

Professional Liability Matters

Legal developments and risk management tips impacting the professional liability community



50-State Survey of Affidavit of Merit Statutes

A growing number of states have enacted some version of an “affidavit of merit” statute in professional malpractice matters. The intended purpose behind these laws is to reduce “unnecessary” or unsupported lawsuits against licensed professionals. In states such as Pennsylvania, New Jersey, and others, plaintiffs in malpractice litigation must certify through an impartial professional in the defendant’s field that there is a fundamental basis for the complaint. While the specifics of the particular statute in each state may differ in terms of scope and application, the importance of compliance cannot be overstated. The following table represents a 50-state survey of affidavit of merit statutes, includes a link to the applicable statute, if any, and summarizes the application of each law.

By Goldberg Segalla LLP and www.ProfessionalLiabilityMatters.com
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STATE	AOM?	AUTHORITY	CLASS(ES)	APPLICATION
Alabama	No	n/a		
Alaska	No	n/a		
Arizona	Yes	A.R.S. § 12-2602 A.R.S. § 12-2603	Licensed Professionals & Health Care	In any malpractice action the plaintiff must serve with the claim a certification stating whether expert testimony is necessary and, if so, must serve a preliminary affidavit including the factual basis for the claim, the conduct that constituted malpractice, and how such conduct caused the alleged harm.
Arkansas	Yes	A.C.A. § 16-114-209	Health Care	Within 30 days of filing a med mal complaint, the plaintiff must file an affidavit signed by a qualified expert that the claim is reasonable, the defendant breached the standard of care and the breach caused the alleged harm.

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California	Yes	Cal. Civ. Pro. §411.35	Architects, Engineers & Land Surveyors	In a malpractice action against an architect, engineer, or land surveyor, counsel for the plaintiff must certify before filing the complaint that he/she consulted with a professional in the defendant's field and concluded that the defendant breached the standard of care.
Colorado	Yes	C.R.S. § 13-20-602	Licensed Professionals	Within 60 days of filing a malpractice claim against a licensed professional (or an acupuncturist), the plaintiff must file a certificate that he/she has consulted with an appropriate professional who opined that the defendant breached the standard of care and the case is reasonable.
Connecticut	Yes	Conn. Stat. § 52-190a	Health Care	The initial complaint against a health care professional must contain a certification stating attorney made "reasonable inquiry" to determine reasonable grounds exist that the defendant breached the standard of care and that counsel has a non-discoverable written certificate from an appropriate professional in the defendant's field.
Delaware	Yes	18 Del. C. § 6853	Health Care	The initial complaint against a healthcare professional must contain a non-discoverable certification signed by a professional in defendant's field stating the defendant breached the standard of care and the claims are reasonable.
DC	No	n/a		
Florida	Yes	Fla. Stat. § 766.104	Health Care	The initial complaint against a healthcare professional must contain a non-discoverable certification of counsel that a reasonable pre-suit investigation gave rise to a good faith belief that the defendant engaged in malpractice. Good faith requirement is satisfied by a written opinion by a qualified expert opining that evidence of medical negligence exists.
Georgia	Yes	G.A. Code § 9-11-9.1	Licensed Professionals & Others	Complaint against licensed professionals (and others identified by statute including chiropractors, dietitians, pharmacists, therapists, etc.) must include an affidavit of an expert competent to testify setting forth specifically at least one negligent act or omission claimed to exist and the factual basis for each such claim.
Hawaii	Yes	H. Code § 672B-6 H. Code. § 671-12.5	Design Professionals & Health Care	In any malpractice claim against a design or healthcare professional a plaintiff must file with the complaint a certification that counsel has consulted with a qualified professional who concluded that the claim is reasonable and meritorious
Idaho	No	n/a		

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Illinois	Yes	735 I.L.C.S. 5/2-622	Health Care	In any med mal claim a plaintiff must file with the complaint a certification that counsel has consulted with a qualified professional who concluded that the claim is reasonable and meritorious.
Indiana	No	n/a		
Iowa	No	n/a		
Kansas	Yes	K.S.A. §60-3501 K.S.A. §65-4901	Licensed Professionals & Health Care	At the request of any party to a malpractice action, the court shall convene a malpractice screening panel to hear the claim and within 180 days draft a recommendation whether the professional departed from the standard of care and caused the plaintiff damage. If any party rejects the panel's determination, the plaintiff may proceed with the action in the district court.
Kentucky	No	n/a		
Louisiana	No	n/a		
Maine	No	n/a		
Maryland	Yes	Md. Code §3-2A-04 Md. Code §3-2C-01-2	Health Care Real Estate	Claim shall be dismissed, without prejudice, if within 90 days of the complaint the plaintiff fails to file a certificate attesting to departure from standards of care. Within 15 days after discovery is completed, a party shall file a supplemental certificate of a qualified expert. Claim shall be dismissed, without prejudice, if the plaintiff fails to file a certificate attesting that the real estate professional (architect, interior designer, landscape architect, engineer or land surveyor) failed to meet standard of professional care.
Massachusetts	No	n/a		
Michigan	Yes	MCL 600.2912d	Health Care	Plaintiff alleging medical malpractice shall file with the complaint an affidavit of merit signed by a healthcare professional certifying that he/she reviewed all medical records and the defendant breached the standard of care.

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Michigan (cont)		MCL § 600.2912e	Health Care	Within 91 days after AOM, defendant must file an affidavit of meritorious defense.
Minnesota	Yes	Minn. Stat. §145.682 Minn. Stat. § 544.42	Health Care Licensed Professionals	In a med mal action, the plaintiff must serve with the complaint an affidavit that states the facts have been reviewed with an expert who opines the defendant deviated from the applicable standard of care. In a malpractice action against an attorney, architect, accountant, engineer, land surveyor, or landscape architect the plaintiff must serve an affidavit of expert review and serve an affidavit identifying experts to be called within 180 days of commencing discovery.
Mississippi	Yes	Miss. Code § 11-1-58	Health Care	In any med mal action the complaint shall be accompanied by a certification that counsel has consulted with an expert and that the attorney concludes that there is a reasonable basis for the commencement of such action.
Missouri	Yes	Mo. § 538.225	Health Care	In any med mal action the plaintiff shall file an affidavit stating that he/she has the written opinion of an expert concluding that the defendant breached standard of care which caused the claimed damages.
Montana	No	n/a		
Nebraska	No	n/a		
Nevada	Yes	Nev. Stat. § 41A.071 Nev. Stat. § 40.6884	Health Care Real Estate	Any med mal action is subject to dismissal, without prejudice, if the action is filed without an affidavit from a medical expert in the field supporting the allegations contained in the action. In any malpractice action against a design professional, engineer, land surveyor or architect the plaintiff's attorney shall file an affidavit along with the first pleading stating he/she has consulted with an expert and concluded that the action is reasonable.
New Hampshire	No	n/a		
New Jersey	Yes	N.J.S.A. § 2A:53A-27	Licensed Professional	In any action for damages for personal injuries, wrongful death or property damage resulting from alleged malpractice by a licensed professional, the

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				plaintiff shall provide an affidavit from a professional in the field that the defendant breached the applicable standard of care within 60 days after the defendant answers the complaint. The court may grant no more than one 60-day extension to file the affidavit upon a finding of good cause.
New Mexico	No	n/a		
New York	Yes	N.Y. CPLR § 3012-a	Health Care	In any med mal action the complaint shall be accompanied by a certificate declaring that counsel has consulted with an appropriate health care professional and concludes that the claim is reasonable.
North Carolina	Yes	NC Stat. 8C-1	Health Care	In any med mal action the complaint shall include a certification that counsel has consulted with an appropriate health care professional who reviewed all reasonably available medical records pertaining to the alleged negligence and is prepared to testify that the defendant breached the standard of care.
North Dakota	Yes	N.D. Code §28-01-46	Health Care	At defendant's motion, plaintiff must serve an admissible expert opinion to support a med mal claim within 3 months of suit. The expert's affidavit must identify the name and business address of the expert, the expert's field of expertise, and contain a brief summary of the basis for the expert's opinion.
Ohio	Yes	Ohio C.R. 10(D)(2)	Health Care	Any med mal claim must include an affidavit from a professional opining that the defendant breached the standard of care and caused the alleged harm.
Oklahoma	No	n/a		
Oregon	Yes	ORS § 31.300 ORS § 31.350	Design Professionals Real Estate Licensee	Actions against design professionals must contain an attorney certification that the attorney has consulted with a design professional available and willing to testify to opinions regarding the liability of the defendant. Malpractice actions against a real estate licensee require a certification that the attorney has consulted a real estate licensee available and willing to testify to opinions regarding the liability of the defendant.
Pennsylvania	Yes	Pa. R.C.P. 1042.3	Licensed	In any malpractice action against a licensed professional, the attorney for

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			Professionals	the plaintiff shall certify within 60 days of the complaint that an appropriate professional has supplied a written statement that there exists a reasonable probability that the defendant breached the standard of care which caused the alleged harm.
Rhode Island	No	n/a		
South Carolina	Yes	S.C. Code §15-36-100	Licensed Professional	In a malpractice action, plaintiff must file as part of the complaint an affidavit of an expert specifying at least one act of negligence by the defendant.
South Dakota	No	n/a		
Tennessee	Yes	Tenn. Cd §29-26-122	Health Care	In any med mal action the plaintiff shall file a certificate of good faith with the complaint stating that he has consulted with a professional who signed a statement confirming they are competent to opine in the case and the claim is reasonable.
Texas	Yes	Tex. Code § 150.002	Licensed Professional	In any malpractice action the plaintiff must file with the complaint an affidavit of a licensed professional who is competent to testify and specifies the alleged negligence of the defendant.
Utah	Yes	Ut Code §78B-3-423	Health Care	In any med mal action a plaintiff must file an attorney affidavit that he/she consulted with a health care professional who opined the case is reasonable and that the defendant breached the standard of care which caused the alleged harm.
Vermont	Yes	12 V.S.A. § 1042	Health Care	In any med mal action a plaintiff must file with the complaint a certification that counsel has consulted with a qualified professional who concluded that the defendant breached the standard of care and caused the injury.
Virginia	No	n/a		
Washington	No	n/a		Wash. Code§7.70.150 governs med mal actions but the statute was ruled unconstitutional in Putman v. Wenatchee Valley Med Ctr., 216 P.3d 374 (2009) .
West Virginia	Yes	WVa. Code §55-7B-6	Health Care	At least 30 days prior to filing a med mal action the claimant must serve a notice of claim on each would-be defendant including a certificate executed by a healthcare provider opining that the defendant breached the standard and caused the alleged injury.

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Wisconsin	No	n/a		
Wyoming	No	n/a		

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