

**411.167 Certificate of merit for medical malpractice actions.**

- (1) A claimant commencing any action identified in KRS 413.140(1)(e), or against a long-term-care facility as defined in KRS 216.510 alleging that the long-term-care facility failed to provide proper care to one (1) or more residents of the facility, shall file a certificate of merit with the complaint in the court in which the action is commenced.
- (2) "Certificate of merit" means an affidavit or declaration that:
  - (a) The claimant has reviewed the facts of the case and has consulted with at least one (1) expert qualified pursuant to the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence who is qualified to give expert testimony as to the standard of care or negligence and who the claimant or his or her counsel reasonably believes is knowledgeable in the relevant issues involved in the particular action, and has concluded on the basis of review and consultation that there is reasonable basis to commence the action;
  - (b) The claimant was unable to obtain the consultation required by paragraph (a) of this subsection because a limitation of time established by KRS Chapter 413 would bar the action and that the consultation could not reasonably be obtained before that time expired. An affidavit or declaration executed pursuant to this paragraph shall be supplemented by an affidavit or declaration pursuant to paragraph (a) of this subsection or paragraph (c) of this subsection within sixty (60) days after service of the complaint or the suit shall be dismissed unless the court grants an extension for good cause; or
  - (c) The claimant was unable to obtain the consultation required by paragraph (a) of this subsection because the claimant or his or her counsel had made at least three (3) separate good-faith attempts with three (3) different experts to obtain a consultation and that none of those contacted would agree to a consultation; so long as none of those contacted gave an opinion that there was no reasonable basis to commence the action.
- (3) A single certificate of merit is required for an action even if more than one (1) defendant has been named in the complaint or is subsequently named.
- (4) A certificate of merit is not required where the claimant intends to rely solely on one (1) or more causes of action for which expert testimony is not required, including claims of res ipsa loquitur and lack of informed consent, in which case the complaint shall be accompanied by an affidavit or declaration that no cause of action is asserted for which expert testimony is required.
- (5) If a request by the claimant for the records of the claimant's medical treatment by the defendants has been made and the records have not been produced, the claimant shall not be required to file a certificate of merit under this section until ninety (90) days after the records have been produced. For purposes of this section, "records" includes but is not limited to paper or electronic copies of dictations, video recordings, fetal heart monitor strips, and imaging studies.
- (6) The identity and statements of an expert relied upon in subsection (2) of this section above are not discoverable, except:

- (a) When a claim is made under subsection (2)(c) of this section that the claimant was unable to obtain the required consultation with an expert, the court, upon the request of a defendant made prior to compliance by the claimant with this section, may require the claimant to divulge to the court, in camera and without disclosure by the court to any other party, the names of the physicians refusing to consult; or
  - (b) If any party to an action hereto prevails on the basis of the failure of an opposing party to offer any competent expert testimony, the court may, upon motion, for good cause shown compel the opposing party or party's counsel to provide to the court the name of any expert consulted and any written materials relied upon in executing the certificate.
- (7) The claimant, in lieu of serving a certificate of merit, may provide the defendant or defendants with expert information in the form required by the Kentucky Rules of Civil Procedure. Nothing in this section requires the disclosure of any "consulting" or nontrial expert, except as expressly stated in this section.

**Effective:** June 27, 2019

**History:** Created 2019 Ky. Acts ch. 180, sec. 1, effective June 27, 2019.