Louisiana Medical Review Panel FAQs

Q. I have been chosen to be a Panelist on a Medical Review Panel. Do I have to serve? How much do I get paid?

A. Absent a conflict of interest, participation in a Medical Review Panel process is mandatory. However, a physician may be excused if he or she has already served on four other Medical Review Panels during the previous 12-month period, or if he or she submits an affidavit attesting that service would constitute an "unreasonable burden or undue hardship."

By statute, the Panelists chosen are paid a *per diem* of $25, not to exceed $300 for all work on the Panel, plus any travel expenses incurred. However, in the event a Panelist is called to testify in a post-Panel lawsuit, he or she will be entitled to reasonable expert witness fees.

Q. I have been contacted by the claimant's attorney following a Panel Opinion that was adverse to the patient. Am I obligated to speak with this attorney?

A. Absent a subpoena, a Panelist is not obligated to speak with any of the parties or attorneys involved. However, a subpoena may be issued if a Panelist refuses to meet informally with an attorney or fails to cooperate with efforts to schedule his deposition, compelling the Panelist to testify on a date that may not be convenient for his patient schedule.

Q. How long does a physician need to keep materials after serving on a Panel?

A. A Panel member is not required to keep evidence after the Opinion is signed, but may do so. If not maintained, the materials should be disposed of in a HIPAA-compliant manner. If the Panelist is later asked to provide testimony, via deposition or in trial, the attorneys involved in the case can re-produce the prior materials for review and may also include additional information, such as depositions or subsequent medical records.

Q. Can I be sued for the Opinion I rendered?

A. A Panelist has "absolute immunity" from liability for all of his or her communications, findings, and the Opinion rendered during service on a Medical Review Panel.

Q: What if information needed to render a Panel Opinion is disputed and the subject of debate between the claimant and defendant physician?
A: If information needed to render an Opinion is a "material" fact which is disputed by the parties, then the Louisiana Medical Malpractice Act provides that the Panel should find that "there is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court." However, some facts that are contested may be indisputable, not all disputed facts are "material." Therefore, if a fact is disputed but has no bearing on the determination to be made by the Panel, and thus immaterial, an Opinion should be rendered as to whether or not the defendant-physician met the standard of care.

Q: Should I render an Opinion regarding treatment by an unnamed physician or a portion of the defendant's treatment that is not included in the complaint?
A: There is no legal duty to go beyond the allegations of the complaint. The Louisiana Medical Malpractice Act specifically provides that a complaint must contain the names of all defendants, the dates of the alleged malpractice, a description of the alleged malpractice as to each named defendant, and a description of the alleged injuries. Therefore, treatment that is not specifically raised by the claimant is not before the Panel for review and should not be included in the Opinion.

Q: Must I appear in person at the meeting with the Attorney Chairman?
A: No. Panel members may participate in deliberations via telephone or videoconference. Sometimes remote participation is unavoidable, such as when a physician has an unanticipated medical emergency necessitating his or her physical presence in another locale or when a Panelist resides at a significant geographical distance from the location of the meeting. However, if circumstances permit, it is advisable to attend the meeting in person to facilitate communications with the Attorney Chairman and other Panelists.

Q: Does the Panel's Opinion have to be unanimous? What if I disagree with the findings of another Panelist?
A: While many Attorney Chairmen will encourage a consensus finding, there is no requirement that the Opinion be unanimous. Any member of the Panel may render a dissenting Opinion, or where indicated, each Panelist may render a unique, individual Opinion. Therefore, if you are familiar with the care at issue, you should render an Opinion consistent with your own findings even if your impression is challenged by another Panelist,

as you should not allow yourself to be intimidated or oppressed by an outspoken or harassing Panelist or Chairman.

Q: How is the written Opinion prepared?
A: It is the duty and responsibility of the Attorney Chairman to prepare the written Opinion and Reasons for each member of the Panel to sign. As the Attorney Chairman may not be knowledgeable of the medical issues, as a Panelist, you should carefully review the proposed Opinion in order to ensure that the Attorney Chairman has accurately transcribed your intent and correctly composed the medical aspects of the Opinion and Reasons.

Some required language of the Opinion is dictated by statute. Specifically, the Panel must render an Opinion as to whether or not "the evidence supports the conclusion that the defendant acted or failed to act within the appropriate standard of care" as alleged in the complaint. Generally, "standard of care" is the legal phraseology used to describe that skill, judgment and treatment which would ordinarily be provided by other members of the defendant physician's specialty under similar circumstances. The physician is reviewed in terms of reasonableness under the then existing circumstances; physicians are not judged in terms of hindsight, with retrospective knowledge not available at the time of treatment. Also, the law recognizes that unfortunate outcomes do not alone establish negligence, as complications can occur in the absence of negligence on the part of the physician.

If the Panel finds that the physician's conduct did deviate from the required standard of care, then the Panel must also address the issue of "causation", in other words, whether or not the physician's substandard conduct was a causative factor resulting in the "damages" or injury as alleged. The law recognizes that negligent treatment may have no impact on the patient's outcome.

Q: Can I change my mind after the formal, written Opinion has been signed?
A: Yes. Sometimes, with the passage of time and additional consideration, or following review of further evidence not previously available, or due to interim advances in medicine, a Panelist may subsequently possess an expanded or wholly different view than previously expressed at the time of the Panel meeting. In the event you are consulted or subpoenaed for deposition or trial, you should be prepared to explain any different current opinions as well as the reasoning for those changes.