Task Force Meeting Attendance Sheet

Medical Malpractice Task Force

Date: 6 Oct 05 **Meeting Type:** Working Group

Location: 328 NW

Committee Member	Present	Absent	Excused
Representative Curtis Gielow, Chair	☒	☐	☐
Representative Mike Huebsch	☒	☐	☐
Representative Ann Nischke	☒	☐	☐
Representative Jason Fields	☒	☐	☐
Representative Bob Ziegelbauer	☒	☐	☐
Mr. David Strifling	☒	☐	☐
Ms. Mary Wolverton	☒	☐	☐
Dr. Clyde "Bud" Chumbley	☒	☐	☐
Mr. David Olson	☒	☐	☐
Mr. Ralph Topinka	☒	☐	☐

Totals: 10 0 0

John Reinemann

John Reinemann
Task Force Clerk

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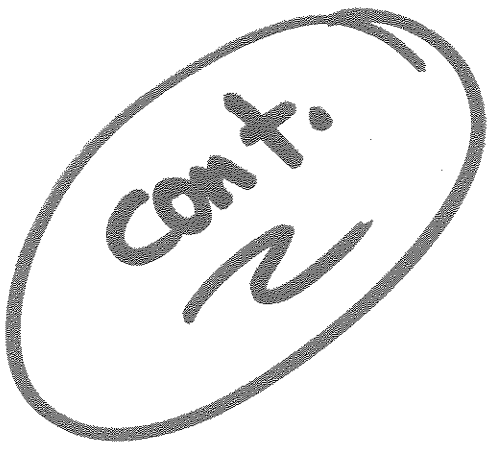
cont.

"TAKING THE BEST"
Contributory Legislative Elements for Developing the Proposed Model Act on Medical Liability Reform

Prepared for the Civil Justice Task Force and Health and Human Services Task Force



Section 11

Comparative vs. Contributory Negligence

12) Comparative v. Contributory Negligence: examples from Connecticut, Delaware, and Arizona

SUMMARY:

Connecticut

Connecticut has adopted the doctrine of modified comparative negligence. Conn. Gen. Stat. Ann. § 52-572h(b) (West 1991). Under this doctrine, a claimant's action is barred if his negligence exceeds the combined negligence of all defendants. Otherwise, the claimant's recovery is diminished in proportion to his degree of negligence. *Id.*

Delaware

Delaware has adopted the modified doctrine of comparative negligence. Del. Code Ann. tit. 10, § 8132 (Supp. 1994). Under this doctrine, a claimant's action is barred if his negligence exceeds the combined negligence of all defendants. Otherwise, the claimant's recovery is diminished in proportion to his degree of negligence. *Id.*

Arizona

Arizona adheres to a pure form of comparative negligence. Ariz. Rev. Stat. Ann. § 12-2505 (West 1994 & Supp. 1997). A claimant's award is diminished in proportion to the claimant's relative degree of fault, but the claimant's fault generally will not act as a bar to recovery. *Id.* However, a trier of fact may bar recovery if the claimant wilfully or wantonly caused or contributed to the death or injury. *Id.*

C.G.S.A. § 52-572h

Connecticut General Statutes Annotated Currentness

Title 52. Civil Actions
Chapter 925. Statutory Rights of Action and Defenses (Refs & Annos)
➡§ 52-572h. Negligence actions. Doctrines applicable. Liability of multiple tortfeasors for damages

(a) For the purposes of this section: (1) "Economic damages" means compensation determined by the trier of fact for pecuniary losses including, but not limited to, the cost of reasonable and necessary medical care, rehabilitative services, custodial care and loss of earnings or earning capacity excluding any noneconomic damages; (2) "noneconomic damages" means compensation determined by the trier of fact for all nonpecuniary losses including, but not limited to, physical pain and suffering and mental and emotional suffering; (3) "recoverable economic damages" means the economic damages reduced by any applicable findings including but not limited to set-offs, credits, comparative negligence, additur and remittitur, and any reduction provided by section 52-225a; (4) "recoverable noneconomic damages" means the noneconomic damages reduced by any applicable findings including but not limited to set-offs, credits, comparative negligence, additur and remittitur.

(b) In causes of action based on negligence, contributory negligence shall not bar recovery in an action by any person or the person's legal representative to recover damages resulting from personal injury, wrongful death or damage to property if the negligence was not greater than the combined negligence of the person or persons against whom recovery is sought including settled or released persons under subsection (n) of this section. The economic or noneconomic damages allowed shall be diminished in the proportion of the percentage of negligence attributable to the person recovering which percentage shall be determined pursuant to subsection (f) of this section.

(c) In a negligence action to recover damages resulting from personal injury, wrongful death or damage to property occurring on or after October 1, 1987, if the damages are determined to be proximately caused by the negligence of more than one party, each party against whom recovery is allowed shall be liable to the claimant only for such party's proportionate share of the recoverable economic damages and the recoverable noneconomic damages except as provided in subsection (g) of this section.

(d) The proportionate share of damages for which each party is liable is calculated by multiplying the recoverable economic damages and the recoverable noneconomic damages by a fraction in which the numerator is the party's percentage of negligence, which percentage shall be determined pursuant to subsection (f) of this section, and the denominator is the total of the percentages of negligence, which percentages shall be determined pursuant to subsection (f) of this section, to be attributable to all parties whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section. Any percentage of negligence attributable to the claimant shall not be included in the denominator of the fraction.

(e) In any action to which this section is applicable, the instructions to the jury given by

the court shall include an explanation of the effect on awards and liabilities of the percentage of negligence found by the jury to be attributable to each party.

(f) The jury or, if there is no jury, the court shall specify: (1) The amount of economic damages; (2) the amount of noneconomic damages; (3) any findings of fact necessary for the court to specify recoverable economic damages and recoverable noneconomic damages; (4) the percentage of negligence that proximately caused the injury, death or damage to property in relation to one hundred per cent, that is attributable to each party whose negligent actions were a proximate cause of the injury, death or damage to property including settled or released persons under subsection (n) of this section; and (5) the percentage of such negligence attributable to the claimant.

(g) (1) Upon motion by the claimant to open the judgment filed, after good faith efforts by the claimant to collect from a liable defendant, not later than one year after judgment becomes final through lapse of time or through exhaustion of appeal, whichever occurs later, the court shall determine whether all or part of a defendant's proportionate share of the recoverable economic damages and recoverable noneconomic damages is uncollectible from that party, and shall reallocate such uncollectible amount among the other defendants in accordance with the provisions of this subsection. (2) The court shall order that the portion of such uncollectible amount which represents recoverable noneconomic damages be reallocated among the other defendants according to their percentages of negligence, provided that the court shall not reallocate to any such defendant an amount greater than that defendant's percentage of negligence multiplied by such uncollectible amount. (3) The court shall order that the portion of such uncollectible amount which represents recoverable economic damages be reallocated among the other defendants. The court shall reallocate to any such other defendant an amount equal to such uncollectible amount of recoverable economic damages multiplied by a fraction in which the numerator is such defendant's percentage of negligence and the denominator is the total of the percentages of negligence of all defendants, excluding any defendant whose liability is being reallocated. (4) The defendant whose liability is reallocated is nonetheless subject to contribution pursuant to subsection (h) of this section and to any continuing liability to the claimant on the judgment.

(h) (1) A right of contribution exists in parties who, pursuant to subsection (g) of this section are required to pay more than their proportionate share of such judgment. The total recovery by a party seeking contribution shall be limited to the amount paid by such party in excess of such party's proportionate share of such judgment.

(2) An action for contribution shall be brought within two years after the party seeking contribution has made the final payment in excess of such party's proportionate share of the claim.

(i) This section shall not limit or impair any right of subrogation arising from any other relationship.

(j) This section shall not impair any right to indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnitee is for indemnity and not contribution, and the indemnitor is not entitled to contribution from the indemnitee for any portion of such indemnity obligation.

(k) This section shall not apply to breaches of trust or of other fiduciary obligation.

(*l*) The legal doctrines of last clear chance and assumption of risk in actions to which this section is applicable are abolished.

(m) The family car doctrine shall not be applied to impute contributory or comparative negligence pursuant to this section to the owner of any motor vehicle or motor boat.

(n) A release, settlement or similar agreement entered into by a claimant and a person discharges that person from all liability for contribution, but it does not discharge any other persons liable upon the same claim unless it so provides. However, the total award of damages is reduced by the amount of the released person's percentage of negligence determined in accordance with subsection (f) of this section.

(*o*) Except as provided in subsection (b) of this section, there shall be no apportionment of liability or damages between parties liable for negligence and parties liable on any basis other than negligence including, but not limited to, intentional, wanton or reckless misconduct, strict liability or liability pursuant to any cause of action created by statute, except that liability may be apportioned among parties liable for negligence in any cause of action created by statute based on negligence including, but not limited to, an action for wrongful death pursuant to section 52-555 or an action for injuries caused by a motor vehicle owned by the state pursuant to section 52-556.

CREDIT(S)

(1973, P.A. 73-622, § 1; 1982, P.A. 82-160, § 241; 1986, P.A. 86- 338, § 3, eff. Oct. 1, 1986; 1987, P.A. 87-227, § 3; 1988, P.A. 88-364, § 69, eff. June 8, 1988; 1999, P.A. 99-69, § 1, eff. May 27, 1999.)

10 Del.C. § 8132

DELAWARE CODE ANNOTATED
TITLE 10. COURTS AND JUDICIAL PROCEDURE
PART V. LIMITATION OF ACTIONS
CHAPTER 81. PERSONAL ACTIONS

§ 8132 Comparative negligence.

In all actions brought to recover damages for negligence which results in death or injury to person or property, the fact that the plaintiff may have been contributorily negligent shall not bar a recovery by the plaintiff or the plaintiff's legal representative where such negligence was not greater than the negligence of the defendant or the combined negligence of all defendants against whom recovery is sought, but any damages awarded shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

A.R.S. § 12-2505

Arizona Revised Statutes Annotated Currentness

Title 12. Courts and Civil Proceedings (Refs & Annos)
Chapter 16. Uniform Contribution Among Tortfeasors Act (Refs & Annos)
Article 1. General Provisions (Refs & Annos)
§ 12-2505. Comparative negligence; definition

A. The defense of contributory negligence or of assumption of risk is in all cases a question of fact and shall at all times be left to the jury. If the jury applies either defense, the claimant's action is not barred, but the full damages shall be reduced in proportion to the relative degree of the claimant's fault which is a proximate cause of the injury or death, if any. There is no right to comparative negligence in favor of any claimant who has intentionally, wilfully or wantonly caused or contributed to the injury or wrongful death.

B. In this section, "claimant's fault" includes the fault imputed or attributed to a claimant by operation of law, if any.

Section 12

Ostensible Agency

13) Ostensible Agency from Indianna

SUMMARY

The Indiana Supreme Court recently adopted an interpretation of Restatement (Second) of Torts § 429 to hold that a hospital may be liable, under the theory of apparent or ostensible agency, for the negligence of a physician acknowledged to be an independent contractor. The court focused on the reasonableness of the patient's belief that hospital employees were rendering care. It held that a hospital will be deemed to have held itself out as the provider of care and the patient to have relied on this representation unless the hospital gives notice that the physician is an independent contractor, generally by providing written notice at the time of admission, or the patient has some special knowledge of the physician's independence, as through a relationship pre-dating the hospital treatment. *Sword v. NKC Hospitals, Inc.*, No. 10S05-9610-CV-637, 1999 WL 512010 (Ind. June 25, 1999). In addition, cases prior to the adoption of the apparent agency theory held that if a hospital is aware that the care a physician is providing has deviated from normal practice, its personnel must either question the physician's orders or inform the proper authorities. *Yaney v. McCray Memorial Hospital*, 496 N.E.2d 135, 137 (Ind. Ct. App. 1986).

If a qualified provider is found liable solely due to the negligence of an agent or employee who is also a qualified provider, its liability for itself and the agent or employee is limited to one damage cap amount ($100,000 for acts prior to July 1, 1999, $250,000 thereafter), not two. Ind. Code Ann. § 34-18-14-3(d) (West Supp. 1998).

Restatement (Second) of Torts **§ 429** (1965)

Restatement of the Law -- Torts
Restatement (Second) of Torts
Current through April 2005

Division 2. Negligence
Chapter 15. Liability Of An Employer Of An Independent Contractor
Topic 2. Harm Caused By Negligence Of A Carefully Selected Independent Contractor

§ 429. Negligence In Doing Work Which Is Accepted In Reliance On The Employer's Doing The Work Himself

Link to Case Citations

One who employs an independent contractor to perform services for another which are accepted in the reasonable belief that the services are being rendered by the employer or by his servants, is subject to liability for physical harm

caused by the negligence of the contractor in supplying such services, to the same extent as though the employer were supplying them himself or by his servants.

IC 34-18-14-3

West's Annotated Indiana Code Currentness

Title 34. Civil Procedure (Refs & Annos)
Article 18. Medical Malpractice
Chapter 14. Limits on Damages (Refs & Annos)
➡34-18-14-3 Recovery limitations

Sec. 3. (a) The total amount recoverable for an injury or death of a patient may not exceed the following:

(1) Five hundred thousand dollars ($500,000) for an act of malpractice that occurs before January 1, 1990.
(2) Seven hundred fifty thousand dollars ($750,000) for an act of malpractice that occurs:
(A) after December 31, 1989; and
(B) before July 1, 1999.
(3) One million two hundred fifty thousand dollars ($1,250,000) for an act of malpractice that occurs after June 30, 1999.

(b) A health care provider qualified under this article (or IC 27-12 before its repeal) is not liable for an amount in excess of two hundred fifty thousand dollars ($250,000) for an occurrence of malpractice.

(c) Any amount due from a judgment or settlement that is in excess of the total liability of all liable health care providers, subject to subsections (a), (b), and (d), shall be paid from the patient's compensation fund under IC 34-18- 15.

(d) If a health care provider qualified under this article (or IC 27-12 before its repeal) admits liability or is adjudicated liable solely by reason of the conduct of another health care provider who is an officer, agent, or employee of the health care provider acting in the course and scope of employment and qualified under this article (or IC 27-12 before its repeal), the total amount that shall be paid to the claimant on behalf of the officer, agent, or employee and the health care provider by the health care provider or its insurer is two hundred fifty thousand dollars ($250,000). The balance of an adjudicated amount to which the claimant is entitled shall be paid by other liable health care providers or the patient's compensation fund, or both.

Section 13

"I'm Sorry" Provision Enacted

14) "I'm sorry" Provision enacted in Oklahoma

Summary:

Oklahoma makes all "I'm sorry" gestures inadmissible as evidence of an admission of liability or an admission against interest. These gestures include any and all "statements, affirmations, gestures, or conduct" made by a health care provider or provider employee that express sympathy, condolence, and benevolence regarding pain, suffering, or death following an unanticipated outcome of medical care. Okl.St.Ann. § 1-1708.1H

63 Okl.St.Ann. § 1-1708.1H

Oklahoma Statutes Annotated Currentness

Title 63. Public **Health** and Safety (Refs & Annos)
Chapter 1. Public **Health** Code
Article 17. Miscellaneous
Affordable Access to **Health Care Act**
➡§ 1-1708.1H. Statements, conduct, etc. expressing apology, sympathy, etc.--Admissibility--Definitions

A. In any medical liability action, any and all statements, affirmations, gestures, or conduct expressing **apology,** sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a **health care** provider or an employee of a **health care** provider to the plaintiff, a relative of the plaintiff, or a representative of the plaintiff and which relate solely to discomfort, pain, suffering, injury, or death as the result of the unanticipated outcome of the medical **care** shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest.

B. For purposes of this section, unless context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. "Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a durable power of attorney or **health care** proxy, or any person recognized in law or custom as an agent for the plaintiff.

Section 14

Other Texas Statutes

15. Other Texas Statutes

A) Comparative negligence

B) Several liability, no joint liability

C) Right of contribution

D) Arbitration

Summary:

a) Texas has adopted the doctrine of modified comparative negligence for tort claims generally. Tex. Civ. Prac. & Rem. Code Ann. §§ 33.001 to 33.017 (West 1997). For incidents on or after September 1, 1995, and for lawsuits filed on or after September 1, 1996, a claimant's action is barred if his "percentage of responsibility" is greater than 50 percent. If his percentage of responsibility is 50 percent or less, the claimant's recovery is diminished in proportion to this percentage. Tex. Civ. Prac. & Rem. Code Ann. § 33.012 (West 1997). For prior incidents, a claimant's action is barred only if his percentage of responsibility exceeds that of all defendants combined. Tex. Civ. Prac. & Rem. Code Ann. § 33.001 (West 1997) (see notes for wording prior to 1995 amendment). Texas's comparative negligence statute does not apply to claims for exemplary damages. Tex. Civ. Prac. & Rem. Code Ann. § 33.002 (West 1997).

b) Texas law generally provides that joint tortfeasors are liable severally and not jointly. Each defendant is liable only for that portion of the claimant's damages that is equal to his percentage of responsibility. Tex. Civ. Prac. & Rem. Code Ann. § 33.013 (West 1997). The calculation of percentage of responsibility includes settling defendants and responsible third parties (whom defendants must join). Tex. Civ. Prac. & Rem. Code Ann. § 33.003 (West 1997). It excludes employers and bankrupts. Tex. Civ. Prac. & Rem. Code Ann. § 33.011 (West 1997). For incidents occurring on or after September 1, 1995, and lawsuits filed on or after September 1, 1996, a defendant may be held jointly liable only if his fault is greater than 50 percent. Tex. Civ. Prac. & Rem. Code Ann. § 33.013 (West 1997). For prior incidents, there is joint and several liability in the following cases: (a) when the percentage of responsibility attributed to the defendant is greater than twenty percent and is greater than the percentage of responsibility attributed to the claimant, and (b) when no percentage of responsibility is attributed to the claimant and the defendant is greater than ten percent negligent. Tex. Civ. Prac. & Rem. Code Ann. § 33.013 (West 1997) (see notes for wording prior to 1995 amendment).

c) Texas affords joint tortfeasors a right of contribution in medical malpractice actions, as in other tort cases, based on the tortfeasors' percentages of responsibility. Tex. Civ. Prac. & Rem. Code Ann. §§ 33.015 and 33.011 (West 1997). Such an action for contribution may be maintained only within the principal medical malpractice action. *Prudential Insurance Co. v. Henson*, 753 S.W.2d 415 (Tex. App. 1988, no writ). A settling tortfeasor does not have a right to contribution. *Beech Aircraft Corp. v. Jinkins*, 739 S.W.2d 19 (Tex. 1987). However, a settling tortfeasor may retain a common law right of indemnity against one for whom he is vicariously liable. *St. Anthony's Hospital v. Whitfield*, 946 S.W.2d 174 (Tex. App. 1997, writ denied) (allowing a settling hospital to sue a settling nurse for indemnity).

d) Texas does not mandate the reference of medical malpractice actions to an arbitrator or screening panel. However, the legislature has authorized counties to adopt alternative dispute resolution systems, Tex. Civ. Prac. & Rem. Code Ann. §§ 152.001 to 152.004 (West 1997), and pretrial mediation is routine in many Texas venues pursuant to this legislation. In addition, legislation codified at Tex. Civ. Prac. & Rem. Code Ann. §§ 154.001 to 154.073 (West 1997) provides standards for the use of mediation, mini-trials, moderated settlement conferences, summary jury trials, and arbitration.

No health care provider can require or even request that a patient sign an agreement to arbitrate liability claims without giving the patient a prescribed form of written notice that the agreement is invalid without the signature of the patient's attorney. Tex. Civ. Stat. Ann. art. 4590i, § 15.01 (West Supp. 1998). This section contains serious penalties.

V.T.C.A., Civil Practice & Remedies Code § 33.012

Vernon's Texas Statutes and Codes Annotated Currentness
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle C. Judgments
Chapter 33. Proportionate Responsibility (Refs & Annos)
Subchapter B. Contribution (Refs & Annos)
➡§ 33.012. Amount of Recovery

(a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to each settling person's percentage of responsibility.

(c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

(1) the sum of the dollar amounts of all settlements; or
(2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact.

<Text of subsec. (d) as added by Acts 1995, 74th Leg., ch. 136, § 1>

(d) This section shall not apply to benefits paid by or on behalf of an employer to an employee pursuant to workers' compensation insurance coverage, as defined in Section 401.011(44), Labor Code, in effect at the time of the act, event, or occurrence made the basis of claimant's suit.

<Text of subsec. (d) as added by Acts 2003, 78th Leg., ch. 204, § 4.06>

(d) An election made under Subsection (c) shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected Subsection (c)(1).

V.T.C.A., Civil Practice & Remedies Code § 33.013

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle C. Judgments
Chapter 33. Proportionate Responsibility (Refs & Annos)
Subchapter B. Contribution (Refs & Annos)
§ 33.013. Amount of Liability

(a) Except as provided in Subsection (b), a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or
(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the

Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:
(A) Section 19.02 (murder);
(B) Section 19.03 (capital murder);
(C) Section 20.04 (aggravated kidnapping);
(D) Section 22.02 (aggravated assault);
(E) Section 22.011 (sexual assault);
(F) Section 22.021 (aggravated sexual assault);
(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);
(H) Section 32.21 (forgery);
(I) Section 32.43 (commercial bribery);
(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);
(K) Section 32.46 (securing execution of document by deception);
(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or
(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(c) Repealed by Acts 2003, 78th Leg., ch. 204, § 4.10(5).

(d) This section does not create a cause of action.

(e) Notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. A defendant acts with specific intent to do harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) The jury may not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

V.T.C.A., Civil Practice & Remedies Code § 33.003

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle C. Judgments
Chapter 33. Proportionate Responsibility (Refs & Annos)
Subchapter A. Proportionate Responsibility
➡§ 33.003. Determination of Percentage of Responsibility

(a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;
(2) each defendant;
(3) each settling person; and
(4) each responsible third party who has been designated under Section 33.004.

(b) This section does not allow a submission to the jury of a question regarding conduct by any person without sufficient evidence to support the submission.

V.T.C.A., Civil Practice & Remedies Code § 33.015

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle C. Judgments
Chapter 33. Proportionate Responsibility (Refs & Annos)
Subchapter B. Contribution (Refs & Annos)
➡§ 33.015. Contribution

(a) If a defendant who is jointly and severally liable under Section 33.013 pays a percentage of the damages for which the defendant is jointly and severally liable greater than his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

(b) As among themselves, each of the defendants who is jointly and severally liable under Section 33.013 is liable for the damages recoverable by the claimant under Section 33.012 in proportion to his respective percentage of responsibility. If a defendant who is jointly and severally liable pays a larger proportion of those damages than is required by his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other defendant with whom he is jointly and severally liable under Section 33.013 to the extent that the other defendant has not paid the proportion of those damages required by that other defendant's percentage of responsibility.

(c) If for any reason a liable defendant does not pay or contribute the portion of the damages required by his percentage of responsibility, the amount of the damages not paid or contributed by that defendant shall be paid or contributed by the remaining defendants who are jointly and severally liable for those damages. The additional amount to be paid or contributed by each of the defendants who is jointly and severally liable for those damages shall be in proportion to his respective percentage of responsibility.

(d) No defendant has a right of contribution against any settling person.

V.T.C.A., Civil Practice & Remedies Code § 152.001

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 7. Alternate Methods of Dispute Resolution (Refs & Annos)
Chapter 152. Alternative Dispute Resolution System Established by Counties (Refs & Annos)

➡§ 152.001. Definition

In this chapter, "alternative dispute resolution system" means an informal forum in which mediation, conciliation, or arbitration is used to resolve disputes among individuals, including those having an ongoing relationship such as relatives, neighbors, landlords and tenants, employees and employers, and merchants and consumers.

V.T.C.A., Civil Practice & Remedies Code § 152.002

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 7. Alternate Methods of Dispute Resolution (Refs & Annos)
Chapter 152. Alternative Dispute Resolution System Established by Counties (Refs & Annos)

➡§ 152.002. Establishment

(a) The commissioners court of a county by order may establish an alternative dispute resolution system for the peaceable and expeditious resolution of citizen disputes.

(b) The commissioners court may do all necessary acts to make the alternative dispute resolution system effective, including:

(1) contracting with a private nonprofit corporation, a political subdivision, a public corporation, or a combination of these entities for the purpose of administering the system;
(2) making reasonable rules relating to the system; and
(3) vesting management of the system in a committee selected by the county bar association.

(c) The actions of a committee authorized by Subsection (b)(3) are subject to the approval of the commissioners court.

V.T.C.A., Civil Practice & Remedies Code § 152.003

Vernon's Texas Statutes and Codes Annotated Currentness

Civil Practice and Remedies Code (Refs & Annos)
Title 7. Alternate Methods of Dispute Resolution (Refs & Annos)

➡§ 152.003. Referral of Cases

A judge of a district court, county court, statutory county court, probate court, or justice of the peace court in a county in which an alternative dispute resolution system has been established may, on motion of a party or on the judge's or justice's own motion, refer a case to the system. Referral under this section does not prejudice the case.

Section 15

Medical Review Boards

Louisiana

RS 40:1299.39.2

§1299.39.2. Medical review panel; one panel for state and private claims

The following provisions shall apply when, for the same injury to or death of a patient, a malpractice claim alleges liability of both a state health care provider under the provisions of this Part and a health care provider under the provisions of Part XXIII of this Chapter:

(1) Unless all parties have agreed otherwise, only one medical review panel shall be convened in such instance to review the claims under this Part and Part XXIII of this Chapter.

(2) The panel shall consist of a single attorney chairperson and three health care providers who hold unlimited licenses to practice their profession in Louisiana.

(3) The panel shall be considered a joint medical review panel, and its actions shall be deemed to have the same force and effect as if a separate medical review panel had been convened under each of the respective Parts.

(4) The panel shall be governed by the law applicable under both Parts. In the event of a procedural conflict between the provisions of the Parts, the provisions of R.S. 40:1299.47 shall govern.

Acts 2004, No. 183, §1, eff. June 10, 2004.

RS 40:1299.47

§1299.47. Medical review panel

A.(1)(a) All malpractice claims against health care providers covered by this Part, other than claims validly agreed for submission to a lawfully binding arbitration procedure, shall be reviewed by a medical review panel established as hereinafter provided for in this Section. The filing of a request for review by a medical review panel as provided for in this Section shall not be reportable by any health care provider, the Louisiana Patient's Compensation Fund, or any other entity to the Louisiana State Board of Medical Examiners, to any licensing authority, committee, or board of any other state, or to any credentialing or similar agency, committee, or board of any clinic, hospital, health insurer, or managed care company.

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

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

(ii) The name of the patient.

(iii) The names of the claimants.

(iv) The names of defendant health care providers.

(v) The dates of the alleged malpractice.

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

(vii) A brief description of alleged injuries.

(c) A claimant shall have forty-five days from the mailing date of the confirmation of receipt of the request for review in accordance with Subparagraph (3)(a) of this Subsection to pay to the board a filing fee in the amount of one hundred dollars per named defendant qualified under this Part.

(d) Such filing fee may be waived only upon receipt of one of the following:

(i) An affidavit of a physician holding a valid and unrestricted license to practice his specialty in the state of his residence certifying that adequate medical records have been obtained and reviewed and that the allegations of malpractice against each defendant health care provider named in the claim constitute a claim of a breach of the applicable standard of care as to each named defendant health care provider.

(ii) An in forma pauperis ruling issued in accordance with Louisiana Code of Civil Procedure Article 5181 et seq. by a district court in a venue in which the malpractice claim could properly be brought upon the conclusion of the medical review panel process.

(e) Failure to comply with the provisions of Subparagraph (c) or (d) of this Paragraph within the specified time frame shall render the request for review of a malpractice claim invalid and without effect. Such an invalid request for review of a malpractice claim shall not suspend the time within which suit must be instituted in Subparagraph (2)(a) of this Subsection.

(f) All funds generated by such filing fees shall be private monies and shall be applied to the costs of the Patient's Compensation Fund Oversight Board incurred in the administration of claims.

(g) The filing fee of one hundred dollars per named defendant qualified under this Part shall be applicable in the event that a claimant identifies additional qualified health care providers as defendants. The filing fee applicable to each identified qualified health care provider shall be due forty-five days from the mailing date of the confirmation of receipt of the request for review for the additional named defendants in accordance with R.S. 40:1299.47(A)(3)(a).

(2)(a) The filing of the request for a review of a claim shall suspend the time within which suit must be instituted, in accordance with this Part, until ninety days following notification, by certified mail, as provided in Subsection J of this Section, to the claimant or his attorney of the issuance of the opinion by the medical review panel, in the case of those health care providers covered by this Part, or in the case of a health care provider against whom a claim has been filed under the provisions of this Part, but who has not qualified under this Part, until sixty days following notification by certified mail to the claimant or his attorney by the board that the health care provider is not covered by this Part. The filing of a request for review of a claim shall suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care providers, both qualified and not qualified, to the same extent that prescription is suspended against the party or parties that are the subject of the request for review. Filing a request for review of a malpractice claim as required by this Section with any agency or entity other than the division of administration shall not suspend or interrupt the running of prescription. All requests for review of a malpractice claim identifying additional health care providers shall also be filed with the division of administration.

(b) The request for review of a malpractice claim under this Section shall be deemed filed on the date of receipt of the request stamped and certified by the division of administration or on the date of mailing of the request if mailed to the division of administration by certified or registered mail only upon timely compliance with the provisions of Subparagraph (1)(c) or (d) of this Subsection. Upon receipt of any request, the division of administration shall forward a copy of the request to the board within five days of receipt.

(c) An attorney chairman for the medical review panel shall be appointed within one year from the date the request for review of the claim was filed. Upon appointment of the attorney chairman, the parties shall notify the board of the name and address of the attorney chairman. If the board has not received notice of the appointment of an attorney chairman within nine months from the date the request for review of the claim was filed, then the board shall send notice to the parties by certified or registered mail that the claim will be dismissed in ninety days unless an attorney chairman is appointed within one year from the date the request for review of the claim was filed. If the board has not received notice of the appointment of an attorney chairman within one year from the date the request for review of the claim was filed, then the board shall promptly send notice to the parties by certified or registered mail that the claim has been dismissed for failure to appoint an attorney chairman and the parties shall be deemed to have waived the use of the medical review panel. The filing of a request for a medical review panel shall

suspend the time within which suit must be filed until ninety days after the claim has been dismissed in accordance with this Section.

(3) It shall be the duty of the board within fifteen days of the receipt of the claim by the board to:

(a) Confirm to the claimant that the filing has been officially received and whether or not the named defendant or defendants have qualified under this Part.

(b) In the confirmation to the claimant pursuant to Subparagraph (a) of this Paragraph, notify the claimant of the amount of the filing fee due and the time frame within which such fee is due to the board, and that upon failure to comply with the provisions of Subparagraph (1)(c) or (d) of this Subsection, the request for review of a malpractice claim is invalid and without effect and that the request shall not suspend the time within which suit must be instituted in Subparagraph (2)(a) of this Subsection.

(c) Notify all named defendants, whether or not qualified under the provisions of this Part, that a filing has been made against them and request made for the formation of a medical review panel; and forward a copy of the proposed complaint to each named defendant at his last and usual place of residence or his office.

(4) The board shall notify the claimant and all named defendants by registered or certified mail, return receipt requested, of any of the following information:

(a) The date of receipt of the filing fee.

(b) That no filing was due because the claimant timely provided the affidavit set forth in Item (1)(d)(i) of this Subsection.

(c) That the claimant has timely complied with the provisions of Item (1)(d)(ii) of this Subsection.

(d) That the required filing fee was not timely paid pursuant to Subparagraph (1)(c) of this Subsection.

B.(1)(a)(i) No action against a health care provider covered by this Part, or his insurer, may be commenced in any court before the claimant's proposed complaint has been presented to a medical review panel established pursuant to this Section.

(ii) A certificate of enrollment issued by the board shall be admitted in evidence.

(b) However, with respect to an act of malpractice which occurs after September 1, 1983, if an opinion is not rendered by the panel within twelve months after the date of notification of the selection of the attorney chairman by the executive director to the selected attorney and all other parties pursuant to Paragraph (1) of Subsection C of this Section, suit may be instituted against a health care provider covered by this Part.

However, either party may petition a court of competent jurisdiction for an order extending the twelve-month period provided in this Subsection for good cause shown. After the twelve month period provided for in this Subsection or any court-ordered extension thereof, the medical review panel established to review the claimant's complaint shall be dissolved without the necessity of obtaining a court order of dissolution.

(c) By agreement of both parties, the use of the medical review panel may be waived.

(2)(a) A health care provider, against whom a claim has been filed under the provisions of this Part, may raise 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.

(3) Ninety days after the notification to all parties by certified mail by the attorney chairman of 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.

C. The medical review panel shall consist of three health care providers who hold unlimited licenses to practice their profession in Louisiana and one attorney. The parties may agree on the attorney member of the medical review panel. If no attorney for or representative of any health care provider named in the complaint has made an appearance in the proceedings or made written contact with the attorney for the plaintiff within forty-five days of the date of receipt of the notification to the health care provider and the insurer that the required filing fee has been received by the patient's compensation board as required by R.S. 40:1299.47(A)(1)(c), the attorney for the plaintiff may appoint the attorney member of the medical review panel for the purpose of convening the panel. Such notice to the health care provider and the insurer shall be sent by registered or certified mail, return receipt requested. If no agreement can be reached, then the attorney member of the medical review panel shall be selected in the following manner:

(1)(a) The office of the clerk of the Louisiana Supreme Court, upon receipt of notification from the board, shall draw five names at random from the list of attorneys who reside or maintain an office in the parish which would be proper venue for the action in a court of law. The names of judges, magistrates, district attorneys and assistant district attorneys shall be excluded if drawn and new names drawn in their place. After selection of the attorney names, the office of the clerk of the supreme court shall notify the board of the names so selected. It shall be the duty of the board to notify the parties of the attorney names from which the parties may choose the attorney member of the panel within five days. If no agreement can be reached within five days, the parties shall

immediately initiate a procedure of selecting the attorney by each striking two names alternately, with the claimant striking first and so advising the health care provider of the name of the attorney so stricken; thereafter, the health care provider and the claimant shall alternately strike until both sides have stricken two names and the remaining name shall be the attorney member of the panel. If either the plaintiff or defendant fails to strike, the clerk of the Louisiana Supreme Court shall strike for that party within five additional days.

(b) After the striking, the office of the board shall notify the attorney and all other parties of the name of the selected attorney.

(2) The attorney shall act as chairman of the panel and in an advisory capacity but shall have no vote. It is the duty of the chairman to expedite the selection of the other panel members, to convene the panel, and expedite the panel's review of the proposed complaint. The chairman shall establish a reasonable schedule for submission of evidence to the medical review panel but must allow sufficient time for the parties to make full and adequate presentation of related facts and authorities within ninety days following selection of the panel.

(3)(a) The plaintiff shall notify the attorney chairman and the named defendants of his choice of a health care provider member of the medical review panel within thirty days of the date of certification of his filing by the board.

(b) The named defendant shall then have fifteen days after notification by the plaintiff of the plaintiff's choice of his health care provider panelist to name the defendant's health care provider panelist.

(c) If either the plaintiff or defendant fails to make a selection of health care provider panelist within the time provided, the attorney chairman shall notify by certified mail the failing party to make such selection within five days of the receipt of the notice.

(d) If no selection is made within the five day period, then the chairman shall make the selection on behalf of the failing party. The two health care provider panel members selected by the parties or on their behalf shall be notified by the chairman to select the third health care provider panel member within fifteen days of their receipt of such notice.

(e) If the two health care provider panel members fail to make such selection within the fifteen day period allowed, the chairman shall then make the selection of the third panel member and thereby complete the panel.

(f) A physician who holds an unrestricted license to practice medicine by the Louisiana State Board of Medical Examiners and who is engaged in the active practice of medicine in this state, whether in the teaching profession or otherwise, shall be available for selection as a member of a medical review panel.

(g) Each party to the action shall have the right to select one health care provider and upon selection the health care provider shall be required to serve.

(h) When there are multiple plaintiffs or defendants, there shall be only one health care provider selected per side. The plaintiff, whether single or multiple, shall have the right to select one health care provider, and the defendant, whether single or multiple, shall have the right to select one health care provider.

(i) A panelist so selected and the attorney member selected in accordance with this Subsection shall serve unless for good cause shown may be excused. To show good cause for relief from serving, the panelist shall present an affidavit to a judge of a court of competent jurisdiction and proper venue which shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. A health care provider panelist may also be excused from serving by the attorney chairman if during the previous twelve-month period he has been appointed to four other medical review panels. In either such event, a replacement panelist shall be selected within fifteen days in the same manner as the excused panelist.

(j) If there is only one party defendant which is not a hospital, community blood center, tissue bank, or ambulance service, all panelists except the attorney shall be from the same class and specialty of practice of health care provider as the defendant. If there is only one party defendant which is a hospital, community blood center, tissue bank, or ambulance service, all panelists except the attorney shall be physicians. If there are claims against multiple defendants, one or more of whom are health care providers other than a hospital, community blood center, tissue bank, or ambulance service, the panelists selected in accordance with this Subsection may also be selected from health care providers who are from the same class and specialty of practice of health care providers as are any of the defendants other than a hospital, community blood center, tissue bank, or ambulance service.

(4) When the medical review panel is formed, the chairman shall within five days notify the board and the parties by registered or certified mail of the names and addresses of the panel members and the date on which the last member was selected.

(5) Before entering upon their duties, each voting panelist shall subscribe before a notary public the following oath:

"I, (name) do solemnly swear/affirm that I will faithfully perform the duties of medical review panel member to the best of my ability and without partiality or favoritism of any kind. I acknowledge that I represent neither side and that it is my lawful duty to serve with complete impartiality and to render a decision in accordance with law and the evidence."

The attorney panel member shall subscribe to the same oath except that in lieu of the last sentence thereof the attorney's oath shall state:

"I acknowledge that I represent neither side and that it is my lawful duty to advise the panel members concerning matters of law and procedure and to serve as chairman."

The original of each oath shall be attached to the opinion rendered by the panel.

(6) The party aggrieved by the alleged failure or refusal of another to perform according to the provisions of this Section may petition any district court of proper venue over the parties for an order directing that the parties comply with the medical review panel provisions of the medical malpractice act.

(7) A panelist or a representative or attorney for any interested party shall not discuss with other members of a medical review panel on which he serves a claim which is to be reviewed by the panel until all evidence to be considered by the panel has been submitted. A panelist or a representative or attorney for any interested party shall not discuss the pending claim with the claimant or his attorney asserting the claim or with a health care provider or his attorney against whom a claim has been asserted under this Section. A panelist or the attorney chairman shall disclose in writing to the parties prior to the hearing any employment relationship or financial relationship with the claimant, the health care provider against whom a claim is asserted, or the attorneys representing the claimant or health care provider, or any other relationship that might give rise to a conflict of interest for the panelists.

D.(1) The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties in written form only.

(2) The evidence may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, interrogatories, affidavits and reports of medical experts, and any other form of evidence allowable by the medical review panel.

(3) Depositions of the parties and witnesses may be taken prior to the convening of the panel.

(4) Upon request of any party, or upon request of any two panel members, the clerk of any district court shall issue subpoenas and subpoenas duces tecum in aid of the taking of depositions and the production of documentary evidence for inspection and/or copying.

(5) The chairman of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel as provided in Subsection G.

(6) A copy of the evidence shall be sent to each member of the panel.

E. Either party, after submission of all evidence and upon ten days notice to the other side, shall have the right to convene the panel at a time and place agreeable to the members of the panel. Either party may question the panel concerning any matters

relevant to issues to be decided by the panel before the issuance of their report. The chairman of the panel shall preside at all meetings. Meetings shall be informal.

F. The panel shall have the right and duty to request and procure all necessary information. The panel may consult with medical authorities, provided the names of such authorities are submitted to the parties with a synopsis of their opinions and provided further that the parties may then obtain their testimony by deposition. The panel may examine reports of such other health care providers necessary to fully inform itself regarding the issue to be decided. Both parties shall have full access to any material submitted to the panel.

G. The panel shall have the sole duty to express its expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care. After reviewing all evidence and after any examination of the panel by counsel representing either party, the panel shall, within thirty days but in all events within one hundred eighty days after the selection of the last panel member, render one or more of the following expert opinions, which shall be in writing and signed by the panelists, together with written reasons for their conclusions:

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

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

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

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

H. Any report of the expert opinion reached by the medical review panel shall be admissible as evidence in any action subsequently brought by the claimant in a court of law, but such expert opinion shall not be conclusive and either party shall have the right to call, at his cost, any member of the medical review panel as a witness. If called, the witness shall be required to appear and testify. A panelist shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by this Part.

I.(1)(a) Each physician member of the medical review panel shall be paid at the rate of twenty-five dollars per diem, not to exceed a total of three hundred dollars for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in a court of law regarding the communications, findings, and conclusions made in

the course and scope of duties as a member of the medical review panel, and in addition thereto, reasonable travel expenses.

(b) The attorney chairman of the medical review panel shall be paid at the rate of one hundred dollars per diem, not to exceed a total of two thousand dollars for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in a court of law regarding the communications, findings, and conclusions made in the course and scope of duties as a member of the medical review panel, and in addition thereto, reasonable travel expenses. Additionally, the attorney chairman shall be reimbursed for all reasonable out-of-pocket expenses incurred in performing his duties for each medical review panel. The attorney chairman shall submit the amount due him for all work performed as a member of the panel by affidavit, which shall attest that he has performed in the capacity of chairman of the medical review panel and that he was personally present at all the panel's meetings or deliberations.

(2)(a) The costs of the medical review panel shall be paid by the health care provider if the opinion of the medical review panel is in favor of said defendant health care provider.

(b) The claimant shall pay the costs of the medical review panel if the opinion of the medical review panel is in favor of the claimant. However, if the claimant is unable to pay, the claimant shall submit to the attorney chairman prior to the convening of the medical review panel an in forma pauperis ruling issued in accordance with Louisiana Code of Civil Procedure Article 5181 et seq. by a district court in a venue in which the malpractice claim could properly be brought upon the conclusion of the medical review panel process. Upon timely receipt of the in forma pauperis ruling, the costs of the medical review panel shall be paid by the health care provider, with the proviso that if the claimant subsequently receives a settlement or receives a judgment, the advance payment of the medical review panel costs will be offset.

(c) In a medical malpractice suit filed by the claimant in which a unanimous opinion was rendered in favor of the defendant health care provider as provided in the expert opinion stated in Paragraph (G)(2) of this Section, the claimant who proceeds to file such a suit shall be required to post a cash or surety bond, approved by the court, in the amount of all costs of the medical review panel. Upon the conclusion of the medical malpractice suit, the court shall order that the cash or surety bond be forfeited to the defendant health care provider for reimbursement of the costs of the medical review panel, unless a final judgment is rendered finding the defendant liable to the claimant for any damages. If a final judgment is rendered finding the defendant liable to the claimant for any damages, the court shall order that the defendant health care provider reimburse the claimant an amount equal to the cost of obtaining the cash or surety bond posted by the claimant.

(d) In the event a medical review panel renders a unanimous opinion in favor of the claimant as provided in the expert opinions stated in Paragraphs (G)(1) and (4) of this Section, and the claimant has not timely submitted an in forma pauperis ruling to the panel's attorney chairman, and thereafter the defendant health care provider failed to settle the claim with the claimant resulting in the claimant filing a malpractice suit in a

court of competent jurisdiction and proper venue against the defendant health care provider based on the same claim which was the subject of the unanimously adverse medical review panel opinion against the defendant health care provider, the defendant health care provider shall be required to post a cash or surety bond, approved by the court, in the amount of all costs of the medical review panel. Upon the conclusion of the medical malpractice suit, the court shall order that the cash or surety bond be forfeited to the claimant for reimbursement of the costs of the medical review panel, unless a final judgment is rendered finding that the defendant health care provider has no liability for damages to the claimant. If a final judgment is rendered finding that the defendant health care provider has no liability for damages to the claimant, the court shall order that the claimant reimburse the defendant health care provider an amount equal to the cost of obtaining the cash or surety bond posted by the defendant health care provider.

(3) If the medical review panel decides that there is a material issue of fact bearing on liability for consideration by the court, the claimant and the health care provider shall split the costs of the medical review panel. However, in those instances in which the claimant is unable to pay his share of the costs of the medical review panel, the claimant shall submit to the attorney chairman prior to the convening of the medical review panel an in forma pauperis ruling issued in accordance with Louisiana Code of Civil Procedure Article 5181 et seq., by a district court in a venue in which the malpractice claim could properly be brought upon the conclusion of the medical review panel process. Upon timely receipt of the in forma pauperis ruling, the costs of the medical review panel shall be paid by the defendant health care provider with the proviso that if the claimant subsequently receives a settlement or receives a judgment, the advance payment of the claimant's share of the costs of the medical review panel will be offset.

(4) Upon the rendering of the written panel decision, if any one of the panelists finds that the evidence supports the conclusion that a defendant health care provider failed to comply with the appropriate standard of care as charged in the complaint, each defendant health care provider as to whom such a determination was made shall reimburse to the claimant that portion of the filing fee applicable to the claim against such defendant health care provider or if any one of the panelists finds that the evidence supports the conclusion that there is a material issue of fact, not requiring expert opinion, bearing on liability of such defendant health care provider for consideration by the court, each such defendant health care provider as to whom such a determination was made shall reimburse to the claimant fifty percent of that portion of the filing fee applicable to the claim against such defendant health care provider.

J. The chairman shall submit a copy of the panel's report to the board and all parties and attorneys by registered or certified mail within five days after the panel renders its opinion.

K. In the event the medical review panel after a good faith effort has been unable to carry out its duties by the end of the one hundred eighty day period, as provided in R.S. 40:1299.47(G), either party or the board, after exhausting all remedies available to them under this Section, may petition the appropriate court of competent jurisdiction for an

order to show cause why the panel should not be dissolved and the panelists relieved of their duties. The suspension of the running of prescription shall cease sixty days after the receipt by the claimant or his attorney of the final order dissolving the medical review panel, which order shall be mailed to the claimant or his attorney by certified mail.

L. Where the medical review panel issues its opinion after the one hundred eighty days required by this Section, the suspension of the running of prescription shall not cease until ninety days following notification by certified mail to the claimant or his attorney of the issuance of the opinion as required by Subsection J of this Section.

M. Legal interest shall accrue from the date of filing of the complaint with the board on a judgment rendered by a court in a suit for medical malpractice brought after compliance with this Part.

Amended by Acts 1991, No. 661, §1; Acts 1991, No. 668, §1; Acts 1992, No. 347, §1, eff. June 17, 1992; Acts 1995, No. 1258, §1; Acts 1997, No. 664, §1; Acts 1997, No. 830, §1; Acts 1999, No. 610, §1; Acts 2002, 1st Ex. Sess., No. 86, §1; Acts 2003, No. 484, §1; Acts 2003, No. 644, §1; Acts 2003, No. 961, §1; Acts 2003, No. 1263, §1, eff. July 7, 2003; Acts 2004, No. 306, §1; Acts 2004, No. 309, §1; Acts 2004, No. 311, §1.

Section 16

Limitations on Contingency Fees

Florida

SECTION 26. Claimant's right to fair compensation.--

(a) Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

(b) This Amendment shall take effect on the day following approval by the voters.

History.--Proposed by Initiative Petition filed with the Secretary of State September 8, 2003; adopted 2004.

Section 17

Certificate of Merit

USA HEALTH ACT

SEC. X. EVALUATION BY QUALIFIED SPECIALIST.

(a) APPOINTMENT BY COURT OF QUALIFIED SPECIALIST.—Within 30 days of the filing of a health care lawsuit, the court shall appoint a qualified specialist whose appointment is agreed to by one qualified specialist chosen by the claimant and one qualified specialist chosen by the defendant. If a qualified specialist is not agreed to by the qualified specialist chosen by the claimant and the qualified specialist chosen by the defendant within such 30 days, then the court shall appoint such qualified specialist at its discretion. The qualified specialist appointed by the court shall, within 45 days of such appointment, submit to the court an affidavit that includes such specialist's statement of opinion whether, based on a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant. If such specialist does not submit such affidavit to the court within 45 days of such appointment, the court shall dismiss such health care lawsuit. Such affidavit shall also contain a statement by the qualified specialist of specific breaches in the standard of care and the approximate negligence causation. Such affidavit shall not be admissible in any health care lawsuit or other court proceedings, or any arbitration proceeding. However, such affidavit, and information relevant to the determinations made by such specialist in such affidavit, shall be discoverable by the plaintiff and the defendant. In the case of multiple defendants, a separate affidavit shall be required for each defendant. The court shall set a reasonable fee that shall be paid by the claimant for the preparation of such affidavit by such qualified specialist.

(b) QUALIFIED SPECIALIST DEFINED.—(1) In subsection (a), a "qualified specialist" means, with respect to a health care lawsuit--

(A) except as required under subparagraphs (2) and (3), a health care professional who--

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW--In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be a qualified specialist under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES—An individual shall not be a qualified specialist if such individual's medical specialty or subspecialty is different from the defendant's unless, in addition to a showing of substantial familiarity in accordance with subparagraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(c) ATTORNEYS FEES AND COSTS.—In a health care lawsuit, in the event the statement of opinion by a qualified specialist appointed by the court in an affidavit is that there is no reasonable and meritorious cause for the filing of the action against the defendant, and the claimant does not substantially prevail by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution, the court shall order the claimant, or such claimant's attorneys, to pay the costs and reasonable attorneys fees incurred by the defendant as a direct result of the health care lawsuit in which such qualified specialist's opinion was filed. Claimants and their attorneys shall share liability for such costs and reasonable attorneys fees incurred, as determined by the court in the interests of justice.