Although House Bill 1285 would appear to prohibit any "party" or the "party's" employees or partner from being certified as an expert, it clearly impacts upon the defendant in much greater terms, legally and practically, than upon the plaintiff.

It is generally recognized that a plaintiff in a medical malpractice action must establish by expert testimony a breach of the standard of professional care causing compensable damages. Requiring the plaintiff to secure an independent expert for purposes of a certificate of merit establishes no additional burden on the plaintiff than the law already requires and the failure to file a qualified certificate results in the dismissal without prejudice of plaintiff's action. Indeed, a significant reason that the Health Claims Arbitration System has been held to be constitutional has been because it imposes no additional and significant burdens to the parties. In Attorney General v. Johnson, 282 Md. 274 (1978), the Court of Appeals upheld the Health Claims Arbitration law emphasizing that it established no new burdensome rule for a plaintiff "as the burden was always upon the plaintiff to prove his case." 282 Md. at 293.

The burden imposed by House Bill 1285 on the defendant, however, is greatly different including the requirement of an independent expert and the potential entry of summary judgment on the question of liability should the statutory requirements not be met.

It is widely recognized that a defendant doctor may testify as his or her own expert in a medical malpractice action. 2/ See Dobbs v. Smith, 514 So.2d 871 (Ala. 1987); Beal v. Hamilton, 712 S.W.2d 873 (Tex.App. 1986); Landers v. Georgia Baptist Medical Center, 333 S.E.2d 884 (Ga. 1985); Farish v. Bankers Multiple Line Ins. Col., 425 So.2d 12 (Fla.App. 1982); Sanderson v. Moline, 499 P.2d 1281 (Wash. App. 1972), and that an interest in subject matter of a case goes to weight, not admissibility, Redman v. United States, 136 F.2d 203 (4th Cir. 1943); Osborne v. McCoy, 485 So.2d 150 (La. App. 1985); Farish, supra. Thus, affidavits of the defendant alone have been held adequate to defeat a plaintiff's motion for summary judgment, Landers, supra; Parker v. Knight, 267 S.E.2d 222 (Ga. 1980). And this is certainly the rule in Maryland. For example, in Hahn v. Suburban Hosp. Ass'n, 54 Md.App. 685 (1983), the Court of Special Appeals held that the hospital doctor as a qualified expert had established the standard of care. 54 Md.App. at 694-697. And in Reilly v. Newman, 74 Md.App. 281 (1988), a defendant doctor's opinion statements justified summary judgment on the medical question of whether the plaintiff was suffering from a medical disorder. Id. at 290.

The 1986 statute that required a defendant to file a certificate of qualified expert showed no intent to expressly override this common law rule that defendant may act as an expert in his or her own defense. See Floor Report on House Bill 1285 (1988)