

1 AN ACT relating to medical review panels.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 216C IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *This chapter provides for the establishment of medical review panels to review*
6 *proposed malpractice complaints against health care providers covered by this chapter.*

7 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
8 READ AS FOLLOWS:

9 *As used in this chapter unless the context otherwise requires:*

10 *(1) "Cabinet" means the Cabinet for Health and Family Services;*

11 *(2) "Dependent claim" means any claim against an entity or person that owns,*
12 *controls, or manages any part of the operations of a health care provider, and*
13 *which arises out of or relates in any way, in whole or in part, to a claim of*
14 *malpractice or a malpractice-related claim;*

15 *(3) "Health care" means an act or treatment performed or furnished or that should*
16 *have been performed or furnished by a health care provider for, to, or on behalf*
17 *of a patient;*

18 *(4) "Health care provider" means any health facility as defined in KRS 216B.015, or*
19 *a provider, including natural persons, of health care or health services, including*
20 *but not limited to those licensed, certified, registered under, or subject to KRS*
21 *194A.700 to 194A.729 or KRS Chapter 310, 311, 311A, 311B, 312, 313, 314,*
22 *314A, 315, 319, 319A, 320, 327, 333, 334A, or 335 and the current and former*
23 *officers, directors, administrators, agents, or employees of any such persons or*
24 *entities acting within the course and scope of their office, employment, or agency;*

25 *(5) "Malpractice" means a tort based on or arising out of health care or professional*
26 *services that were provided, or that should have been provided, by a health care*
27 *provider to a patient;*

1 (6) "Malpractice-related claim" means a claim for a tort, breach of contract, or a
 2 violation of a statute, administrative regulation, right, or rule based on or arising
 3 out of health care or professional services that were provided, or that should have
 4 been provided, by a health care provider to a patient;

5 (7) "Patient" means an individual who receives or should have received health care
 6 from a health care provider under a contract, express or implied, and includes a
 7 person having a claim of any kind, whether derivative or otherwise, related to
 8 alleged malpractice on the part of a health care provider. Derivative claims
 9 include the claim of a spouse, parent, guardian, trustee, child, relative, heir,
 10 beneficiary, estate of the patient, representative of the patient's estate, attorney, or
 11 any other representative of the patient, including claims for loss of services,
 12 wrongful death, loss of consortium, expenses, and other similar claims; and

13 (8) "Tort" means a legal wrong, breach of duty, or negligent or unlawful act or
 14 omission proximately causing injury or damage to another.

15 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) All malpractice and malpractice-related claims against a health care provider,
 18 other than claims validly agreed for submission to a binding arbitration
 19 procedure, shall be reviewed by a medical review panel. Such an action may not
 20 be commenced in a court in Kentucky before:

21 (a) The claimant's proposed complaint has been presented to a medical review
 22 panel established under this chapter; and

23 (b) An opinion is given by the panel.

24 (2) Any action involving a dependent claim accruing after the effective date of this
 25 Act shall be immediately and automatically stayed until the claimant's proposed
 26 complaint against the health care provider has been presented to a medical
 27 review panel established under this chapter and an opinion is given by the panel.

1 (3) Nothing in this chapter shall apply to a cause of action filed before the effective
2 date of this Act.

3 →SECTION 4. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
4 READ AS FOLLOWS:

5 Notwithstanding Section 3 of this Act, a claimant may commence an action in court
6 for malpractice or for a malpractice-related claim against a health care provider
7 without the presentation of the claim to a medical review panel if the claimant and all
8 parties named as defendants in the action agree that the claim is not to be presented to
9 a medical review panel. The agreement shall be in writing and shall be signed by each
10 party or an authorized agent of the party. The claimant shall attach a copy of the
11 agreement to the complaint filed with the court in which the action is commenced.

12 →SECTION 5. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
13 READ AS FOLLOWS:

14 (1) The filing of a proposed complaint tolls the applicable statute of limitations. The
15 statute of limitations is tolled until ninety (90) days after the claimant has
16 received the opinion of the medical review panel.

17 (2) A proposed complaint is considered filed when:

18 (a) A copy of the proposed complaint and the filing fees set forth in subsection
19 (3) of this section are delivered or mailed by registered or certified mail to
20 the cabinet; or

21 (b) An electronic copy of the proposed complaint and the filing fees set forth in
22 subsection (3) of this section are transmitted to the cabinet if the cabinet
23 establishes an electronic filing system.

24 (3) The following fees shall accompany each proposed complaint:

25 (a) A filing fee of one hundred dollars (\$100); and

26 (b) A processing fee of ten dollars (\$10) for each additional defendant after the
27 first defendant.

1 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
2 READ AS FOLLOWS:

3 *Within ten (10) days after receiving a proposed complaint and the filing fee, the cabinet*
4 *shall serve a copy of the proposed complaint by registered or certified mail on each*
5 *health care provider that has been named as a defendant in the proposed complaint.*
6 *The proposed complaint shall be served on a person authorized to receive summons*
7 *under the Kentucky Rules of Civil Procedure. Service shall be deemed complete for*
8 *purposes of this chapter upon receipt by the cabinet of the return mail receipt showing*
9 *delivery on the defendant.*

10 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
11 READ AS FOLLOWS:

12 *(1) A medical review panel shall consist of one (1) attorney and three (3) health care*
13 *providers authorized to serve under Section 9 of this Act.*

14 *(2) The attorney member of the medical review panel shall act as chairperson of the*
15 *panel and in an advisory capacity, but shall not vote.*

16 *(3) The chairperson of the medical review panel shall expedite the selection of the*
17 *other panel members, convene the panel, and expedite the panel's review of the*
18 *proposed complaint. The chairperson may establish a reasonable schedule for*
19 *submission of evidence to the medical review panel, but shall allow reasonable*
20 *time for the parties to make full and adequate presentation of related facts and*
21 *authorities in accordance with this chapter.*

22 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
23 READ AS FOLLOWS:

24 *The chairperson of a medical review panel shall be selected in the following manner:*

25 *(1) Within ten (10) days after service of the complaint on all defendants as described*
26 *in Section 6 of this Act, the cabinet shall notify the parties to select a panel*
27 *chairperson by agreement. If no agreement on a panel chairperson can be*

- 1 reached within twenty (20) days of service upon all parties, any party may request
2 the director of the Kentucky Bar Association to select a list of potential
3 chairpersons;
- 4 (2) Upon receipt of a twenty-five dollar (\$25) medical review panel chairperson
5 selection fee from the party making the request, the director shall draw at random
6 a list of five (5) names of attorneys who:
- 7 (a) Are licensed to practice law in the Commonwealth of Kentucky; and
8 (b) Maintain offices in the county of venue designated in the proposed
9 complaint or in a contiguous county;
- 10 (3) The director shall notify the parties, and the parties shall then strike names
11 alternately, with the plaintiff striking first until one (1) name remains. If there is
12 more than one (1) plaintiff or more than one (1) defendant, the plaintiffs shall
13 make their strikes collectively and the defendants shall make their strikes
14 collectively. The remaining attorney shall be the chairperson of the panel;
- 15 (4) After the striking, the party making the last strike shall notify the chairperson
16 and all other parties of the name of the chairperson;
- 17 (5) If a party does not strike a name within five (5) days after receiving notice from
18 the director:
- 19 (a) The opposing party shall, in writing, request the director to strike for the
20 nonresponsive party; and
- 21 (b) The director shall draw at random a name to strike and shall strike that
22 name;
- 23 (6) When one (1) name remains, the director shall within five (5) days notify the
24 chairperson and all other parties of the name of the chairperson; and
- 25 (7) Within fifteen (15) days after being notified of being selected as chairperson, the
26 chairperson shall:
- 27 (a) Send a written acknowledgment of appointment to the director; or

1 **(b) Show good cause for relief from serving as provided in Section 13 of this**
2 **Act.**

3 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
4 READ AS FOLLOWS:

5 **Those health care providers who are natural persons, whether in the teaching**
6 **profession or otherwise, who hold a valid, active license to practice in his or her**
7 **profession in Kentucky shall be available for selection as a member of the medical**
8 **review panel.**

9 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
10 TO READ AS FOLLOWS:

11 **(1) Within five (5) days after acknowledging appointment of the selection of a panel**
12 **chairperson, the panel chairperson shall provide the parties with two (2) lists of**
13 **panelists who are eligible for panel membership under Section 9 of this Act. Each**
14 **list shall contain three (3) names of prospective panelists eligible to serve. The**
15 **lists shall, to the extent reasonably possible, include only prospective panelists**
16 **from the professions and within the specialty fields, if any, of one (1) or more of**
17 **the defendants. The parties to the proposed complaint shall be permitted to**
18 **propose to the panel chairperson the health care provider professions and related**
19 **specialty fields from which the lists of panelists will be drawn.**

20 **(2) The plaintiff shall strike a name from each list, and the defendant shall strike a**
21 **name from each list. If there is more than one (1) plaintiff or more than one (1)**
22 **defendant, the plaintiffs shall make their strikes collectively and the defendants**
23 **shall make their strikes collectively. The remaining names on each list shall serve**
24 **as panel members. The two (2) selected panelists shall then select a third panel**
25 **member who meets the criteria set forth in Section 9 of this Act and is from the**
26 **profession and specialty field, if any, of one (1) or more of the defendants.**

27 **(3) If a party fails to make a strike within the time provided, the chairperson shall**

1 make the strike and notify all parties. Within fifteen (15) days after their
 2 selection, the panel members shall select the third member and notify the
 3 chairperson and the parties. If the panel members fail to make a selection, the
 4 chairperson shall make the selection and notify all parties.

5 (4) If there are multiple plaintiffs or defendants, only one (1) panel member shall be
 6 selected by the plaintiffs, collectively, and one (1) by the defendants, collectively.

7 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 8 TO READ AS FOLLOWS:

9 (1) Within ten (10) days after the selection of a panel member, written challenge may
 10 be made to the chairperson. Upon challenge, the chairperson shall determine if
 11 there is sufficient cause to dismiss the panel member for a conflict or potential
 12 bias. If the challenged or dismissed panel member was selected through the
 13 striking process, the chairperson shall provide a new striking panel. The party
 14 whose appointment was challenged shall strike last, and the remaining member
 15 shall serve.

16 (2) If the challenged or dismissed panel member was selected by the other two (2)
 17 panel members or by the chairperson, the panel members or the chairperson who
 18 selected the challenged panel member shall make a new selection.

19 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 20 TO READ AS FOLLOWS:

21 When a medical review panel is formed, the chairperson shall, within five (5) days,
 22 notify the cabinet and the parties by registered or certified mail of the following:

23 (1) The names and addresses of the panel members; and

24 (2) The date on which the last member was selected.

25 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 26 TO READ AS FOLLOWS:

27 (1) A member of a medical review panel who is selected shall serve unless:

1 (a) The panel member is dismissed pursuant to a successful challenge as
 2 provided in Section 11 of this Act or removed pursuant to Section 15 or 16
 3 of this Act;

4 (b) The parties by agreement excuse the panelist; or

5 (c) The panelist is excused as provided in this section for good cause shown.

6 (2) To show good cause for relief from serving, the attorney selected as chairperson
 7 of a medical review panel shall serve an affidavit upon the clerk of the Kentucky
 8 Supreme Court. The affidavit shall set out the facts showing that service would
 9 constitute an unreasonable burden or undue hardship. The clerk may excuse the
 10 attorney from serving. The attorney shall notify all parties, who shall then select
 11 a new chairperson using the procedure set forth in Section 8 of this Act.

12 (3) To show good cause for relief from serving, a panel member who is not the
 13 chairperson of a medical review panel shall serve an affidavit upon the panel
 14 chairperson. The affidavit shall set out the facts showing that service would
 15 constitute an unreasonable burden or undue hardship. The chairperson may
 16 excuse the member from serving and notify all parties. The excused panel
 17 member shall be replaced using the procedure set forth in Section 11 of this Act
 18 for dismissed panel members.

19 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 20 TO READ AS FOLLOWS:

21 A party, attorney, or panelist who fails to act as required by this chapter without good
 22 cause shown is subject to appropriate sanctions upon application to a Circuit Court
 23 that has jurisdiction over the subject matter.

24 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 25 TO READ AS FOLLOWS:

26 The secretary of the cabinet may remove the chairperson of the panel if the
 27 chairperson is not fulfilling the duties imposed upon the chairperson by this chapter. If

1 *the chairperson is removed, a new chairperson shall be selected in the manner set forth*
2 *in Section 8 of this Act.*

3 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
4 TO READ AS FOLLOWS:

5 *The chairperson may remove a member of the panel if the chairperson determines that*
6 *the member is not fulfilling the duties imposed upon the panel members by this*
7 *chapter. If a member is removed under this section, a new member shall be selected in*
8 *the manner provided in Section 11 of this Act for dismissed panel members.*

9 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
10 TO READ AS FOLLOWS:

11 *(1) The evidence to be considered by the medical review panel shall be submitted by*
12 *the respective parties in written form only.*

13 *(2) The evidence may consist of nonprivileged medical records, X-rays, lab tests,*
14 *excerpts of treatises, depositions of witnesses including parties, and affidavits.*

15 *(3) Depositions of parties and witnesses, subject to approval by the chairperson, may*
16 *be taken after the formation of the panel but before the evidence is submitted to*
17 *the panel.*

18 *(4) Upon request of any party, or upon request of any panel member, the chairperson*
19 *shall issue administrative subpoenas and subpoenas duces tecum in aid of the*
20 *taking of depositions and the production of documentary evidence for inspection*
21 *or copying, or both.*

22 *(5) The chairperson shall ensure that before the panel gives its expert opinion, each*
23 *panel member has the opportunity to review every item of evidence submitted by*
24 *the parties.*

25 *(6) The plaintiff's evidence shall be submitted to the medical review panel within*
26 *thirty (30) days after the chairperson has notified the parties of the formation of*
27 *the medical review panel as set forth in Section 12 of this Act.*

1 *(7) The defendants' evidence shall be submitted to the medical review panel within*
 2 *forty-five (45) days after the receipt of the plaintiff's submission of evidence.*

3 *(8) If no submission is made by one (1) or more of the parties, the medical review*
 4 *panel shall review the evidence submitted by the other parties and shall proceed*
 5 *with rendering its opinion on the evidence submitted.*

6 *(9) The chairperson may extend the deadlines set forth in this section in the event of*
 7 *extenuating circumstances, if requested by one (1) or more of the parties.*

8 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 9 TO READ AS FOLLOWS:

10 *(1) A party, a party's agent, a party's attorney, or a party's insurance carrier shall*
 11 *not communicate with any member of the panel, except as authorized by law,*
 12 *before the giving of the panel's expert opinion.*

13 *(2) (a) The panel has the right and duty to request all necessary and relevant*
 14 *information.*

15 *(b) The panel may consult with medical authorities.*

16 *(c) The panel may examine reports of other health care providers necessary to*
 17 *fully inform the panel regarding the issue to be decided.*

18 *(d) All parties shall have full access to any material submitted to the panel.*

19 *(3) The chairperson of the panel shall advise the panel relative to any legal question*
 20 *involved in the review proceeding and shall prepare the opinion of the panel.*

21 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 22 TO READ AS FOLLOWS:

23 *(1) The panel has the sole duty to express the panel's expert opinion as to whether or*
 24 *not the evidence supports the conclusion that a defendant or defendants acted or*
 25 *failed to act within the appropriate standards of care as charged in the complaint*
 26 *and whether any such failure was a substantial factor in providing a negative*
 27 *outcome for that patient.*

1 (2) After reviewing all evidence, the panel shall, within thirty (30) days of receipt of
 2 the defendants' evidence submitted under Section 17 of this Act, give as to each
 3 defendant one (1) of the following expert opinions, which shall be in writing and
 4 signed by the panelists:

5 (a) The evidence supports the conclusion that the specifically identified
 6 defendant failed to comply with the appropriate standard of care as charged
 7 in the complaint and the conduct was a substantial factor in producing a
 8 negative outcome for the patient;

9 (b) The evidence supports the conclusion that the specifically identified
 10 defendant failed to comply with the appropriate standard of care as charged
 11 in the complaint, but the conduct was not a substantial factor in producing
 12 a negative outcome for the patient; or

13 (c) The evidence does not support the conclusion that the specifically identified
 14 defendant failed to meet the applicable standard of care as charged in the
 15 complaint.

16 (3) In order to give the expert opinion of the panel in accordance with subsection (2)
 17 of this section, two (2) or more of the members of the panel shall agree on the
 18 conclusion.

19 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 20 TO READ AS FOLLOWS:

21 (1) The panel shall give its expert opinion within one hundred eighty (180) days after
 22 the selection of the last member of the initial panel. However, if:

23 (a) The chairperson or any other member of the panel is removed; and

24 (b) A new member is selected to replace the removed member more than ninety
 25 (90) days after the last member of the initial panel is selected;

26 the panel has ninety (90) days after the selection of the new member to give its
 27 expert opinion.

1 (2) If the panel has not given its opinion within the time allowed under subsection
 2 (1) of this section, the panel shall submit a report to the parties, stating the
 3 reasons for the delay.

4 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 5 TO READ AS FOLLOWS:

6 (1) The report of the expert opinion reached by the medical review panel is
 7 admissible as evidence in any action subsequently brought by the claimant in a
 8 court of law, unless the court finds that admissible evidence first produced during
 9 pretrial discovery in the action would have had a substantial and material impact
 10 on the panel's deliberations and ultimate conclusions reported under Section 19
 11 of this Act.

12 (2) The expert opinion is not conclusive, and either party may call any member of the
 13 medical review panel as a witness. If called as a witness, the panel member shall
 14 appear and testify, but shall be entitled to reasonable compensation by the party
 15 calling the witness.

16 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 17 TO READ AS FOLLOWS:

18 A panelist shall have absolute immunity for civil liability for all communications,
 19 findings, opinions, and conclusions made in the course and scope of duties prescribed
 20 by this chapter.

21 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 22 TO READ AS FOLLOWS:

23 (1) Each member of the medical review panel other than the chairperson is entitled
 24 to be paid as follows:

25 (a) Up to three hundred fifty dollars (\$350) for all work performed as a member
 26 of the panel exclusive of time involved if called as a witness to testify in
 27 court; and

1 (b) Reasonable travel expenses.

2 (2) The chairperson of the panel is entitled to be paid as follows:

3 (a) At the rate of two hundred fifty dollars (\$250) per diem, not to exceed two
4 thousand dollars (\$2,000) per case; and

5 (b) Reasonable travel expenses.

6 (3) The chairperson shall keep an accurate record of the time and expenses of all the
7 members of the panel. The record shall be submitted to the parties for payment
8 with the panel's report.

9 (4) Fees of the panel, including travel expenses and other expenses of the review,
10 shall be paid by the party or parties in whose favor the expert opinion is written.

11 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
12 TO READ AS FOLLOWS:

13 The chairperson shall submit a copy of the panel's report by registered or certified mail
14 within five (5) days after the panel gives its opinion to:

15 (1) The cabinet; and

16 (2) All parties and the attorneys for the parties.

17 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
18 TO READ AS FOLLOWS:

19 (1) A court having jurisdiction over the subject matter and the parties to a proposed
20 complaint filed with the cabinet under this chapter may, upon the filing of a
21 petition as set forth in Section 26 of this Act:

22 (a) Entertain motions to compel or limit discovery previously authorized by the
23 chairperson of the medical review panel;

24 (b) Entertain motions to enforce or quash subpoenas issued by the chairperson
25 of the medical review panel; and

26 (c) Entertain motions for sanctions pursuant to Section 14 of this Act.

27 (2) The court has jurisdiction to entertain a motion filed under this chapter only

1 during that time after a proposed complaint is filed with the cabinet under this
2 chapter but before the medical review panel gives the panel's written opinion.

3 (3) The failure of any party to move to compel or limit discovery under this chapter
4 does not constitute the waiver of any affirmative defense or issue of law or fact.

5 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
6 TO READ AS FOLLOWS:

7 (1) A party to a proceeding commenced under this chapter, the cabinet, or the
8 chairperson of a medical review panel, if any, may invoke the jurisdiction of the
9 court by paying the statutory filing fee to the clerk and filing a petition with a
10 copy of the proposed complaint and motion with the clerk.

11 (2) The filing of a copy of the proposed complaint and motion with the clerk confers
12 jurisdiction upon the court over the subject matter of the proceeding for the
13 limited purposes stated in this chapter, including the assessment of costs or the
14 allowance of expenses, including reasonable attorney's fees, or both.

15 (3) The moving party or the moving party's attorney shall cause as many summonses
16 as are necessary to be issued by the clerk and served, together with a copy of the
17 proposed complaint and a copy of the motion, and in accordance with the
18 Kentucky Rules of Civil Procedure upon:

19 (a) The cabinet;

20 (b) Each nonmoving party to the proceedings; and

21 (c) The chairperson of the medical review panel, if any, unless the cabinet or
22 the chairperson is the moving party.

23 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
24 TO READ AS FOLLOWS:

25 (1) Each nonmoving party to the proceeding, including the cabinet and the
26 chairperson of the medical review panel, if any, shall have a period of twenty (20)
27 days after service, or a period of twenty-three (23) days after service if service is

1 by mail, to appear and file and serve a written response to the motion, unless the
2 court, for cause shown, orders the period enlarged.

3 (2) The court shall order the clerk to serve a copy of the court's ruling on the motion
4 by ordinary mail on the cabinet, each party to the proceeding, and the
5 chairperson of the medical review panel, if any.

6 →SECTION 28. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
7 TO READ AS FOLLOWS:

8 Upon the filing of a copy of the proposed complaint and motion with the clerk of the
9 court, all further proceedings before the medical review panel shall be stayed
10 automatically until the court has entered a ruling on the motion.

11 →SECTION 29. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
12 TO READ AS FOLLOWS:

13 The court may enforce its ruling on any motion filed under this chapter in accordance
14 with the Kentucky Rules of Civil Procedure, subject to any right of appeal otherwise
15 allowed by Kentucky law.