

NSPE Position Statement No. 10-1755—Certificate of Merit

Adopted: 2009

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NSPE Contact: Committee on Policy and Advocacy

Professional Policy Supported: 10-Professional Practice

Position Statement: It is the position of the National Society of Professional Engineers (NSPE) to support the enactment of certificate of merit laws to reduce baseless claims against professional engineers. It is further the position of NSPE to urge its state societies to seek the enactment of certificate of merit laws using the model outlined below as a resource in supporting such legislation at the state level.

Background:

Injured parties often seek relief from any party that may be even remotely involved in alleged wrongful death, personal injury, property damage, or breach of contract. Professional engineers are often targets of these suits. Many of these malpractice and negligence claims brought against professional engineers may have no material basis or justification in fact or in law.

Model Certificate of Merit Statute

1. In any action for damages alleging professional malpractice by a professional engineer, the plaintiff shall be required to file with the complaint an affidavit of a third-party professional engineer competent to testify, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional engineer shall be licensed in this state and actively engaged in the practice of engineering.
2. The contemporaneous filing requirement of Section 1 shall not apply to any case in which the period of limitation will expire within 10 days of the date of filing and, because of such time constraints, the plaintiff has alleged that an affidavit of a third-party professional engineer could not be prepared. In such cases, the plaintiff shall have 45 days after the filing of the complaint to supplement the pleadings with the affidavit. The trial court may, on motion, after hearing and for good cause extend such time as it shall determine justice requires.

3. If an affidavit is filed after the filing of a complaint, as allowed under Section 2, the defendant shall not be required to file an answer to the complaint and affidavit until 30 days after the filing of such affidavit.
4. This Act shall not be construed to extend any applicable period of limitation.