

HOUSE BILL No. 5338

December 3, 2003, Introduced by Rep. Howell and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 2912d (MCL 600.2912d), as amended by 1993 PA
78; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2912d. (1) ~~Subject to subsection (2), the~~ **A**
2 plaintiff in an action alleging medical malpractice ~~or, if the~~
3 ~~plaintiff is represented by an attorney, the plaintiff's attorney~~
4 ~~shall file with the complaint~~ **may request from a defendant who**
5 **has filed an answer or a defendant who has filed an answer may**
6 **request from a plaintiff an affidavit of merit under this**
7 **section. Except to the extent that an applicable Michigan court**
8 **rule conflicts with this section, a request for an affidavit of**
9 **merit and the response to a request shall comply with Michigan**
10 **court rules that govern the request for and production of**

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1 documents in a civil action.

2 (2) An affidavit of merit under this section shall be signed
3 by a health professional who the ~~plaintiff's attorney~~ party
4 producing the affidavit reasonably believes meets the
5 requirements for an expert witness under section 2169. The
6 affidavit of merit shall ~~certify that~~ list all medical records
7 reviewed by the health professional ~~has reviewed the notice and~~
8 all medical records supplied to him or her by the plaintiff's
9 attorney concerning the allegations contained in the notice in
10 connection with the action and shall contain a statement of each
11 of the following as to the defendant receiving or making the
12 request:

13 (a) The applicable standard of practice or care.

14 (b) ~~The health professional's opinion that~~ How the
15 applicable standard of practice or care was breached ~~by the~~
16 health professional or health facility receiving the notice or
17 not breached.

18 (c) The actions that should have been taken or omitted ~~by~~
19 the health professional or health facility in order to have
20 ~~complied~~ to comply with the applicable standard of practice or
21 care, or the actions that were taken or omitted in compliance
22 with the applicable standard of practice or care.

23 (d) The manner in which the alleged breach of the standard of
24 practice or care ~~was~~ or the compliance with the standard of
25 practice or care was or was not the proximate cause of the injury
26 alleged. ~~in the notice.~~

27 ~~(2) Upon motion of a party for good cause shown, the court~~

1 ~~in which the complaint is filed may grant the plaintiff or, if~~
2 ~~the plaintiff is represented by an attorney, the plaintiff's~~
3 ~~attorney an additional 28 days in which to file the affidavit~~
4 ~~required under subsection (1).~~

5 (3) If ~~the defendant~~ **a party** in an action alleging medical
6 malpractice fails to allow access to medical records within the
7 time ~~period set forth in section 2912b(6), the affidavit~~
8 ~~required under subsection (1) may be filed within 91 days after~~
9 ~~the filing of the complaint~~ **required by section 2912b(7), an**
10 **affidavit requested under this section by the party need not be**
11 **produced until 182 days after the party provides the records to**
12 **the party from whom the affidavit is requested.**

13 Enacting section 1. Section 2912e of the revised judicature
14 act of 1961, 1961 PA 236, MCL 600.2912e, is repealed.