

By: Representative Mims

To: Judiciary A

## HOUSE BILL NO. 485

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, 2007.