

HOUSE BILL REPORT

HB 1224

As Reported by House Committee On:
Judiciary

Title: An act relating to expert witnesses in actions under chapter 7.70 RCW.

Brief Description: Qualifying expert witnesses in actions under chapter 7.70 RCW.

Sponsors: Representatives Schual-Berke, Cody, Lantz, Fromhold, Moeller, P. Sullivan, Morrell, Linville, Clibborn, Kagi and Ormsby.

Brief History:

Committee Activity:

Judiciary: 2/14/05, 2/28/05 [DPS].

Brief Summary of Substitute Bill

- Establishes qualifications for expert witnesses in medical malpractice actions.
- Requires expert testimony in a medical malpractice action to be corroborated by admissible evidence.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Williams, Vice Chair; Campbell, Kirby, Springer and Wood.

Minority Report: Without recommendation. Signed by 3 members: Representatives Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; and Serben.

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 in 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.

Statutory law dealing with medical malpractice actions does not establish qualifications for expert witnesses. 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 be an expert if qualified by "knowledge, skill, experience, training, or education." The trial court judge has broad discretion under this rule to determine whether a witness is qualified to give an expert opinion.

Summary of Substitute Bill:

An expert in a medical malpractice action must meet the following qualifications in order to provide expert testimony at trial:

- have expertise in the medical condition at issue in the action; and
- at the time of the incident, or at the time of retirement for a provider who retired no more than five years prior to suit, was either: (1) engaged in active practice in the same or similar area of practice or specialty as the defendant; or (2) teaching in the same or similar area of practice or specialty as the defendant, including instruction regarding the particular condition at issue in the action.

The court may waive the expert qualifications if the court finds that: (1) extensive efforts were made to locate an expert meeting the qualifications, but none was willing and able to testify; and (2) the proposed expert is qualified to be an expert 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 admissible evidence. Examples of admissible evidence are provided, including treatment or practice protocols or guidelines, objective academic research, or clinical trials.

Substitute Bill Compared to Original Bill:

The original bill did not contain the provision allowing a retired provider to qualify as an expert if the provider retired within five years before the suit and at the time of the incident was either practicing or teaching in the same or similar field as the defendant.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The fundamental focus of these bills is protecting access and improving affordability of health care. We've worked for years on compromises, and it is time to work together to move forward and get the job done.

Testimony Against: This bill will disqualify people who might be extremely qualified, such as a retired physician. Sometimes it is important to be able to have a retired physician because of the politics of testifying against another provider, especially in a particular specialty. Qualifications of expert witnesses are adequately addressed in the Rules of Evidence. This should be left to the discretion of the judge in the case. Currently under the evidence rules, the facts and data underlying an expert opinion are not admissible but it appears they would be under this bill.

Persons Testifying: (In support) Representative Lantz.

(Opposed to original bill) Mark Johnson, Washington State Bar Association; John Budlong, Washington State Trial Lawyers' Association; Cliff Webster, Washington State Medical Association; Larry Shannon, Washington State Trial Lawyers' Association; and Barbara Shickich, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.