

Requirements for Professional Malpractice Cases

Certain exceptions may apply, and law is subject to change. Contact White and Williams LLP for additional information.

ALABAMA

No certificate requirement.

ALASKA

In actions against health care providers, if the parties have not agreed to submit any claim to arbitration, the claim must be routed to an expert advisory panel for review, unless the court decides that an expert advisory opinion is not necessary. Discovery may not be undertaken in a case until the report of the expert advisory panel is received or 60 days after selection of the panel, whichever occurs first. Alaska Stat. § 09.55.536.

ARIZONA

At the same time as filing a claim against any professional licensed by the state, the claimant's attorney shall certify whether an expert opinion is necessary to prove the professional standard of care or liability for the claim. If the attorney certifies that expert opinion is necessary, the claimant shall serve a preliminary expert opinion affidavit with the claimant's initial disclosures. The affidavit shall state the expert's qualifications to provide the opinion; the factual basis for the claim; the acts which constitute a breach of the standard of care; and how the breach caused the claimant's damages. Ariz. Rev. Stat. §§ 12-2602, 2603.

ARKANSAS

In an action against medical professionals, an affidavit of merit by an expert is required, stating the expert's familiarity with the standard of care, qualifications, opinion on how the standard of care was breached, and an opinion on how the breach resulted in injury/death. Ark. Code Ann. § 16-114-209. The statute's requirement that the affidavit be filed within 30 days after the complaint was held unconstitutional in *Summerville v. Thrower*, 253 S.W.3d 415 (Ark. 2007). Even if the case is not one against a medical professional, Rule 11 - discussing signing pleadings and other papers - requires consultation with at least one expert, believed competent under Ark. R. Evid. 702, when a party's claim or affirmative defense may only be established in whole or in part by expert testimony. Ark. R. Civ. P. 11(b)(5).

CALIFORNIA

A certificate of merit must be filed on or before date of service of the complaint or cross-complaint in every action arising from professional negligence of an architect, engineer, or land surveyor. Cal. Civil Proc. Code § 411.35.

COLORADO

Within sixty days of the filing of a complaint against a licensed professional, plaintiff's counsel must file a certificate of review with the court. Colo. Rev. Stat. §§ 13-20-601, 13-20-602. For construction defect claims, the claimant must serve the construction professional (architect, contractor, subcontractor, developer, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property) with written notice of the claim at least 75 days before filing suit (90 days for commercial properties). Colo. Rev. Stat. § 13-20-801, *et seq.*

CONNECTICUT

In any action alleging injury or wrongful death caused by a health care provider, a certificate of good faith must be filed with the complaint. The certificate shall provide a detailed written opinion by a similar health care provider in support of the belief that evidence of medical negligence appears to exist. Conn. Gen. Stat. § 52-190a.

DELAWARE

An affidavit of merit must be filed along with the complaint in any negligence action against a health care provider. Del. Code Ann. tit. 18, § 6853. An affidavit of merit is not necessary if the complaint alleges a rebuttable inference of medical negligence, including when an object is left in the patient's body or surgery is performed on the wrong body part. A review panel may be used in medical malpractice claims but is not required prior to filing the complaint. Del. Code Ann. tit. 18, § 6803, *et seq.*; *see* Del. Super. Ct. Civ. R. 71.2.

DISTRICT OF COLUMBIA

No certificate requirement.

FLORIDA

In a medical negligence case, the complaint or initial pleading shall contain a certificate of counsel that a reasonable investigation gave rise to a good faith belief that grounds exist for an action against each named defendant. The limitation period may be delayed up to 90 days to permit the required investigation upon payment of a filing fee. Fla. Stat. § 766.104.

GEORGIA

An affidavit of merit by an expert is required for actions against health care professionals, architects, attorneys, CPAs, land surveyors and professional engineers. The affidavit shall be filed with the complaint setting forth at least one negligent act or omission and the factual basis for the claim. When the period of limitation will expire within ten days of the filing of the complaint, the affidavit may be filed 45 days after the filing of the complaint if the attorney swears or affirms that he was retained within 90 days of the limitation date. Ga. Code § 9-11-9.1.

HAWAII

In claims against engineers, architects, surveyors, landscape architects or health care professionals, a certificate of consultation must be filed with the conciliation panel as a prerequisite to the filing of a complaint. Haw. Rev. Stat. §§ 671-12, 671-12.5, 671-16, 672-B5, 672-B6, 672-B11.

IDAHO

Before a medical malpractice action can be filed, a claim must be submitted to a hearing panel, which is to issue an advisory opinion. Idaho Code § 6-1001, *et seq.*

ILLINOIS

In an action against a health care provider, plaintiff's attorney must file an affidavit of merit with the complaint declaring that the attorney has consulted with a health care professional and that the consultant has determined the action to have merit. 735 Ill. Comp. Stat. 5/2-622. Parts of Section 2-622 were held unconstitutional in *Best v. Taylor Mach. Works*, 689 N.E.2d 1057 (Ill. 1997) and *Lebron v. Gottlieb Memorial Hosp.*, 930 N.E.2d 895 (Ill. 2010), but the statute remains in effect in an earlier form. *Christmas v. Hugar*, 949 N.E.2d 675 (Ill. App. Ct. 2010).

INDIANA

A complaint against a health care provider may not be filed before the claim has first been presented to a medical review panel, and the panel has issued an opinion. Ind. Code § 34-18-8-4.

IOWA

A certificate of merit is required from an expert in a negligence action against a health care provider prior to the commencement of discovery in the case and within sixty days of the defendant's answer. Iowa Code § 147.140.

KANSAS

In an action against a professional licensee other than a health care provider, at the request of a party the case must be referred to a screening panel. After the panel issues its recommendations, the plaintiff may reject them and proceed with the action. Kan. Stat. Ann. § 60-3501, *et seq.* The procedure for claims against health care providers is similar, although referral to the screening panel is compulsory. Kan. Stat. Ann. § 65-4901, *et seq.*

KENTUCKY

A malpractice claim against a health care provider must be accompanied by a certificate of merit declaring that the claimant has consulted with a medical expert who is qualified to give expert testimony as to the standard of care. Ky. Rev. Stat. Ann. 411.167.

LOUISIANA

All malpractice claims against health care providers, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel. La. R.S. 40:1231.8.

MAINE

No certificate requirement. However, medical malpractice cases are screened by a panel of professionals. Me. Rev. Stat. tit. 24, § 2903; *see* Me. Rev. Stat. tit. 24, § 2853.

MARYLAND

Within 90 days of filing a claim against a doctor, architect, engineer or interior designer, a claimant must file a certificate from a qualified expert stating that the licensed professional failed to meet a standard of professional care. Md. Code, Cts. & Jud. Proc. §§ 3-2C-02, 3-2A-04. Claims against doctors must first be submitted for mandatory arbitration, and the certificate must also state that the departure from standard of care was the proximate cause of the alleged injury. Md. Code, Cts. & Jud. Proc. § 3-2A-04.

MASSACHUSETTS

In a medical malpractice action, there is no prerequisite to filing a complaint, but within 15 days of the defendant's answer, the claim is to be heard by a tribunal. If the tribunal finds for the defendant, the case can proceed only if the plaintiff files a \$6000 bond. Mass. Gen. Laws ch. 231, § 60B; *see* Mass. Super. Ct. Rule 73.

MICHIGAN

In a medical malpractice action, the plaintiff's attorney shall file with the complaint an affidavit of merit signed by a health professional which states: (a) the applicable standard of practice or care; (b) the opinion that the applicable standard of practice or care was breached; (c) the actions that should have been taken or omitted to have complied with the applicable standard of practice or care; and (d) the manner in which the breach of the standard of practice or care was the proximate cause of the injury. Mich. Comp. Laws § 600.2912d.

MINNESOTA

In medical malpractice actions, the plaintiff must serve the defendant with: (a) an affidavit of expert review by the plaintiff's attorney, with the summons and complaint; and (b) within 180 days of commencing an action, an affidavit identifying the plaintiff's expert, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for the opinion. Minn. Stat. § 145.682. In actions against non-medical professionals, including attorneys, architects, landscape architects, CPAs, engineers and

MINNESOTA (continued)

land surveyors, the plaintiff must satisfy the requirements of Section 145.682. In the alternative, the parties may agree to waive the expert review, or the filing party may apply for a waiver from the court upon commencement of the action. In reviewing a waiver application, the court must determine whether good cause exists to grant the waiver. Minn. Stat. § 544.42.

MISSISSIPPI

In a medical malpractice action, the complaint shall be accompanied by a certificate from the attorney declaring: (a) that the attorney has consulted with a qualified expert who has given the attorney the belief that there is a reasonable basis for the action; (b) that the attorney was unable to obtain the certificate because of an approaching statute of limitation; or (c) that the attorney was unable to obtain the certificate because, after approaching three experts, none would agree to a consultation. When the certificate is not filed with the complaint because of an approaching statute of limitation, the attorney must supplement the filing with the certificate within sixty days. Miss. Code Ann. § 11-1-58.

MISSOURI

Within 90 days of the filing of a petition alleging medical malpractice, the plaintiff's attorney must file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that the failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition. Mo. Rev. Stat. § 538.225.

MONTANA

Claims of medical malpractice must first be submitted to the Montana Medical Legal Panel for a hearing and a decision of the panel before a claimant can file a civil action in any court. No certificate of merit is required. Mont. Code Ann. § 27-6-101, *et seq.*; see Mont. Code Ann. § 27-6-701.

NEBRASKA

No action against a health care provider may be commenced before the claimant's proposed complaint has been presented to a medical review panel and an opinion has been rendered by the panel. Neb. Rev. Stat. § 44-2840.

NEVADA

An action for medical or dental malpractice must be filed with affidavit of merit. Nev. Rev. Stat. § 41A.071. Failure to file the affidavit cannot be cured by amending the complaint. Fierle v. Perez, 219 P.3d 906 (Nev. 2009). An action against an engineer, land surveyor, architect or landscape architect must be filed with an affidavit of merit. Nev. Rev. Stat. § 40.6884.

NEW HAMPSHIRE

No affidavit/certificate of merit requirement. Medical malpractice claims must be submitted to an independent review board prior to trial. N.H. Rev. Stat. Ann. § 519-B:1, *et seq.*

NEW JERSEY

An affidavit of merit shall be served upon each defendant within 60 days of the filing of the answer in any action alleging malpractice or negligence by a licensed professional, including health care providers, attorneys, insurance producers, land surveyors and engineers. N.J. Stat. Ann. §§ 2A:53A-26, 2A:53A-27.

NEW MEXICO

No certificate requirement. However, medical malpractice cases involving an independent provider are screened by a medical review commission, but the independent provider and patient may stipulate to forego the panel process. See N.M. Stat. §§ 41-5-14 and 41-5-15. Beginning July 1, 2022, malpractice cases involving hospitals or outpatient healthcare facilities shall not be considered and shall not be filed with the review commission. N.M. Stat. § 41-5-14

NEW YORK

A certificate of merit must be filed along with the complaint in any malpractice action for medical, dental or podiatric malpractice. N.Y. C.P.L.R. § 3012-a.

NORTH CAROLINA

In a medical malpractice action, the complaint shall be dismissed unless it asserts that the medical records have been reviewed by a consultant who is willing to testify that the medical care did not comply with the applicable standard of care, or that negligence is established under the existing common-law doctrine of *res ipsa loquitur*. Rule 9 of the Rules of Civil Procedure.

NORTH DAKOTA

In medical malpractice actions, the complaint will be dismissed unless the plaintiff submits an affidavit of merit from an expert within three months of the commencement of the action. N.D. Cent. Code § 28-01-46.

OHIO

Affidavit of merit by an expert must be attached to a complaint that contains a medical claim, dental claim, optometric claim, or chiropractic claim, or, with leave of court, may follow such a complaint by up to ninety days. Rule 10(D), Ohio Civil Rules.

OKLAHOMA

No certificate requirement. Zeier v. Zimmer, Inc., 152 P.3d 861 (Okla. 2006) (holding the affidavit of merit statute, 63 O.S. § 1-1708.1E, unconstitutional; statute was repealed in 2009).

OREGON

An attorney's certificate of consultation with an expert is required in actions against architects, landscape architects, engineers, land surveyors and real estate licensees. Or. Rev. Stat. §§ 31.300, 31.350.

PENNSYLVANIA

Certificates of merit are required in actions asserting professional liability claims against either a licensed professional or the entity responsible for the licensed professional. The term "licensed professional" refers to any person licensed in the Commonwealth of Pennsylvania or in another state as a health care provider, an accountant, an architect, a chiropractor, a dentist, an engineer or land surveyor, a nurse, an optometrist, a pharmacist, a physical therapist, a veterinarian or an attorney at law. The certificate shall be filed with the complaint or within sixty days after the filing of the complaint. The certificate of merit must substantially comply with the form set forth in Pa. R.C.P. 1042.9. Pa. R.C.P. 1042.1, 1042.3, 1042.9.

RHODE ISLAND

No certificate requirement.

SOUTH CAROLINA

A complaint alleging professional negligence against a licensed professional must include an affidavit of merit signed by a licensed and qualified expert in the same field as the alleged tortfeasor. The statute specifically includes various types of doctors, attorneys, engineers, architects, CPAs, land surveyors and other professionals. S.C. Code Ann. § 15-36-100.

SOUTH DAKOTA

No certificate requirement. However, the Health Care Services Arbitration Panel may hear and decide claims of medical malpractice. S.D. Codified Laws § 21-25B-4. Participation in the panel is optional; arbitration is not a prerequisite to filing a lawsuit for medical malpractice.

TENNESSEE

Actions alleging health care liability and requiring expert testimony to establish the applicable professional standard of care require a certificate of good faith. Where the plaintiff advances such a claim, the certificate must accompany the filing of the complaint. If advanced by a defendant alleging fault by a non-party, the certificate must be filed within 30 days of the responsive pleading by the defendant. Health care providers subject to this provision include physicians, pharmacists and nurses, among others. Additionally, any party intending to file an action alleging health care liability must provide written notice to the target health care provider 60 days prior to filing suit. Tenn. Code Ann. §§ 29-26-121, 29-26-122.

TEXAS

In an action against a licensed architect, licensed professional engineer, registered professional land surveyor, registered landscape architect, or any firm in which such licensed or registered professional practices, an affidavit of merit must be filed with the complaint, or within thirty days thereafter if the filing is within ten days of the statute of limitation. Tex. Civ. Prac. & Rem. Code Ann. § 150.002.

UTAH

Section 423 of Utah's Health Care Malpractice Act and all language throughout the Act that refers to affidavits of merit has been declared unconstitutional. Vega v. Jordan Valley Med. Ctr., 449 P.3d 31 (UT 2019).

VERMONT

A certificate of merit is required in actions against health care providers. 12 Vt. Stat. Ann. § 1042.

VIRGINIA

In a medical malpractice action, at the time of service of process, the plaintiff must obtain a written opinion signed by an expert witness that the defendant deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. Within ten days of a request by the defendant, the plaintiff must certify that the opinion was obtained. Va. Code. § 8.01-20.1.

WASHINGTON

No certificate requirement. See Putnam v. Wenatchee Valley Med. Ctr., 216 P.3d 374 (Wash. 2009) (holding that a state statute requiring a certificate of merit for medical malpractice actions violated the Washington Constitution).

WEST VIRGINIA

A notice of claim and screening certificate of merit signed by a qualified health care provider shall be served on all parties 30 days prior to the filing of a medical malpractice lawsuit. The certificate shall state: 1) the expert's experience with the applicable standard of care; 2) the expert's qualifications; 3) the expert's opinion on how the standard of care was breached; and 4) the expert's opinion as to how the breach caused the injury or death. A separate certificate must be provided for each party against whom a claim is asserted. W. Va. Code § 55-7B-6.

WISCONSIN

No certificate requirement. In actions against health care providers, a request for mediation must be filed within fifteen days of filing the complaint. Wis. Stat. § 655.445.

WYOMING

No certificate requirement. Medical malpractice claims must be initiated with an independent review panel unless the parties waive submission of the claim to the panel. Wyo. Stat. § 9-2-1518. However, this statute was repealed in 2021, effective July 1, 2022. As of this date, all activities related to the Wyoming Medical Review Panel Act of 2005 shall cease except as necessary to finalize decisions on malpractice claims against health care providers filed with the panel prior to July 1, 2022. See 2021 Wy. ALS 99.

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After Hours Contacts:

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