

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 8

1 AN ACT TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED
 3 LIABILITY UNDER THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS
 4 WHO PROVIDE HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND
 5 SCHOOL EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S
 6 HEALTH INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE
 7 PERCENT OF THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR
 8 NOT TO EXCEED ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE
 9 CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH
 10 CARE SERVICES TO ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO PROVIDE
 11 FOR MEDICAL PRACTICE DISCLOSURE; TO IMPOSE POWERS AND DUTIES ON
 12 THE STATE BOARD OF MEDICAL LICENSURE AND THE STATE DEPARTMENT OF
 13 HEALTH; TO PROVIDE FOR PENALTIES; TO AMEND SECTION 73-43-11,
 14 MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO PROVIDE THAT ALL
 15 MALPRACTICE CLAIMS SHALL BE REVIEWED BY A MEDICAL REVIEW PANEL; TO
 16 ALLOW PARTIES TO MUTUALLY AGREE TO OPT OUT OF THIS REQUIREMENT; TO
 17 ESTABLISH THE MEMBERSHIP OF THE REVIEW PANEL; TO PROVIDE WHAT
 18 EVIDENCE MAY BE CONSIDERED BY THE PANEL; TO PROVIDE THE FORM OF
 19 THE DECISION; TO PROVIDE FOR PANELIST IMMUNITY AND COMPENSATION;
 20 TO PROVIDE THAT THE LOSING PARTY SHALL PAY ATTORNEY FEES TO THE
 21 PREVAILING PARTY UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION
 22 11-46-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
 23 PROVIDE UNIFORMITY FOR CERTAIN MEDICAL FEES; AND FOR RELATED
 24 PURPOSES.

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

26 **SECTION 1.** Section 11-46-1, Mississippi Code of 1972, is
 27 amended as follows:

28 11-46-1. As used in this chapter the following terms shall
 29 have the meanings herein ascribed unless the context otherwise
 30 requires:

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

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

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

37 (d) "Department" means the Department of Finance and
 38 Administration.

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

41 (f) "Employee" means:

42 (i) Any officer, employee or servant of the State
43 of Mississippi or a political subdivision of the state, including
44 elected or appointed officials and persons acting on behalf of the
45 state or a political subdivision in any official capacity,
46 temporarily or permanently, in the service of the state or a
47 political subdivision whether with or without compensation. The
48 term "employee" shall not mean a person or other legal entity
49 while acting in the capacity of an independent contractor under
50 contract to the state or a political subdivision; provided,
51 however, that for purposes of the limits of liability provided for
52 in Section 11-46-15, the term "employee" shall include physicians
53 under contract to provide health services with the State Board of
54 Health, the State Board of Mental Health or any county or
55 municipal jail facility while rendering services under such
56 contract. The term "employee" shall also include any physician,
57 dentist or other health care practitioner employed by the
58 University of Mississippi Medical Center (UMMC) and its
59 departmental practice plans who is a faculty member and provides
60 health care services only for patients at UMMC or its affiliated
61 practice sites. The term "employee" shall also include any
62 physician, dentist or other health care practitioner employed by
63 any university under the control of the Board of Trustees of State
64 Institutions of Higher Learning who practices only on the campus
65 of any university under the control of the Board of Trustees of
66 State Institutions of Higher Learning. The term "employee" shall
67 also include any physician, dentist or other health care
68 practitioner employed by the State Veterans Affairs Board and who
69 provides health care services for patients for the State Veterans
70 Affairs Board. The term "employee" shall also include Mississippi
71 Department of Human Services licensed foster parents for the

72 limited purposes of coverage under the Tort Claims Act as provided
73 in Section 11-46-8. For the purposes of the limits of liability
74 provided for in Section 11-46-15 and for no other purpose under
75 this chapter, the term "employee" also shall include any physician
76 who provides health care services to Medicaid recipients, State
77 and School Employees Health Insurance Plan participants and
78 Children's Health Insurance Program participants, provided that at
79 least thirty-five percent (35%) of the physician's patients, as
80 determined by the board, are Medicaid recipients, however, not to
81 exceed one hundred twenty-five (125) physicians; and

82 (ii) Any retired physician who provides volunteer
83 unpaid health care services to any public entity or private
84 entity. For the purposes of this subparagraph (ii), "public
85 entity" means any agency, department, institution, instrumentality
86 or political subdivision of the state, or any agency, department,
87 institution or instrumentality of any political subdivision of the
88 state; and "private entity" means any business, organization,
89 corporation, association or other legal entity which is not a
90 public entity.

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

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

96 (i) "Political subdivision" means any body politic or
97 body corporate other than the state responsible for governmental
98 activities only in geographic areas smaller than that of the
99 state, including, but not limited to, any county, municipality,
100 school district, community hospital as defined in Section
101 41-13-10, Mississippi Code of 1972, airport authority or other
102 instrumentality thereof, whether or not such body or
103 instrumentality thereof has the authority to levy taxes or to sue
104 or be sued in its own name.

105 (j) "State" means the State of Mississippi and any
106 office, department, agency, division, bureau, commission, board,
107 institution, hospital, college, university, airport authority or
108 other instrumentality thereof, whether or not such body or
109 instrumentality thereof has the authority to levy taxes or to sue
110 or be sued in its own name.

111 (k) "Law" means all species of law including, but not
112 limited to, any and all constitutions, statutes, case law, common
113 law, customary law, court order, court rule, court decision, court
114 opinion, court judgment or mandate, administrative rule or
115 regulation, executive order, or principle or rule of equity.

116 **SECTION 2. Short title.**

117 Sections 2 through 11 of this act shall be known and may be
118 cited as the Medical Practice Disclosure Act.

119 **SECTION 3. Legislative intent.**

120 The State of Mississippi hereby recognizes the necessity of
121 allowing individuals to make informed and educated choices
122 regarding health care services and the essential need to provide
123 information to facilitate these important decisions. It further
124 recognizes that public disclosure of certain health care
125 information would lower the cost of health care through the use of
126 the most appropriate provider and improve the quality of health
127 care services by mandating the reporting of information regarding
128 health care providers.

129 It is the intention of the Legislature to establish a
130 procedure by which the general public may obtain essential and
131 basic information concerning potential health care providers,
132 while ensuring the accuracy and disclosure of all relevant
133 information that would enable individuals to informatively select
134 their health care provider.

135 **SECTION 4. Collection of information.**

136 (1) The State Board of Medical Licensure (board) and the
137 State Department of Health (department) shall collect for each

138 physician licensed or otherwise practicing medicine in the State
139 of Mississippi the following information, in a format developed by
140 the department that shall be available for dissemination to the
141 public:

142 (a) A description of any criminal convictions for
143 felonies and violent misdemeanors as determined by the department.
144 For the purposes of this paragraph, a person shall be deemed to be
145 convicted of a crime if that person pleaded guilty or if that
146 person was found or adjudged guilty by a court of competent
147 jurisdiction.

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

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

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

157 (e) A description of revocation or involuntary
158 restriction of hospital privileges that have been taken by a
159 hospital's governing body and any other official of a hospital
160 after procedural due process has been afforded, or the resignation
161 from or nonrenewal of medical staff membership or the restriction
162 of privileges at a hospital taken in lieu of or in settlement of a
163 pending disciplinary case.

164 (f) Notwithstanding any law to the contrary, all
165 medical malpractice court judgments and all medical malpractice
166 arbitration awards in which a payment is awarded to a complaining
167 party and all settlements of medical malpractice claims in which a
168 payment is made to a complaining party. Settlement of a claim may
169 occur for a variety of reasons which do not necessarily reflect
170 negatively on the professional competence or conduct of the

171 physician. A payment in settlement of a medical malpractice
172 action or claim should not be construed as creating a presumption
173 that medical malpractice has occurred.

174 (g) All civil court awards or settlements arising from
175 allegations of sexual misconduct filed by patients, employees or
176 hospital staff.

177 (h) A paragraph describing the malpractice experience
178 of each medical specialty and an explanation that some high risk
179 specialties experience more malpractice claims than less risky
180 specialties. This information shall be updated on an annual basis
181 to reflect the most recent malpractice claims experience of each
182 specialty.

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

184 (j) Graduate medical education.

185 (k) Specialty board certification(s).

186 (l) Number of years in practice.

187 (m) Name of hospitals where the physician has
188 privileges.

189 (n) Appointments to medical school faculties and
190 indication as to whether the physician has a responsibility for
191 graduate medical education.

192 (o) Information regarding publications in peer-reviewed
193 medical literature.

194 (p) Information regarding professional or community
195 service activities and awards.

196 (q) The location of the physician's primary practice
197 location.

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

200 (s) An indication of whether the physician participates
201 in the Medicaid program.

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

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

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

210 (b) If the physician demonstrates to the board that
211 disclosure of the information would represent an undue risk of
212 injury to the physician or the property of the physician, the
213 board may grant the request and the information shall be withheld
214 until such time as the situation is resolved, based on the
215 presentation of evidence to the board, for a period not to exceed
216 one (1) year.

217 (5) The board or the department shall not disclose any
218 pending malpractice claims to the public, and nothing in this
219 section shall be construed to prohibit the board or the department
220 from investigating and disciplining a physician on the basis of
221 pending medical malpractice claim information obtained under this
222 act.

223 **SECTION 5. Report of criminal convictions and pleas of nolo**
224 **contendere.**

225 (1) The clerk of any court in which a physician is convicted
226 of any crime or in which any unregistered practitioner is
227 convicted of holding himself out as a practitioner of medicine or
228 of practicing medicine shall, within one (1) week thereafter,
229 report the same to the State Medical Licensure Board, together
230 with a copy of the court proceedings in the case.

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

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

237 (4) If a physician pleads nolo contendere to charges or
238 where sufficient facts of guilt were found and the matter was
239 continued without a finding by a court of competent jurisdiction,
240 the clerk shall, within one (1) week thereafter, report the same
241 to the Medical Licensure Board, together with a copy of the court
242 proceedings in the case. Upon review, the Medical Licensure Board
243 shall provide the information to the department for purposes
244 consistent with this act.

245 **SECTION 6. Reports to hospitals and health care facilities.**

246 (1) Each licensed hospital or health care facility shall
247 report to the board and the department if the hospital or facility
248 denies, restricts, revokes or fails to renew staff privileges or
249 accepts the resignation of a physician for any reason related to
250 the physician's competence to practice medicine or for any other
251 reason related to a complaint or allegation regarding any
252 violation of law, regulation, rule or bylaw of the hospital or
253 facility regardless of whether the complaint or allegation
254 specifically states a violation of a specific law, regulation,
255 rule or bylaw. The report shall be filed within thirty (30) days
256 of the occurrence of the reportable action and include details
257 regarding the nature and circumstances of the action, its date and
258 the reasons for it.

259 (2) Each licensed hospital or health care facility shall
260 file an annual disciplinary report with the board no later than
261 January 31 and shall send the report by certified or registered
262 mail. The report shall summarize the action reports submitted for
263 the previous calendar year and shall be signed under oath. If the
264 hospital or facility submitted no action reports for the previous
265 calendar year, then the report required by this subsection shall
266 state that no action reports were required.

267 (3) No hospital, health care facility or person reporting
268 information to the board or the department under this section
269 shall be liable to the physician referenced in the report for

270 making the report, provided that the report is made in good faith
271 and without malice.

272 **SECTION 7. Reports of disciplinary action by professional**
273 **medical organizations.**

274 (1) A professional medical association, society, body,
275 professional standards review organization or similarly
276 constituted professional organization, whether or not such
277 association, society, body or organization is local, regional,
278 state, national or international in scope, shall report to the
279 Medical Licensure Board the disciplinary action taken against any
280 physician. Such report of disciplinary action shall be filed with
281 the board within thirty (30) days of such disciplinary action,
282 shall be in writing and shall be mailed to the board by certified
283 or registered mail.

284 (2) As used in this section, the term "disciplinary action"
285 includes, but is not limited to, revocation, suspension, censure,
286 reprimand, restriction, nonrenewal, denial or restriction of
287 privileges or a resignation shall be reported only when the
288 resignation or the denial or restriction of privileges is related
289 in any way to:

- 290 (a) The physician's competence to practice medicine; or
291 (b) A complaint or allegation regarding any violation
292 of law or regulation, including, but not limited to, the
293 regulations of the department or the Medical Licensure Board or
294 hospital, health care facility or professional medical association
295 bylaws, whether or not the complaint or allegation specifically
296 cites violation of a specified law, regulation or by law.

297 **SECTION 8. Reports by insurers of malpractice claims or**
298 **actions.**

299 (1) Every insurer or risk management organization which
300 provides professional liability insurance to a physician shall
301 report to the department any claim or action for damages for
302 personal injuries alleged to have been caused by error, omission

303 or negligence in the performance of the physician's professional
304 services where the claim resulted in:

305 (a) Final judgment in any amount;

306 (b) Settlement in any amount; or

307 (c) Final disposition not resulting in payment on
308 behalf of the insured.

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

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

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

316 (b) The name, address and age of the claimant or
317 plaintiff.

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

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

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

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

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

328 **SECTION 9. Reports by physicians of settlements or**
329 **arbitration awards.**

330 (1) A physician who does not possess professional liability
331 insurance shall report to the department every settlement or
332 arbitration award of a claim or action for damages for death or
333 personal injury caused by negligence, error or omission in
334 practice, or the unauthorized rendering of professional services
335 by the physician. The report shall be made within thirty (30)

336 days after the settlement agreement has been reduced to writing or
337 thirty (30) days after service of the arbitration award on the
338 parties as long as it is signed by all the parties.

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

343 (b) A physician who makes a knowing or intentional
344 failure to comply with the provisions of this section, or
345 conspires or colludes not to comply with the provisions of this
346 section, or hinders or impedes any other person in such
347 compliance, shall be subject to a civil penalty of not less than
348 Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand
349 Dollars (\$50,000.00).

350 **SECTION 10. Public access to information.**

351 (1) Effective July 1, 2004, a fee of not more than Twenty
352 Dollars (\$20.00) shall be assessed to all physicians, and the fee
353 shall be collected by the department every two (2) years to offset
354 the costs associated with this act.

355 (2) The department shall make available to the public, upon
356 request by any person or entity and upon payment of a reasonable
357 copy charge not to exceed One Dollar (\$1.00) per page, the
358 information compiled by the board in Section 26 of this act.

359 (3) Each physician shall make available to the public, free
360 of charge, information compiled by the board in Section 26 of this
361 act. All physicians shall conspicuously post at their primary
362 place of practice a notice stating, "free background information
363 available upon request."

364 (4) The department shall disseminate information of Section
365 26 of this act by posting the information on the state's website
366 on the Internet. The fees collected under subsection (1) may be
367 used to pay for the expenses of complying with this subsection.

368 **SECTION 11. Rules and regulations.**

369 The board and the department shall in the manner provided by
370 law promulgate the rules and regulations necessary to carry out
371 the provisions of this act, including, but not limited to, the
372 exchange of information between the board and the department and
373 other relevant state agencies, insurance carriers, hospitals and
374 judicial administrative offices.

375 **SECTION 12.** Section 73-43-11, Mississippi Code of 1972, is
376 amended as follows:

377 73-43-11. The State Board of Medical Licensure shall have
378 the following powers and responsibilities:

379 (a) Setting policies and professional standards
380 regarding the medical practice of physicians, osteopaths,
381 podiatrists and physician assistants practicing with physician
382 supervision;

383 (b) Considering applications for licensure;

384 (c) Conducting examinations for licensure;

385 (d) Investigating alleged violations of the medical
386 practice act;

387 (e) Conducting hearings on disciplinary matters
388 involving violations of state and federal law, probation,
389 suspension and revocation of licenses;

390 (f) Considering petitions for termination of
391 probationary and suspension periods, and restoration of revoked
392 licenses;

393 (g) To promulgate and publish reasonable rules and
394 regulations necessary to enable it to discharge its functions and
395 to enforce the provisions of law regulating the practice of
396 medicine;

397 (h) To enter into contracts with any other state or
398 federal agency, or with any private person, organization or group
399 capable of contracting, if it finds such action to be in the
400 public interest and in the furtherance of its
401 responsibilities; * * *

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

404 (j) Perform the duties prescribed by the Medical
405 Practice Disclosure Act.

406 **SECTION 13. Medical review panel.**

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

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

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

411 (ii) "Health care provider" means a person,
412 partnership, limited liability partnership, limited liability
413 company, corporation, facility, or institution licensed by this
414 state to provide health care or professional services as a
415 physician, hospital, institution for the aged or infirm, community
416 blood center, tissue bank, dentist, registered or licensed
417 practical nurse or certified nurse assistant, ambulance service,
418 certified registered nurse anesthetist, nurse-midwife, licensed
419 midwife, pharmacist, optometrist, podiatrist, chiropractor,
420 physical therapist, occupational therapist, psychologist, social
421 worker, licensed professional counselor, or any nonprofit facility
422 considered tax-exempt under Section 501(c)(3), Internal Revenue
423 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and
424 treatment of cancer or cancer-related diseases, whether or not
425 such a facility is required to be licensed by this state, or any
426 professional corporation a health care provider is authorized to
427 form under the Mississippi Code of 1972, or any partnership,
428 limited liability partnership, limited liability company, or
429 corporation whose business is conducted principally by health care
430 providers, or an officer, employee, partner, member, shareholder,
431 or agent thereof acting in the course and scope of his employment.

432 (iii) "Malpractice" means any unintentional tort
433 or any breach of contract based on health care or professional
434 services rendered, or which should have been rendered, by a health

435 care provider, to a patient, including failure to render services
436 timely and the handling of a patient, including loading and
437 unloading of a patient, and also includes all legal responsibility
438 of a health care provider arising from acts or omissions in the
439 training or supervision of health care providers, or from defects
440 in blood, tissue, transplants, drugs and medicines, or from
441 defects in or failures of prosthetic devices, implanted in or used
442 on or in the person of a patient.

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

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

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

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

459 (ii) Each defendant shall file a written answer
460 within thirty (30) days of service of the request. If the
461 defendant fails to file an answer as required, the board shall
462 notify the defendant of the obligation to file and penalty for
463 failure to file; notice shall be by certified or registered United
464 States mail. If the defendant has not filed within thirty (30)
465 days of the receipt of the notice specified in this subparagraph
466 (ii), the request for review shall be dismissed; the panel, if

467 formed, shall be dissolved, and the plaintiff shall be allowed to
468 proceed in court upon the complaint filed.

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

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

476 (b) If the court finds for the party raising the
477 exception or defense, that party shall be dismissed. If there are
478 no defendants remaining, the panel, if established, shall be
479 dissolved.

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

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

489 (i) The board shall draw five (5) names at random
490 from the list of attorneys maintained by the board who have
491 medical malpractice experience. The names of judges, magistrates,
492 district attorneys and assistant district attorneys shall be
493 excluded if drawn and new names drawn in their place. After
494 selection of the attorney names, the board shall notify the
495 parties of the attorney names from which the parties, within five
496 (5) days, may choose the attorney member of the panel. If no
497 agreement can be reached within five (5) days, the parties shall
498 immediately initiate a procedure of selecting the attorney by each
499 striking two (2) names alternately, with the plaintiff striking

500 first and so advising the defendant of the name of the attorney so
501 stricken; thereafter, the defendant and the plaintiff shall
502 alternately strike until both sides have stricken two (2) names
503 and the remaining name shall be the attorney member of the panel.
504 If either the plaintiff or defendant fails to strike, the board
505 shall strike for that party within five (5) additional days.

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

509 (b) The attorney shall act as chairman of the panel and
510 shall have no vote. The chairman shall preside at panel meetings,
511 advise the panel as to questions of law, and shall prepare the
512 opinion of the panel as required in subsection (7) of this
513 section. It is the duty of the chairman to expedite the selection
514 of the other panel members, to convene the panel and expedite the
515 panel's review of the proposed complaint. The attorney chairman
516 shall establish, by order, a reasonable schedule for submission of
517 evidence to the medical review panel, but must allow sufficient
518 time for the parties to make full and adequate presentation of
519 related facts and authorities within one hundred twenty (120) days
520 following selection of the panel.

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

523 (i) All physicians who hold a license to practice
524 medicine in the State of Mississippi and who are engaged in the
525 active practice of medicine in this state, whether in the teaching
526 profession or otherwise, shall be available for selection and,
527 unless excused for cause, required to serve upon selection.

528 (ii) Each party to the action shall have the right
529 to select one (1) physician and upon selection the physician shall
530 be required to serve.

531 (iii) When there are multiple plaintiffs or
532 defendants, there shall be only one (1) physician selected per

533 side. The plaintiff, whether single or multiple, shall have the
534 right to select one (1) physician, and the defendant, whether
535 single or multiple, shall have the right to select one (1)
536 physician.

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

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

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

546 (vii) The physician selection process shall be
547 completed within thirty (30) days of the selection of the attorney
548 chairman.

549 (d) Attorneys and physicians with any financial,
550 employment, or personal or family ties to any party or attorney
551 for a party shall not serve on a panel. Any conflict that cannot
552 be resolved shall be decided by the court upon the motion of any
553 party.

554 (4) **Evidence.**

555 (a) The evidence to be considered by the medical review
556 panel shall be promptly submitted by the respective parties in
557 written form only.

558 (b) The evidence may consist of:

559 (i) Medical records;

560 (ii) Sworn statements;

561 (iii) Expert reports signed by experts;

562 (iv) Deposition transcripts;

563 (v) Any other evidence allowed by the medical
564 review panel or submitted by the parties.

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

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

571 (e) The plaintiff must sign a valid authorization
572 allowing defendants to obtain the plaintiff's medical records.
573 The defendant shall treat all medical records in a confidential
574 manner and shall not disclose the contents of the records to
575 anyone other than the panel or other experts; all other experts
576 must treat the plaintiff's records as confidential.

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

579 (5) **Hearings.** (a) After submission of all evidence and
580 upon ten (10) days' notice to the other side, either party or the
581 panel shall have the right to convene the panel at a time and
582 place agreeable to the members of the panel; each party is
583 entitled to request only one (1) hearing. The panel may hold as
584 many hearings as it chooses. The purpose of a hearing is to ask
585 questions as to additional evidence needed and to afford an
586 opportunity to make oral presentation of the facts. The chairman
587 of the panel shall preside at all hearings, which shall be
588 informal.

589 (b) The following are locations where hearings may be
590 held:

591 (i) At a courthouse or other available public
592 building in the county where the act or omission is alleged to
593 have occurred.

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

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

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

605 (a) There was a breach of the appropriate standard of
606 care;

607 (b) There was not a breach of the appropriate standard
608 of care; or

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

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

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

619 (9) **Panelist compensation.**

620 (a) (i) Each physician member of the medical review
621 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
622 all work performed as a member of the panel, and in addition
623 thereto, per diem as provided in Section 25-3-69, Mississippi Code
624 of 1972, and travel expenses as would be calculated for a state
625 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

626 (ii) The attorney chairman of the medical review
627 panel shall be paid at the rate of One Hundred Fifty Dollars
628 (\$150.00) per hour, not to exceed a total of Three Thousand

629 Dollars (\$3,000.00), for all work performed as a member of the
630 panel, and in addition thereto, per diem as provided in Section
631 25-3-69, Mississippi Code of 1972, and travel expenses as would be
632 calculated for a state employee pursuant to Section 25-3-41,
633 Mississippi Code of 1972.

634 (b) The costs of the medical review panel shall be
635 split between the parties. The panel members shall by affidavit
636 request the payment due under this subsection (9) from the board,
637 which in turn shall bill the parties for the proportionate share
638 of each party.

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

644 **SECTION 14.** Section 11-46-19, Mississippi Code of 1972, is
645 amended as follows:

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

647 11-46-19. (1) The board shall have the following powers:

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

649 (b) To approve any award made from the Tort Claims
650 Fund;

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

653 (d) To assign litigated claims against governmental
654 entities other than political subdivisions to competent attorneys
655 unless such governmental entity has a staff attorney who is
656 competent to represent the governmental entity and is approved by
657 the board; the board shall give primary consideration to attorneys
658 practicing in the jurisdiction where the claim arose in assigning
659 cases; attorneys hired to represent a governmental entity other
660 than a political subdivision shall be paid according to the
661 department fee schedule;

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

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

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

673 (h) To purchase any policies of liability insurance and
674 to administer any plan of self-insurance or policies of liability
675 insurance required for the protection of the state against claims
676 and suits brought under this chapter;

677 (i) To expend money from the Tort Claims Fund for the
678 purchase of any policies of liability insurance and the payment of
679 any award or settlement of a claim against the state under the
680 provisions of this chapter or of a claim against any school
681 district, junior college or community college district, or state
682 agency, arising from the operation of school buses or other
683 vehicles, under the provisions of Section 37-41-42;

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

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

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

694 (m) To administer disposition of claims against the
695 Tort Claims Fund;

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

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

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

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

709 (r) To establish and assess premiums to be paid by
710 governmental entities required to participate in the Tort Claims
711 Fund;

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

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

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

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

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

724 (i) To accept filings under the act;

725 (ii) To coordinate the selection of panels;

726 (iii) To maintain lists of attorneys eligible for
727 appointment as attorney chairmen;

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

730 (v) To promulgate rules and regulations necessary
731 to implement the provisions of Section 13 of House Bill No. _____,
732 2004 First Extraordinary Session; and

733 (vi) To provide general administrative support.

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

738 (3) The department shall have the following powers and
739 duties:

740 (a) To annually report to the Legislature concerning
741 each comprehensive plan of liability protection established
742 pursuant to Section 11-46-17(2). Such report shall include a
743 comprehensive analysis of the cost of the plan, a breakdown of the
744 cost to participating state entities, and such other information
745 as the department may deem necessary.

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

749 (c) To submit the board's budget request for the
750 initial year of operation of the board in order to authorize
751 expenditures for the 1993-1994 fiscal year and for the
752 appropriation of such general funds as shall be required for the
753 commencement of its activities.

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

756 11-46-19. (1) The board shall have the following powers:

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

758 (b) To approve any award made from the Tort Claims
759 Fund;

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

762 (d) To assign litigated claims against governmental
763 entities other than political subdivisions to competent attorneys
764 unless such governmental entity has a staff attorney who is
765 competent to represent the governmental entity and is approved by
766 the board; the board shall give primary consideration to attorneys
767 practicing in the jurisdiction where the claim arose in assigning
768 cases; attorneys hired to represent a governmental entity other
769 than a political subdivision shall be paid according to the
770 department fee schedule;

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

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

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

782 (h) To purchase any policies of liability insurance and
783 to administer any plan of self-insurance or policies of liability
784 insurance required for the protection of the state against claims
785 and suits brought under this chapter;

786 (i) To expend money from the Tort Claims Fund for the
787 purchase of any policies of liability insurance and the payment of
788 any award or settlement of a claim against the state under the
789 provisions of this chapter or of a claim against any school
790 district, junior college or community college district, or state

791 agency, arising from the operation of school buses or other
792 vehicles, under the provisions of Section 37-41-42;

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

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

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

803 (m) To administer disposition of claims against the
804 Tort Claims Fund;

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

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

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

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

818 (r) To establish and assess premiums to be paid by
819 governmental entities required to participate in the Tort Claims
820 Fund;

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

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

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

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

831 (i) To accept filings under the act;

832 (ii) To coordinate the selection of panels;

833 (iii) To maintain lists of attorneys eligible for
834 appointment as attorney chairmen;

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

837 (v) To promulgate rules and regulations necessary
838 to implement the provisions of Section 13 of House Bill No. _____,
839 2004 First Extraordinary Session; and

840 (vi) To provide general administrative support.

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

845 (3) The department shall have the following powers and
846 duties:

847 (a) To annually report to the Legislature concerning
848 each comprehensive plan of liability protection established
849 pursuant to Section 11-46-17(2). Such report shall include a
850 comprehensive analysis of the cost of the plan, a breakdown of the
851 cost to participating state entities, and such other information
852 as the department may deem necessary.

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

856 (c) To submit the board's budget request for the
857 initial year of operation of the board in order to authorize
858 expenditures for the 1993-1994 fiscal year and for the
859 appropriation of such general funds as shall be required for the
860 commencement of its activities.

861 **SECTION 15.** (1) A physician shall charge all purchasers the
862 lowest fee for health care which the physician has agreed to
863 accept as full payment for the same health care when the same
864 health care is being paid for in whole or in part through any
865 agreement between the physician and any other purchaser. Nothing
866 in this section shall be deemed to limit the physician's right to
867 provide any health care for free.

868 (2) To assist patients to determine a physician's fees and
869 compliance with this section, a patient shall have access to any
870 fee schedules agreed to by the physician, and any other records of
871 the physician related to the patient's health care which might
872 contain information indicating whether the physician is in
873 compliance with this section. This right of access, whether or
874 not exercised, may not be waived, and may be exercised prior to,
875 during or after the health care is provided. This right of access
876 is not intended to conflict with, supercede or alter any rights or
877 obligations under general law related to the privacy of patient
878 records.

879 (3) **Definitions.** As used in this section, the following
880 terms shall have the following meanings:

881 (a) "Health care" means services, procedures,
882 treatment, accommodations or products provided by a physician
883 described by this section.

884 (b) "Physician" means one licensed by the Board of
885 Medical Licensure, and any corporation, professional association
886 or similar organization established and operated for the purpose
887 of provided health care by such licensees.

888 (c) "Purchaser" means patients, third-party payors or
889 others paying for a patient's health care, and does not include a
890 patient receiving care without charge.

891 (d) "Charge" means require, charge, bill, accept or be
892 entitled to receive as payment for health care.

893 (e) "Patient" means individual who has sought, is
894 seeking, is receiving, or has received health care from the
895 physician.

896 (f) "Have access to" means, in addition to any other
897 procedure for producing such records provided by general law,
898 making the records available for review, inspection and copying
899 upon formal or informal request by the patient or a representative
900 of the patient, provided that current records which have been made
901 publicly available by publication or on the Internet may be made
902 available by reference to the location at which the records are
903 publicly available.

904 **SECTION 16.** If any provision of this act is held by a court
905 to be invalid, such invalidity shall not affect the remaining
906 provisions of this act, and to this end the provisions of this act
907 are declared severable.

908 **SECTION 17.** This act shall take effect and be in force from
909 and after July 1, 2004.