

FIRST REGULAR SESSION

SENATE BILL NO. 149

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time January 20, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1002S.02I

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
2 section, to be known as section 491.305, to read as follows:

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

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

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

17 **2. Notwithstanding section 334.010, a physician who is licensed
18 in another state and who testifies as an expert witness in this state in
19 any action against a physician for damages for personal injury or death
20 arising out of the rendering of or the failure to render health care
21 services, shall be deemed to have a temporary license to practice**

22 medicine in this state for the purpose of providing such testimony and
23 shall be subject to the authority of the board of registration for the
24 healing arts and the provisions of chapter 334.

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

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

30 (a) Providing a medical expert for review of medical injury
31 claims;

32 (b) Locating medical expert witnesses; or

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

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

36 4. It shall be considered unprofessional conduct within the
37 meaning of section 334.100 when a medical expert witness:

38 (1) Provides expert medical testimony on a contingency fee basis;
39 or

40 (2) Knowingly provides expert medical testimony that such
41 expert knows or reasonably should have known is false, fraudulent,
42 misleading, or without medical foundation.

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

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