



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Tom Cross

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-622

from Ch. 110, par. 2-622

Amends the Code of Civil Procedure. Requires that the report from the reviewing health professional for a pro se plaintiff in a medical malpractice action contain the name and address of the reviewing health professional and documentation of compliance with the qualifying requirements for being a reviewing health professional. Provides that a reviewing health professional that provides frivolous or improper review of a case shall be liable to each of the parties for the reasonable costs and attorneys' fees expended in resolving the case. Provides that a review shall be found frivolous if it is substantially lacking in factual support, is based upon a standard of care or practice that lacks substantial use in the relevant specialty or field of practice, or is made for an improper purpose, such as to harass or cause needless increase in the cost of litigation. Limits the extension to one 90-day extension for a pro se plaintiff who was unable to obtain a reviewing physician's reports and who has not previously voluntarily dismissed an action based upon the same or substantially the same acts, omissions, or occurrences.

LRB093 15204 LCB 46428 b

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-622 as follows:

6 (735 ILCS 5/2-622) (from Ch. 110, par. 2-622)

7 (Text of Section WITHOUT the changes made by P.A. 89-7,
8 which has been held unconstitutional)

9 Sec. 2-622. Healing art malpractice.

10 (a) In any action, whether in tort, contract or otherwise,
11 in which the plaintiff seeks damages for injuries or death by
12 reason of medical, hospital, or other healing art malpractice,
13 the plaintiff's attorney or the plaintiff, if the plaintiff is
14 proceeding pro se, shall file an affidavit, attached to the
15 original and all copies of the complaint, declaring one of the
16 following:

17 1. That the affiant has consulted and reviewed the
18 facts of the case with a health professional who the
19 affiant reasonably believes: (i) is knowledgeable in the
20 relevant issues involved in the particular action; (ii)
21 practices or has practiced within the last 6 years or
22 teaches or has taught within the last 6 years in the same
23 area of health care or medicine that is at issue in the
24 particular action; ~~and~~ (iii) meets the minimum
25 requirements set forth in Section 8-2501; and (iv) is
26 qualified by experience or demonstrated competence in the
27 subject of the case; that the reviewing health professional
28 has determined in a written report, after a review of the
29 medical record and other relevant material involved in the
30 particular action that there is a reasonable and
31 meritorious cause for the filing of such action; and that
32 the affiant has concluded on the basis of the reviewing

1 health professional's review and consultation that there
2 is a reasonable and meritorious cause for filing of such
3 action. If the affidavit is filed as to a defendant who is
4 a physician licensed to treat human ailments without the
5 use of drugs or medicines and without operative surgery, a
6 dentist, a podiatrist, a psychologist, or a naprapath, the
7 written report must be from a health professional licensed
8 in the same profession, with the same class of license, as
9 the defendant. For affidavits filed as to all other
10 defendants, the written report must be from a physician
11 licensed to practice medicine in all its branches. In
12 either event, the affidavit must identify the profession of
13 the reviewing health professional. A copy of the written
14 report, clearly identifying the plaintiff and the reasons
15 for the reviewing health professional's determination that
16 a reasonable and meritorious cause for the filing of the
17 action exists, must be attached to the affidavit, ~~but~~
18 ~~information which would identify the reviewing health~~
19 ~~professional may be deleted from the copy so attached.~~ The
20 report shall include the name and address of the reviewing
21 health professional and documentation of compliance with
22 requirements set forth in Section 8-2501. Any reviewing
23 health professional that provides a frivolous or improper
24 review of a case shall be liable to each of the parties for
25 the reasonable costs and attorneys' fees the parties
26 expended in resolving the case. A review shall be found
27 frivolous if it is substantially lacking in factual
28 support, is based upon a standard of care or practice that
29 lacks substantial use in the relevant specialty or field of
30 practice, or is made for an improper purpose, such as to
31 harass or cause needless increase in the cost of
32 litigation.

33 2. That the plaintiff has not previously voluntarily
34 dismissed an action based upon the same or substantially
35 the same acts, omissions, or occurrences and that the
36 affiant was unable to obtain a consultation required by

1 paragraph 1 because a statute of limitations would impair
2 the action and the consultation required could not be
3 obtained before the expiration of the statute of
4 limitations. If an affidavit is executed pursuant to this
5 paragraph, the certificate and written report required by
6 paragraph 1 shall be filed within 90 days after the filing
7 of the complaint. No additional 90-day extensions shall be
8 granted. The defendant shall be excused from answering or
9 otherwise pleading until 30 days after being served with a
10 certificate required by paragraph 1.

11 3. That a request has been made by the plaintiff or his
12 attorney for examination and copying of records pursuant to
13 Part 20 of Article VIII of this Code and the party required
14 to comply under those Sections has failed to produce such
15 records within 60 days of the receipt of the request. If an
16 affidavit is executed pursuant to this paragraph, the
17 certificate and written report required by paragraph 1
18 shall be filed within 90 days following receipt of the
19 requested records. All defendants except those whose
20 failure to comply with Part 20 of Article VIII of this Code
21 is the basis for an affidavit under this paragraph shall be
22 excused from answering or otherwise pleading until 30 days
23 after being served with the certificate required by
24 paragraph 1.

25 (b) Where a certificate and written report are required
26 pursuant to this Section a separate certificate and written
27 report shall be filed as to each defendant who has been named
28 in the complaint and shall be filed as to each defendant named
29 at a later time.

30 (c) Where the plaintiff intends to rely on the doctrine of
31 "res ipsa loquitur", as defined by Section 2-1113 of this Code,
32 the certificate and written report must state that, in the
33 opinion of the reviewing health professional, negligence has
34 occurred in the course of medical treatment. The affiant shall
35 certify upon filing of the complaint that he is relying on the
36 doctrine of "res ipsa loquitur".

1 (d) When the attorney intends to rely on the doctrine of
2 failure to inform of the consequences of the procedure, the
3 attorney shall certify upon the filing of the complaint that
4 the reviewing health professional has, after reviewing the
5 medical record and other relevant materials involved in the
6 particular action, concluded that a reasonable health
7 professional would have informed the patient of the
8 consequences of the procedure.

9 (e) Allegations and denials in the affidavit, made without
10 reasonable cause and found to be untrue, shall subject the
11 party pleading them or his attorney, or both, to the payment of
12 reasonable expenses, actually incurred by the other party by
13 reason of the untrue pleading, together with reasonable
14 attorneys' fees to be summarily taxed by the court upon motion
15 made within 30 days of the judgment or dismissal. In no event
16 shall the award for attorneys' fees and expenses exceed those
17 actually paid by the moving party, including the insurer, if
18 any. In proceedings under this paragraph (e), the moving party
19 shall have the right to depose and examine any and all
20 reviewing health professionals who prepared reports used in
21 conjunction with an affidavit required by this Section.

22 (f) A reviewing health professional who in good faith
23 prepares a report used in conjunction with an affidavit
24 required by this Section shall have civil immunity from
25 liability which otherwise might result from the preparation of
26 such report.

27 (g) The failure to file a certificate required by this
28 Section shall be grounds for dismissal under Section 2-619.

29 (h) This Section does not apply to or affect any actions
30 pending at the time of its effective date, but applies to cases
31 filed on or after its effective date.

32 (i) This amendatory Act of 1997 does not apply to or affect
33 any actions pending at the time of its effective date, but
34 applies to cases filed on or after its effective date.

35 (j) This amendatory Act of the 93rd General Assembly does
36 not apply to or affect any actions pending at the time of its

1 effective date, but applies to cases filed on or after its
2 effective date.

3 (Source: P.A. 86-646; 90-579, eff. 5-1-98.)