
MEMORANDUM
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A.R.S. 12-2602.01 is now in effect in Arizona. This statute imposes new requirements on both plaintiffs and defendants in medical malpractice cases regarding the listing expert witness testimony.

Pursuant to subsection A, any plaintiff filing a malpractice case, or a defendant designating a non-party at fault, must file a written statement stating if expert testimony is required to prove the standard of care of the health care professional in question.

If so, under subsection B, the plaintiff must file a "preliminary expert opinion affidavit" with the initial disclosures under Rule 26.1. This is a significant change from prior practice, where expert disclosure is not required until a later time, set by the court at the CPC conference.

Under subsection B, if a defendant names a health care professional as a non-party at fault, the defendant must file the expert affidavit within 60 days of the non-party at fault designation.

The expert affidavit must include at least this information:

1. The expert's qualifications;
2. Factual basis for the opinion;
3. What acts or omissions by the health care professional the expert considers a breach of the standard of care; and
4. The manner in which such acts or omissions proximately caused injury.

Under subsection C, the court may extend time for compliance with the statute on application and good cause shown, or by stipulation of the parties.

Under subsection D, if the party asserting the claim certifies that no expert testimony is required, the health care provider may dispute that certification and may apply to the court for an order requiring an expert affidavit. The plaintiff may also file such a motion in case a defendant designates a non-party at fault but certifies that no expert testimony is required.

In the event an expert affidavit is required but none is filed, the court, on its own motion, or the motion of a party, "shall dismiss the claim against the health care professional" without prejudice. (Subsection F) If it is alleged that the affidavit is insufficient, the court shall give the proponent of the affidavit reasonable time to cure the deficiency. (Id.)

Under the statute, a party may supplement the affidavit as needed. (Subsection G) An

expert can be impeached with the affidavit “only upon a finding of the court that the facts upon which the affidavit were based have not substantially changed and that the facts were known to the expert at the time the affidavit was prepared.” (Id.)

The statute does not discuss this point, but I am assuming it applies only to medical malpractice suits filed on or after its effective date, which, I think, is August 25. I imagine it applies to non-party at fault designations filed after the effective date, even if the case existed before the statute came into effect, though that may be a matter of argument.