

New Law Affects Expert Report Procedures in Health Care Liability Claims

August 01, 2021

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Under Texas Civil Practice and Remedies Code (CPRC) Section 74.351, claimants who file a health care liability claim (HCLC) against a health care provider are required to serve a preliminary expert report that explains how the health care provider contributed to the alleged injuries by failing to satisfy the standard of care applicable to that provider. This statute, aimed at early dismissal of meritless malpractice claims, requires that the trial court dismiss with prejudice any HCLC for which the claimant failed to timely serve a complying expert report within 120 days after the defendant's answer is filed.

Over the past several years, courts throughout Texas have issued varying interpretations of what claims constitute an HCLC, and therefore, are subject to the expert report requirement. Senate Bill 232, passed in the 2021 Texas legislative session, aims to alleviate some of the uncertainty created by these differing opinions and prevent the dismissal of potentially meritorious claims where claimants fail to serve an expert report not realizing that their claim is an HCLC.

Effective September 1, 2021, new CPRC Section 74.353 will provide a statutory process that allows trial courts to make a preliminary determination of whether a plaintiff's claim is an HCLC that requires a Section 74.351 expert report, and it specifies a time after that determination for the claimant to serve an expert report, if it is required. The statute also allows for an interlocutory appeal of the trial court's determination as to whether the claim is a HCLC. While this new mechanism potentially gives plaintiffs more comfort and clarity, it still requires the plaintiff to seek a ruling from the trial court by filing a motion within 30 days of the defendant's answer. The enrolled version of SB 232 can be accessed [here](#).