

SECOND REGULAR SESSION

HOUSE BILL NO. 1991

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PRATT (Sponsor) AND YATES (Co-sponsor).

Read 1st time March 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4937L.01I

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to expert witnesses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be
2 known as section 491.305, to read as follows:

**491.305. 1. In any action against a physician for damages for personal injury or
2 death arising out of the rendering of or the failure to render health care services, a person
3 may qualify as an expert witness on the issue of the appropriate medical standard of care
4 only if the person:**

5 **(1) Is licensed as a physician in this state, or some other state;**

6 **(2) Is certified by a board recognized by the American Board of Medical Specialties
7 or the American Board of Osteopathic Specialties in a specialty directly related to the
8 particular health care matter at issue; and**

9 **(3) Was, within one year of the date of the alleged occurrence giving rise to the
10 claim, actively engaged in the clinical practice of medicine and devoting at least three-
11 fourths of the person's professional time to active clinical practice of the same or
12 substantially similar specialty as the defendant. The court shall not permit an expert in
13 one medical specialty to testify in an action against a physician in another medical specialty
14 unless the expert shows both that the standards of care and practice in the two specialties
15 are substantially similar and that the expert has substantial familiarity between the
16 specialties.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **2. A physician who is licensed in another state and who testifies as an expert witness**
18 **in this state in any action against a physician for damages for personal injury or death**
19 **arising out of the rendering of or the failure to render health care services, shall be deemed**
20 **to have a temporary license to practice medicine in this state for the purpose of providing**
21 **such testimony and shall be subject to the authority of the board of registration for the**
22 **healing arts and the provisions of chapter 334, RSMo.**

23 **3. In any action against a physician for damages for personal injury or death**
24 **arising out of the rendering of or the failure to render health care services, evidence shall**
25 **not be admissible in court that:**

26 **(1) Has been obtained under an agreement with a third party who receives a**
27 **contingency fee for doing any of the following:**

28 **(a) Providing a medical expert for review of medical injury claims;**

29 **(b) Locating medical expert witnesses; or**

30 **(c) Arranging the provision of medical expert testimony; or**

31 **(2) Is provided by a medical expert witness who has agreed to provide medical**
32 **testimony on a contingency fee basis.**

33 **4. It shall be considered unprofessional conduct within the meaning of section**
34 **334.100, RSMo, when a medical expert witness:**

35 **(1) Provides expert medical testimony on a contingency fee basis; or**

36 **(2) Knowingly provides expert medical testimony that such expert knows or**
37 **reasonably should have known is false, fraudulent, misleading, or without medical**
38 **foundation.**

39 **5. Nothing in this section shall be construed to limit a physician from testifying as**
40 **a medical expert witness on his or her own behalf in any action against such physician for**
41 **damages for personal injury or death arising out of the rendering of or failure to render**
42 **health care services.**

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