

# SENATE BILL No. 688

September 16, 2003, Introduced by Senators GOSCHKA, GEORGE and HARDIMAN and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 2169 (MCL 600.2169), as amended by 1993 PA 78.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2169. (1) In an action alleging medical malpractice,  
2 ~~a person~~ **an individual** shall not give expert testimony on the  
3 appropriate standard of practice or care unless the ~~person~~  
4 **individual** is licensed as a health professional in this state or  
5 another state and meets **all of** the following criteria:

6       (a) If the party against whom or on whose behalf the  
7 testimony is offered is a specialist, ~~specializes~~ **then** at the  
8 time of the occurrence that is the basis for the action **and at**  
9 **the time of the testimony, the expert witness must be board**  
10 **certified** in the same specialty as the party against whom or on

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1 whose behalf the testimony is offered. ~~However, if~~ **This**  
2 **requirement applies regardless of whether** the party against whom  
3 or on whose behalf the testimony is offered is a specialist who  
4 is board certified. ~~—, the expert witness must be a specialist~~  
5 ~~who is board certified in that specialty.~~

6 (b) Subject to subdivision (c), during the year immediately  
7 preceding the date of the occurrence that is the basis for the  
8 claim or action, **the expert witness** devoted a majority of his or  
9 her professional time to either or both of the following:

10 (i) The active clinical practice of the same health  
11 profession in which the party against whom or on whose behalf the  
12 testimony is offered is licensed and, if that party is a  
13 specialist, the active clinical practice of that specialty.

14 (ii) The instruction of students in an accredited health  
15 professional school or accredited residency or clinical research  
16 program in the same health profession in which the party against  
17 whom or on whose behalf the testimony is offered is licensed and,  
18 if that party is a specialist, an accredited health professional  
19 school or accredited residency or clinical research program in  
20 the same specialty.

21 (c) If the party against whom or on whose behalf the  
22 testimony is offered is a general practitioner, ~~the expert~~  
23 ~~witness,~~ **then** during the year immediately preceding the date of  
24 the occurrence that is the basis for the claim or action, **the**  
25 **expert witness** devoted a majority of his or her professional time  
26 to either or both of the following:

27 (i) Active clinical practice as a general practitioner.

1 (ii) Instruction of students in an accredited health  
2 professional school or accredited residency or clinical research  
3 program in the same health profession in which the party against  
4 whom or on whose behalf the testimony is offered is licensed.

5 (2) In determining the qualifications of an expert witness in  
6 an action alleging medical malpractice, the court shall, at a  
7 minimum, evaluate all of the following:

8 (a) The educational and professional training of the expert  
9 witness.

10 (b) The area of specialization of the expert witness **and**  
11 **whether the expert witness was board certified at the time of the**  
12 **occurrence that is the basis for the action and is currently**  
13 **board certified.**

14 (c) The length of time the expert witness has been engaged in  
15 the active clinical practice or instruction of the health  
16 profession or the specialty.

17 (d) The relevancy of the expert witness's testimony.

18 (3) This section does not limit the power of the trial court  
19 to disqualify an expert witness on grounds other than the  
20 qualifications set forth in this section.

21 (4) In an action alleging medical malpractice, an expert  
22 witness shall not testify on a contingency fee basis. A person  
23 who violates this subsection is guilty of a misdemeanor.

24 (5) In an action alleging medical malpractice, all of the  
25 following limitations apply to discovery conducted by opposing  
26 counsel to determine whether or not an expert witness is  
27 qualified:

1 (a) Tax returns of the expert witness are not discoverable.

2 (b) Family members of the expert witness shall not be deposed  
3 concerning the amount of time the expert witness spends engaged  
4 in the practice of his or her health profession.

5 (c) A personal diary or calendar belonging to the expert  
6 witness is not discoverable. As used in this subdivision,  
7 "personal diary or calendar" means a diary or calendar that does  
8 not include listings or records of professional activities.

9 (6) As used in this section, "board certified" means that  
10 term as defined in section 2701 of the public health code, 1978  
11 PA 368, MCL 333.2701.