

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 5

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO AMEND SECTION
 3 11-1-60, MISSISSIPPI CODE OF 1972, TO REVISE CAPS ON NONECONOMIC
 4 DAMAGES; TO PROVIDE FOR CLASS ACTIONS; TO AMEND SECTION 11-1-66,
 5 MISSISSIPPI CODE OF 1972, TO REVISE PREMISES LIABILITY; TO AMEND
 6 SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE JOINT AND
 7 SEVERAL LIABILITY; TO AMEND SECTION 13-5-23, MISSISSIPPI CODE OF
 8 1972, TO PROVIDE THAT JURORS CAN ONLY BE EXCUSED FROM SERVICE FOR
 9 ILLNESS OR UNDUE HARDSHIP; TO CODIFY SECTION 13-5-24, MISSISSIPPI
 10 CODE OF 1972, TO PROVIDE THAT JURORS CAN POSTPONE JURY SERVICE ONE
 11 TIME ONLY; TO AMEND SECTION 13-5-25, MISSISSIPPI CODE OF 1972, TO
 12 LIMIT THE FREQUENCY OF JURY SERVICE; TO AMEND SECTION 13-5-28,
 13 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF JURY SERVICE
 14 EXEMPTION ENTITLEMENT TO BE INCLUDED IN JUROR SUMMONSES; TO AMEND
 15 SECTION 13-5-34, MISSISSIPPI CODE OF 1972, TO REVISE THE
 16 PUNISHMENT FOR FAILURE TO APPEAR FOR JURY SERVICE; TO CODIFY
 17 SECTION 13-5-99, MISSISSIPPI CODE OF 1972, TO PROVIDE EMPLOYMENT
 18 PROTECTIONS FOR JURORS; TO AMEND SECTION 25-7-61, MISSISSIPPI CODE
 19 OF 1972, TO CREATE A LENGTHY TRIAL FUND; TO AMEND SECTION 33-1-5,
 20 MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN JUROR EXEMPTIONS;
 21 TO REPEAL SECTIONS 41-17-7 AND 47-5-55, MISSISSIPPI CODE OF 1972,
 22 WHICH PROVIDE CERTAIN EXEMPTIONS FROM JURY SERVICE; TO AMEND
 23 SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
 24 DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED LIABILITY UNDER
 25 THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS WHO PROVIDE
 26 HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND SCHOOL
 27 EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S HEALTH
 28 INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE PERCENT OF
 29 THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR NOT TO EXCEED
 30 ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE CERTAIN RETIRED
 31 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO
 32 ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN THE STATE
 33 TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI TORT
 34 CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE AVAILABLE
 35 FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES IN THE
 36 SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT CLAIMS
 37 BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN
 38 PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE
 39 RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL
 40 TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER
 41 A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY
 42 AS AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE FOR
 43 MEDICAL PRACTICE OF DISCLOSURE; TO IMPOSE POWERS AND DUTIES ON THE
 44 STATE BOARD OF MEDICAL LICENSURE AND THE STATE DEPARTMENT OF
 45 HEALTH; TO PROVIDE FOR PENALTIES; TO AMEND SECTION 73-43-11,
 46 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION
 47 73-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THE RIGHT FOR
 48 HARMED PATIENTS TO ATTEND DISCIPLINARY PROCEEDINGS INVOLVING THE
 49 PHYSICIAN RESPONSIBLE FOR THE HARM; TO REQUIRE STATEWIDE
 50 PUBLICATION OF RECALL NOTICES; TO PROVIDE FOR A DIRECT ACTION
 51 AGAINST AN INSURER; TO PROVIDE THAT POLICY SHALL CONTAIN
 52 PROVISIONS THAT INSOLVENCY OR BANKRUPTCY OF THE INSURED SHALL NOT

53 RELEASE THE INSURER FROM LIABILITY; TO PROVIDE THAT ACTIONS MAY BE
54 BROUGHT AGAINST THE INSURER ALONE IN CERTAIN SITUATIONS; TO
55 PROVIDE THAT THE INSURANCE POLICY SHALL BE ADMISSIBLE INTO
56 EVIDENCE; TO PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE REVIEWED
57 BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY AGREE TO
58 OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP REVIEW
59 PANEL; TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE PANEL; TO
60 PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR PANELIST IMMUNITY
61 AND COMPENSATION; TO PROVIDE THAT THE LOSING PARTY SHALL PAY
62 ATTORNEY FEES TO THE PREVAILING PARTY UNDER CERTAIN CIRCUMSTANCES;
63 TO AMEND SECTION 11-46-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY
64 THERETO; AND FOR RELATED PURPOSES.

65 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

66 **SECTION 1.** Section 11-11-3, Mississippi Code of 1972, is
67 amended as follows:

68 11-11-3. (1) (a) (i) Civil actions of which the circuit
69 court has original jurisdiction shall be commenced in the county
70 where the defendant resides, or, if a corporation, in the county
71 of its principal place of business, or in the county where a
72 substantial alleged act or omission occurred or where a
73 substantial event that caused the injury occurred.

74 (ii) Civil actions alleging a defective product
75 may also be commenced in the county where the plaintiff obtained
76 the product.

77 (b) If venue in a civil action against a nonresident
78 defendant cannot be asserted under paragraph (a) of this
79 subsection (1), a civil action against a nonresident may be
80 commenced in the county where the plaintiff resides or is
81 domiciled.

82 (2) In any civil action where more than one (1) plaintiff is
83 joined, each plaintiff shall independently establish proper venue;
84 it is not sufficient that venue is proper for any other plaintiff
85 joined in the civil action.

86 **SECTION 2.** Section 11-1-60, Mississippi Code of 1972, is
87 amended as follows:

88 11-1-60. (1) For the purposes of this section, the
89 following words and phrases shall have the meanings ascribed
90 herein unless the context clearly requires otherwise:

91 (a) "Noneconomic damages" means subjective,
92 nonpecuniary damages arising from death, pain, suffering,
93 inconvenience, mental anguish, worry, emotional distress, loss of
94 society and companionship, loss of consortium, bystander injury,
95 physical impairment, injury to reputation, humiliation,
96 embarrassment, loss of the enjoyment of life, hedonic damages,
97 other nonpecuniary damages, and any other theory of damages such
98 as fear of loss, illness or injury. The term "noneconomic
99 damages" shall not include damages for disfigurement, nor does it
100 include punitive or exemplary damages.

101 (b) "Actual economic damages" means objectively
102 verifiable pecuniary damages arising from medical expenses and
103 medical care, rehabilitation services, custodial care,
104 disabilities, loss of earnings and earning capacity, loss of
105 income, burial costs, loss of use of property, costs of repair or
106 replacement of property, costs of obtaining substitute domestic
107 services, loss of employment, loss of business or employment
108 opportunities, and other objectively verifiable monetary losses.

109 * * *

110 (2) (a) In any civil action, in the event the trier of fact
111 finds the defendant liable, they shall not award the plaintiff
112 more than the following for noneconomic damages:

113 (i) For claims for causes of action filed on or
114 after July 1, 2004, but before July 1, 2011, the sum of Two
115 Million Dollars (\$2,000,000.00);

116 (ii) For claims for causes of action filed on or
117 after July 1, 2011, but before July 1, 2017, the sum of Three
118 Million Dollars (\$3,000,000.00);

119 (iii) For claims for causes of action filed on or
120 after July 1, 2017, the sum of Five Million Dollars
121 (\$5,000,000.00).

122 It is the intent of this section to limit all noneconomic
123 damages to the above.

124 (b) The trier of fact shall not be advised of the
125 limitations imposed by this subsection (2) and the judge shall
126 appropriately reduce any award of noneconomic damages that exceeds
127 the applicable limitation.

128 (3) The limitation on noneconomic damages set forth in
129 subsection (2) shall not apply in cases where the judge determines
130 that a jury may impose punitive damages.

131 (4) Nothing in this section shall be construed to impose a
132 limitation on damages for disfigurement or actual economic
133 damages.

134 **SECTION 3.** (1) One or more members of a class may sue or be
135 sued as representative parties on behalf of all only if (a) the
136 class is so numerous that joinder of all members is impracticable,
137 (b) there are questions of law or fact common to the class, (c)
138 the claims or defenses of the representative parties are typical
139 of the claims or defenses of the class, and (d) the representative
140 parties will fairly and adequately protect the interests of the
141 class.

142 (2) An action may be maintained as a class action if the
143 prerequisites of subsection (1) are satisfied, and in addition:

144 (a) The prosecution of separate actions by or against
145 individual members of the class would create a risk of:

146 (i) Inconsistent or varying adjudications with
147 respect to individual members of the class which would establish
148 incompatible standards of conduct for the party opposing the
149 class, or

150 (ii) Adjudications with respect to individual
151 members of the class which would as a practical matter be
152 dispositive of the interests of the other members not parties to
153 the adjudications or substantially impair or impede their ability
154 to protect their interests; or

155 (b) The party opposing the class has acted or refused
156 to act on grounds generally applicable to the class, thereby

157 making appropriate final injunctive relief or corresponding
158 declaratory relief with respect to the class as a whole; or

159 (c) The court finds that the questions of law or fact
160 common to the members of the class predominate over any questions
161 affecting only individual members, and that a class action is
162 superior to other available methods for the fair and efficient
163 adjudication of the controversy. The matters pertinent to the
164 findings include: (i) the interest of members of the class in
165 individually controlling the prosecution or defense of separate
166 actions; (ii) the extent and nature of any litigation concerning
167 the controversy already commenced by or against members of the
168 class; (iii) the desirability or undesirability of concentrating
169 the litigation of the claims in the particular forum; (iv) the
170 difficulties likely to be encountered in the management of a class
171 action.

172 (3) (a) As soon as practicable after the commencement of an
173 action brought as a class action, the court shall determine by
174 order whether it is to be so maintained. An order under this
175 subdivision may be conditional, and may be altered or amended
176 before the decision on the merits.

177 (b) In any class action maintained under subsection
178 (2)(c), the court shall direct to the members of the class the
179 best notice practicable under the circumstances, including
180 individual notice to all members who can be identified through
181 reasonable effort. The notice shall advise each member that (i)
182 the court will exclude the member from the class if the member so
183 requests by a specified date; (ii) the judgment, whether favorable
184 or not, will include all members who do not request exclusion; and
185 (iii) any member who does not request exclusion may, if the member
186 desires, enter an appearance through counsel.

187 (c) The judgment in an action maintained as a class
188 action under subsection (2)(a) or (2)(b), whether or not favorable
189 to the class, shall include and describe those whom the court

190 finds to be members of the class. The judgment in an action
191 maintained as a class action under subsection (2)(c), whether or
192 not favorable to the class, shall include and specify or describe
193 those to whom the notice provided in subsection (3)(b) was
194 directed, and who have not requested exclusion, and whom the court
195 finds to be members of the class.

196 (d) When appropriate (i) an action may be brought or
197 maintained as a class action with respect to particular issues, or
198 (ii) a class may be divided into subclasses and each subclass
199 treated as a class, and the provisions of this rule shall then be
200 construed and applied accordingly.

201 (4) (a) When a person sues or is sued as a representative
202 of a class, the court must, at an early practicable time,
203 determine by order whether to certify the action as a class
204 action.

205 (b) An order certifying a class action must define the
206 class and the class claims, issues or defenses and must appoint
207 class counsel under subsection (9).

208 (c) An order under this subsection may be altered or
209 amended before final judgment.

210 (d) (i) For any class certified under this section or
211 the court may direct appropriate notice to the class.

212 (ii) For any class certified under this section,
213 the court must direct to class members the best notice practicable
214 under the circumstances, including individual notice to all
215 members who can be identified through reasonable effort. The
216 notice must concisely and clearly state in plain, easily
217 understood language:

- 218 1. The nature of the action;
- 219 2. The definition of the class certified;
- 220 3. The class claims, issues or defenses;
- 221 4. That a class member may enter an
222 appearance through counsel if the member so desires;

223 5. That the court will exclude from the class
224 any member who requests exclusion, stating when and how members
225 may elect to be excluded; and

226 6. The binding effect of a class judgment on
227 class members under this section.

228 (e) The judgment in an action maintained as a class
229 action under subsection (3)(a) or (3)(b), whether or not favorable
230 to the class, shall include and describe those whom the court
231 finds to be members of the class. The judgment in an action
232 maintained as a class action under subsection (3)(c), whether or
233 not favorable to the class, shall include and specify or describe
234 those to whom the notice provided in subsection (4)(b) was
235 directed, and who have not requested exclusion, and whom the court
236 finds to be members of the class.

237 (f) When appropriate (i) an action may be brought or
238 maintained as a class action with respect to particular issues, or
239 (ii) a class may be divided into subclasses and each subclass
240 treated as a class, and the provisions of this rule shall then be
241 construed and applied accordingly.

242 (5) In the conduct of actions to which this rule applies,
243 the court may make appropriate orders:

244 (a) Determining the course of proceedings or
245 prescribing measures to prevent undue repetition or complication
246 in the presentation of evidence or argument;

247 (b) Requiring, for the protection of the members of the
248 class or otherwise for the fair conduct of the action, that notice
249 be given in such manner as the court may direct to some or all of
250 the members of any step in the action, or of the proposed extent
251 of the judgment, or of the opportunity of members to signify
252 whether they consider the representation fair and adequate, to
253 intervene and present claims or defenses, or otherwise to come
254 into the action;

255 (c) Imposing conditions on the representative parties
256 or on intervenors;

257 (d) Requiring that the pleadings be amended to
258 eliminate therefrom allegations as to representation of absent
259 persons, and that the action proceed accordingly;

260 (e) Dealing with similar procedural matters. The
261 orders may be combined and may be altered or amended as may be
262 desirable from time to time.

263 (6) A class action shall not be dismissed or compromised
264 without the approval of the court, and notice of the proposed
265 dismissal or compromise shall be given to all members of the class
266 in such manner as the court directs.

267 (7) (a) (i) The court must approve any settlement,
268 voluntary dismissal or compromise of the claims, issues or
269 defenses of a certified class.

270 (ii) The court must direct notice in a reasonable
271 manner to all class members who would be bound by a proposed
272 settlement, voluntary dismissal or compromise.

273 (iii) The court may approve a settlement,
274 voluntary dismissal or compromise that would bind class members
275 only after a hearing and on finding that the settlement, voluntary
276 dismissal or compromise is fair, reasonable and adequate.

277 (b) The parties seeking approval of a settlement,
278 voluntary dismissal or compromise must file a statement
279 identifying any agreement made in connection with the proposed
280 settlement, voluntary dismissal or compromise.

281 (c) In an action previously certified as a class
282 action, the court may refuse to approve a settlement unless it
283 affords a new opportunity to request exclusion to individual class
284 members who had an earlier opportunity to request exclusion but
285 did not do so.

286 (d) (i) Any class member may object to a proposed
287 settlement, voluntary dismissal or compromise that requires court
288 approval.

289 (ii) An objection made under this subsection may
290 be withdrawn only with the court's approval.

291 (8) A court of appeals may in its discretion permit an
292 appeal from an order of a district court granting or denying class
293 action certification under this rule if application is made to it
294 within ten (10) days after entry of the order. An appeal does not
295 stay proceedings in the district court unless the district judge
296 or the court of appeals so order.

297 (9) (a) Unless a statute provides otherwise, a court that
298 certifies a class must appoint class counsel.

299 (b) An attorney appointed to serve as class counsel
300 must fairly and adequately represent the interests of the class.

301 (c) In appointing class counsel, the court:

302 (i) Must consider:

303 1. The work counsel has done in identifying
304 or investigating potential claims in the action;

305 2. Counsel's experience in handling class
306 actions, other complex litigation and claims of the type asserted
307 in the action;

308 3. Counsel's knowledge of the applicable law;
309 and

310 4. The resources counsel will commit to
311 representing the class;

312 (ii) May consider any other matter pertinent to
313 counsel's ability to fairly and adequately represent the interests
314 of the class;

315 (iii) May direct potential class counsel to
316 provide information on any subject pertinent to the appointment
317 and to propose terms for attorney fees and nontaxable costs; and

318 (iv) May make further orders in connection with
319 the appointment.

320 (d) The court may designate interim counsel to act on
321 behalf of the putative class before determining whether to certify
322 the action as a class action.

323 (e) The court may appoint one or more individual
324 attorneys or one or more law firms as class counsel which the
325 court determines is best able to represent the interests of the
326 class.

327 (f) The order appointing class counsel may include
328 provisions about the award of attorney fees or nontaxable costs.

329 (10) In an action certified as a class action, the court may
330 award reasonable attorney fees and nontaxable costs authorized by
331 law or by agreement of the parties as follows:

332 (a) A claim for an award of attorney fees and
333 nontaxable costs must be made by motion, subject to the provisions
334 of this subsection, at a time set by the court. Notice of the
335 motion must be served on all parties and, for motions by class
336 counsel, directed to class members in a reasonable manner.

337 (b) A class member, or a party from whom payment is
338 sought, may object to the motion.

339 (c) The court may hold a hearing and must find the
340 facts and state its conclusions of law on the motion.

341 (d) The court may refer issues related to the amount of
342 the award to a special master or to a magistrate judge.

343 **SECTION 4.** Section 11-1-66, Mississippi Code of 1972, is
344 amended as follows:

345 11-1-66. (1) No owner, occupant, lessee or managing agent
346 of property shall be civilly liable for the criminal acts of a
347 third party, unless such owner, occupant, lessee or managing agent
348 knew or, with the exercise of reasonable care, should have known
349 of the risk of criminal conduct on such property and the failure

350 to exercise reasonable care to deter such foreseeable conduct is a
351 proximate cause of damages to an individual or entity.

352 (2) No owner, occupant, lessee or managing agent of property
353 shall be liable for the death or injury of an independent
354 contractor or the independent contractor's employees resulting
355 from dangers of which the contractor knew or reasonably should
356 have known.

357 **SECTION 5.** Section 85-5-7, Mississippi Code of 1972, is
358 amended as follows:

359 85-5-7. (1) As used in this section "fault" means an act or
360 omission of a person which is a proximate cause of injury or death
361 to another person or persons, damages to property, tangible or
362 intangible, or economic injury, including, but not limited to,
363 negligence, malpractice, strict liability, absolute liability or
364 failure to warn. "Fault" shall not include any tort which results
365 from an act or omission committed with a specific wrongful intent.

366 * * *

367 (2) Except as otherwise provided in subsection (4) of this
368 section, in any civil action based on fault, the liability for
369 damages caused by two (2) or more persons shall be several only,
370 and not joint and several and a joint tort-feasor shall be liable
371 only for the amount of damages allocated to him in direct
372 proportion to his percentage of fault. In assessing percentages
373 of fault an employer and the employer's employee or a principal
374 and the principal's agent shall be considered as one (1) defendant
375 when the liability of such employer or principal has been caused
376 by the wrongful or negligent act or omission of the employee or
377 agent.

378 * * *

379 (3) Nothing in this section shall eliminate or diminish any
380 defenses or immunities which currently exist, except as expressly
381 noted herein.

382 (4) Joint and several liability shall be imposed on all who
383 consciously and deliberately pursue a common plan or design to
384 commit a tortious act, or actively take part in it. Any person
385 held jointly and severally liable under this section shall have a
386 right of contribution from his fellow defendants acting in
387 concert.

388 (5) In actions involving joint tort-feasors, the trier of
389 fact shall determine the percentage of fault for each party
390 alleged to be at fault.

391 * * *

392 (6) Nothing in this section shall be construed to create a
393 cause of action. Nothing in this section shall be construed, in
394 any way, to alter the immunity of any person.

395 **SECTION 6.** Section 13-5-23, Mississippi Code of 1972, is
396 amended as follows:

397 13-5-23. (1) All qualified persons shall be liable to serve
398 as jurors, unless excused by the court for one (1) of the
399 following causes:

400 (a) When the juror is ill and, on account of the
401 illness, is incapable of performing jury service; or

402 (b) When the juror's attendance would cause undue or
403 extreme physical or financial hardship to the prospective juror or
404 a person under his or her care or supervision.

405 * * *

406 (2) An excuse of illness under subsection (1)(a) of this
407 section may be made to the clerk of court outside of open court by
408 providing the clerk with * * * a certificate of a licensed
409 physician * * *, stating that the juror is ill and is unfit for
410 jury service, in which case the clerk may excuse the juror. If
411 the excuse of illness is not supported by a physician's
412 certificate, a judge of the court for which the individual was
413 called to jury service shall decide whether to excuse an
414 individual under subsection (1)(a) of this section.

415 (3) (a) The test of an excuse under subsection (1)(b) of
416 this section for undue or extreme physical or financial hardship
417 shall be whether the individual would either:

418 (i) Be required to abandon a person under his or
419 her personal care or supervision due to the impossibility of
420 obtaining an appropriate substitute caregiver during the period of
421 participation in the jury pool or on the jury; or

422 (ii) Incur costs that would have a substantial
423 adverse impact on the payment of the individual's necessary daily
424 living expenses or on those for whom he or she provides the
425 principal means of support; or

426 (iii) Suffer physical hardship that would result
427 in illness or disease.

428 (b) "Undue or extreme physical or financial hardship"
429 does not exist solely based on the fact that a prospective juror
430 will be required to be absent from his or her place of employment
431 or business.

432 (c) A judge of the court for which the individual was
433 called to jury service shall decide whether to excuse an
434 individual under subsection (1)(b) of this section.

435 (d) A person asking to be excused based on a finding of
436 undue or extreme physical or financial hardship must take all
437 actions necessary to have obtained a ruling on that request by no
438 later than the date on which the individual is scheduled to appear
439 for jury duty.

440 (e) A person asking a judge to grant an excuse under
441 subsection (1)(b) of this section shall be required to provide the
442 judge with documentation such as, but not limited to, federal and
443 state income tax returns or other information which verifies
444 income, medical statements from licensed physicians, proof of
445 dependency or guardianship and similar documents, which the judge
446 finds to clearly support the request to be excused. Failure to
447 provide satisfactory documentation shall result in a denial of the

448 request to be excused. Any documentation produced under this
449 paragraph shall not be a public record.

450 (4) After two (2) years, a person excused from jury service
451 shall become eligible once again for qualification as a juror
452 unless the person was excused from service permanently. A person
453 is excused from jury service permanently only when the deciding
454 judge determines that the underlying grounds for being excused are
455 of a permanent nature.

456 (5) * * * A tales juror * * * shall not be compelled to
457 serve two (2) days successively unless the case in which the juror
458 is impaneled continues longer than one (1) day. Grand jurors
459 shall serve until discharged by the court.

460 **SECTION 7.** The following provision shall be codified as
461 Section 13-5-24, Mississippi Code of 1972:

462 13-5-24. (1) Notwithstanding any other provisions of this
463 chapter, individuals scheduled to appear for jury service have the
464 right to postpone the date of their initial appearance for jury
465 service one (1) time only. Postponements shall be granted upon
466 request, provided that:

467 (a) The juror has not been granted a postponement
468 within the past two (2) years;

469 (b) The prospective juror appears in person or contacts
470 the clerk of the court by telephone, electronic mail or in writing
471 to request a postponement; and

472 (c) Prior to the grant of a postponement with the
473 concurrence of the clerk of the court, the prospective juror fixes
474 a date certain to appear for jury service that is within the next
475 two (2) terms of court but not more than twelve (12) months after
476 the date on which the prospective juror originally was called to
477 serve and on which date the court will be in session.

478 (2) A subsequent request to postpone jury service may be
479 approved by a judicial officer only in the event of an extreme
480 emergency, such as a death in the family, sudden illness, or a

481 natural disaster or a national emergency in which the prospective
482 juror is personally involved, that could not have been anticipated
483 at the time the initial postponement was granted. Prior to the
484 grant of a second postponement, the prospective juror must fix a
485 date certain on which the individual will appear for jury service
486 within twelve (12) months of the postponement on a date when the
487 court will be in session.

488 **SECTION 8.** Section 13-5-25, Mississippi Code of 1972, is
489 amended as follows:

490 13-5-25. Every citizen over sixty-five (65) years of age,
491 and everyone who has served on the regular panel as a juror in the
492 actual trial of one or more litigated cases within two (2) years,
493 shall be exempt from service if he claims the privilege * * *. No
494 qualified juror shall be excluded because of any such reasons, but
495 the same shall be a personal privilege to be claimed by any person
496 selected for jury duty. Any citizen over sixty-five (65) years of
497 age may claim this personal privilege outside of open court by
498 providing the clerk of court with information that allows the
499 clerk to determine the validity of the claim.

500 Provided, however, that no person who has served on the
501 regular panel as a juror in the actual trial of one or more
502 litigated cases in one (1) court may claim the exemption in any
503 other court where he may be called to serve.

504 **SECTION 9.** Section 13-5-28, Mississippi Code of 1972, is
505 amended as follows:

506 13-5-28. If a grand, petit or other jury is ordered to be
507 drawn, the clerk thereafter shall cause each person drawn for jury
508 service to be served with a summons, either personally or by mail,
509 addressed to him at his usual residence, business or post office
510 address, requiring him to report for jury service at a specified
511 time and place. The summons shall include instructions to the
512 potential jurors that explain, in layman's terms, the provisions
513 of Sections 13-5-23 and 13-5-99.

514 **SECTION 10.** Section 13-5-34, Mississippi Code of 1972, is
515 amended as follows:

516 13-5-34. (1) A person summoned for jury service who fails
517 to appear or to complete jury service as directed, and who has
518 failed to obtain a postponement in compliance with the provisions
519 for requesting a postponement, or who fails to appear on the date
520 set pursuant to Section 13-5-24 shall be ordered by the court to
521 appear forthwith and show cause for his failure to comply with the
522 summons. If he fails to show good cause for noncompliance with
523 the summons he is in civil contempt of court and * * * may be
524 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
525 not more than three (3) days, or both. The prospective juror may
526 be excused from paying sanctions for good cause shown or in the
527 interest of justice.

528 (2) In addition to, or in lieu of, the fine or imprisonment
529 provided in subsection (1) of this section, the court may order
530 that the prospective juror complete a period of community service
531 for a period no less than if the prospective juror would have
532 completed jury service, and provide proof of completion of this
533 community service to the court.

534 **SECTION 11.** The following provision shall be codified as
535 Section 13-5-99, Mississippi Code of 1972:

536 13-5-99. (1) It shall be unlawful for any employer or any
537 other person to persuade or attempt to persuade any juror to avoid
538 jury service; to intimidate or to threaten any juror in that
539 respect; or to remove or otherwise subject an employee to adverse
540 employment action as a result of jury service if the employee
541 notifies his or her employer that he or she has been summoned to
542 serve as a juror within a reasonable period of time after receipt
543 of a summons.

544 (2) It shall be unlawful for an employer to require or
545 request an employee to use annual, vacation or sick leave for time
546 spent responding to a summons for jury duty, time spent

547 participating in the jury selection process, or time spent
548 actually serving on a jury. Nothing in this provision shall be
549 construed to require an employer to provide annual, vacation or
550 sick leave to employees under the provisions of this statute who
551 otherwise are not entitled to such benefits under company
552 policies.

553 (3) Any violation of subsection (1) or (2) of this section
554 shall be deemed an interference with the administration of justice
555 and a contempt of court and punishable as such.

556 (4) A court shall automatically postpone and reschedule the
557 service of a summoned juror employed by an employer with five (5)
558 or fewer full-time employees, or their equivalent, if another
559 employee of that employer has previously been summoned to appear
560 during the same period. Such postponement will not constitute the
561 excused individual's right to one (1) automatic postponement under
562 Section 13-5-24.

563 **SECTION 12.** Section 25-7-61, Mississippi Code of 1972, is
564 amended as follows:

565 25-7-61. (1) Fees of jurors shall be payable as follows:

566 (a) Grand jurors and petit jurors in the chancery,
567 county, circuit and special eminent domain courts shall be paid an
568 amount to be set by the board of supervisors, not to be less than
569 Twenty-five Dollars (\$25.00) per day and not to be greater than
570 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
571 25-3-41. In the trial of all cases where jurors are in charge of
572 bailiffs and are not permitted to separate, the sheriff with the
573 approval of the trial judge may pay for room and board of jurors
574 on panel for actual time of trial.

575 No grand juror shall receive any compensation except mileage
576 unless he shall have been sworn as provided by Section 13-5-45;
577 and no petit juror except those jurors called on special venires
578 shall receive any compensation authorized under this subsection

579 except mileage unless he shall have been sworn as provided by
580 Section 13-5-71.

581 (b) Jurors making inquisitions of idiocy, lunacy or of
582 unsound mind and jurors on coroner's inquest shall be paid Five
583 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
584 by the county treasurer on order of the board of supervisors on
585 certificate of the clerk of the chancery court in which such
586 inquisition is held.

587 (c) Jurors in the justice courts shall be paid an
588 amount of not less than Ten Dollars (\$10.00) per day and not more
589 than Fifteen Dollars (\$15.00) per day, to be established by the
590 board of supervisors. In all criminal cases in the justice court
591 wherein the prosecution fails, the fees of jurors shall be paid by
592 the county treasurer on order of the board of supervisors on
593 certificate of the county attorney in all counties that have
594 county attorneys, otherwise by the justice court judge.

595 (2) Any juror may return the fees provided as compensation
596 for service as a juror to the county which paid for such person's
597 service as a juror. The fees returned to the county may be
598 earmarked for a particular purpose to be selected by the juror,
599 including:

600 (a) The local public library;

601 (b) Local law enforcement;

602 (c) The Mississippi Fire Fighters Memorial Burn Center
603 Fund created in Section 7-9-70, Mississippi Code of 1972; or

604 (d) Any other governmental agency.

605 (3) The Administrative Office of Courts shall promulgate
606 rules to establish a Lengthy Trial Fund to be used to provide full
607 or partial wage replacement or wage supplementation to jurors who
608 serve as petit jurors in civil cases for more than ten (10) days.

609 (a) The court rules shall provide for the following:

610 (i) The selection and appointment of an
611 administrator for the fund.

612 (ii) Procedures for the administration of the
613 fund, including payments of salaries of the administrator and
614 other necessary personnel.

615 (iii) Procedures for the accounting, auditing and
616 investment of money in the Lengthy Trial Fund.

617 (iv) A report by the Administrative Office of
618 Courts on the administration of the Lengthy Trial Fund in its
619 annual report on the judicial branch, setting forth the money
620 collected for and disbursed from the fund.

621 (b) The administrator shall use any monies deposited in
622 the Lengthy Trial Fund to pay full or partial wage replacement or
623 supplementation to jurors whose employers pay less than full
624 regular wages when the period of jury service lasts more than ten
625 (10) days.

626 (c) The court may pay replacement or supplemental wages
627 of up to Three Hundred Dollars (\$300.00) per day per juror
628 beginning on the eleventh day of jury service. In addition, for
629 any jurors who qualify for payment by virtue of having served on a
630 jury for more than ten (10) days, the court, upon finding that
631 such service posed a significant financial hardship to a juror,
632 even in light of payments made with respect to jury service after
633 the tenth day, may award replacement or supplemental wages of up
634 to One Hundred Dollars (\$100.00) per day from the fourth to the
635 tenth day of jury service.

636 (d) Any juror who is serving or has served on a jury
637 that qualifies for payment from the Lengthy Trial Fund, provided
638 the service commenced on or after the July 1, 2004, may submit a
639 request for payment from the Lengthy Trial Fund on a form that the
640 administrator provides. Payment shall be limited to the
641 difference between the state-paid jury fee and the actual amount
642 of wages a juror earns, up to the maximum level payable, minus any
643 amount the juror actually receives from the employer during the
644 same time period.

645 (i) The form shall disclose the juror's regular
646 wages, the amount the employer will pay during the term of jury
647 service starting on the eleventh day and thereafter, the amount of
648 replacement or supplemental wages requested, and any other
649 information the administrator deems necessary for proper payment.

650 (ii) The juror also shall be required to submit
651 verification from the employer as to the wage information provided
652 to the administrator, for example, the employee's most recent
653 earnings statement or similar document, prior to initiation of
654 payment from the fund.

655 (iii) If an individual is self-employed or
656 receives compensation other than wages, the individual may provide
657 a sworn affidavit attesting to his or her approximate gross weekly
658 income, together with such other information as the administrator
659 may require, in order to verify weekly income.

660 **SECTION 13.** Section 33-1-5, Mississippi Code of 1972, is
661 amended as follows:

662 33-1-5. Any member of the Mississippi National Guard on
663 active duty shall be exempt from jury duty upon presenting a
664 current written statement from his superior officer that such jury
665 service will be likely to interfere with his military duties.

666 **SECTION 14.** Section 41-17-7, Mississippi Code of 1972, which
667 provides for the exemption from jury service of state insane
668 hospital personnel, is repealed.

669 **SECTION 15.** Section 47-5-55, Mississippi Code of 1972, which
670 provides for the exemption from jury service of state correctional
671 system employees and officers, is repealed.

672 **SECTION 16.** The Legislature recognizes the importance of
673 assuring adequate health care services for all Mississippians, and
674 it acknowledges that physicians are a vital component of providing
675 such services. The Legislature finds that because of the makeup
676 of the citizenry of the state and the percentage of citizens who
677 are (a) Medicaid recipients, (b) State and School Employees Health

678 Insurance Plan participants and (c) Children's Health Insurance
679 Program participants, physicians who provide health care services
680 to such individuals are providing an essential public service and
681 that it is in the public interest to provide funding to further
682 address medical malpractice insurance needs of these physicians.

683 **SECTION 17.** Section 11-46-1, Mississippi Code of 1972, is
684 amended as follows:

685 11-46-1. As used in this chapter the following terms shall
686 have the meanings herein ascribed unless the context otherwise
687 requires:

688 (a) "Claim" means any demand to recover damages from a
689 governmental entity as compensation for injuries.

690 (b) "Claimant" means any person seeking compensation
691 under the provisions of this chapter, whether by administrative
692 remedy or through the courts.

693 (c) "Board" means the Mississippi Tort Claims Board.

694 (d) "Department" means the Department of Finance and
695 Administration.

696 (e) "Director" means the executive director of the
697 department who is also the executive director of the board.

698 (f) "Employee" means:

699 (i) Any officer, employee or servant of the State
700 of Mississippi or a political subdivision of the state, including
701 elected or appointed officials and persons acting on behalf of the
702 state or a political subdivision in any official capacity,
703 temporarily or permanently, in the service of the state or a
704 political subdivision whether with or without compensation. The
705 term "employee" shall not mean a person or other legal entity
706 while acting in the capacity of an independent contractor under
707 contract to the state or a political subdivision; provided,
708 however, that for purposes of the limits of liability provided for
709 in Section 11-46-15, the term "employee" shall include physicians
710 under contract to provide health services with the State Board of

711 Health, the State Board of Mental Health or any county or
712 municipal jail facility while rendering services under such
713 contract. The term "employee" shall also include any physician,
714 dentist or other health care practitioner employed by the
715 University of Mississippi Medical Center (UMMC) and its
716 departmental practice plans who is a faculty member and provides
717 health care services only for patients at UMMC or its affiliated
718 practice sites. The term "employee" shall also include any
719 physician, dentist or other health care practitioner employed by
720 any university under the control of the Board of Trustees of State
721 Institutions of Higher Learning who practices only on the campus
722 of any university under the control of the Board of Trustees of
723 State Institutions of Higher Learning. The term "employee" shall
724 also include any physician, dentist or other health care
725 practitioner employed by the State Veterans Affairs Board and who
726 provides health care services for patients for the State Veterans
727 Affairs Board. The term "employee" shall also include Mississippi
728 Department of Human Services licensed foster parents for the
729 limited purposes of coverage under the Tort Claims Act as provided
730 in Section 11-46-8. For the purposes of the limits of liability
731 provided for in Section 11-46-15 and for no other purpose under
732 this chapter, the term "employee" also shall include any physician
733 who provides health care services to Medicaid recipients, State
734 and School Employees Health Insurance Plan participants and
735 Children's Health Insurance Program participants, provided that at
736 least thirty-five percent (35%) of the physician's patients, as
737 determined by the board, are Medicaid recipients, however, not to
738 exceed one hundred twenty-five (125) physicians; and
739 (ii) Any retired physician who provides volunteer
740 unpaid health care services to any public entity or private
741 entity. For the purposes of this subparagraph (ii), "public
742 entity" means any agency, department, institution, instrumentality
743 or political subdivision of the state, or any agency, department,

744 institution or instrumentality of any political subdivision of the
745 state; and "private entity" means any business, organization,
746 corporation, association or other legal entity which is not a
747 public entity.

748 (g) "Governmental entity" means and includes the state
749 and political subdivisions as herein defined.

750 (h) "Injury" means death, injury to a person, damage to
751 or loss of property or any other injury that a person may suffer
752 that is actionable at law or in equity.

753 (i) "Political subdivision" means any body politic or
754 body corporate other than the state responsible for governmental
755 activities only in geographic areas smaller than that of the
756 state, including, but not limited to, any county, municipality,
757 school district, community hospital as defined in Section
758 41-13-10, Mississippi Code of 1972, airport authority or other
759 instrumentality thereof, whether or not such body or
760 instrumentality thereof has the authority to levy taxes or to sue
761 or be sued in its own name.

762 (j) "State" means the State of Mississippi and any
763 office, department, agency, division, bureau, commission, board,
764 institution, hospital, college, university, airport authority or
765 other instrumentality thereof, whether or not such body or
766 instrumentality thereof has the authority to levy taxes or to sue
767 or be sued in its own name.

768 (k) "Law" means all species of law including, but not
769 limited to, any and all constitutions, statutes, case law, common
770 law, customary law, court order, court rule, court decision, court
771 opinion, court judgment or mandate, administrative rule or
772 regulation, executive order, or principle or rule of equity.

773 **SECTION 18.** There is created in the State Treasury a special
774 fund to the credit of the Mississippi Tort Claims Board, which
775 shall be comprised of any funds that may be made available for the
776 fund by the Legislature. Monies in the fund shall be expended by

777 the Mississippi Tort Claims Board, upon appropriation by the
778 Legislature, only for the purpose of providing additional funds
779 for prior acts extended reporting period coverage and for paying
780 the medical malpractice premiums for those physicians described in
781 Section 11-46-1(f)(ii). Unexpended amounts remaining in the
782 special fund at the end of a fiscal year shall not lapse into the
783 State General Fund, and any interest earned or investment earnings
784 on amounts in the special fund shall be deposited to the credit of
785 the special fund.

786 **SECTION 19.** The Tort Claims Board shall develop methods and
787 promulgate rules and regulations to verify whether a physician
788 meets the percentage requirement under Section 11-46-1(f) to
789 qualify as an employee. There is created an advisory council to
790 assist the Mississippi Tort Claims Board in determining whether a
791 physician meets the percentage requirement under Section
792 11-46-1(f) to qualify as an employee. The advisory council shall
793 be composed of the Executive Director of the Mississippi Medical
794 Association or his designee; the President of the Mississippi
795 Medical and Surgical Association or his designee; the
796 administrator of the Mississippi Tort Claims Board or his
797 designee; two (2) physicians appointed by the Lieutenant Governor;
798 two (2) physicians appointed by the Speaker of the House of
799 Representatives and three (3) nonphysician members, one (1) from
800 each Supreme Court district, appointed by the Governor.

801 **SECTION 20.** **Short title.**

802 Sections 20 through 29 of this act shall be known and may be
803 cited as the Medical Practice Disclosure Act.

804 **SECTION 21.** **Legislative intent.**

805 The State of Mississippi hereby recognizes the necessity of
806 allowing individuals to make informed and educated choices
807 regarding health care services and the essential need to provide
808 information to facilitate these important decisions. It further
809 recognizes that public disclosure of certain health care

810 information would lower the cost of health care through the use of
811 the most appropriate provider and improve the quality of health
812 care services by mandating the reporting of information regarding
813 health care providers.

814 It is the intention of the Legislature to establish a
815 procedure by which the general public may obtain essential and
816 basic information concerning potential health care providers,
817 while ensuring the accuracy and disclosure of all relevant
818 information that would enable individuals to informatively select
819 their health care provider.

820 **SECTION 22. Collection of information.**

821 (1) The State Board of Medical Licensure (board) and the
822 State Department of Health (department) shall collect for each
823 physician licensed or otherwise practicing medicine in the State
824 of Mississippi the following information, in a format developed by
825 the department that shall be available for dissemination to the
826 public:

827 (a) A description of any criminal convictions for
828 felonies and violent misdemeanors as determined by the department.
829 For the purposes of this paragraph, a person shall be deemed to be
830 convicted of a crime if that person pleaded guilty or if that
831 person was found or adjudged guilty by a court of competent
832 jurisdiction.

833 (b) A description of any charges to which a physician
834 pleads nolo contendere or where sufficient facts of guilt were
835 found and the matter was continued without a finding by a court of
836 competent jurisdiction.

837 (c) A description of any final disciplinary actions
838 taken by the State Board of Medical Licensure.

839 (d) A description of any final disciplinary actions by
840 licensing boards in other states or reported in the National
841 Practitioner Data Bank.

842 (e) A description of revocation or involuntary
843 restriction of hospital privileges that have been taken by a
844 hospital's governing body and any other official of a hospital
845 after procedural due process has been afforded, or the resignation
846 from or nonrenewal of medical staff membership or the restriction
847 of privileges at a hospital taken in lieu of or in settlement of a
848 pending disciplinary case.

849 (f) Notwithstanding any law to the contrary, all
850 medical malpractice court judgments and all medical malpractice
851 arbitration awards in which a payment is awarded to a complaining
852 party and all settlements of medical malpractice claims in which a
853 payment is made to a complaining party. Settlement of a claim may
854 occur for a variety of reasons which do not necessarily reflect
855 negatively on the professional competence or conduct of the
856 physician. A payment in settlement of a medical malpractice
857 action or claim should not be construed as creating a presumption
858 that medical malpractice has occurred.

859 (g) All civil court awards or settlements arising from
860 allegations of sexual misconduct filed by patients, employees or
861 hospital staff.

862 (h) A paragraph describing the malpractice experience
863 of each medical specialty and an explanation that some high risk
864 specialties experience more malpractice claims than less risky
865 specialties. This information shall be updated on an annual basis
866 to reflect the most recent malpractice claims experience of each
867 specialty.

868 (i) Names of medical schools and dates of graduation.

869 (j) Graduate medical education.

870 (k) Specialty board certification(s).

871 (l) Number of years in practice.

872 (m) Name of hospitals where the physician has
873 privileges.

874 (n) Appointments to medical school faculties and
875 indication as to whether the physician has a responsibility for
876 graduate medical education.

877 (o) Information regarding publications in peer-reviewed
878 medical literature.

879 (p) Information regarding professional or community
880 service activities and awards.

881 (q) The location of the physician's primary practice
882 location.

883 (r) The indication of any translating services that may
884 be available at the physician's primary practice location.

885 (s) An indication of whether the physician participates
886 in the Medicaid program.

887 (2) The department shall provide each physician with a copy
888 of that physician's profile prior to the release to the public.

889 (3) A physician shall be provided a reasonable time, not to
890 exceed sixty (60) days, to correct factual inaccuracies or
891 omissions that may appear in the profile.

892 (4) (a) A physician may petition the board for permission
893 to temporarily omit certain information for a period not to exceed
894 one (1) year.

895 (b) If the physician demonstrates to the board that
896 disclosure of the information would represent an undue risk of
897 injury to the physician or the property of the physician, the
898 board may grant the request and the information shall be withheld
899 until such time as the situation is resolved, based on the
900 presentation of evidence to the board, for a period not to exceed
901 one (1) year.

902 (5) The board or the department shall not disclose any
903 pending malpractice claims to the public, and nothing in this
904 section shall be construed to prohibit the board or the department
905 from investigating and disciplining a physician on the basis of

906 pending medical malpractice claim information obtained under this
907 act.

908 **SECTION 23. Report of criminal convictions and pleas of nolo**
909 **contendere.**

910 (1) The clerk of any court in which a physician is convicted
911 of any crime or in which any unregistered practitioner is
912 convicted of holding himself out as a practitioner of medicine or
913 of practicing medicine shall, within one (1) week thereafter,
914 report the same to the State Medical Licensure Board, together
915 with a copy of the court proceedings in the case.

916 (2) For the purposes of this section, a person shall be
917 deemed to be convicted of a crime if he pleaded guilty or was
918 found or adjudged guilty by a court of competent jurisdiction.

919 (3) Upon review, the State Board of Medical Licensure shall
920 provide the information to the department for purposes consistent
921 with this act.

922 (4) If a physician pleads nolo contendere to charges or
923 where sufficient facts of guilt were found and the matter was
924 continued without a finding by a court of competent jurisdiction,
925 the clerk shall, within one (1) week thereafter, report the same
926 to the Medical Licensure Board, together with a copy of the court
927 proceedings in the case. Upon review, the Medical Licensure Board
928 shall provide the information to the department for purposes
929 consistent with this act.

930 **SECTION 24. Reports to hospitals and health care facilities.**

931 (1) Each licensed hospital or health care facility shall
932 report to the board and the department if the hospital or facility
933 denies, restricts, revokes or fails to renew staff privileges or
934 accepts the resignation of a physician for any reason related to
935 the physician's competence to practice medicine or for any other
936 reason related to a complaint or allegation regarding any
937 violation of law, regulation, rule or bylaw of the hospital or
938 facility regardless of whether the complaint or allegation

939 specifically states a violation of a specific law, regulation,
940 rule or bylaw. The report shall be filed within thirty (30) days
941 of the occurrence of the reportable action and include details
942 regarding the nature and circumstances of the action, its date and
943 the reasons for it.

944 (2) Each licensed hospital or health care facility shall
945 file an annual disciplinary report with the board no later than
946 January 31 and shall send the report by certified or registered
947 mail. The report shall summarize the action reports submitted for
948 the previous calendar year and shall be signed under oath. If the
949 hospital or facility submitted no action reports for the previous
950 calendar year, then the report required by this subsection shall
951 state that no action reports were required.

952 (3) No hospital, health care facility or person reporting
953 information to the board or the department under this section
954 shall be liable to the physician referenced in the report for
955 making the report, provided that the report is made in good faith
956 and without malice.

957 **SECTION 25. Reports of disciplinary action by professional**
958 **medical organizations.**

959 (1) A professional medical association, society, body,
960 professional standards review organization or similarly
961 constituted professional organization, whether or not such
962 association, society, body or organization is local, regional,
963 state, national or international in scope, shall report to the
964 Medical Licensure Board the disciplinary action taken against any
965 physician. Such report of disciplinary action shall be filed with
966 the board within thirty (30) days of such disciplinary action,
967 shall be in writing and shall be mailed to the board by certified
968 or registered mail.

969 (2) As used in this section, the term "disciplinary action"
970 includes, but is not limited to, revocation, suspension, censure,
971 reprimand, restriction, nonrenewal, denial or restriction of

972 privileges or a resignation shall be reported only when the
973 resignation or the denial or restriction of privileges is related
974 in any way to:

975 (a) The physician's competence to practice medicine; or

976 (b) A complaint or allegation regarding any violation
977 of law or regulation, including, but not limited to, the
978 regulations of the department or the Medical Licensure Board or
979 hospital, health care facility or professional medical association
980 bylaws, whether or not the complaint or allegation specifically
981 cites violation of a specified law, regulation or by law.

982 **SECTION 26. Reports by insurers of malpractice claims or**
983 **actions.**

984 (1) Every insurer or risk management organization which
985 provides professional liability insurance to a physician shall
986 report to the department any claim or action for damages for
987 personal injuries alleged to have been caused by error, omission
988 or negligence in the performance of the physician's professional
989 services where the claim resulted in:

990 (a) Final judgment in any amount;

991 (b) Settlement in any amount; or

992 (c) Final disposition not resulting in payment on
993 behalf of the insured.

994 (2) Reports shall be filed with the board no later than
995 thirty (30) days following the occurrence of any event listed
996 under this section.

997 (3) The reports shall be in writing on a form prescribed by
998 the department and shall contain the following information.

999 (a) The name, address, specialty coverage and policy
1000 number of the physician against whom the claim is made.

1001 (b) The name, address and age of the claimant or
1002 plaintiff.

1003 (c) The nature and substance of the claim.

1004 (d) The date when and place where the claim arose.

1005 (e) The amounts paid, if any, and the date, manner of
1006 disposition, judgment and settlement.

1007 (f) The date and reason for final disposition, if no
1008 judgment or settlement.

1009 (g) Such additional information as the department shall
1010 require. No insurer or its agents or employees shall be liable in
1011 any cause of action arising from reporting to the department as
1012 required in this section.

1013 **SECTION 27. Reports by physicians of settlements or**
1014 **arbitration awards.**

1015 (1) A physician who does not possess professional liability
1016 insurance shall report to the department every settlement or
1017 arbitration award of a claim or action for damages for death or
1018 personal injury caused by negligence, error or omission in
1019 practice, or the unauthorized rendering of professional services
1020 by the physician. The report shall be made within thirty (30)
1021 days after the settlement agreement has been reduced to writing or
1022 thirty (30) days after service of the arbitration award on the
1023 parties as long as it is signed by all the parties.

1024 (2) (a) Except as otherwise provided in this section, a
1025 physician who fails to comply with the provisions of this section
1026 shall be subject to a civil penalty of not more than Five Hundred
1027 Dollars (\$500.00).

1028 (b) A physician who makes a knowing or intentional
1029 failure to comply with the provisions of this section, or
1030 conspires or colludes not to comply with the provisions of this
1031 section, or hinders or impedes any other person in such
1032 compliance, shall be subject to a civil penalty of not less than
1033 Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand
1034 Dollars (\$50,000.00).

1035 **SECTION 28. Public access to information.**

1036 (1) The department shall make available to the public, upon
1037 request by any person or entity, the information compiled by the
1038 board in Section 22 of this act.

1039 (2) Each physician shall make available to the public, free
1040 of charge, information compiled by the board in Section 22 of this
1041 act. All physicians shall conspicuously post at their primary
1042 place of practice a notice stating, "free background information
1043 available upon request."

1044 (3) The department shall disseminate information of Section
1045 22 of this act by posting the information on the state's website
1046 on the Internet.

1047 **SECTION 29. Rules and regulations.**

1048 The board and the department shall in the manner provided by
1049 law promulgate the rules and regulations necessary to carry out
1050 the provisions of this act, including, but not limited to, the
1051 exchange of information between the board and the department and
1052 other relevant state agencies, insurance carriers, hospitals and
1053 judicial administrative offices.

1054 **SECTION 30.** Section 73-43-11, Mississippi Code of 1972, is
1055 amended as follows:

1056 73-43-11. The State Board of Medical Licensure shall have
1057 the following powers and responsibilities:

1058 (a) Setting policies and professional standards
1059 regarding the medical practice of physicians, osteopaths,
1060 podiatrists and physician assistants practicing with physician
1061 supervision;

1062 (b) Considering applications for licensure;

1063 (c) Conducting examinations for licensure;

1064 (d) Investigating alleged violations of the medical
1065 practice act;

1066 (e) Conducting hearings on disciplinary matters
1067 involving violations of state and federal law, probation,
1068 suspension and revocation of licenses;

1069 (f) Considering petitions for termination of
1070 probationary and suspension periods, and restoration of revoked
1071 licenses;

1072 (g) To promulgate and publish reasonable rules and
1073 regulations necessary to enable it to discharge its functions and
1074 to enforce the provisions of law regulating the practice of
1075 medicine;

1076 (h) To enter into contracts with any other state or
1077 federal agency, or with any private person, organization or group
1078 capable of contracting, if it finds such action to be in the
1079 public interest and in the furtherance of its
1080 responsibilities; * * *

1081 (i) Perform the duties prescribed by Sections 73-26-1
1082 through 73-26-5; and

1083 (j) Perform the duties prescribed by the Medical
1084 Practice Disclosure Act.

1085 **SECTION 31.** Section 73-25-27, Mississippi Code of 1972, is
1086 amended as follows:

1087 73-25-27. The Mississippi State Board of Medical Licensure
1088 after notice and opportunity for a hearing to the licentiate, is
1089 authorized to suspend or revoke for any cause named herein any
1090 license it has issued, or the renewal thereof, that authorizes any
1091 person to practice medicine, osteopathy, or any other method of
1092 preventing, diagnosing, relieving, caring for, or treating, or
1093 curing disease, injury or other bodily condition. The procedure
1094 for suspension of a license for being out of compliance with an
1095 order for support, and the procedure for the reissuance or
1096 reinstatement of a license suspended for that purpose, and the
1097 payment of any fees for the reissuance or reinstatement of a
1098 license suspended for that purpose, shall be governed by Section
1099 93-11-157 or 93-11-163, as the case may be. If there is any
1100 conflict between any provision of Section 93-11-157 or 93-11-163

1101 and any provision of this chapter, the provisions of Section
1102 93-11-157 or 93-11-163, as the case may be, shall control.

1103 Such notice shall be effected by registered mail or personal
1104 service setting forth the particular reasons for the proposed
1105 action and fixing a date not less than thirty (30) days or more
1106 than sixty (60) days from the date of such mailing or such
1107 service, at which time the licentiate shall be given an
1108 opportunity for a prompt and fair hearing. For the purpose of
1109 such hearing the board, acting by and through its executive
1110 office, may subpoena persons and papers on its own behalf and on
1111 behalf of licentiate, including records obtained pursuant to
1112 Section 73-25-28, may administer oaths and such testimony when
1113 properly transcribed, together with such papers and exhibits,
1114 shall be admissible in evidence for or against the licentiate. At
1115 such hearing licentiate may appear by counsel and personally in
1116 his own behalf. Any person sworn and examined as a witness in
1117 such hearing shall not be held to answer criminally, nor shall any
1118 papers or documents produced by such witness be competent evidence
1119 in any criminal proceedings against such witness other than for
1120 perjury in delivering his evidence. Any patient or a
1121 representative of the patient who has suffered harm by a physician
1122 subject to a hearing under this section shall have the right to
1123 attend all proceedings regarding such physician. Notice shall be
1124 provided to the patient or his representative at the same time and
1125 in the same manner as the notice is made to the physician. On the
1126 basis of any such hearing, or upon default of the licentiate, the
1127 Board of Medical Licensure shall make a determination specifying
1128 its findings of fact and conclusions of law.

1129 A copy of such determination shall be sent by registered mail
1130 or served personally upon the licentiate. The decision of the
1131 Board of Medical Licensure revoking or suspending the license
1132 shall become final thirty (30) days after so mailed or served
1133 unless within said period the licentiate appeals the decision to

1134 the chancery court, pursuant to the provisions hereof, and the
1135 proceedings in chancery shall be conducted as other matters coming
1136 before the court. All proceedings and evidence, together with
1137 exhibits, presented at such hearing before the Board of Medical
1138 Licensure in the event of appeal shall be admissible in evidence
1139 in said court.

1140 The Board of Medical Licensure may subpoena persons and
1141 papers on its own behalf and on behalf of the respondent,
1142 including records obtained pursuant to Section 73-25-28, may
1143 administer oaths, and may compel the testimony of witnesses. It
1144 may issue commissions to take testimony, and testimony so taken
1145 and sworn to shall be admissible in evidence for and against the
1146 respondent. The Board of Medical Licensure shall be entitled to
1147 the assistance of the chancery court or the chancellor in
1148 vacation, which, on petition by the board, shall issue ancillary
1149 subpoenas and petitions and may punish as for contempt of court in
1150 the event of noncompliance therewith.

1151 Unless the court otherwise decrees, a license that has been
1152 suspended by the Board of Medical Licensure for a stated period of
1153 time shall automatically become valid on the expiration of that
1154 period and a license that has been suspended for an indefinite
1155 period shall become again valid if and when the Board of Medical
1156 Licensure so orders, which it may do on its own motion or on the
1157 petition of the respondent. A license that has been revoked shall
1158 not be restored to validity except: (1) after a rehearing by the
1159 Board of Medical Licensure, on petition of the respondent, for
1160 good cause shown, filed within ten (10) days, immediately
1161 following the service on him of the order or judgment of the Board
1162 of Medical Licensure revoking his license or (2) by order of the
1163 court, on petition as aforesaid. Any licentiate whose license
1164 becomes again valid after a period of suspension or after it has
1165 been restored to validity after a rehearing or by an order of the
1166 court, shall record it again in the office of the clerk of the

1167 circuit court of the county in which he resides in conformity with
1168 the requirements of Section 73-25-13. Nothing in this chapter
1169 shall be construed as limiting or revoking the authority of any
1170 court or of any licensing or registering officer or board, other
1171 than the State Board of Medical Licensure, to suspend, revoke and
1172 reinstate licenses and to cancel registrations under the
1173 provisions of Section 41-29-311.

1174 **SECTION 32.** Any product sold or distributed in Mississippi
1175 by any manufacturer or distributor licensed to do business or
1176 doing business in Mississippi shall publish statewide notice of
1177 any recall of any product or its component parts within thirty
1178 (30) days of the recall. Any manufacturer or distributor who
1179 fails to provide notice of a recall as required by this section
1180 shall, upon conviction, be fined Fifty Thousand Dollars
1181 (\$50,000.00) for each violation. The Attorney General shall
1182 enforce compliance with the provisions of this section.

1183 **SECTION 33.** (1) No policy or contract of liability
1184 insurance shall be issued or delivered in this state unless it
1185 contains provisions to the effect that the insolvency or
1186 bankruptcy of the insured shall not release the insurer from the
1187 payment of damages for injuries sustained or loss occasioned
1188 during the existence of the policy. Any judgment which may be
1189 rendered against the insured for which the insurer is liable which
1190 shall have become executory shall be deemed prima facie evidence
1191 of the insolvency of the insured, and an action may thereafter be
1192 maintained within the terms and limits of the policy by the
1193 injured person or his or her survivors or heirs against the
1194 insurer.

1195 (2) (a) The injured person or his or her survivors or heirs
1196 mentioned in subsection (1) of this section, at their option,
1197 shall have a right of direct action against the insurer within the
1198 terms and limits of the policy; and such action may be brought
1199 against the insurer alone, or against both the insured and insurer

1200 jointly and in solido, in the county in which the accident or
1201 injury occurred or in the county in which an action could be
1202 brought against either the insured or the insurer under the
1203 general rules of venue prescribed by the Rules of Civil Procedure
1204 only. However, such action may be brought against the insurer
1205 alone only when:

1206 (i) The insured has been adjudged a bankrupt by a
1207 court of competent jurisdiction or when proceedings to adjudge an
1208 insured a bankrupt have been commenced before a court of competent
1209 jurisdiction;

1210 (ii) The insured is insolvent;

1211 (iii) Service of citation or other process cannot
1212 be made on the insured;

1213 (iv) When the cause of action is for damages as a
1214 result of an offense or quasi-offense between children and their
1215 parents or between married persons; or

1216 (v) When the insurer is an uninsured motorist
1217 carrier.

1218 (b) This right of direct action shall exist whether or
1219 not the policy of insurance sued upon was written or delivered in
1220 the State of Mississippi and whether or not such policy contains a
1221 provision forbidding such direct action, provided the accident or
1222 injury occurred within the State of Mississippi. Nothing
1223 contained in this section shall be construed to affect the
1224 provisions of the policy or contract if such provisions are not in
1225 violation of the laws of this state.

1226 (3) The policy or contract of liability insurance shall be
1227 admissible into evidence in any proceeding regarding such policy
1228 or contract of liability insurance.

1229 (4) It is the intent of this section that any action brought
1230 under the provisions of this section shall be subject to all of
1231 the lawful conditions of the policy or contract and the defenses
1232 which could be urged by the insurer to a direct action brought by

1233 the insured, provided the terms and conditions of such policy or
1234 contract are not in violation of the laws of this state.

1235 (5) It is also the intent of this section that all liability
1236 policies within their terms and limits are executed for the
1237 benefit of all injured persons and their survivors or heirs to
1238 whom the insured is liable and that it is the purpose of all
1239 liability policies to give protection and coverage to all
1240 insureds, whether they are named insureds or additional insureds
1241 under the omnibus clause, for any legal liability such insured may
1242 have as or for a tort-feasor within the terms and limits of such
1243 policy.

1244 **SECTION 34. Medical review panel.**

1245 (1) **Claims; statute of limitations.**

1246 (a) **Definitions.** For purposes of this section:

1247 (i) "Board" means the Tort Claims Board
1248 established by Section 11-46-18, Mississippi Code of 1972.

1249 (ii) "Health care provider" means a person,
1250 partnership, limited liability partnership, limited liability
1251 company, corporation, facility, or institution licensed by this
1252 state to provide health care or professional services as a
1253 physician, hospital, institution for the aged or infirm, community
1254 blood center, tissue bank, dentist, registered or licensed
1255 practical nurse or certified nurse assistant, ambulance service,
1256 certified registered nurse anesthetist, nurse-midwife, licensed
1257 midwife, pharmacist, optometrist, podiatrist, chiropractor,
1258 physical therapist, occupational therapist, psychologist, social
1259 worker, licensed professional counselor, or any nonprofit facility
1260 considered tax-exempt under Section 501(c)(3), Internal Revenue
1261 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and
1262 treatment of cancer or cancer-related diseases, whether or not
1263 such a facility is required to be licensed by this state, or any
1264 professional corporation a health care provider is authorized to
1265 form under the Mississippi Code of 1972, or any partnership,

1266 limited liability partnership, limited liability company, or
1267 corporation whose business is conducted principally by health care
1268 providers, or an officer, employee, partner, member, shareholder,
1269 or agent thereof acting in the course and scope of his employment.

1270 (iii) "Malpractice" means any unintentional tort
1271 or any breach of contract based on health care or professional
1272 services rendered, or which should have been rendered, by a health
1273 care provider, to a patient, including failure to render services
1274 timely and the handling of a patient, including loading and
1275 unloading of a patient, and also includes all legal responsibility
1276 of a health care provider arising from acts or omissions in the
1277 training or supervision of health care providers, or from defects
1278 in blood, tissue, transplants, drugs and medicines, or from
1279 defects in or failures of prosthetic devices, implanted in or used
1280 on or in the person of a patient.

1281 (b) (i) All malpractice claims against health care
1282 providers, other than claims validly agreed for submission to a
1283 lawfully binding arbitration procedure, shall be reviewed by a
1284 medical review panel as provided in this section unless all
1285 parties specifically waive the use of the medical review panel.

1286 (ii) An action against a health care provider or
1287 his insurer commenced in any court shall be presented to a medical
1288 review panel and an opinion rendered by the panel pursuant to this
1289 section, and the court's request for review shall constitute a
1290 stay pending the panel's decision.

1291 (iii) The request for review of a malpractice
1292 claim under this section shall be made by the court on its own
1293 motion or on the motion of any party.

1294 (c) (i) The request for review must be in writing,
1295 delivered to the board in person or by certified or registered
1296 United States mail, and include as an exhibit the complaint filed.

1297 (ii) Each defendant shall file a written answer
1298 within thirty (30) days of service of the request. If the

1299 defendant fails to file an answer as required, the board shall
1300 notify the defendant of the obligation to file and penalty for
1301 failure to file; notice shall be by certified or registered United
1302 States mail. If the defendant has not filed within thirty (30)
1303 days of the receipt of the notice specified in this subparagraph
1304 (ii), the request for review shall be dismissed; the panel, if
1305 formed, shall be dissolved, and the plaintiff shall be allowed to
1306 proceed in court upon the complaint filed.

1307 **(2) Dismissal of review; dissolution of panel.**

1308 (a) During the pendency of proceedings under this
1309 section, a health care provider against whom a claim has been
1310 filed may raise any exception or defenses available pursuant to
1311 Mississippi law, whether a procedural, statute of limitations or
1312 other exception or defense, at any time without need for
1313 completion of the review process by the medical review panel.

1314 (b) If the court finds for the party raising the
1315 exception or defense, that party shall be dismissed. If there are
1316 no defendants remaining, the panel, if established, shall be
1317 dissolved.

1318 **(3) Composition and selection of panel.**

1319 (a) The medical review panel shall consist of two (2)
1320 physicians who each hold an unlimited license to practice medicine
1321 in Mississippi, one (1) patient advocate appointed by the Tort
1322 Claims Board and one (1) attorney who shall be the nonvoting chair
1323 of the panel. The parties may agree on the attorney member of the
1324 medical review panel within thirty (30) days after the filing of
1325 the answer; if no agreement can be reached, then the attorney
1326 member of the medical review panel shall be selected as follows:

1327 (i) The board shall draw five (5) names at random
1328 from the list of attorneys maintained by the board who have
1329 medical malpractice experience. The names of judges, magistrates,
1330 district attorneys and assistant district attorneys shall be
1331 excluded if drawn and new names drawn in their place. After

1332 selection of the attorney names, the board shall notify the
1333 parties of the attorney names from which the parties, within five
1334 (5) days, may choose the attorney member of the panel. If no
1335 agreement can be reached within five (5) days, the parties shall
1336 immediately initiate a procedure of selecting the attorney by each
1337 striking two (2) names alternately, with the plaintiff striking
1338 first and so advising the defendant of the name of the attorney so
1339 stricken; thereafter, the defendant and the plaintiff shall
1340 alternately strike until both sides have stricken two (2) names
1341 and the remaining name shall be the attorney member of the panel.
1342 If either the plaintiff or defendant fails to strike, the board
1343 shall strike for that party within five (5) additional days.

1344 (ii) After the striking, the board shall notify
1345 the attorney and all parties of the name of the selected attorney.
1346 An attorney who has a conflict of interest shall decline to serve.

1347 (b) The attorney shall act as chairman of the panel and
1348 shall have no vote. The chairman shall preside at panel meetings,
1349 advise the panel as to questions of law, and shall prepare the
1350 opinion of the panel as required in subsection (7) of this
1351 section. It is the duty of the chairman to expedite the selection
1352 of the other panel members, to convene the panel and expedite the
1353 panel's review of the proposed complaint. The attorney chairman
1354 shall establish, by order, a reasonable schedule for submission of
1355 evidence to the medical review panel, but must allow sufficient
1356 time for the parties to make full and adequate presentation of
1357 related facts and authorities within one hundred twenty (120) days
1358 following selection of the panel.

1359 (c) The qualification and selection of physician
1360 members of the medical review panel shall be as follows:

1361 (i) All physicians who hold a license to practice
1362 medicine in the State of Mississippi and who are engaged in the
1363 active practice of medicine in this state, whether in the teaching
1364 profession or otherwise, shall be available for selection and,

1365 unless excused for cause, required to serve upon selection.

1366 (ii) Each party to the action shall have the right
1367 to select one (1) physician and upon selection the physician shall
1368 be required to serve.

1369 (iii) When there are multiple plaintiffs or
1370 defendants, there shall be only one (1) physician selected per
1371 side. The plaintiff, whether single or multiple, shall have the
1372 right to select one (1) physician, and the defendant, whether
1373 single or multiple, shall have the right to select one (1)
1374 physician.

1375 (iv) If any defendant is a physician, the
1376 physicians selected must be of the same specialty as at least one
1377 (1) physician defendant.

1378 (v) Parties and their attorneys are absolutely
1379 prohibited from contact with the physician whose name is
1380 submitted, either before or after submission. No physician may be
1381 informed of the method of any panel member's selection.

1382 (vi) No physician may be selected to serve on more
1383 than four (4) medical review panels in a twelve-month period.

1384 (vii) The physician selection process shall be
1385 completed within thirty (30) days of the selection of the attorney
1386 chairman.

1387 (d) Attorneys and physicians with any financial,
1388 employment, or personal or family ties to any party or attorney
1389 for a party shall not serve on a panel. Any conflict that cannot
1390 be resolved shall be decided by the court upon the motion of any
1391 party.

1392 (4) **Evidence.**

1393 (a) The evidence to be considered by the medical review
1394 panel shall be promptly submitted by the respective parties in
1395 written form only.

1396 (b) The evidence may consist of:

1397 (i) Medical records;

1398 (ii) Sworn statements;
1399 (iii) Expert reports signed by experts;
1400 (iv) Deposition transcripts;
1401 (v) Any other evidence allowed by the medical
1402 review panel or submitted by the parties.

1403 (c) Depositions of the parties only may be taken, and
1404 may be taken prior to the convening of the panel.

1405 (d) Upon request of any party or panel member, the
1406 board shall issue subpoenas and subpoenas duces tecum in aid of
1407 the taking of depositions and the production of documentary
1408 evidence for inspection, copying or both.

1409 (e) The plaintiff must sign a valid authorization
1410 allowing defendants to obtain the plaintiff's medical records.
1411 The defendant shall treat all medical records in a confidential
1412 manner and shall not disclose the contents of the records to
1413 anyone other than the panel or other experts; all other experts
1414 must treat the plaintiff's records as confidential.

1415 (f) The board shall send a copy of the evidence to each
1416 member of the panel.

1417 (5) **Hearings.** (a) After submission of all evidence and
1418 upon ten (10) days' notice to the other side, either party or the
1419 panel shall have the right to convene the panel at a time and
1420 place agreeable to the members of the panel; each party is
1421 entitled to request only one (1) hearing. The panel may hold as
1422 many hearings as it chooses. The purpose of a hearing is to ask
1423 questions as to additional evidence needed and to afford an
1424 opportunity to make oral presentation of the facts. The chairman
1425 of the panel shall preside at all hearings, which shall be
1426 informal.

1427 (b) The following are locations where hearings may be
1428 held:

1429 (i) At a courthouse or other available public
1430 building in the county where the act or omission is alleged to
1431 have occurred.

1432 (ii) The attorney chairman shall decide the
1433 location in the event of any dispute.

1434 (iii) Private offices in the county where the act
1435 or omission is alleged to have occurred may be used if there is no
1436 cost or if the parties pay for the cost.

1437 (6) **Panel deliberations and decision.** After receiving all
1438 evidence from the parties, the panel shall convene to discuss the
1439 evidence presented not less than one (1) time, and, not later than
1440 sixty (60) days after receiving all evidence from the parties,
1441 shall render a written decision signed by the panelists, together
1442 with written reasons for their conclusions, as follows:

1443 (a) There was a breach of the appropriate standard of
1444 care;

1445 (b) There was not a breach of the appropriate standard
1446 of care; or

1447 (c) Whether the defendant or defendants failed to
1448 comply with the appropriate standard of care cannot be determined.

1449 (7) **Form of decision.** The decision reached by the medical
1450 review panel shall be in writing, shall state the facts upon which
1451 it is based, shall be of public record, and shall be admissible as
1452 evidence in the civil case filed.

1453 (8) **Panelist immunity.** A panelist shall have absolute
1454 immunity from civil liability for all communications, findings,
1455 opinions and conclusions made in the course and scope of duties
1456 prescribed by this section.

1457 (9) **Panelist compensation.**

1458 (a) (i) Each physician member of the medical review
1459 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1460 all work performed as a member of the panel, and in addition
1461 thereto, per diem as provided in Section 25-3-69, Mississippi Code

1462 of 1972, and travel expenses as would be calculated for a state
1463 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1464 (ii) The attorney chairman of the medical review
1465 panel shall be paid at the rate of One Hundred Fifty Dollars
1466 (\$150.00) per hour, not to exceed a total of Three Thousand
1467 Dollars (\$3,000.00), for all work performed as a member of the
1468 panel, and in addition thereto, per diem as provided in Section
1469 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1470 calculated for a state employee pursuant to Section 25-3-41,
1471 Mississippi Code of 1972.

1472 (b) The costs of the medical review panel shall be
1473 split between the parties. The panel members shall by affidavit
1474 request the payment due under this subsection (9) from the board,
1475 which in turn shall bill the parties for the proportionate share
1476 of each party.

1477 (10) **Delivery and effect of decision.** The chairman shall
1478 submit a copy of the panel's report to the board and all parties
1479 and attorneys by registered or certified mail within five (5) days
1480 after the panel renders its opinion. The panel's report shall be
1481 of public record.

1482 (11) **Allocation of attorney fees and expenses.**

1483 (a) If the decision of the panel finds for the
1484 defendant and the defendant prevails in court, the plaintiff shall
1485 pay reasonable attorney fees and expenses of the defendant to be
1486 determined by the court.

1487 (b) If the decision of the panel finds for the
1488 plaintiff:

1489 (i) The plaintiff may submit a written settlement
1490 offer for a sum certain to the defendant. If the defendant
1491 rejects the settlement offer, the plaintiff prevails in court, and
1492 the judgment is equal to or greater than the settlement offer, the
1493 defendant shall pay reasonable attorney fees and expenses of the
1494 plaintiff to be determined by the court.

1495 (ii) The defendant also may submit a written
1496 settlement offer for a sum certain to the plaintiff. If the
1497 plaintiff rejects the settlement offer and the defendant prevails
1498 in the subsequent court action, or the plaintiff prevails but the
1499 judgment is less than the defendant's settlement offer, the
1500 plaintiff shall pay reasonable attorney fees and expenses of the
1501 defendant to be determined by the court.

1502 **SECTION 35.** Section 11-46-19, Mississippi Code of 1972, is
1503 amended as follows:

1504 **[Until July 1, 2005, this section shall read as follows:]**

1505 11-46-19. (1) The board shall have the following powers:

1506 (a) To provide oversight over the Tort Claims Fund;

1507 (b) To approve any award made from the Tort Claims
1508 Fund;

1509 (c) To pay all necessary expenses attributable to the
1510 operation of the Tort Claims Fund from such fund;

1511 (d) To assign litigated claims against governmental
1512 entities other than political subdivisions to competent attorneys
1513 unless such governmental entity has a staff attorney who is
1514 competent to represent the governmental entity and is approved by
1515 the board; the board shall give primary consideration to attorneys
1516 practicing in the jurisdiction where the claim arose in assigning
1517 cases; attorneys hired to represent a governmental entity other
1518 than a political subdivision shall be paid according to the
1519 department fee schedule;

1520 (e) To approve all claimants' attorney fees in claims
1521 against the state;

1522 (f) To employ on a full-time basis a staff attorney who
1523 shall possess the minimum qualifications required to be a member
1524 of The Mississippi Bar, and such other staff as it may deem
1525 necessary to carry out the purposes of this chapter; the employees
1526 in the positions approved by the board shall be hired by the

1527 director, shall be employees of the department, and shall be
1528 compensated from the Tort Claims Fund;

1529 (g) To contract with one or more reputable insurance
1530 consulting firms as may be necessary;

1531 (h) To purchase any policies of liability insurance and
1532 to administer any plan of self-insurance or policies of liability
1533 insurance required for the protection of the state against claims
1534 and suits brought under this chapter;

1535 (i) To expend money from the Tort Claims Fund for the
1536 purchase of any policies of liability insurance and the payment of
1537 any award or settlement of a claim against the state under the
1538 provisions of this chapter or of a claim against any school
1539 district, junior college or community college district, or state
1540 agency, arising from the operation of school buses or other
1541 vehicles, under the provisions of Section 37-41-42;

1542 (j) To cancel, modify or replace any policy or policies
1543 of liability insurance procured by the board;

1544 (k) To issue certificates of coverage to governmental
1545 entities, including any political subdivision participating in any
1546 plan of liability protection approved by the board;

1547 (l) To review and approve or reject any plan of
1548 liability insurance or self-insurance reserves proposed or
1549 provided by political subdivisions if such plan is intended to
1550 serve as security for risks of claims and suits against them for
1551 which immunity has been waived under this chapter;

1552 (m) To administer disposition of claims against the
1553 Tort Claims Fund;

1554 (n) To withhold issuance of any warrants payable from
1555 funds of a participating state entity should such entity fail to
1556 make required contributions to the Tort Claims Fund in the time
1557 and manner prescribed by the board;

1558 (o) To develop a comprehensive statewide list of
1559 attorneys who are qualified to represent the state and any

1560 employee thereof named as a defendant in a claim brought under
1561 this chapter against the state or such employee;

1562 (p) To develop a schedule of fees for paying attorneys
1563 defending claims against the state or an employee thereof;

1564 (q) To adopt and promulgate such reasonable rules and
1565 regulations and to do and perform all such acts as are necessary
1566 to carry out its powers and duties under this chapter;

1567 (r) To establish and assess premiums to be paid by
1568 governmental entities required to participate in the Tort Claims
1569 Fund;

1570 (s) To contract with a third-party administrator to
1571 process claims against the state under this chapter;

1572 (t) To annually submit its budget request to the
1573 Legislature as a state agency;

1574 (u) To dispose of salvage obtained in settlement or
1575 payment of any claim at fair market value by such means and upon
1576 such terms as the board may think best; * * *

1577 (v) To administer the Medical Malpractice Insurance
1578 Availability Plan under Section 83-48-5; and

1579 (w) To act as the board as required under House Bill
1580 No. _____, 2004 First Extraordinary Session, dealing with medical
1581 malpractice claims as follows:

1582 (i) To accept filings under the act;

1583 (ii) To coordinate the selection of panels;

1584 (iii) To maintain lists of attorneys eligible for
1585 appointment as attorney chairmen;

1586 (iv) To promulgate rules in reference to the
1587 qualifications of attorneys serving as panel members;

1588 (v) To promulgate rules and regulations necessary
1589 to implement the provisions of Section 34 of House Bill No. _____,
1590 2004 First Extraordinary Session; and

1591 (vi) To provide general administrative support.

1592 (2) Policies of liability insurance purchased for the
1593 protection of governmental entities against claims and suits
1594 brought under this chapter shall be purchased pursuant to the
1595 competitive bidding procedures set forth in Section 31-7-13.

1596 (3) The department shall have the following powers and
1597 duties:

1598 (a) To annually report to the Legislature concerning
1599 each comprehensive plan of liability protection established
1600 pursuant to Section 11-46-17(2). Such report shall include a
1601 comprehensive analysis of the cost of the plan, a breakdown of the
1602 cost to participating state entities, and such other information
1603 as the department may deem necessary.

1604 (b) To provide the board with any staff and meeting
1605 facilities as may be necessary to carry out the duties of the
1606 board as provided in this chapter.

1607 (c) To submit the board's budget request for the
1608 initial year of operation of the board in order to authorize
1609 expenditures for the 1993-1994 fiscal year and for the
1610 appropriation of such general funds as shall be required for the
1611 commencement of its activities.

1612 **[From and after July 1, 2005, this section shall read as**
1613 **follows:]**

1614 11-46-19. (1) The board shall have the following powers:

1615 (a) To provide oversight over the Tort Claims Fund;

1616 (b) To approve any award made from the Tort Claims
1617 Fund;

1618 (c) To pay all necessary expenses attributable to the
1619 operation of the Tort Claims Fund from such fund;

1620 (d) To assign litigated claims against governmental
1621 entities other than political subdivisions to competent attorneys
1622 unless such governmental entity has a staff attorney who is
1623 competent to represent the governmental entity and is approved by
1624 the board; the board shall give primary consideration to attorneys

1625 practicing in the jurisdiction where the claim arose in assigning
1626 cases; attorneys hired to represent a governmental entity other
1627 than a political subdivision shall be paid according to the
1628 department fee schedule;

1629 (e) To approve all claimants' attorney fees in claims
1630 against the state;

1631 (f) To employ on a full-time basis a staff attorney who
1632 shall possess the minimum qualifications required to be a member
1633 of The Mississippi Bar, and such other staff as it may deem
1634 necessary to carry out the purposes of this chapter; the employees
1635 in the positions approved by the board shall be hired by the
1636 director, shall be employees of the department, and shall be
1637 compensated from the Tort Claims Fund;

1638 (g) To contract with one or more reputable insurance
1639 consulting firms as may be necessary;

1640 (h) To purchase any policies of liability insurance and
1641 to administer any plan of self-insurance or policies of liability
1642 insurance required for the protection of the state against claims
1643 and suits brought under this chapter;

1644 (i) To expend money from the Tort Claims Fund for the
1645 purchase of any policies of liability insurance and the payment of
1646 any award or settlement of a claim against the state under the
1647 provisions of this chapter or of a claim against any school
1648 district, junior college or community college district, or state
1649 agency, arising from the operation of school buses or other
1650 vehicles, under the provisions of Section 37-41-42;

1651 (j) To cancel, modify or replace any policy or policies
1652 of liability insurance procured by the board;

1653 (k) To issue certificates of coverage to governmental
1654 entities, including any political subdivision participating in any
1655 plan of liability protection approved by the board;

1656 (l) To review and approve or reject any plan of
1657 liability insurance or self-insurance reserves proposed or

1658 provided by political subdivisions if such plan is intended to
1659 serve as security for risks of claims and suits against them for
1660 which immunity has been waived under this chapter;

1661 (m) To administer disposition of claims against the
1662 Tort Claims Fund;

1663 (n) To withhold issuance of any warrants payable from
1664 funds of a participating state entity should such entity fail to
1665 make required contributions to the Tort Claims Fund in the time
1666 and manner prescribed by the board;

1667 (o) To develop a comprehensive statewide list of
1668 attorneys who are qualified to represent the state and any
1669 employee thereof named as a defendant in a claim brought under
1670 this chapter against the state or such employee;

1671 (p) To develop a schedule of fees for paying attorneys
1672 defending claims against the state or an employee thereof;

1673 (q) To adopt and promulgate such reasonable rules and
1674 regulations and to do and perform all such acts as are necessary
1675 to carry out its powers and duties under this chapter;

1676 (r) To establish and assess premiums to be paid by
1677 governmental entities required to participate in the Tort Claims
1678 Fund;

1679 (s) To contract with a third-party administrator to
1680 process claims against the state under this chapter;

1681 (t) To annually submit its budget request to the
1682 Legislature as a state agency;

1683 (u) To dispose of salvage obtained in settlement or
1684 payment of any claim at fair market value by such means and upon
1685 such terms as the board may think best; and

1686 (v) To act as the board as required under House Bill
1687 No. _____, 2004 First Extraordinary Session, dealing with medical
1688 malpractice claims as follows:

1689 (i) To accept filings under the act;

1690 (ii) To coordinate the selection of panels;

1691 (iii) To maintain lists of attorneys eligible for
1692 appointment as attorney chairmen;

1693 (iv) To promulgate rules in reference to the
1694 qualifications of attorneys serving as panel members;

1695 (v) To promulgate rules and regulations necessary
1696 to implement the provisions of Section 34 of House Bill No. _____,
1697 2004 First Extraordinary Session; and

1698 (vi) To provide general administrative support.

1699 (2) Policies of liability insurance purchased for the
1700 protection of governmental entities against claims and suits
1701 brought under this chapter shall be purchased pursuant to the
1702 competitive bidding procedures set forth in Section 31-7-13.

1703 (3) The department shall have the following powers and
1704 duties:

1705 (a) To annually report to the Legislature concerning
1706 each comprehensive plan of liability protection established
1707 pursuant to Section 11-46-17(2). Such report shall include a
1708 comprehensive analysis of the cost of the plan, a breakdown of the
1709 cost to participating state entities, and such other information
1710 as the department may deem necessary.

1711 (b) To provide the board with any staff and meeting
1712 facilities as may be necessary to carry out the duties of the
1713 board as provided in this chapter.

1714 (c) To submit the board's budget request for the
1715 initial year of operation of the board in order to authorize
1716 expenditures for the 1993-1994 fiscal year and for the
1717 appropriation of such general funds as shall be required for the
1718 commencement of its activities.

1719 **SECTION 36.** If any provision of this act is held by a court
1720 to be invalid, such invalidity shall not affect the remaining
1721 provisions of this act, and to this end the provisions of this act
1722 are declared severable.

1723 **SECTION 37.** This act shall take effect and be in force from
1724 and after July 1, 2004, and Sections 1 through 5 of this act shall
1725 apply to all causes of action filed on or after that date.