

HOW TO ATTACK A MEDICAL MALPRACTICE COMPLAINT AND THE REQUIREMENT FOR A REPORT FROM A HEALTH PROFESSIONAL UNDER 735 ILCS 5/2-622

In order to proceed with a medical malpractice lawsuit, Illinois requires Plaintiff's Complaint at Law to meet the requirements of 735 ILCS 5/2-622. The purpose of 735 ILCS 5/2-622 is to act as a screening device for frivolous medical malpractice lawsuits. Under the statute, in a medical malpractice action "where plaintiff seeks damages for injuries or death by reason of medical, hospital, or other healing arts malpractice", the plaintiff's attorney must file an affidavit declaring that:

1. The affiant has consulted with a health professional who the affiant reasonably believes:
 - Is knowledgeable in the relevant issues involved in the particular action;
 - Practices or has practiced within the last 6 years or teaches or has taught within the last 6 years in the same area of healthcare or medicine that is at issue in the particular action; and
 - Meets the expert witness standards set forth in 735 ILCS 5/8-2501;
2. That the reviewing health care professional has determined in a written report that there is a reasonable and meritorious cause for the filing of such an action.

The statute requires that a written report must be filed for each defendant. If a defendant is an individual, the report must be from a health professional who is licensed in the same profession, with the same class of license. If a defendant is a corporation (hospital, nursing homes, etc.) the report must be from a physician licensed to practice medicine in all its branches and has experience with the standard of care, methods, procedures and treatments relevant to the allegation in the lawsuit. In either event, the report must identify the profession of the reviewing health professional. A copy of the written report, clearly identifying the plaintiff and the reasons for the reviewing health professional's determination that a reasonable and meritorious cause for the filing of the action exists, must be attached to the affidavit.

Surprisingly, Illinois legislators do not require the report to identify the reviewing health professional. As such, we are frequently confronted with a complaint that contains a proper 622 affidavit, but when it comes time to disclose expert witnesses, the disclosed expert witness was not the expert who authored the report. While the statute does act as a screening device in some cases, the provision which allows the Plaintiff to remove the name of the physician who authorized the report, takes away much of the bite of the statute. See 735 ILCS 5/2-622(a)(1). Further, the statute allows an affidavit to be filed within 90 days after the filing of the complaint. However, the defendant is not required to file a responsive pleading until 30 days after being serviced with the affidavit.

When confronted with a medical malpractice complaint, which includes an affidavit and report under 735 ILCS 5/2-622, it is imperative that the reviewing attorney ensure that the affidavit and report comply with the statute. Failure of a plaintiff to file an affidavit and health professional's report in compliance with the Statute can be grounds for dismissal under 735 ILCS 5/2-619. See 735 ILCS 5/2-622(g).