

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 865

1 AN ACT TO AMEND SECTION 11-1-58, MISSISSIPPI CODE OF 1972, TO
2 REVISE CERTIFICATE OF CONSULTATION REQUIREMENTS IN MEDICAL
3 MALPRACTICE ACTIONS; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** Section 11-1-58, Mississippi Code of 1972, is
6 amended as follows:

7 11-1-58. (1) In any action against a licensed physician,
8 health care provider or health care practitioner for injuries or
9 wrongful death arising out of the course of medical, surgical or
10 other professional services where expert testimony is otherwise
11 required by law, the complaint shall be accompanied by a
12 certificate executed by the attorney for the plaintiff declaring
13 that:

14 (a) The attorney has reviewed the facts of the case and
15 has consulted with at least one (1) expert qualified pursuant to
16 the Mississippi Rules of Civil Procedure and the Mississippi Rules
17 of Evidence who is qualified to give expert testimony as to
18 standard of care or negligence and who the attorney reasonably
19 believes is knowledgeable in the relevant issues involved in the
20 particular action, and that the attorney has concluded on the
21 basis of such review and consultation that there is a reasonable
22 basis for the commencement of such action; or

23 (b) The attorney was unable to obtain the consultation
24 required by paragraph (a) of this subsection because a limitation
25 of time established by Section 15-1-36 would bar the action and
26 that the consultation could not reasonably be obtained before such
27 time expired. A certificate executed pursuant to this paragraph



28 (b) shall be supplemented by a certificate of consultation
29 pursuant to paragraph (a) or (c) within sixty (60) days after
30 service of the complaint or the suit shall be dismissed; or

31 (c) The attorney was unable to obtain the consultation
32 required by paragraph (a) of this subsection because the attorney
33 had made at least three (3) separate good faith attempts with
34 three (3) different experts to obtain a consultation and that none
35 of those contacted would agree to a consultation.

36 (2) Where a certificate is required pursuant to this section
37 only, a single certificate is required for an action, even if more
38 than one (1) defendant has been named in the complaint or is
39 subsequently named.

40 (3) A certificate under subsection (1) of this section is
41 not required where the attorney intends to rely solely on either
42 the doctrine of "res ipsa loquitur" or "informed consent." In
43 such cases, the complaint shall be accompanied by a certificate
44 executed by the attorney declaring that the attorney is solely
45 relying on such doctrine and, for that reason, is not filing a
46 certificate under subsection (1) of this section.

47 (4) If a request by the plaintiff for the records of the
48 plaintiff's medical treatment by the defendants has been made and
49 the records have not been produced, the plaintiff shall not be
50 required to file the certificate required by this section until
51 ninety (90) days after the records have been produced.

52 (5) For purposes of this section, an attorney who submits a
53 certificate of consultation shall not be required to disclose the
54 identity of the consulted or the contents of the consultation;
55 provided, however, that when the attorney makes a claim under
56 paragraph (c) of subsection (1) of this section that he was unable
57 to obtain the required consultation with an expert, the court,
58 upon the request of a defendant made prior to compliance by the
59 plaintiff with the provisions of this section, may require the
60 attorney to divulge to the court, in camera and without any



61 disclosure by the court to any other party, the names of
62 physicians refusing such consultation.

63 (6) The provisions of this section shall not apply to a
64 plaintiff who is not represented by an attorney.

65 (7) The plaintiff, in lieu of serving a certificate required
66 by this section, may provide the defendant or defendants with
67 expert information in the form required by the Mississippi Rules
68 of Civil Procedure. Nothing in this section requires the
69 disclosure of any "consulting" or nontrial expert, except as
70 expressly stated herein.

71 (8) Where the complaint was not accompanied by a certificate
72 executed by the attorney in accordance with this section, upon
73 motion made the attorney may comply by showing that he actually
74 consulted with a qualified expert prior to filing the complaint or
75 by showing that such failure to provide the certificate was the
76 result of excusable neglect.

77 **SECTION 2.** This act shall take effect and be in force from
78 and after its passage and shall apply to all cases pending or
79 filed as of that date and thereafter.

