

By: Lindsay

S.B. No. 436

A BILL TO BE ENTITLED

AN ACT

relating to procedures regarding health care liability claims filed against physicians and health care providers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.01, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13.01. COST BOND, DEPOSIT, AND EXPERT REPORT. (a) In a health care liability claim, a claimant shall concurrently with the filing of any original petition in a court action also~~[, not later than the 90th day after the date the claim is filed]~~:

(1) file a separate cost bond in the amount of \$5,000 for each physician or health care provider named by the claimant in the action;

(2) deposit ~~[place]~~ cash in the registry of the court ~~[an escrow account]~~ in the amount of \$5,000 for each physician or health care provider named in the action; or

(3) file an expert report for each physician or health care provider with respect to whom a cost bond has not been filed and cash in lieu of the bond has not been deposited under Subdivision (1) or (2) of this subsection.

(b) In any action in which a health care liability claim is asserted, a petition may not be accepted for filing if the petition fails to comply with Subsection (a) of this section as to each

1 defendant named in the petition. A petition that does not comply  
2 with that subsection shall be returned promptly to the claimant or  
3 to the claimant's attorney and may not be considered in connection  
4 with any applicable limitations period as to any defendant named in  
5 the noncomplying petition. For the purposes of this subsection,  
6 any defendant named in a petition that includes a health care  
7 liability claim shall be presumed to be either a physician or a  
8 health care provider, regardless of whether that defendant is or is  
9 not a physician or a health care provider [~~If, as to a defendant~~  
10 ~~physician or health care provider, an expert report, cost bond, or~~  
11 ~~cash in lieu of bond has not been filed or deposited within the~~  
12 ~~period specified by Subsection (a) or (h) of this section, the~~  
13 ~~court, on the motion of the affected physician or health care~~  
14 ~~provider, shall enter an order that:~~

15 ~~[(1) requires the filing of a \$7,500 cost bond with~~  
16 ~~respect to the physician or health care provider not later than the~~  
17 ~~21st day after the date of the order; and~~

18 ~~[(2) provides that if the claimant fails to comply~~  
19 ~~with the order, the action shall be dismissed for want of~~  
20 ~~prosecution with respect to the physician or health care provider,~~  
21 ~~subject to reinstatement in accordance with the applicable rules of~~  
22 ~~civil procedure and Subsection (c) of this section].~~

23 (c)(1) Not later than the 30th day after the date on which a  
24 defendant receives service of the citation, the defendant may file  
25 a motion challenging the sufficiency of an expert report that  
26 applies to that defendant. A motion to strike an expert report  
27 shall be granted if the court finds that the report does not

1 represent a good faith effort to comply with this section,  
2 including each requirement of Subsection (p)(6) of this section.

3 (2) If the court determines that the expert report  
4 does not fully comply with Subsection (p)(6) of this section but  
5 represents a good faith effort to comply, the court shall allow the  
6 claimant 60 days in which to cure any deficiency found to exist in  
7 the report or to file a bond in the amount of \$7,500 or deposit cash  
8 in the registry in the amount of \$7,500 for the respective  
9 defendant. The 60-day period shall begin on the date that the order  
10 is signed granting the challenge.

11 (3) If the court determines that the challenged expert  
12 report does not represent a good faith effort to comply with this  
13 section or if the claimant fails to comply with the requirements of  
14 any order allowing the claimant to cure any deficiency found, the  
15 claimant's claim against the respective defendant shall be  
16 dismissed without prejudice. The order of dismissal shall include  
17 an award of reasonable attorney's fees and costs incurred by the  
18 respective defendant in answering the lawsuit and challenging the  
19 sufficiency of the report. The dismissed claim shall not be used to  
20 toll or extend any applicable limitations period.

21 (4) If not challenged under this section, an expert  
22 report shall be presumed to be sufficient to comply with the  
23 requirements of Subsection (a) of this section, allowing the  
24 petition to be accepted for filing [~~Before a claim that has been~~  
25 ~~dismissed under Subsection (b)(2) of this section may be~~  
26 ~~reinstated, the claimant must pay the costs of court incurred by the~~  
27 ~~defendant before the dismissal and file a \$7,500 cost bond for each~~

1 ~~defendant physician or health care provider]~~.

2 (d) Not later than the later of the 180th day after the date  
3 on which a health care liability claim is filed or the last day of  
4 any extended period established under Subsection (f) or (h) of this  
5 section, the claimant shall, for each physician or health care  
6 provider against whom a claim is asserted:

7 (1) furnish to counsel for each physician or health  
8 care provider one or more expert reports, with a curriculum vitae of  
9 each expert listed in the report; or

10 (2) voluntarily nonsuit the action against the  
11 physician or health care provider.

12 (e) If a claimant has failed, for any defendant physician or  
13 health care provider, to comply with Subsection (d) of this section  
14 within the time required, the court shall, on the motion of the  
15 affected physician or health care provider, enter an order awarding  
16 as sanctions against the claimant or the claimant's attorney:

17 (1) the reasonable attorney's fees and costs of court  
18 incurred by that defendant;

19 (2) the forfeiture of any cost bond respecting the  
20 claimant's claim against that defendant to the extent necessary to  
21 pay the award; and

22 (3) the dismissal of the action of the claimant  
23 against that defendant with prejudice to the claim's refiling.

24 (f) The court may, for good cause shown after motion and  
25 hearing, extend any time period specified in Subsection (d) of this  
26 section for an additional 30 days. Only one extension may be  
27 granted under this subsection.

1           (g)(1) If an expert report was filed to comply with  
2 Subsection (a) of this section and the report was challenged by the  
3 defendant's motion as provided by Subsection (c)(1) of this section  
4 and found by the court to be sufficient or if additional time was  
5 allowed as provided by Subsection (c)(2) of this section and the  
6 claimant met the requirements for the order allowing for additional  
7 time, then no additional challenge may be filed by the respective  
8 defendant in connection with the requirements established by  
9 Subsection (d) of this section. If no motion was filed by a  
10 defendant challenging the sufficiency of a report filed under  
11 Subsection (a) of this section, then not later than the 30th day  
12 after the 180th day after a health care liability claim is filed or  
13 the last day of any extended period established under Subsection  
14 (f) of this section, a defendant may challenge the sufficiency of  
15 any expert report in connection with Subsection (d) of this  
16 section. An expert report filed in connection with Subsection (a)  
17 of this subsection that was not previously challenged as provided  
18 by Subsection (c) of this section shall be considered to be an  
19 expert report filed in connection with Subsection (d) of this  
20 section. If a second report is filed, the claimant may request that  
21 both reports be considered together to meet the requirements of  
22 Subsection (d) of this section.

23           (2) If the court determines that the expert report  
24 does not fully comply with Subsections (d) and (p)(6) of this  
25 section but represents a good faith effort to comply, the court  
26 shall allow the claimant 60 days in which to cure any deficiency  
27 found to exist in the report. The 60-day period shall begin on the

1 date the order is signed granting the challenge [~~Notwithstanding~~  
2 ~~any other provision of this section, if a claimant has failed to~~  
3 ~~comply with a deadline established by Subsection (d) of this~~  
4 ~~section and after hearing the court finds that the failure of the~~  
5 ~~claimant or the claimant's attorney was not intentional or the~~  
6 ~~result of conscious indifference but was the result of an accident~~  
7 ~~or mistake, the court shall grant a grace period of 30 days to~~  
8 ~~permit the claimant to comply with that subsection. A motion by a~~  
9 ~~claimant for relief under this subsection shall be considered~~  
10 ~~timely if it is filed before any hearing on a motion by a defendant~~  
11 ~~under Subsection (e) of this section].~~

12 (h) The affected parties may agree to extend any time period  
13 specified in Subsection (a) or (d) of this section. An agreement  
14 under this subsection is binding and shall be honored by the court  
15 if signed by the affected parties or their counsel and filed with  
16 the court.

17 (i) Notwithstanding any other provision of this section, a  
18 claimant may satisfy any requirement of this section for filing an  
19 expert report by filing reports of separate experts regarding  
20 different physicians or health care providers or regarding  
21 different issues arising from the conduct of a physician or health  
22 care provider, such as issues of liability and causation. Nothing  
23 in this section shall be construed to mean that a single expert must  
24 address all liability and causation issues with respect to all  
25 physicians or health care providers or with respect to both  
26 liability and causation issues for a physician or health care  
27 provider.

1 (j) Nothing in this section shall be construed to require  
2 the filing of an expert report regarding any issue other than an  
3 issue relating to liability or causation.

4 (k) ~~[Notwithstanding any other law, an expert report filed  
5 under this section:~~

6 ~~[(1) is not admissible in evidence by a defendant;~~

7 ~~[(2) shall not be used in a deposition, trial, or other  
8 proceeding; and~~

9 ~~[(3) shall not be referred to by a defendant during the  
10 course of the action for any purpose.~~

11 ~~[(1) A court shall grant a motion challenging the adequacy  
12 of an expert report only if it appears to the court, after hearing,  
13 that the report does not represent a good faith effort to comply  
14 with the definition of an expert report in Subsection (r)(6) of this  
15 section.~~

16 ~~[(m)]~~ On the claimant's compliance with the requirements of  
17 Subsection (d) of this section:

18 (1) any cost bond filed or cash deposited in an escrow  
19 account by the claimant under this section shall be released;

20 (2) the claimant, the claimant's counsel, and any  
21 surety have no liability on the cost bond or cash deposit; and

22 (3) an execution shall not be issued on the cost bond  
23 or cash deposit.

24 (1) ~~[(n)]~~ If a claimant nonsuits a health care liability  
25 claim against a physician or health care provider before filing a  
26 cost bond and seeks to refile the same or a similar health care  
27 liability claim against the physician or health care provider, the

1 claimant shall file a \$7,500 cost bond for each previously  
2 nonsuited physician or health care provider at the time of the  
3 filing of the health care liability claim. If the claimant fails to  
4 file the \$7,500 cost bond for each physician or health care  
5 provider, on motion and hearing the court shall order the filing of  
6 the cost bond and the claimant shall pay the movant reasonable  
7 attorney's fees incurred in obtaining relief under this subsection.

8 (m) [~~(e)~~] Notwithstanding any other provision of this  
9 section, a claimant who is proceeding without an attorney and who is  
10 unable to afford a cost bond or cash deposit may, in lieu of a cost  
11 bond or cash deposit, file an affidavit in the same form required  
12 for an affidavit in lieu of security for costs under the Texas Rules  
13 of Civil Procedure.

14 (n) [~~(p)~~] In the event of a conflict between this section  
15 and another law, including a rule of procedure or court rule, this  
16 section controls to the extent of the conflict.

17 (o) [~~(q)~~] Notwithstanding the provisions of Section 22.004,  
18 Government Code, the supreme court may not amend or adopt rules in  
19 conflict with this section. The district courts and statutory  
20 county courts in a county may not adopt local rules in conflict with  
21 this section.

22 (p) [~~(r)~~] In this section:

23 (1) "Affected parties" means the claimant and the  
24 physician or health care provider who are directly affected by an  
25 act or agreement required or permitted by this section and does not  
26 include other parties to an action who are not directly affected by  
27 that particular act or agreement.



1           (2) "Claim" means a health care liability claim.

2           (3) "Claimant" means a party who files a pleading  
3 asserting a claim. All plaintiffs claiming to have sustained  
4 damages as the result of the bodily injury or death of a single  
5 person are considered to be a single claimant.

6           (4) "Defendant" means a physician or health care  
7 provider against whom a health care liability claim is asserted.  
8 The term includes a third-party defendant, cross-defendant, or  
9 counterdefendant.

10          (5) "Expert" means:

11           (A) with respect to a person giving opinion  
12 testimony regarding whether a physician departed from accepted  
13 standards of medical care, an expert qualified to testify under the  
14 requirements of Section 14.01(a) of this Act; or

15           (B) with respect to a person giving opinion  
16 testimony about a nonphysician health care provider, an expert who  
17 has knowledge of accepted standards of care for the diagnosis,  
18 care, or treatment of the illness, injury, or condition involved in  
19 the claim.

20          (6) "Expert report" means a written report by an  
21 expert that provides a fair summary of the expert's opinions as of  
22 the date of the report regarding applicable standards of care, the  
23 manner in which the care rendered by the physician or health care  
24 provider failed to meet the standards, and the causal relationship  
25 between that failure and the injury, harm, or damages claimed.

26          SECTION 2. This Act takes effect September 1, 2003, and  
27 applies to a health care liability claim filed under Section 13.01,

1 Medical Liability and Insurance Improvement Act of Texas (Article  
2 4590i, Vernon's Texas Civil Statutes), as amended by this Act, on or  
3 after the effective date of this Act. A health care liability claim  
4 filed before the effective date of this Act is governed by the law  
5 in effect immediately before that date, and that law is continued in  
6 effect for that purpose.