

EHB 1926 - H AMD

By Representative Lantz

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

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

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

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

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

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

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

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

11 In any action under this chapter, each side shall presumptively
12 be entitled to only two independent experts on an issue, except
13 upon a showing of good cause. Where there are multiple parties on
14 a side and the parties cannot agree as to which independent experts
15 will be called on an issue, the court, upon a showing of good
16 cause, shall allow additional experts on an issue to be called as
17 the court deems appropriate.

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

20 In an action under this chapter, all parties shall submit a
21 pretrial expert report pursuant to time frames provided in court
22 rules. The expert report must disclose the identity of all expert
23 witnesses and state the nature of the opinions the expert witnesses
24 will present as testimony at trial. Further depositions of these
25 expert witnesses is prohibited. The testimony that an expert
26 witness may present at trial is limited in nature to the opinions
27 disclosed to the court as part of the pretrial expert report. The
28 legislature respectfully requests that the supreme court adopt
29 rules to implement the provisions of this section.

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

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

1 (2) The certificate of merit must be executed by a health care
2 provider who meets the qualifications of an expert under section 8
3 of this act. If there is more than one defendant in the action,
4 the person commencing the action must file a certificate of merit
5 for each defendant.

6 (3) The certificate of merit must contain a statement that the
7 person executing the certificate of merit believes, based on the
8 information known at the time of executing the certificate of
9 merit, that there is a reasonable probability that the defendant's
10 conduct did not follow the accepted standard of care required to be
11 exercised by the defendant.

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

16 Correct the title.

EFFECT: Changes the number of experts allowed per side to two
experts on an issue (removing reference to one standard of care
expert per side).

Adds the following expert qualifications: (1) Has expertise in
the medical condition at issue in the action; and (2) at the
time of the incident, was either engaged in active practice or
teaching in the same or similar area of practice or specialty
as the defendant. Allows the court to waive these
qualifications under certain circumstances.

Requires expert opinions to be corroborated by admissible
evidence, such as academic research or clinical trials.

Requires each party to submit pre-trial expert reports
disclosing the identity of experts and the nature of the
opinions the expert will present. Prohibits depositions of the
experts and limits the expert's testimony to opinions disclosed
in the pre-trial report.

Requires a plaintiff to file a certificate of merit,
executed by a qualified expert, stating that, based on the
information known at the time, there is a reasonable
probability that the defendant's conduct did not meet the
required standard of care.