

HOUSE BILL NO. 618

INTRODUCED BY KEYSER, BARDANOUVE, VINGER, SHONTZ

IN THE HOUSE

February 2, 1983	Introduced and referred to Committee on Judiciary.
February 10, 1983	Committee recommend bill do pass as amended. Report adopted.
February 11, 1983	Bill printed and placed on members' desks.
February 12, 1983	Second reading, do pass.
February 14, 1983	Considered correctly engrossed.
February 15, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 16, 1983	Introduced and referred to Committee on Judiciary.
March 19, 1983	Committee recommend bill be concurred in. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 24, 1983	Returned to House.
March 25, 1983	Sent to enrolling. Reported correctly enrolled.

1 House BILL NO. 618  
2 INTRODUCED BY Reyes Buchanan Kriger  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA  
5 MEDICAL MALPRACTICE PANEL ACT BY CHANGING THE NAME OF THE  
6 ACT; CLARIFYING THE DEFINITIONS USED IN THE ACT; PROVIDING  
7 FOR A DIFFERENT ALLOCATION OF ASSESSMENTS; CHANGING THE TIME  
8 WITHIN WHICH AFFIDAVITS OF DISQUALIFICATION MAY BE FILED;  
9 PROVIDING FOR SERVICE BY CERTIFIED MAIL; INCREASING THE  
10 NUMBER OF PROPOSED PANELISTS INITIALLY SELECTED; DELETING  
11 THE PROHIBITION AGAINST THE USE OF IMPEACHING EVIDENCE IN  
12 COURT; AMENDING SECTIONS 27-6-101, 27-6-103, 27-6-104,  
13 27-6-206, 27-6-305, 27-6-402, 27-6-404, AND 27-6-704, MCA;  
14 AND PROVIDING EFFECTIVE DATES."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 27-6-101, MCA, is amended to read:

18 "27-6-101. Short title. This chapter may be cited as  
19 the "Montana Medical ~~Not~~practice Legal Panel Act".

20 Section 2. Section 27-6-103, MCA, is amended to read:

21 "27-6-103. Definitions. As used in this chapter, the  
22 following definitions apply:

23 (1) "Health care facility" means a facility (other  
24 than a university, college, or governmental hospital or  
25 infirmary) licensed as a health care facility under Title

1 50\_chapter\_5\_

2           (1)(2) "Health care provider" means a physician  
3    ~~licensed-to-practice-medicine-in-Montana-or-a-hospital~~  
4    ~~hospital-related-facility~~ or ~~long-term~~ a health care  
5    facility.

6 (3) "Hospital" means a hospital as defined in  
7 50-5-101.

8            (b)(5) "Malpractice claim" means any claim or  
9            potential claim against a health care provider for medical  
10           treatment, lack of medical treatment, or other alleged  
11           departure from accepted standards of health care which  
12           proximately results in damage to the patient, whether the  
13           patient's claim or potential claim sounds in tort or  
14           contract, and includes but is not limited to allegations of  
15           battery or wrongful death.

16 (b)(5) "panel" means the Montana medical malpractice  
17 legal panel provided for in 27-6-104.

18       (6) "Physician" means an individual licensed to  
19       practice medicine under the provisions of Title 37, chapter  
20       3."

21           Section 3. Section 27-6-104, MCA, is amended to read:

22 "27-6-104. Creation of panel. The Montana medical  
23 ~~malpractice~~ legal panel is created. The panel is attached to  
24 the Montana supreme court for administrative purposes only,  
25 except that 2-15-121(2) does not apply."

Section 4. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers--~~The amount of the assessment shall be set by the director who shall allocate a projected cost among health care providers on a per capita basis except that an individual not engaged in the practice of his profession in Montana is exempt from payment of the assessment. The director may provide a different allocation upon approval by the supreme court, except physicians not engaged in the private practice of medicine. The amount of the assessment must be annually set by the director, who shall allocate a projected cost among physicians, hospitals, and other health care facilities. The amount of the assessment for an individual physician, hospital, or other health care facility must be that portion of the total assessment which bears the same relationship to the total~~

~~assessment as the number of claims against such physician, hospital, or other health care facility bears to the total number of claims against physicians, hospitals, and other health care facilities that have been filed with the panel since April 19, 1977, as that total number of claims is shown in the annual reports of the panel. However, the assessment for an individual hospital must also be determined by dividing the total percentage of the assessment for all hospitals by the total number of hospital beds existing at the time of the assessment and multiplying the result by the number of beds in the hospital to be assessed.~~ Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' annual registration fees are due under 37-3-313. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 in connection with physicians' annual registration fees."

Section 5. Section 27-6-305, MCA, is amended to read:

"27-6-305. Service on health care provider. Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected pursuant--to-the-Montana-Rules-of-Civil-Procedure by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested."

Section 6. Section 27-6-402, MCA, is amended to read:

"27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall, within 14 days from the date of transmittal of the application, each select three 12 proposed panelists from which 3 will be selected within 30 days from the date of transmittal of the application.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select three persons from the health care provider's profession and, where

applicable, from persons specializing in the same field or discipline as the health care provider."

Section 7. Section 27-6-404, MCA, is amended to read:

"27-6-404. Disqualification of panel member. (1) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association, state licensing board, or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed at--least--20--days prior--to--the--date--of--hearing within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected."

Section 8. Section 27-6-704, MCA, is amended to read:

"27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) No panel member may be

1 called to testify in any proceeding concerning the  
2 deliberations, discussions, decisions, and internal  
3 proceedings of the panel.

4 ~~(2) No statement made by any person during a hearing~~  
5 ~~before the panel may be used as impeaching evidence in~~  
6 ~~court.~~ The decision of the medical review panel is not  
7 admissible as evidence in any action subsequently brought in  
8 any court of law."

9 NEW SECTION. Section 9. Effective dates. (1) Section  
10 4 of this act is effective January 1, 1984.

11 (2) All other sections of this act are effective on  
12 passage and approval.

-End-

Approved by Committee  
on Judiciary

## HOUSE BILL NO. 618

INTRODUCED BY KEYSER, BARDANDUVE,

VINGER, SHONTZ

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA MEDICAL MALPRACTICE PANEL ACT BY CHANGING THE NAME OF THE ACT; CLARIFYING THE DEFINITIONS USED IN THE ACT; PROVIDING FOR A DIFFERENT ALLOCATION OF ASSESSMENTS; CHANGING THE TIME WITHIN WHICH AFFIDAVITS OF DISQUALIFICATION MAY BE FILED; PROVIDING FOR SERVICE BY CERTIFIED MAIL; INCREASING THE NUMBER OF PROPOSED PANELISTS INITIALLY SELECTED; DELETING THE PROHIBITION AGAINST THE USE OF IMPEACHING EVIDENCE IN COURT; AMENDING SECTIONS 27-6-101, 27-6-103, 27-6-104, 27-6-206, 27-6-305, 27-6-402, 27-6-404, AND 27-6-704, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-6-101, MCA, is amended to read:

"27-6-101. Short title. This chapter may be cited as the "Montana Medical Malpractice Legal Panel Act."

Section 2. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Health care facility" means a facility (other than a university, college, or governmental hospital or

infirmariy) licensed as a health care facility under Title 50, chapter 5.

(2) "Health care provider" means a physician licensed to practice medicine in Montana or a hospital, hospital-related facility, or long-term a health care facility.

(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Malpractice claim" means any claim or potential claim against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the patient, whether the patient's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(5) "Panel" means the Montana medical malpractice legal panel provided for in 27-6-104.

(6) "Physician" means an individual licensed to practice medicine under the provisions of Title 37, chapter 2.

Section 3. Section 27-6-104, MCA, is amended to read:

"27-6-104. Creation of panel. The Montana medical malpractice legal panel is created. The panel is attached to the Montana supreme court for administrative purposes only.

1 except that 2-15-121(2) does not apply."

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3 "27-6-206. Funding. (1) There is created a pretrial  
4 review fund to be administered by the director exclusively  
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6 income from it shall be held in trust, deposited in an  
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8 the prior approval of the director of the Montana medical  
9 association. The fund may not become a part of or revert to  
10 the general fund of this state but shall be open to auditing  
11 by the legislative auditor.

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1 assessment which bears the same relationship to the total  
2 assessment as the number of claims against such physician,  
3 hospital, or other health care facility bears to the total  
4 number of claims against physicians, hospitals, and other  
5 health care facilities that have been filed with the panel  
6 since April 12, 1977, as that total number of claims is  
7 shown in the annual reports of the panel. However, the  
8 assessment for an individual hospital must also be  
9 determined by dividing the total percentage of the  
10 assessment for all hospitals by the total number of hospital  
11 beds existing at the time of the assessment and multiplying  
12 the result by the number of beds in the hospital to be  
13 assessed. Surplus funds, if any, over and above the amount  
14 required for the annual administration of the chapter shall  
15 be retained by the director and used to finance the  
16 administration of this chapter in succeeding years, in which  
17 event the director shall reduce the annual assessment in  
18 subsequent years, commensurate with the proper  
19 administration of this chapter.

20 (3) The annual surcharge shall be paid on or before  
21 the date physicians' annual registration fees are due under  
22 37-3-313. The director has the same powers and duties in  
23 connection with the collection of and failure to pay the  
24 annual surcharge as the department of commerce has under  
25 37-3-313 in connection with physicians' annual registration

1 fees."

2 Section 5. Section 27-6-305, MCA, is amended to read:  
 3 "27-6-305. Service on health care provider. Upon  
 4 receipt of an application for review, the director or his  
 5 delegate shall cause to be served a true copy of the  
 6 application on the health care providers involved. Service  
 7 shall be effected pursuant--to-the-Montana-Rules-of-Civil-  
 8 Procedure by mailing a certified copy of the application to  
 9 the health care provider at the provider's last-known  
 10 address, postage prepaid, by certified mail, return receipt  
 11 requested."

12 Section 6. Section 27-6-402, MCA, is amended to read:  
 13 "27-6-402. Selection of panelists. (1) Application for  
 14 review shall be promptly transmitted by the director to the  
 15 directors of the health care provider's state professional  
 16 society or association and the state bar, which shall  
 17 within 14 days from the date of transmittal of the  
 18 application, each select three 12 proposed panelists from  
 19 which 3 will be selected within 30 days from the date of  
 20 transmittal of the application.

21 (2) If no state professional society or association  
 22 exists or if the health care provider does not belong to  
 23 such a society or association, the director shall transmit  
 24 the application to the health care provider's state  
 25 licensing board, which shall in turn select three 12 persons

1 from the health care provider's profession and, where  
 2 applicable, from persons specializing in the same field or  
 3 discipline as the health care provider."

4 Section 7. Section 27-6-404, MCA, is amended to read:  
 5 "27-6-404. Disqualification of panel member. (1) Any  
 6 member shall disqualify himself from consideration of any  
 7 case in which, by virtue of his circumstances, he feels his  
 8 presence on the panel would be inappropriate, considering  
 9 the purpose of the panel. The director may excuse a  
 10 proposed panelist from serving."

11 (2) Whenever a party makes and files an affidavit that  
 12 a panel member selected pursuant to this part cannot,  
 13 according to the belief of the party making the affidavit,  
 14 sit in review of the application with impartiality, that  
 15 panel member may proceed no further. Another panel member  
 16 must be selected by the health care provider's professional  
 17 association, state licensing board, or the state bar, as the  
 18 case may be. A party may not disqualify more than three  
 19 panel members in this manner in any single malpractice  
 20 claim, and the affidavit must be filed at least 20 days  
 21 prior to the date of hearing within 15 days of the  
 22 transmittal by the director, under 27-6-402, of the names of  
 23 the panel members selected."

24 Section 8. Section 27-6-704, MCA, is amended to read:  
 25 "27-6-704. Panel proceedings and decision privileged



1 from disclosure in court actions. (1) No panel member may be  
2 called to testify in any proceeding concerning the  
3 deliberations, discussions, decisions, and internal  
4 proceedings of the panel.

5 (2) ~~No statement made by any person during a hearing~~  
6 ~~before the panel may be used as impeaching evidence in~~  
7 ~~court.~~ The decision of the medical review panel is not  
8 admissible as evidence in any action subsequently brought in  
9 any court of law."

10 ~~NEW SECTION.~~ Section 9. Effective dates. (1) Section  
11 4 of this act is effective January 1, 1984.

12 (2) All other sections of this act are effective on  
13 passage and approval.

-End-