

Regular Session, 2012

ACT No. 802

HOUSE BILL NO. 766

BY REPRESENTATIVE LIGI

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 * * *

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

21 * * *

22 (ii) The name of ~~the only one patient for whom, or on whose behalf, the~~
23 request for review is being filed; however, if the claim involves the care of a

pregnant mother and her unborn child, then naming the mother as the patient shall
be sufficient.

* * *

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

B.

* * *

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

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

* * *

§1299.44. Patient's Compensation Fund

A.

* * *

(3)(a) Such surcharge shall be due and payable to the patient's compensation fund within ~~forty-five~~ thirty days after the premiums for malpractice liability

insurance have been received by the insurer, agent of the insurer, risk manager, or surplus line agent from the health care provider in Louisiana.

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

* * *

D.

* * *

(2)

* * *

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

* * *

(xiv) Intervene as a matter of right, at its discretion, in any civil action or proceeding in which a health care provider files a dilatory exception of prematurity pursuant to Code of Civil Procedure Article 926(A)(1) and the board reasonably believes either of the following:

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

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

Any intervention and participation by the board in any civil action or proceeding pursuant to this Subparagraph shall be strictly limited to the health care

1 provider's qualification status under this Part and whether the claim is subject to this
2 Part. A copy of ~~said~~ the exception and the petition for damages shall be sent by the
3 health care provider filing the dilatory exception of prematurity to the board, via
4 certified mail, return receipt requested, concurrently with serving the parties to the
5 civil action or proceeding.

6 * * *

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

11 * * *

12 §1299.47. Medical review panel

13 A.(1)

14 * * *

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

17 * * *

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

22 * * *

23 (6) In the event the board receives a filing fee that was not timely paid
24 pursuant to Subparagraph (1)(c) of this Subsection, then the board shall return, or
25 refund the amount of, the filing fee to the claimant within thirty days of the date the
26 board receives the untimely filing fee.

27 B.

28 * * *

29 (2)(a) A health care provider, against whom a claim has been filed under the
30 provisions of this Part, may raise peremptory exceptions of no right of action

pursuant to Code of Civil Procedure Article 927(6) or any exception or defenses
available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper
venue at any time without need for completion of the review process by the medical
review panel.

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

(3) Ninety days after the notification to all parties by certified mail by the attorney chairman ~~of~~ or the board of the dissolution of the medical review panel or ninety days after the expiration of any court-ordered extension as authorized by Paragraph (1) of this Subsection, the suspension of the running of prescription with respect to a qualified health care provider shall cease.

* * *

Section 2. R.S. 40:1299.44(A)(7)(e) is hereby repealed in its entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____