



Ohio Revised Code

Section 2323.45 Medical liability action - affidavit of noninvolvement by health care provider - procedure.

Effective: September 13, 2004

Legislation: House Bill 215 - 125th General Assembly

(A)(1) A health care provider named as a defendant in a civil action based upon a medical claim is permitted to file a motion with the court for dismissal of the claim accompanied by an affidavit of noninvolvement. The defendant shall notify all parties in writing of the filing of the motion. Prior to ruling on the motion, the court shall allow the parties not less than thirty days from the date that the parties were served with the notice to respond to the motion.

(2) An affidavit of noninvolvement shall set forth, with particularity, the facts that demonstrate that the defendant was misidentified or otherwise not involved individually or through the action of the defendant's agents or employees in the care and treatment of the plaintiff, was not obligated individually or through the defendant's agents or employees to provide for the care and treatment of the plaintiff, and could not have caused the alleged malpractice individually or through the defendant's agents or employees in any way.

(B)(1) The parties shall have the right to challenge the affidavit of noninvolvement by filing a motion and submitting an affidavit with the court that contradicts the assertions of noninvolvement made in the defendant's affidavit of noninvolvement.

(2) If the affidavit of noninvolvement is challenged, any party may request an oral hearing on the motion for dismissal. If requested, the court shall hold a hearing to determine if the defendant was involved, directly or indirectly, in the care and treatment of the plaintiff, or was obligated, directly or indirectly, for the care and treatment of the plaintiff.

(3) The court shall consider all evidence submitted by the parties and the parties' arguments and may dismiss the civil action based upon the defendant's lack of involvement in the elements of the plaintiff's medical claim. The court shall rule on all challenges to the affidavit of noninvolvement within seventy-five days after the filing of the affidavit of noninvolvement.



(4) A court's dismissal of a claim against a defendant pursuant to this section shall be deemed otherwise than upon the merits and without prejudice pursuant to Civil Rule 41.

(C) If the court determines that a health care provider named as a defendant has falsely filed or made false or inaccurate statements in an affidavit of noninvolvement, the court, upon a motion or upon its own initiative, shall immediately reinstate the claim against that defendant, if previously dismissed. Reinstatement of a party pursuant to this division shall not be barred by any statute of limitations defense that was not valid at the time the original affidavit was filed.

(D) In any action in which the defendant is found by the court to have knowingly filed a false or inaccurate affidavit of noninvolvement, the court shall impose upon the person who signed the affidavit or represented the defendant, or both, an appropriate sanction, including, but not limited to, an order to pay to other parties to the claim the amount of the reasonable expenses that the parties incurred as a result of the filing of the false or inaccurate affidavit, including reasonable attorney's fees.

(E) In any action in which the court determines that a party falsely objected to a defendant's affidavit of noninvolvement, or knowingly provided an inaccurate statement regarding a defendant's affidavit, the court shall impose upon the party or the party's counsel, or both, an appropriate sanction, including, but not limited to, an order to pay to the other parties to the claim the amount of the reasonable expenses that the parties incurred as a result of the submission of the false objection or inaccurate statement, including reasonable attorney's fees.

(F) As used in this section:

(1) "Health care provider" has the same meaning as in division (B)(5) of section 2317.02 of the Revised Code.

(2) "Medical claim" means any claim that is asserted in any civil action against a health care provider and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes derivative claims for relief.