

2016 Regular Session

SENATE BILL NO. 36

BY SENATOR GATTI

MALPRACTICE. Provides exclusion from coverage for medical malpractice by doctor practicing outside his specialty or hospital privileges. (8/1/16)

1 AN ACT

2 To amend and reenact R.S. 40:1231.1(A)(13), 1231.2(B)(2), and 1231.8(A)(1)(b), (G), and  
3 (N)(6), relative to medical malpractice claims; to provide with respect to exemptions  
4 from medical malpractice application; to provide definitions; to provide for an  
5 effective date; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:1231.1(A)(13), 1231.2(B)(2), and 1231.8(A)(1)(b), (G), and  
8 (N)(6) are hereby amended and reenacted to read as follows:

9 §1231.1. Definitions and general applications

10 A. As used in this Part:

11 \* \* \*

12 (13) "Malpractice" means any unintentional tort or any breach of contract  
13 based on health care or professional services rendered, or which should have been  
14 rendered, by a health care provider, to a patient, including failure to render services  
15 timely and the handling of a patient, including loading and unloading of a patient,  
16 and also includes all legal responsibility of a health care provider arising from acts  
17 or omissions during the procurement of blood or blood components, in the training

1 or supervision of health care providers, or from defects in blood, tissue, transplants,  
 2 drugs, and medicines, or from defects in or failures of prosthetic devices implanted  
 3 in or used on or in the person of a patient. **It shall also be considered**  
 4 **"malpractice" if a health care provider misrepresents his education, training**  
 5 **or experience in a particular specialty of medicine or with a particular surgery**  
 6 **or procedure.**

7 \* \* \*

8 §1231.2. Limitation of recovery

9 \* \* \*

10 B.

\* \* \*

11 (2)(a) A health care provider qualified under this Part is not liable for an  
 12 amount in excess of one hundred thousand dollars plus interest thereon accruing after  
 13 April 1, 1991, and costs specifically provided for by this Paragraph for all  
 14 malpractice claims because of injuries to or death of any one patient. The sole cost  
 15 for which a health care provider qualified under this Part may be assessed by a trial  
 16 court shall be limited to the cost incurred prior to the rendering of a final judgment  
 17 against the health care provider, not as a nominal defendant, after a trial on a  
 18 malpractice claim, including but not limited to, costs assessed pursuant to Code of  
 19 Civil Procedure Article 970 in any instance where the board was not the offeror or  
 20 offeree of the proposed settlement amount. The health care provider shall not be  
 21 assessed costs in any action in which the fund intervenes or the health care provider  
 22 is a nominal defendant after there has been a settlement between the health care  
 23 provider and the claimant.

24 **(b) Any health care provider qualified under this Part who is found to**  
 25 **have misrepresented his education, training or experience in a particular**  
 26 **specialty of medicine or with a particular surgery or procedure shall be liable**  
 27 **for all sums awarded above the limitation of recovery provided for in**  
 28 **Paragraph (B)(1) of this Section without limitation.**

29 **(c) Any health care provider who negligently or knowingly grants**

1 privileges to, advertises for or profits from another health care provider's  
 2 misrepresentation of his education, training or experience in a particular  
 3 specialty of medicine or with a particular surgery or procedure shall be  
 4 solidarily liable with the health care provider for all sums awarded above the  
 5 limitation of recovery provided for in Paragraph (B)(1) of this Section without  
 6 limitation.

7 \* \* \*

8 §1231.8. Medical review panel

9 A.(1) \* \* \*

10 (b) A request for review of a malpractice claim or a malpractice complaint  
 11 shall contain, at a minimum, all of the following:

12 (i) A request for the formation of a medical review panel.

13 (ii) The name of only one patient for whom, or on whose behalf, the request  
 14 for review is being filed; however, if the claim involves the care of a pregnant  
 15 mother and her unborn child, then naming the mother as the patient shall be  
 16 sufficient.

17 (iii) The names of the claimants.

18 (iv) The names of the defendant health care providers.

19 (v) The dates of the alleged malpractice.

20 (vi) A brief description of the alleged malpractice as to each named defendant  
 21 health care provider.

22 (vii) A brief description of the alleged injuries.

23 (viii) If applicable, an allegation that the defendant health care provider  
 24 misrepresented his education, training or experience in a particular specialty  
 25 of medicine or with a particular surgery or procedure.

26 \* \* \*

27 G. The panel shall have the sole duty to express its expert opinion as to  
 28 whether or not the evidence supports the conclusion that the defendant or defendants  
 29 acted or failed to act within the appropriate standards of care. After reviewing all

1 evidence and after any examination of the panel by counsel representing either party,  
2 the panel shall, within thirty days, render one or more of the following expert  
3 opinions, which shall be in writing and signed by the panelists, together with written  
4 reasons for their conclusions:

5 (1) The evidence supports the conclusion that the defendant or defendants  
6 failed to comply with the appropriate standard of care as charged in the complaint.

7 (2) The evidence does not support the conclusion that the defendant or  
8 defendants failed to meet the applicable standard of care as charged in the complaint.

9 **(3) When the claimant makes an allegation of misrepresentation**  
10 **pursuant to Item (A)(1)(b)(viii) of this Section, the evidence does or does not**  
11 **support the conclusion that the defendant misrepresented his education,**  
12 **training or experience in a particular specialty of medicine or with a particular**  
13 **surgery or procedure.**

14 ~~(3)~~**(4)** That there is a material issue of fact, not requiring expert opinion,  
15 bearing on liability for consideration by the court.

16 ~~(4)~~**(5)** When Paragraph (1) **or (3)** of this Subsection ~~is~~ **are** answered in the  
17 affirmative, that the conduct complained of was or was not a factor of the resultant  
18 damages. If such conduct was a factor, whether the plaintiff suffered: (a) any  
19 disability and the extent and duration of the disability, and (b) any permanent  
20 impairment and the percentage of the impairment.

21 \* \* \*

22 N.

23 \* \* \*

24 (6) The panel shall have the sole duty to express its expert opinion as to  
25 whether or not the evidence supports the conclusion that the defendant or defendants  
26 acted or failed to act within the appropriate standards of care. After reviewing all  
27 evidence and after any examination of the panel by counsel representing either party,  
28 the panel shall, within thirty days, but in no event later than twelve months of the  
29 date of notification of the selection of the attorney chairman pursuant to Paragraph

1 (1) of Subsection C of this Section, render one or more of the following expert  
 2 opinions, which shall be in writing and signed by the panelists, together with written  
 3 reasons for their conclusions:

4 (a) The evidence supports the conclusion that the defendant or defendants  
 5 failed to comply with the appropriate standard of care as charged in the complaint.

6 (b) The evidence does not support the conclusion that the defendant or  
 7 defendants failed to meet the applicable standard of care as charged in the complaint.

8 (c) **When the claimant makes an allegation of misrepresentation**  
 9 **pursuant to Item (A)(1)(b)(viii) of this Section, the evidence does or does not**  
 10 **support the conclusion that the defendant misrepresented his education,**  
 11 **training or experience in a particular specialty of medicine or with a particular**  
 12 **surgery or procedure.**

13 (d) That there is a material issue of fact, not requiring expert opinion, bearing  
 14 on liability for consideration by the court.

15 \* \* \*

16 Section 2. This Act shall become effective on August 1, 2016; if vetoed by the  
 17 governor and subsequently approved by the legislature, this Act shall become effective on  
 18 August 1, 2016, or on the day following such approval by the legislature, whichever is later.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Christine Arbo Peck.

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#### DIGEST

SB 36 Engrossed

2016 Regular Session

Gatti

Proposed law provides that it in addition to the definition of malpractice in present law, it shall also be considered malpractice if a health care provider misrepresents his education, training or experience in a particular specialty of medicine or with a particular surgery or procedure.

Proposed law adds provisions to the limitation of recovery section of present law to include any health care provider who misrepresents his education training or experience in a particular specialty of medicine or with a particular surgery or procedure is not subject to the medical malpractice liability limitation.

Proposed law adds provisions to the limitation of recovery section of present law to include any health care provider who knowingly grants privileges to, advertises for or profits from another health care provider's misrepresentation of his education, training or experience and makes the two solidarily liable is not subject to the medical malpractice liability limitation.

Proposed law establishes a process to present law for the medial review panel to review and issue an opinion on a claimant's allegation that a health care provider misrepresented his education, training or experience in a particular specialty of medicine or with a particular surgery or procedure.

Effective August 1, 2016.

(Amends R.S. 40:1231.1(A)(13), 1231.2(B)(2), and 1231.8(A)(1)(b), (G), and (N)(6))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Revises definition of "malpractice" to include when a health care provider misrepresents his education, training or experience in a particular specialty of medicine or with a particular surgery or procedure.
2. Includes provisions that when a health care provider misrepresents his education training or experience in a particular specialty of medicine or with a particular surgery or procedure he is not subject to the medical malpractice liability limitation.
3. Includes provisions that any health care provider who knowingly grants privileges to, advertises for or profits from another health care provider's misrepresentation of his education, training or experience is not subject to the medical malpractice liability limitation and makes the two solidarily liable.
4. Includes process for the medical review panel to review and issue an opinion on a claimant's allegation that a health care provider misrepresented his education, training or experience in a particular specialty of medicine or with a particular surgery or procedure.
5. Makes technical corrections.