

Regular Session, 2012

HOUSE BILL NO. 766

BY REPRESENTATIVE LIGI

MALPRACTICE/MEDICAL: Provides relative to the Patient's Compensation Fund and its administration by the Patient's Compensation Fund Oversight Board

1 AN ACT

2 To amend and reenact R.S. 40:1299.44(A)(3), (D)(2)(b)(xiv), (D)(5), 1299.47(A)(1)(b)(ii)  
3 and (B)(2), to enact R.S. 40:1299.47(A)(6), and to repeal R.S. 40:1299(A)(7)(e),  
4 relative to the Patient's Compensation Fund; to provide relative to the surcharge  
5 levied on health care providers; to provide for time limitations; to provide relative  
6 to proper parties to remit the surcharge to the Patient's Compensation Fund; to  
7 provide for procedure of board meetings; to provide for requests for review of a  
8 malpractice claim; to provide relative to raising peremptory exceptions; and to  
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 40:1299.44(A)(3), (D)(2)(b)(xiv), (D)(5), 1299.47(A)(1)(b)(ii) and  
12 (B)(2) are hereby amended and reenacted and R.S. 40:1299.47(A)(6) is hereby enacted to  
13 read as follows:

14 §1299.44. Patient's Compensation Fund

15 A.

16 \* \* \*

17 (3)(a) Such surcharge shall be due and payable to the patient's compensation  
18 fund within ~~forty-five~~ thirty days after the premiums for malpractice liability  
19 insurance have been received by the insurer, agent of the insurer, risk manager, or  
20 surplus line agent from the health care provider in Louisiana.

1 (b) It shall be the duty of the insurer, agent of the insurer, risk manager, or  
 2 surplus line agent to remit the surcharge to the Patient's Compensation Fund within  
 3 ~~forty-five~~ thirty days of the date of payment by the health care provider. Failure of  
 4 the insurer, agent of the insurer, risk manager, or surplus line agent to remit payment  
 5 within ~~forty-five~~ thirty days shall subject the insurer, agent of the insurer, risk  
 6 manager, or surplus line agent to a penalty, the amount of which will be set by the  
 7 board on an annual basis, not to exceed a total of twelve percent of the annual  
 8 surcharge. Upon the failure of the insurer, agent of the insurer, risk manager, or  
 9 surplus line agent to remit as provided herein, the board is authorized to institute  
 10 legal proceedings if necessary to collect the surcharge, any penalty amount to be  
 11 assessed, legal interest, and all reasonable attorney fees.

12 \* \* \*

13 D.

14 \* \* \*

15 (2)

16 \* \* \*

17 (b) In addition to other powers and authority expressly or impliedly  
 18 conferred on the board by this Part, the board shall have the authority, to the extent  
 19 not inconsistent with the provisions of this Part, to:

20 \* \* \*

21 (xiv) Intervene as a matter of right, at its discretion, in any civil action or  
 22 proceeding in which a health care provider files a dilatory exception of prematurity  
 23 pursuant to Code of Civil Procedure Article 926(A)(1) and the board reasonably  
 24 believes either of the following:

25 (aa) Any health care provider is not qualified under this Part.

26 (bb) Any claim is not subject to this Part.

27 Any intervention and participation by the board in any civil action or  
 28 proceeding pursuant to this Subparagraph shall be strictly limited to the health care  
 29 provider's qualification status under this Part and whether the claim is subject to this

1 Part. A copy of ~~said~~ the exception and the petition for damages shall be sent by the  
2 health care provider filing the dilatory exception of prematurity to the board, via  
3 certified mail, return receipt requested, concurrently with serving the parties to the  
4 civil action or proceeding.

5 \* \* \*

6 (5) Any meeting of the board or any portion of any meeting of the board  
7 which is restricted to consideration of and/or action upon pending or threatened  
8 claims against the fund or health care providers with the fund shall not be subject to  
9 the provisions of R.S. 42:11 ~~or R.S. 42:27~~ through 28.

10 \* \* \*

11 §1299.47. Medical review panel

12 A.(1)

13 \* \* \*

14 (b) A request for review of a malpractice claim or a malpractice complaint  
15 shall contain, at a minimum, all of the following:

16 \* \* \*

17 (ii) The name of ~~the~~ only one patient for whom, or on whose behalf, the  
18 request for review is being filed.

19 \* \* \*

20 (6) In the event the board receives a filing fee that was not timely paid  
21 pursuant to Subparagraph (1)(c) of this Subsection, then the board shall return, or  
22 refund the amount of, the filing fee to the claimant within thirty days of the date the  
23 board receives the untimely filing fee.

24 B.

25 \* \* \*

26 (2)(a) A health care provider, against whom a claim has been filed under the  
27 provisions of this Part, may raise peremptory exceptions of no right of action  
28 pursuant to Code of Civil Procedure Article 927(6) or any exception or defenses  
29 available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper

1 venue at any time without need for completion of the review process by the medical  
2 review panel.

3 (b) If the court finds that the claim had prescribed or otherwise was  
4 perempted prior to being filed, the panel, if established, shall be dissolved. If the  
5 court grants the peremptory exception of no right of action as to all claimants, the  
6 panel, if established, shall be dissolved. If the court grants the peremptory exception  
7 of no right of action as to less than all claimants, the claimants as to whom the court  
8 granted the peremptory exception of no right of action shall be prohibited from  
9 participating in the panel process as a claimant.

10 \* \* \*

11 Section 2. R.S. 40:1299.44(A)(7)(e) is hereby repealed in its entirety.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Ligi HB No. 766

**Abstract:** Amends the time limitations within which surcharges become payable to the Patient's Compensation Fund and provides for the proper parties to remit the surcharge. Provides that the open meeting laws shall not apply to board meetings of the Patient's Compensation Fund, and provides relative to use of peremptory exceptions without necessity of first completing review by the medical review panel.

Present law provides for public policy for open meetings, executive session, exceptions to open meetings, and procedural requirements of open meetings. Further provides for enforcement, remedies, venue, and civil penalties for noncompliance. Provides that the Patient's Compensation Fund Oversight Board meetings shall not be subject to the Open Meetings Law.

Proposed law retains present law and makes a technical correction, clarifying that the board shall not be subject to civil penalties for violations of the Open Meetings Law.

Present law provides for the operation of the Patient's Compensation Fund.

Proposed law retains present law but changes the time limitation within which surcharges become payable to the Patient's Compensation Fund from 45 days to 30 days and designates an agent of an insurer as a proper party to remit the surcharge. Further provides that a health care provider provide a copy of his qualification status and the petition for damages to the board when it intervenes in a civil action.

Present law provides for the operation of the medical review panel.

Proposed law retains present law and requires the name of only one patient be included in a request for review of a malpractice claim. Provides for return of any filing fees for review

of a malpractice claim received after the 45-day time limitation within which a claimant shall pay a filing fee for review provided in present law. Further provides that a health care provider may raise any peremptory exception in a civil action without first completing the review process with the review panel.

(Amends R.S. 40:1299.44(A)(3), (D)(2)(b)(xiv), (D)(5), 1299.47(A)(1)(b)(ii) and (B)(2); Adds R.S. 40:1299.47(A)(6); Repeals R.S. 40:1299(A)(7)(e))