3 in an escrow account, for costs in an amount of \$2,000.00 within
4 91 days after the filing of the complaint.

5 (3) ~~The~~ SUBJECT TO SUBSECTION (7), THE plaintiff in an
6 action alleging medical malpractice ~~shall be~~ IS in compliance
7 with subsection (1) if the plaintiff's attorney or, if the plain-
8 tiff is not represented by an attorney, the plaintiff files an
9 affidavit attesting that the attorney signing the complaint ~~—~~
10 or the plaintiff if not represented by an attorney, has obtained
11 a written opinion from a licensed physician, dentist, or other
12 appropriate licensed health care provider that the claim alleged
13 is meritorious, within 91 days after the filing of the
14 complaint.

15 (4) If upon expiration of the ninety-first day after the
16 complaint is filed, or the expiration of the extension period
17 described in subsection (5), whichever is later, the plaintiff
18 has failed to post security as described in subsection (2) or has
19 failed to file an affidavit as described in subsection (3), then
20 the court, upon motion of any party or upon the court's own
21 motion, shall increase the amount of security required by subsec-
22 tion (2). If the plaintiff fails to post the increased security,
23 the court may, upon motion and for good cause shown, dismiss the
24 complaint without prejudice.

25 (5) The court, upon motion of any party and for good cause
26 shown, may extend the time for the plaintiff to comply with
27 subsection (2) or (3) for a period not to exceed 91 days.

1 (6) Discovery concerning the affidavit, including the
2 written opinion and the identity of the health care provider who
3 supplied the opinion, shall be allowed only upon application
4 under section 2591 by a prevailing party for costs or attorney
5 fees after judgment is entered.

6 (7) IF A DEFENDANT IN THE ACTION ALLEGING MEDICAL MALPRAC-
7 TICE IS A SPECIALIST, THEN THE LICENSED PHYSICIAN, DENTIST, OR
8 OTHER LICENSED HEALTH CARE PROVIDER WHO GIVES A WRITTEN OPINION
9 UNDER SUBSECTION (3) SHALL MEET BOTH OF THE FOLLOWING CRITERIA:

10 (A) AT THE TIME THE WRITTEN OPINION IS GIVEN, BE SPECIALIZ-
11 ING IN THE SAME SPECIALTY OR A RELATED, RELEVANT AREA OF MEDICINE
12 OR OSTEOPATHIC MEDICINE AND SURGERY, DENTISTRY, OR HEALTH CARE AS
13 THE SPECIALIST WHO IS A DEFENDANT IN THE MEDICAL MALPRACTICE
14 ACTION.

15 (B) AT THE TIME THE WRITTEN OPINION IS GIVEN, HAVE DEVOTED A
16 SUBSTANTIAL PORTION OF HIS OR HER PROFESSIONAL TIME TO THE ACTIVE
17 CLINICAL PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SUR-
18 GERY, THE ACTIVE CLINICAL PRACTICE OF DENTISTRY, OR ACTIVE CLINI-
19 CAL PRACTICE IN THE AREA OF HEALTH CARE FOR WHICH THE HEALTH CARE
20 PROVIDER IS LICENSED, OR TO THE INSTRUCTION OF STUDENTS IN AN
21 ACCREDITED MEDICAL SCHOOL, OSTEOPATHIC MEDICAL SCHOOL, DENTAL
22 SCHOOL, OR OTHER HEALTH CARE PROFESSIONAL SCHOOL FOR THE HEALTH
23 CARE PROFESSION IN WHICH THE HEALTH CARE PROVIDER IS LICENSED, IN
24 THE SAME SPECIALTY OR A RELATED, RELEVANT AREA OF HEALTH CARE AS
25 THE SPECIALIST WHO IS A DEFENDANT IN THE MEDICAL MALPRACTICE
26 ACTION.

1 Sec. 2912e. (1) In an action alleging medical malpractice,
2 within 21 days after the plaintiff has furnished security or
3 filed an affidavit in compliance with section 2912d, the
4 defendant shall file an answer to the complaint. Within 91 days
5 after filing an answer, the defendant shall furnish security for
6 costs or an affidavit as required by this section.

7 (2) Subject to subsections (4) and (5), the defendant in an
8 action alleging medical malpractice ~~shall be~~ IS in compliance
9 with subsection (1) if the defendant posts a bond with surety or
10 any other equivalent security approved by the court, including
11 cash in an escrow account, for costs in an amount of \$2,000.00
12 within 91 days after the filing of the answer.

13 (3) ~~The~~ SUBJECT TO SUBSECTION (7), THE defendant in an
14 action alleging medical malpractice ~~shall be~~ IS in compliance
15 with subsection (1) if the defendant's attorney or, if the
16 defendant is not represented by an attorney, the defendant files
17 an affidavit attesting that the attorney signing the answer, or
18 the defendant if not represented by an attorney, has obtained a
19 written opinion from a licensed physician, dentist, or other
20 appropriate licensed health care provider other than the
21 defendant that there is a meritorious defense to the claims in
22 the complaint made against the defendant within 91 days after the
23 filing of the answer.

24 (4) If upon expiration of the ninety-first day after the
25 answer has been filed, or the expiration of the extension period
26 described in subsection (5), whichever is later, the defendant
27 has failed to comply with subsection (2) or (3), then the court,

1 upon motion of any party or upon the court's own motion, shall
2 increase the amount of security required by subsection (2). If
3 the defendant fails to post the increased security, the court,
4 upon motion and for good cause shown, may strike the answer and
5 enter a default judgment against that defendant.

6 (5) The court, upon motion of any party and for good cause
7 shown, may extend the time for the defendant to comply with sub-
8 section (2) or (3) for a period not to exceed 91 days.

9 (6) Discovery concerning the affidavit, including the writ-
10 ten opinion and the identity of the health care provider who sup-
11 plied the opinion shall be allowed only upon application under
12 section 2591 by a prevailing party for costs and attorney fees
13 after judgment is entered.

14 (7) IF A DEFENDANT IN THE ACTION ALLEGING MEDICAL MALPRAC-
15 TICE IS A SPECIALIST, THEN A LICENSED PHYSICIAN, DENTIST, OR
16 OTHER LICENSED HEALTH CARE PROVIDER WHO GIVES A WRITTEN OPINION
17 UNDER SUBSECTION (3) SHALL MEET BOTH OF THE FOLLOWING CRITERIA:

18 (A) AT THE TIME THE WRITTEN OPINION IS GIVEN, BE SPECIALIZ-
19 ING IN THE SAME SPECIALTY OR A RELATED, RELEVANT AREA OF MEDICINE
20 OR OSTEOPATHIC MEDICINE AND SURGERY, DENTISTRY, OR HEALTH CARE AS
21 THE SPECIALIST WHO IS A DEFENDANT IN THE MEDICAL MALPRACTICE
22 ACTION.

23 (B) AT THE TIME THE WRITTEN OPINION IS GIVEN, HAVE DEVOTED A
24 SUBSTANTIAL PORTION OF HIS OR HER PROFESSIONAL TIME TO THE ACTIVE
25 CLINICAL PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND SUR-
26 GERY, THE ACTIVE CLINICAL PRACTICE OF DENTISTRY, OR ACTIVE
27 CLINICAL PRACTICE IN THE AREA OF HEALTH CARE FOR WHICH THE HEALTH

1 CARE PROVIDER IS LICENSED, OR TO THE INSTRUCTION OF STUDENTS IN
2 AN ACCREDITED MEDICAL SCHOOL, OSTEOPATHIC MEDICAL SCHOOL, DENTAL
3 SCHOOL, OR OTHER HEALTH CARE PROFESSIONAL SCHOOL FOR THE HEALTH
4 CARE PROFESSION IN WHICH THE HEALTH CARE PROVIDER IS LICENSED, IN
5 THE SAME SPECIALTY OR A RELATED, RELEVANT AREA OF HEALTH CARE AS
6 THE SPECIALIST WHO IS A DEFENDANT IN THE MEDICAL MALPRACTICE
7 ACTION.