

HOUSE BILL NO. 766

INTRODUCED BY B. CLOSE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISQUALIFICATION GROUNDS OF A MEMBER OR PROPOSED MEMBER OF THE MEDICAL LEGAL PANEL; AND AMENDING SECTION 27-6-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-6-404, MCA, is amended to read:

"27-6-404. Disqualification of panel member. (1) A member must be disqualified from consideration of a case in which, by virtue of the member's circumstances, the member believes that serving on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

~~(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association or state licensing board or the state bar, as appropriate. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected.~~

(2) A panel member or proposed panel member must be disqualified, subject to subsection (4), in any proceeding in which the member's impartiality might reasonably be questioned due to:

(a) the member having a personal bias or prejudice concerning a party or a party's lawyer or having personal knowledge of facts that are in dispute in the case;

(b) the member knowing that the member, the member's spouse or domestic partner, or the member's household family member or the spouse or domestic partner of the family member is:

(i) a party to the case or an officer, director, general partner, managing member, or trustee of a party to the case;

1 (ii) acting as a lawyer or health care provider in the case;

2 (iii) a person who has more than a nominal interest that could be substantially affected by the case;

3 or

4 (iv) likely to be a material witness in the case;

5 (c) the member or the member's spouse, domestic partner, parent, child, or household family
6 member having, individually or as a fiduciary, an economic interest in the subject matter in controversy or in a
7 party to the case and the member has knowledge of the interest; or

8 (d) the member:

9 (i) serving as a lawyer or health care provider in the matter in controversy or being associated with
10 a lawyer or health care provider who participated substantially as a lawyer or health care provider in the matter
11 during the association; or

12 (ii) being a material witness concerning the matter.

13 (3) Subject to the limitations in subsection (4), a party may request that a panel member or
14 proposed panel member be disqualified under this section by filing an affidavit that:

15 (a) identifies the basis under this section or under the rules adopted to implement this section for
16 the party's request; and

17 (b) states specific facts known to the party that support the request for disqualification.

18 (4) Under subsection (3), each party may file:

19 (a) up to three requests to disqualify a member or proposed member who is an attorney; and

20 (b) up to three requests to disqualify a member or proposed member who is a health care provider.

21 (5) The director shall:

22 (a) determine the sufficiency of an affidavit filed under subsection (3);

23 (b) remove a panel member or proposed panel member who is disqualified; and

24 (c) select a replacement panel member or proposed panel member.

25 (6) A member who is subject to disqualification under this section or to the rules adopted to
26 implement this section, other than for bias or prejudice under subsection (2)(a), may disclose the basis of the
27 member's disqualification and may ask the parties and their lawyers to consider whether to waive
28 disqualification. If, following the disclosure, the parties and lawyers agree that the member should not be

- 1 disqualified, the member may participate in the proceeding. The agreement must be incorporated into the
- 2 record of the proceeding maintained under 27-6-703."

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