



Access to the Courts in Washington State Remains Safe

Written On September 21, 2009 By [Bob Kraft](#)

An editorial in the [Seattle Times](#) hits the nail on the head when it comes to laws requiring medical malpractice victims to get a medical certificate of merit before being allowed to file suit and conduct discovery. This is an unreasonable burden for the potential plaintiff. How can you prove medical malpractice before you're allowed to conduct proper discovery to find out exactly what happened at the hospital or doctor's office? Here are excerpts from the editorial:

THE state Supreme Court was right to throw out a three-year-old law requiring patients to get certificates of merit from an expert before they could sue for medical malpractice.

"Requiring plaintiffs to submit evidence supporting their claims before the discovery process violates the plaintiffs' right of access to courts," wrote Justice Susan Owens in the 7-0 decision.

The right to have access to the courts is clearly stated in Article 1 of the Washington state Constitution.

This wasn't a close call for the Supreme Court and one does wonder why the Legislature enacted the law in 2006. It was one of several changes to the medical-malpractice system, spurred by the failure a year before of two competing voter initiatives put forth by doctors and trial lawyers.

Lawmakers wanted to reduce the number of frivolous lawsuits; instead, they interfered in the judicial process.

The court rightly pushed back, calling the certificate requirement a violation of the vital separation of state powers. In other states, including Arkansas, Mississippi and Ohio, courts have thrown out these kinds of laws.

Justices are right to be protective of the public's right to seek redress through the courts. It was a done deal 200 years ago when the U.S. Supreme Court in *Marbury v. Madison* said: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

It remains a key principle today as underscored by a fine state Supreme Court ruling.