

THE MEDICAL REVIEW PANEL PROCESS:

(the following is meant to be a summary only and does not replace any provision in the statute)

By agreement of all parties, the use of the medical review panel may be waived. There are also provisions for an expedited panel process which are not outlined here.

After the panel request is filed and the defendants are deemed qualified and the filing fee is paid or an affidavit or in forma pauperis is timely received, the next step in the formation of the panel is the selection of the attorney chairman. An attorney chairman for the medical review panel shall be appointed within one year from the date the request was filed. The claimants and defendants or their respective representatives, should mutually agree on an attorney to serve as the chairman. Once this has been done, the parties shall notify the PCF of the appointment and supply the name and address of the chosen attorney. The PCF will then send a notice of the appointment to the chairman.

The panel opinion is to be rendered within 12 months after the date of notification by the PCF to the attorney chairman and all parties of the appointment. Either party may petition a court for an order extending the twelve month period if good cause is shown. After the original 12 month period or any court-ordered extension, the medical review panel that was established shall be dissolved without the necessity of obtaining a court order of dissolution. The attorney chairman should send a certified, return receipt requested notice of the dismissal of the panel to all parties. Suit may be instituted against a health care provider, but must be done within 90 days.

If the parties do not send the PCF a notice of their selection and appointment of an attorney chairman within 9 months from the date the request was filed, then the PCF shall send notice to the parties by certified mail warning that the claim will be dismissed in 90 days unless an attorney chairman is appointed within one year from the date the request was filed. If the board has not received notice of the appointment of an attorney chairman within one year from the date the request for review of the claim was filed, then the PCF shall promptly send notice to the parties by certified or registered mail that the claim has been dismissed for failure to appoint an attorney chairman and the parties shall be deemed to have waived the use of the medical review panel. The filing of a request for a medical review panel shall suspend the time within which suit must be filed until ninety days after the claim has been dismissed.

If the parties cannot agree on the selection of an attorney chairman, they can request the PCF obtain a list of 5 attorneys, called a strike list, from the office of the clerk of the Louisiana Supreme Court. The Clerk will randomly choose from the list of attorneys who reside or maintain an office in the parish which would be proper venue for the action in a court of law. The Clerk shall provide the list to the PCF, who will in turn send the list to the parties. If no agreement on a selection from the list can be reached the parties shall immediately begin the strike process with the claimant striking first. Then the health care provider and the claimant shall alternately strike until both sides have stricken two names and the remaining name shall be the attorney member of the panel. If either the plaintiff or defendant fails to strike, the clerk of the Louisiana Supreme Court shall strike for that party. After the striking process is complete the parties must notify the PCF, who in turn will send the selected attorney a notice of his appointment. This process must be completed and the Attorney selected within one year of filing of the complaint.

Once an attorney chairman has been selected, the healthcare provider members of the panel can be selected. The attorney serves in an advisory capacity and has no vote. It is the duty of the chairman to expedite the selection of the other panel members, to convene the panel, and expedite the panel's review

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of the proposed complaint. The chairman shall establish a reasonable schedule for submission of evidence to the medical review panel.

The plaintiff shall notify the attorney chairman and the named defendants of his choice of a health care provider member of the medical review panel.

The named defendant shall then have 15 days after notification by the plaintiff's choice to name a health care provider panelist.

When there are multiple plaintiffs or defendants, there shall be only one health care provider selected per side. The panel members should be of the same medical specialty as the named defendant(s).

If either the plaintiff or defendant fails to make a selection of health care provider panelist, the attorney chairman shall notify by certified mail the failing party to make such selection within 5 days of the receipt of the notice. If no selection is made within the 5 day period, then the chairman shall make the selection on behalf of the failing party.

The two health care provider panel members selected by the parties or on their behalf shall be notified by the chairman to select the third health care provider panel member within fifteen days of their receipt of such notice. If the two health care provider panel members fail to make such selection within the fifteen day period allowed, the chairman shall then make the selection of the third panel member and thereby complete the panel.

A panelist or attorney chairman selected shall serve unless excused by a judge following submission of an affidavit which shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. A health care provider panelist may also be excused from serving by the attorney chairman if during the previous 12 month period he has been appointed to 4 other medical review panels. A replacement panelist shall be selected within fifteen days in the same manner as the excused panelist.

Once all members of the panel are selected, the attorney chairman must notify the PCF and all parties by certified mail of the names of the panel members.

A panelist or a representative or attorney for any interested party shall not discuss the claim with other members of a medical review panel until all evidence to be considered by the panel has been submitted. A panelist or a representative or attorney for any interested party shall not discuss the pending claim with the claimant or his attorney asserting the claim or with a health care provider or his attorney against whom a claim has been asserted under this Section. A panelist or the attorney chairman shall disclose in writing to the parties prior to the hearing any relationship with any involved party that might give rise to a conflict of interest for the panelists. All panel members shall take an oath as provided for in the statute.

The evidence to be considered by the panel shall be promptly submitted to the attorney chairman by the respective parties in written form only. Copies of all submissions shall be provided to all parties by the attorney chairman.

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The evidence may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, interrogatories, affidavits and reports of medical experts. Depositions of the parties and witnesses may be taken and submitted to the panel.

Subpoenas and subpoenas duces tecum can be issued by the court to aid in the taking of depositions and the production of documentary evidence.

Either party may question the panel concerning any matters relevant to issues to be decided by the panel before the issuance of their report. The chairman of the panel shall preside at all meetings. Meetings shall be informal.

The chairman of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion and written reasons of the panel. After reviewing all evidence the panel shall, within thirty days, render one or more of the following expert opinions, which shall be in writing and signed by the panelists, together with written reasons for their conclusions:

- (1) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.
- (2) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.
- (3) That there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court.

The chairman shall submit a copy of the panel's report to the PCF and all parties **by** certified mail within 5 days after the panel renders its opinion. The opinion is admissible as evidence in court and the panel members can be called upon to testify in court. Prescription is suspended until ninety days following notification by certified mail to the claimant or his attorney of the issuance of the opinion.

The attorney chairman is paid up to \$2000 plus reasonable expenses and the panel members are paid up to \$300 and reasonable expenses. The costs of the panel are paid by the plaintiff if there is a breach found and by the defendant(s) if there is no breach found. Costs are shared when there is a material issue of fact opinion.

The failure to complete the panel process within the time allowed by the statutes effectively waives the panel and the suit must be filed within 90 days of any notice that the panel has been closed or dismissed for lack of selection of an attorney chairman, rendering of an opinion within one year of the appointment of an attorney chairman, or failure to obtain an extension of time for the panel process.