

By: Representatives Mims, Barnett

To: Judiciary A

HOUSE BILL NO. 528

1 AN ACT TO PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE
2 REVIEWED BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY
3 AGREE TO OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP
4 REVIEW PANEL; TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE
5 PANEL; TO PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR
6 PANELIST IMMUNITY AND COMPENSATION; TO PROVIDE THAT THE LOSING
7 PARTY SHALL PAY ATTORNEY FEES TO THE PREVAILING PARTY UNDER
8 CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

10 **SECTION 1. Medical review panel.**

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

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

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

15 (ii) "Health care provider" means a person,
16 partnership, limited liability partnership, limited liability
17 company, corporation, facility, or institution licensed by this
18 state to provide health care or professional services as a
19 physician, hospital, institution for the aged or infirm, community
20 blood center, tissue bank, dentist, registered or licensed
21 practical nurse or certified nurse assistant, ambulance service,
22 certified registered nurse anesthetist, nurse-midwife, licensed
23 midwife, pharmacist, optometrist, podiatrist, chiropractor,
24 physical therapist, occupational therapist, psychologist, social
25 worker, licensed professional counselor, or any nonprofit facility
26 considered tax-exempt under Section 501(c)(3), Internal Revenue
27 Code, pursuant to 26 USCS 501(c)(3), for the diagnosis and
28 treatment of cancer or cancer-related diseases, whether or not
29 such a facility is required to be licensed by this state, or any
30 professional corporation a health care provider is authorized to

31 form under the Mississippi Code of 1972, or any partnership,
32 limited liability partnership, limited liability company, or
33 corporation whose business is conducted principally by health care
34 providers, or an officer, employee, partner, member, shareholder,
35 or agent thereof acting in the course and scope of his employment.

36 (iii) "Malpractice" means any unintentional tort
37 or any breach of contract based on health care or professional
38 services rendered, or which should have been rendered, by a health
39 care provider, to a patient, including failure to render services
40 timely and the handling of a patient, including loading and
41 unloading of a patient, and also includes all legal responsibility
42 of a health care provider arising from acts or omissions in the
43 training or supervision of health care providers, or from defects
44 in blood, tissue, transplants, drugs and medicines, or from
45 defects in or failures of prosthetic devices, implanted in or used
46 on or in the person of a patient.

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

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

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

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

63 (ii) Each defendant shall file a written answer
64 within thirty (30) days of service of the request. If the
65 defendant fails to file an answer as required, the board shall
66 notify the defendant of the obligation to file and penalty for
67 failure to file; notice shall be by certified or registered United
68 States mail. If the defendant has not filed within thirty (30)
69 days of the receipt of the notice specified in this subparagraph
70 (ii), the request for review shall be dismissed; the panel, if
71 formed, shall be dissolved, and the plaintiff shall be allowed to
72 proceed in court upon the complaint filed.

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

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

80 (b) If the court finds for the party raising the
81 exception or defense, that party shall be dismissed. If there are
82 no defendants remaining, the panel, if established, shall be
83 dissolved.

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

85 (a) The medical review panel shall consist of three (3)
86 physicians who each hold an unlimited license to practice medicine
87 in Mississippi and one (1) attorney who shall be the nonvoting
88 chair of the panel. The parties may agree on the attorney member
89 of the medical review panel within thirty (30) days after the
90 filing of the answer; if no agreement can be reached, then the
91 attorney member of the medical review panel shall be selected as
92 follows:

93 (i) The board shall draw five (5) names at random
94 from the list of attorneys maintained by the board who have
95 medical malpractice experience. The names of judges, magistrates,

96 district attorneys and assistant district attorneys shall be
97 excluded if drawn and new names drawn in their place. After
98 selection of the attorney names, the board shall notify the
99 parties of the attorney names from which the parties, within five
100 (5) days, may choose the attorney member of the panel. If no
101 agreement can be reached within five (5) days, the parties shall
102 immediately initiate a procedure of selecting the attorney by each
103 striking two (2) names alternately, with the plaintiff striking
104 first and so advising the defendant of the name of the attorney so
105 stricken; thereafter, the defendant and the plaintiff shall
106 alternately strike until both sides have stricken two (2) names
107 and the remaining name shall be the attorney member of the panel.
108 If either the plaintiff or defendant fails to strike, the board
109 shall strike for that party within five (5) additional days.

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

113 (b) The attorney shall act as chairman of the panel and
114 shall have no vote. The chairman shall preside at panel meetings,
115 advise the panel as to questions of law, and shall prepare the
116 opinion of the panel as required in subsection (7) of this
117 section. It is the duty of the chairman to expedite the selection
118 of the other panel members, to convene the panel and expedite the
119 panel's review of the proposed complaint. The attorney chairman
120 shall establish, by order, a reasonable schedule for submission of
121 evidence to the medical review panel, but must allow sufficient
122 time for the parties to make full and adequate presentation of
123 related facts and authorities within one hundred twenty (120) days
124 following selection of the panel.

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

127 (i) All physicians who hold a license to practice
128 medicine in the State of Mississippi and who are engaged in the

129 active practice of medicine in this state, whether in the teaching
130 profession or otherwise, shall be available for selection and,
131 unless excused for cause, required to serve upon selection.

132 (ii) Each party to the action shall have the right
133 to select one (1) physician and upon selection the physician shall
134 be required to serve.

135 (iii) When there are multiple plaintiffs or
136 defendants, there shall be only one (1) physician selected per
137 side. The plaintiff, whether single or multiple, shall have the
138 right to select one (1) physician, and the defendant, whether
139 single or multiple, shall have the right to select one (1)
140 physician. The two (2) physicians so chosen shall jointly select
141 the third physician. If the two (2) physicians cannot agree on
142 the selection of the third physician within thirty (30) days, then
143 the third physician shall be selected by the Tort Claims Board.

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

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

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

153 (vii) The physician selection process shall be
154 completed within thirty (30) days of the selection of the attorney
155 chairman.

156 (d) Attorneys and physicians selected shall disclose
157 any financial, employment, or personal or family ties to any party
158 or attorney for a party. Any conflict that cannot be resolved
159 shall be decided by the court upon the motion of any party.

160 (4) **Evidence.**

161 (a) The evidence to be considered by the medical review
162 panel shall be promptly submitted by the respective parties in
163 written form only.

164 (b) The evidence may consist of:

165 (i) Medical records;

166 (ii) Sworn statements;

167 (iii) Expert reports signed by experts;

168 (iv) Deposition transcripts;

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

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

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

177 (e) The plaintiff must sign a valid authorization
178 allowing defendants to obtain the plaintiff's medical records.
179 The defendant shall treat all medical records in a confidential
180 manner and shall not disclose the contents of the records to
181 anyone other than the panel or other experts; all other experts
182 must treat the plaintiff's records as confidential.

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

185 (5) **Hearings.** (a) After submission of all evidence and
186 upon ten (10) days' notice to the other side, either party or the
187 panel shall have the right to convene the panel at a time and
188 place agreeable to the members of the panel; each party is
189 entitled to request only one (1) hearing. The panel may hold as
190 many hearings as it chooses. The purpose of a hearing is to ask
191 questions as to additional evidence needed and to afford an
192 opportunity to make oral presentation of the facts. The chairman

193 of the panel shall preside at all hearings, which shall be
194 informal.

195 (b) The following are locations where hearings may be
196 held:

197 (i) At a courthouse or other available public
198 building in the county where the act or omission is alleged to
199 have occurred.

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

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

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

211 (a) There was a breach of the appropriate standard of
212 care;

213 (b) There was not a breach of the appropriate standard
214 of care; or

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

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

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

225 (9) **Panelist compensation.**

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

232 (ii) The attorney chairman of the medical review
233 panel shall be paid at the rate of One Hundred Fifty Dollars
234 (\$150.00) per hour, not to exceed a total of Three Thousand
235 Dollars (\$3,000.00), for all work performed as a member of the
236 panel, and in addition thereto, per diem as provided in Section
237 25-3-69, Mississippi Code of 1972, and travel expenses as would be
238 calculated for a state employee pursuant to Section 25-3-41,
239 Mississippi Code of 1972.

240 (b) The costs of the medical review panel shall be
241 split between the parties. The panel members shall by affidavit
242 request the payment due under this subsection (9) from the board,
243 which in turn shall bill the parties for the proportionate share
244 of each party.

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

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

251 (a) If the decision of the panel finds for the
252 defendant and the defendant prevails in court, the plaintiff shall
253 pay reasonable attorney fees and expenses of the defendant to be
254 determined by the court.

255 (b) If the decision of the panel finds for the
256 plaintiff:

257 (i) The plaintiff may submit a written settlement
258 offer for a sum certain to the defendant. If the defendant

259 rejects the settlement offer, the plaintiff prevails in court, and
260 the judgment is equal to or greater than the settlement offer, the
261 defendant shall pay reasonable attorney fees and expenses of the
262 plaintiff to be determined by the court.

263 (ii) The defendant also may submit a written
264 settlement offer for a sum certain to the plaintiff. If the
265 plaintiff rejects the settlement offer and the defendant prevails
266 in the subsequent court action, or the plaintiff prevails but the
267 judgment is less than the defendant's settlement offer, the
268 plaintiff shall pay reasonable attorney fees and expenses of the
269 defendant to be determined by the court.

270 **SECTION 2.** This act shall take effect and be in force from
271 and after July 1, 2005.