

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), (16), (21), (22), (23), and (D), relative to  
3 medical malpractice claims; to provide with respect to exemptions from medical  
4 malpractice application; to provide definitions; to provide for an effective date; and  
5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:1231.1(A)(13), (16), (21), (22), (23), and (D) are hereby amended  
8 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 be considered an intentional tort**  
 4 **and not subject to the provisions of this Part for a physician to hold himself out**  
 5 **as a specialist in an area of medicine for which he is not board certified or**  
 6 **credentialed in as defined in this Subsection.**

7 \* \* \*

8 (16) "Physician" means a person with an unlimited license to practice  
 9 medicine in this state **who may also have specialist training in a particular**  
 10 **discipline and possess board certification or credentialing.**

11 \* \* \*

12 (21) **"Specialist" means a physician who is qualified by having completed**  
 13 **advanced clinical training and education in a specific area of medicine to obtain**  
 14 **certification by a specialty examining board.**

15 ~~(21)~~ **(22)** "Tissue bank" means any independent nonprofit facility procuring  
 16 and processing human organs or tissues for transplantation, medical education,  
 17 research, or therapy.

18 ~~(22)~~ **(23)** "Tort" means any breach of duty or any negligent act or omission  
 19 proximately causing injury or damage to another. The standard of care required of  
 20 every health care provider, except a hospital, in rendering professional services or  
 21 health care to a patient, shall be to exercise that degree of skill ordinarily employed,  
 22 under similar circumstances, by the members of his profession in good standing in  
 23 the same community or locality, and to use reasonable care and diligence, along with  
 24 his best judgment, in the application of his skill.

25 \* \* \*

26 D. **(1)** A health care provider who fails to qualify under this Part is not  
 27 covered by the provisions of this Part and is subject to liability under the law without  
 28 regard to the provisions of this Part. If a health care provider does not so qualify, the  
 29 patient's remedy will not be affected by the terms and provisions of this Part, except

1 as hereinafter provided with respect to the suspension and the running of prescription  
2 of actions against a health care provider who has not qualified under this Part when  
3 a claim has been filed against the health care provider for review under this Part.

4 **(2) A physician intentionally representing himself as being a specialist or**  
5 **being board certified without having obtained the required clinical training,**  
6 **education and board certification and being in good standing with the respective**  
7 **board shall cause the physician, his employer, hospital or corporation to be**  
8 **subject to liability under the law without regard to the provisions of this Part.**

9 \* \* \*

10 Section 2. This Act shall become effective on August 1, 2016; if vetoed by the  
11 governor and subsequently approved by the legislature, this Act shall become effective on  
12 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 Original

2016 Regular Session

Gatti

Proposed law provides that it shall be considered an intentional tort and not subject to the provisions of present law relative to medical malpractice claims for a physician to hold himself out as a specialist in an area of medicine for which he is not board certified or credentialed in as defined in proposed law.

Present law defines a physician as a person with an unlimited license to practice medicine in this state.

Proposed law clarifies that a physician may also have specialist training in a particular discipline and possess board certification or credentialing.

Present law does not define specialist.

Proposed law defines that specialist means a physician who is qualified by having completed advanced clinical training and education in a specific area of medicine to obtain certification by a specialty examining board.

Present law states circumstances when a health care provider fails to qualify under medical malpractice provisions.

Proposed law clarifies that intentionally representing oneself as a specialist without having obtained the required clinical training, education and board certification shall cause a physician, his employer, hospital or corporation to be subject to liability under the general tort law.

Effective August 1, 2016.

(Amends R.S. 40:1231.1(A)(13), (16), (21), (22), (23), and (D))