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Louisiana Supreme Court Grants Writ on the Issue of the Constitutionality of the Medical Malpractice Act

The Louisiana Medical Malpractice Act (MMA) has been around since 1975, or about 30 years. It was enacted at a time of perceived medical healthcare crises, predicted shortages of doctors in various areas including Louisiana, and medical malpractice insurance premium rates were through the roof. Louisiana was among the first to enact a body of law, still in existence today, which required administrative proceedings before a district court suit could be filed (medical malpractice review panel), membership in a state administered fund to redress damages from acts of medical malpractice (Patient Compensation Fund through the Department of Administration), and a cap on damages (\$500,000, excluding future medical expenses). The MMA withstood a number of early constitutional attacks, until now.

This newsletter reported in 2007 the case of *Arrington v. ER Physicians Group*, a five judge panel of the Third Circuit Court of Appeal reviewed a constitutional attack on the grounds that the damages cap has not been adjusted to reflect the present value of the US dollar. The Louisiana Supreme Court remanded the case holding that the procedural requirements of Constitutional challenges had not been met and the issue was not properly before the court. There the case died, until now. All predictions were that the issue would raise its head again.

Now, another Constitutional challenge to the Medical Malpractice Act comes out of the Louisiana Fourth Circuit in the New Orleans area. The case is *Russo v. Kraus*, 49 So3d 941, La. App. 4 Cir. 2010. This time, instead of the attack on the statute's cap on damages, the attack centers on the provisions of the statute which enumerate those illnesses which are not subject to one year prescription (Section 5628), thereby discriminating on the basis of physical condition in violation of the equal protection clause of the Constitution. The 4th Circuit remanded the case for

a *Sibley* hearing, which provides the parties an opportunity to present evidence as to whether a medical malpractice statute is constitutional.

The Supreme Court of Louisiana granted the writ, saying:

Writ granted. In light of the defendants' stipulation to the latency of Janice Russo's disease and this court's prior findings concerning the existence of a medical malpractice insurance crisis in the 1970's, the Court of Appeal erred in reversing the District Court's judgment and remanding this matter for a *Sibley* ...hearing on the issues... Accordingly, the judgment of the Court of Appeal is hereby reversed, and the judgment of the District Court is hereby reinstated.

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