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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2385

02/27/2014 Authored by Lesch and Holberg

The bill was read for the first time and referred to the Committee on Civil Law

03/06/2014 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Policy

1.1 A bill for an act
1.2 relating to civil actions; adjusting certain time limits relating to the certification
1.3 of expert review because of recent amendments to the Minnesota Rules of Civil
1.4 Procedure; amending Minnesota Statutes 2012, sections 145.682, subdivisions 2,
1.5 4; 544.42, subdivisions 2, 4.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2012, section 145.682, subdivision 2, is amended to read:

1.8 Subd. 2. Requirement. In an action alleging malpractice, error, mistake, or failure
1.9 to cure, whether based on contract or tort, against a health care provider which includes a
1.10 cause of action as to which expert testimony is necessary to establish a prima facie case,
1.11 the plaintiff must: (1) unless otherwise provided in subdivision 3, paragraph (b), serve
1.12 upon defendant with the summons and complaint an affidavit as provided in subdivision 3;
1.13 and (2) serve upon defendant within 180 days after commencement of the suit discovery
1.14 under the Rules of Civil Procedure, rule 26.04(a) an affidavit as provided by subdivision 4.

1.15 Sec. 2. Minnesota Statutes 2012, section 145.682, subdivision 4, is amended to read:

1.16 Subd. 4. Identification of experts to be called. (a) The affidavit required by
1.17 subdivision 2, clause (2), must be signed by each expert listed in the affidavit and by the
1.18 plaintiff's attorney and state the identity of each person whom plaintiff expects to call as
1.19 an expert witness at trial to testify with respect to the issues of malpractice or causation,
1.20 the substance of the facts and opinions to which the expert is expected to testify, and
1.21 a summary of the grounds for each opinion. Answers to interrogatories that state the
1.22 information required by this subdivision satisfy the requirements of this subdivision if
1.23 they are signed by the plaintiff's attorney and by each expert listed in the answers to

2.1 interrogatories and served upon the defendant within 180 days after commencement of the
 2.2 ~~suit~~ discovery under the Rules of Civil Procedure, rule 26.04(a) against the defendant.

2.3 (b) The parties or the court for good cause shown, may by agreement, provide for
 2.4 extensions of the time limits specified in subdivision 2, 3, or this subdivision. Nothing in
 2.5 this subdivision may be construed to prevent either party from calling additional expert
 2.6 witnesses or substituting other expert witnesses.

2.7 (c) In any action alleging medical malpractice, all expert interrogatory answers must
 2.8 be signed by the attorney for the party responding to the interrogatory and by each expert
 2.9 listed in the answers. The court shall include in a scheduling order a deadline prior to the
 2.10 close of discovery for all parties to answer expert interrogatories for all experts to be
 2.11 called at trial. No additional experts may be called by any party without agreement of
 2.12 the parties or by leave of the court for good cause shown.

2.13 Sec. 3. Minnesota Statutes 2012, section 544.42, subdivision 2, is amended to read:

2.14 Subd. 2. **Requirement.** In an action against a professional alleging negligence or
 2.15 malpractice in rendering a professional service where expert testimony is to be used by a
 2.16 party to establish a prima facie case, the party must:

2.17 (1) unless otherwise provided in subdivision 3, paragraph (a), clause (2) or (3), serve
 2.18 upon the opponent with the pleadings an affidavit as provided in subdivision 3; and

2.19 (2) serve upon the opponent within 180 days of commencement of discovery under
 2.20 the Rules of Civil Procedure, rule 26.04(a) an affidavit as provided in subdivision 4.

2.21 Sec. 4. Minnesota Statutes 2012, section 544.42, subdivision 4, is amended to read:

2.22 Subd. 4. **Identifying experts to be called; adding or substituting experts.** (a) The
 2.23 affidavit required by subdivision 2, clause (2), must be signed by the party's attorney and
 2.24 state the identity of each person whom the attorney expects to call as an expert witness
 2.25 at trial to testify with respect to the issues of negligence, malpractice, or causation,
 2.26 the substance of the facts and opinions to which the expert is expected to testify, and
 2.27 a summary of the grounds for each opinion. Answers to interrogatories that state the
 2.28 information required by this subdivision satisfy the requirements of this subdivision if
 2.29 they are signed by the party's attorney and served upon the opponent within 180 days
 2.30 after commencement ~~of the action~~ of discovery under the Rules of Civil Procedure, rule
 2.31 26.04(a) against the defendant ~~or within 180 days after service of the affidavit required by~~
 2.32 ~~subdivision 3, paragraph (a), clause (2) or (3).~~

2.33 (b) The parties by agreement, or the court for good cause shown, may provide for
 2.34 extensions of the time limits specified in subdivision 2, 3, or this subdivision. Nothing in

3.1 this subdivision prevents any party from calling additional expert witnesses or substituting
3.2 other expert witnesses.

3.3 **Sec. 5. EFFECTIVE DATE; APPLICATION.**

3.4 Sections 1 to 4 are effective the day following final enactment and apply to causes of
3.5 action commenced on or after that date.