

THE LOUISIANA MEDICAL MALPRACTICE CLAIM SYSTEM
PURSUANT TO LSA-R.S. §§ 40:1299.41, *et seq.*

- I. A claim/complaint must be filed by the patient or his/her representative within one year of the alleged malpractice or the claim is prescribed. (There is an exception to the one-year period where the “date of discovery” of the alleged negligent act is later and the claim may be filed within one year of this date, but in no event later than three years from the alleged negligent act.)
- II. The claim must be filed with the Louisiana Division of Administration and its filing suspends the running of prescription for the time period of a medical review panel proceeding and (approximately) ninety (90) days following the rendition of the Opinion of the Medical Review Panel.
- III. For malpractice allegations arising under the Medical Malpractice Act (“Private Act”), LSA-R.S. § 40:1299.41, *et seq.*, the Division of Administration, upon receipt of the complaint, forwards it to the Louisiana Patients’ Compensation Fund Oversight Board for invoking proceedings consistent with the provisions of the Act at R.S. § 40:1299.47; i.e. a Medical Review Panel.
- IV. The claim/complaint that is filed by plaintiff must contain the following:
 - (a) A request for the formation of a medical review panel;
 - (b) The name of the patient;
 - (c) The names of the claimants, if representing a patient who is deceased or a minor;
 - (d) The names of the healthcare providers against whom the claim is asserted;
 - (e) The date(s) of the alleged malpractice;
 - (f) A brief description of the alleged malpractice as to each named healthcare provider respondent;
 - (g) A filing fee of \$100.00 per named defendant must accompany the complaint.
- V. The claim must be reviewed by a Medical Review Panel prior to any civil action being filed in a court of law.
- VI. The Medical Review Panel is composed of a non-voting attorney chairperson and three voting physician members (or other healthcare professionals; i.e., nurse, physical therapist, x-ray technician, etc., depending on the nature of the allegations and the particular parties named). This panel of healthcare providers (guided on the law by the attorney chairperson) rules on the merits of the claimant’s allegations of malpractice.
 - (a) First, the attorney chairperson is chosen by agreement of all parties and officially notified of his/her appointment by the Patients’ Compensation Fund;
 - (b) Second, the plaintiff makes his or her selection of a physician panelist, generally from the specialty of the allegedly negligent healthcare provider (or if a hospital is also named, from any specialty field), and if the plaintiff declines to select a panelist, the attorney chairperson will name one in plaintiff’s stead;

- (c) Third, the defendant(s), by consensus agreement of all, collectively decide on the second panelist;
 - (d) Fourth, the two panelists so chosen next agree on a third member, or if they cannot agree, then the attorney chairperson will make the third appointment.
- VII. Once the panel has been formed, it must allow the parties adequate time to prepare and submit evidence, but at least ninety (90) days after its formation.
- VIII. The panel shall be convened and render an Opinion within one hundred and eighty days after formation, unless good cause be shown to request an extension of the life of the Medical Review Panel.
- IX. The plaintiff's Burden of Proof consists of:
 - (a) That the defendant's conduct fell below the applicable standard of care and that this conduct caused plaintiff's damages, injuries, or disability; or
 - (b) That there is a material issue of fact bearing on liability which requires a judicial decision by a court.
- X. Regardless of the decision of the Medical Review Panel, i.e., irrespective of the findings and conclusions of the panel that there was or was not evidence of a breach of the standard of care by any defendant, the plaintiff may still bring a lawsuit in court. (Please note: Louisiana statute proclaims that matters in the medical review panel process, and not yet filed in court as a lawsuit, are non-reportable to state boards or other credentialing bodies; however, this law is not binding outside of Louisiana. *See* R.S. § 40:1299.47A(1)(a), as amended by Acts 306 of 2004.)
- XI. However, the Opinion of the Medical Review Panel can be used as evidence by either side in further judicial proceedings.
- XII. Prescription or bar on plaintiff's action starts to run again ninety (90) days after the receipt by plaintiff of the Opinion by certified mail delivery.
- XIII. This timing issue in which to file a post-panel lawsuit is critical to both plaintiff and defendant:
 - (a) If plaintiff had originally filed a claim with the Louisiana Division of Administration at the absolute end date for the prescriptive period on his/her claim, plaintiff will have only the ninety-day period within which to file his/her lawsuit;
 - (b) Defendants hope that plaintiffs fail to file suit in a timely fashion after the Medical Review Panel ruling, thus permanently foreclosing the plaintiffs' ability to file a lawsuit and extinguishing the plaintiff's cause and right of action.

IMPORTANT NOTE: It is the obligation and responsibility of every physician and/or employee who receives coverage for medical malpractice liability from the Tulane University Self Insurance Trust to cooperate with the claims handling procedures of the attorneys representing our physicians in any medical malpractice claims and lawsuits. To this end, it is the responsibility of each individual named as a defendant to notify the Office of Associate General Counsel or outside counsel, where such has been retained, of the party's contact information as soon as possible should this information change during the pendency of the proceedings.