

Regular Session, 2012

HOUSE BILL NO. 766

BY REPRESENTATIVE LIGI

MALPRACTICE/MEDICAL: Provides relative to the Patient's Compensation Fund and its administration by the Patient's Compensation Fund Oversight Board

1 AN ACT

2 To amend and reenact R.S. 40:1299.39.1(A)(1)(b)(ii) and (B)(2), 1299.44(A)(3),

3 (D)(2)(b)(xiv) and (5), 1299.47(A)(1)(b)(ii) and (B)(2) and (3), to enact R.S.

4 40:1299.39.1(A)(6) and 1299.47(A)(6), and to repeal R.S. 40:1299.44(A)(7)(e),

5 relative to medical review; to provide relative to the state medical review panel; to

6 provide for the Patient's Compensation Fund; to provide relative to the surcharge

7 levied on health care providers; to provide for time limitations; to provide relative

8 to proper parties to remit the surcharge to the Patient's Compensation Fund; to

9 provide for procedure of board meetings; to provide for requests for review of a

10 malpractice claim; to provide relative to raising peremptory exceptions; and to

11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 40:1299.39.1(A)(1)(b)(ii) and (B)(2), 1299.44(A)(3), (D)(2)(b)(xiv)

14 and (5), 1299.47(A)(1)(b)(ii) and (B)(2) and (3) are hereby amended and reenacted and R.S.

15 40:1299.39.1(A)(6) and 1299.47(A)(6) are hereby enacted to read as follows:

16 §1299.39.1. State medical review panel

17 A.(1)

18 \* \* \*

1 (b)

2 \* \* \*

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

7 \* \* \*

8 (6) In the event the commissioner receives a filing fee that was not timely  
9 paid pursuant to Subparagraph (1)(c) of this Subsection, the commissioner shall  
10 return, or refund the amount of, the filing fee to the claimant within thirty days of the  
11 date the commissioner receives the untimely filing fee.

12 B.

13 \* \* \*

14 (2)(a) The state or a person, against whom a claim has been filed under the  
15 provisions of this Part, may raise peremptory exceptions of no right of action  
16 pursuant to Code of Civil Procedure Article 927(6) or any exceptions or defenses  
17 available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper  
18 venue at any time without need for completion of the review process by the state  
19 medical review panel.

20 (b) If the court finds that the claim had prescribed or otherwise was  
21 perempted prior to being filed, the panel, if established, shall be dissolved upon the  
22 judgment becoming final. If the court grants the peremptory exception of no right  
23 of action as to all claimants, the panel, if established, shall be dissolved upon the  
24 judgment becoming final. If the court grants the peremptory exception of no right  
25 of action as to less than all claimants, the claimants as to whom the court granted the  
26 peremptory exception of no right of action shall be prohibited from participating in  
27 the panel process as a claimant.

28 \* \* \*

1 §1299.44. Patient's Compensation Fund

2 A.

3 \* \* \*

4 (3)(a) Such surcharge shall be due and payable to the patient's compensation  
5 fund within ~~forty-five~~ thirty days after the premiums for malpractice liability  
6 insurance have been received by the insurer, agent of the insurer, risk manager, or  
7 surplus line agent from the health care provider in Louisiana.

8 (b) It shall be the duty of the insurer, agent of the insurer, risk manager, or  
9 surplus line agent to remit the surcharge to the Patient's Compensation Fund within  
10 ~~forty-five~~ thirty days of the date of payment by the health care provider. Failure of  
11 the insurer, agent of the insurer, risk manager, or surplus line agent to remit payment  
12 within ~~forty-five~~ thirty days ~~shall~~ may subject the insurer, agent of the insurer, risk  
13 manager, or surplus line agent to a penalty, the amount of which will be set by the  
14 board on an annual basis, not to exceed a total of twelve percent of the annual  
15 surcharge. Upon the failure of the insurer, agent of the insurer, risk manager, or  
16 surplus line agent to remit as provided herein, the board is authorized to institute  
17 legal proceedings if necessary to collect the surcharge, any penalty amount to be  
18 assessed, legal interest, and all reasonable attorney fees.

19 \* \* \*

20 D.

21 \* \* \*

22 (2)

23 \* \* \*

24 (b) In addition to other powers and authority expressly or impliedly  
25 conferred on the board by this Part, the board shall have the authority, to the extent  
26 not inconsistent with the provisions of this Part, to:

27 \* \* \*

28 (xiv) Intervene as a matter of right, at its discretion, in any civil action or  
29 proceeding in which a health care provider files a dilatory exception of prematurity

1           pursuant to Code of Civil Procedure Article 926(A)(1) and the board reasonably  
2           believes either of the following:

3                   (aa) Any health care provider is not qualified under this Part.

4                   (bb) Any claim is not subject to this Part.

5           Any intervention and participation by the board in any civil action or  
6           proceeding pursuant to this Subparagraph shall be strictly limited to the health care  
7           provider's qualification status under this Part and whether the claim is subject to this  
8           Part. A copy of ~~said~~ the exception and the petition for damages shall be sent by the  
9           health care provider filing the dilatory exception of prematurity to the board, via  
10          certified mail, return receipt requested, concurrently with serving the parties to the  
11          civil action or proceeding.

12   \*       \*       \*

13                   (5) Any meeting of the board or any portion of any meeting of the board  
14           which is restricted to consideration of and/or action upon pending or threatened  
15           claims against the fund or health care providers with the fund shall not be subject to  
16           the provisions of R.S. 42:11 ~~or R.S. 42:27~~ through 28.

17   \*       \*       \*

18           §1299.47. Medical review panel

19                   A.(1)

20   \*       \*       \*

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

23   \*       \*       \*

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

28   \*       \*       \*



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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Ligi

HB No. 766

**Abstract:** Amends the time limitations within which surcharges become payable to the Patient's Compensation Fund and provides for the proper parties to remit the surcharge. Relative to both private and state medical review panels, provides for the use of peremptory exceptions without necessity of first completing review by the medical review panel.

Present law provides for public policy for open meetings, executive session, exceptions to open meetings, and procedural requirements of open meetings. Further provides for enforcement, remedies, venue, and civil penalties for noncompliance. Provides that the Patient's Compensation Fund Oversight Board meetings shall not be subject to the Open Meetings Law.

Proposed law retains present law and makes a technical correction, clarifying that the board shall not be subject to civil penalties for violations of the Open Meetings Law.

Present law provides for the operation of the Patient's Compensation Fund.

Proposed law retains present law but changes the time limitation within which surcharges become payable to the Patient's Compensation Fund from 45 days to 30 days and designates an agent of an insurer as a proper party to remit the surcharge. Further provides that a health care provider provide a copy of his qualification status and the petition for damages to the board when it intervenes in a civil action.

Present law provides for the operation of the medical review panel and the state medical review panel.

Proposed law retains present law and requires the name of only one patient be included in a request for review of a malpractice claim. If the claim involves the care of a pregnant mother and her unborn child, the naming of the mother as the patient shall suffice. Provides for return of any filing fees within 30 days for review of a malpractice claim received after the 45-day time limitation provided in present law. Further provides that a health care provider may raise any peremptory exception in a civil action without first completing the review process with the review panel.

Present law provides for notice of dissolution of the medical review panel by the attorney chairman of the board.

Proposed law corrects a typographical error in present law providing for notice of dissolution to be made by the attorney chairman or the board.

(Amends R.S. 40:1299.39.1(A)(1)(b)(ii) and (B)(2), 1299.44(A)(3), (D)(2)(b)(xiv) and (5), 1299.47(A)(1)(b)(ii) and (B)(2) and (3); Adds R.S. 40:1299.39.1(A)(6) and 1299.47(A)(6); Repeals R.S. 40:1299(A)(7)(e))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added provision that a claim involving a pregnant mother and her unborn child may be brought in the name of the mother only.
2. Corrected a typographical error in present law requiring notice of dissolution of the medical review panel by the "attorney chairman of the board" to "attorney chairman or the board".
3. Relative to the Patient's Compensation Fund, provided that the failure to timely pay present law surcharges may subject the insurer, agent of the insurer, risk manager, or surplus line agent to a penalty.

House Floor Amendments to the engrossed bill.

1. Added provision that the name of only one patient be included in a request for review of a malpractice claim. If the claim involves the care of a pregnant mother and her unborn child, the naming of the mother as the patient shall suffice.
2. Provided for return of any filing fees within 30 days for review of a malpractice claim received after the 45-day time limitation provided in present law.
3. Added provision that a health care provider may raise any peremptory exception in a civil action without first completing the review process with the review panel and provided for dissolution of the panel if the exception is granted.