

WITHDRAWN

1 Senator Harp of the 16th offered the following amendment:

2 Amend the Senate Health and Human Services Committee substitute to HB 1028 by striking
3 from line 5 on page 15 through line 6 on page 16 and inserting in lieu thereof the following:

4 "(a) In an action for medical malpractice, the opinions of an expert as to the standard of
5 care of the defendant professional whose conduct is at issue shall be admissible only if, at
6 the time the act or omission is alleged to have occurred or at the time the witness testifies,
7 the expert witness:

8 (1) Was licensed by an appropriate regulatory agency to practice his or her profession
9 and was practicing or teaching his or her profession for at least three of the last five years
10 immediately preceding such time; and

11 (2) Meets at least one of the following criteria:

12 (A) The expert shares at least one specialty certification with the defendant;

13 (B) The expert has experience in the diagnosis or treatment of the condition at issue,
14 the performance of the procedure or procedures at issue, or the provision of the services
15 at issue;

16 (C) The expert has experience in an area of practice or specialty that diagnoses, treats,
17 or cares for patients under similar conditions or circumstances; or

18 (D) The expert's knowledge concerning the standard of care with regard to the act or
19 omission alleged is within the knowledge or expertise of any person holding a license
20 from a regulatory agency.

21 (b) Any objection to the qualification of the expert witness to provide such testimony shall:

22 (1) Be made no later than 30 days after the completion of the witness's deposition or
23 prior to the date of any pretrial hearing, whichever is earlier;

24 (2) Be made by written motion; and

25 (3) Set forth with specificity the factual and legal basis of the objection.

26 (c) Nothing in this Code section shall prohibit a health care provider from testifying as to
27 the standard of care of another health care provider with different licensure or certification
28 if the individual meets the criteria set forth in subsection (a) of this Code section.

29 (d) Any expert who testifies concerning whether a defendant complied with or deviated
30 from the standard of care shall be subject to direct examination or cross-examination on the
31 expert's personal practices in the area of conduct at issue.

32 (e) This Code section shall not apply to Code Section 9-11-9.1 and shall not be construed
33 to alter the competency requirements of any expert testifying by affidavit for purposes of
34 Code Section 9-11-9.1.

1 (f) For each defendant whose conduct is at issue, the plaintiff shall identify at least one
2 expert who meets the requirements of subsection (a) of this Code section no later than eight
3 months after the filing of the last defendant's answer; provided, however, that the court
4 shall be authorized to extend the time for the identification of an expert witness upon good
5 cause shown.

6 (g) Nothing in this Code section shall be construed to prohibit the plaintiff from
7 identifying additional expert witnesses as to the standard of care of any defendant beyond
8 the eight-month period set forth in subsection (f) of this Code section.

9 (h) If the plaintiff fails to designate an expert as required by subsection (f) of this Code
10 section, then the action as to that defendant shall be dismissed without prejudice by the trial
11 court.

12 (i) Any objection to the qualifications of an expert witness designated by the plaintiff as
13 required by subsection (f) of this Code section shall be asserted pursuant to the
14 requirements of subsection (b) of this Code section. If the court rules that the expert does
15 not meet the criteria of subsection (a) of this Code section, then the court shall issue an
16 order requiring the plaintiff to identify an expert meeting the requirements of subsection (a)
17 of this Code section within a time period determined by the court which shall not be less
18 than 45 days. If the plaintiff fails to do so, the action as to that defendant shall be
19 dismissed without prejudice.

20 (j) An order dismissing any defendant or the entire case pursuant to subsection (h) or (i)
21 of this Code section shall be subject to review by direct appeal upon the filing of a timely
22 notice of appeal following the entry of the order. If such an order is appealed, the statute
23 of limitations, the statute of repose, and the six-month renewal period shall be tolled until
24 the civil action is remitted to the trial court."