

HOUSE BILL NO. 196

INTRODUCED BY MILES, GOULD, DAILY, BULGER

IN THE HOUSE

JANUARY 14, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

JANUARY 26, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 27, 1987 PRINTING REPORT.

JANUARY 28, 1987 SECOND READING, DO PASS.

JANUARY 29, 1987 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 94; NOES, 1.

 TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 30, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE & SAFETY.

MARCH 10, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 13, 1987 SECOND READING, CONCURRED IN.

MARCH 16, 1987 THIRD READING, CONCURRED IN.
 AYES, 50; NOES, 0.

 RETURNED TO HOUSE.

IN THE HOUSE

MARCH 17, 1987 RECEIVED FROM SENATE.

 SENT TO ENROLLING.

1 HB (BILL NO. 196)
 2 INTRODUCED BY [Signature]
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE
 5 JURISDICTION OF THE MONTANA MEDICAL LEGAL PANEL TO CLAIMS
 6 AGAINST DENTISTS; AMENDING SECTIONS 27-6-103, 27-6-206,
 7 27-6-302, 27-6-306, AND 27-6-401, MCA; AND PROVIDING AN
 8 APPLICABILITY DATE."
 9

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

11 Section 1. Section 27-6-103, MCA, is amended to read:

12 "27-6-103. Definitions. As used in this chapter, the
 13 following definitions apply:

14 (1) "Dentist" means:

15 (a) for purposes of the assessment of the annual
 16 surcharge, an individual licensed to practice dentistry
 17 under the provisions of Title 37, chapter 4, who at the time
 18 of the assessment:

19 (i) has as his principal residence or place of dental
 20 practice the state of Montana;

21 (ii) is not employed full-time by any federal
 22 governmental agency or entity; and

23 (iii) is not fully retired from the practice of
 24 dentistry; or

25 (b) for all other purposes, a person licensed to

1 practice dentistry under the provisions of Title 37, chapter
 2 4, who at the time of the occurrence of the incident giving
 3 rise to the claim:

4 (i) was an individual who had as his principal
 5 residence or place of dental practice the state of Montana
 6 and was not employed full-time by any federal governmental
 7 agency or entity; or

8 (ii) was a professional service corporation,
 9 partnership, or other business entity organized under the
 10 laws of any state to render dental services and whose
 11 shareholders, partners, or owners were individual dentists
 12 licensed to practice dentistry under the provisions of Title
 13 37, chapter 4.

14 ~~(1)~~(2) "Health care facility" means a facility (other
 15 than a university, college, or governmental infirmary)
 16 licensed as a health care facility under Title 50, chapter
 17 5.

18 ~~(2)~~(3) "Health care provider" means a physician, a
 19 dentist, or a health care facility.

20 ~~(3)~~(4) "Hospital" means a hospital as defined in
 21 50-5-101.

22 ~~(4)~~(5) "Malpractice claim" means any claim or
 23 potential claim of a claimant against a health care provider
 24 for medical or dental treatment, lack of medical or dental
 25 treatment, or other alleged departure from accepted

1 standards of health care which proximately results in damage
 2 to the claimant, whether the claimant's claim or potential
 3 claim sounds in tort or contract, and includes but is not
 4 limited to allegations of battery or wrongful death.

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

7 †6†(7) "Physician" means:

8 (a) for purposes of the assessment of the annual
 9 surcharge, an individual licensed to practice medicine under
 10 the provisions of Title 37, chapter 3, who at the time of
 11 the assessment:

12 (i) has as his principal residence or place of medical
 13 practice the state of Montana;

14 (ii) is not employed full-time by any federal
 15 governmental agency or entity; and

16 (iii) is not fully retired from the practice of
 17 medicine; or

18 (b) for all other purposes, a person licensed to
 19 practice medicine under the provisions of Title 37, chapter
 20 3, who at the time of the occurrence of the incident giving
 21 rise to the claim:

22 (i) was an individual who had as his principal
 23 residence or place of medical practice the state of Montana
 24 and was not employed full-time by any federal governmental
 25 agency or entity; or

1 (ii) was a professional service corporation,
 2 partnership, or other business entity organized under the
 3 laws of any state to render medical services, and whose
 4 shareholders, partners, or owners were individual physicians
 5 licensed to practice medicine under the provisions of Title
 6 37, chapter 3."

7 Section 2. Section 27-6-206, MCA, is amended to read:

8 "27-6-206. Funding. (1) There is created a pretrial
 9 review fund to be administered by the director exclusively
 10 for the purposes stated in this chapter. The fund and any
 11 income from it shall be held in trust, deposited in an
 12 account, and invested and reinvested by the director with
 13 the prior approval of the director of the Montana medical
 14 association. The fund may not become a part of or revert to
 15 the general fund of this state but shall be open to auditing
 16 by the legislative auditor.

17 (2) To create the fund, an annual surcharge shall be
 18 levied on all health care providers. The amount of the
 19 assessment must be annually set by the director and must be
 20 apportioned among physicians, dentists, hospitals, and other
 21 health care providers by group. As to the group of all
 22 physicians, the group of all dentists, the group of all
 23 hospitals, and the group of all other health care
 24 facilities, the amount of the assessment must be
 25 proportionate to the respective percentage of total health

1 care providers brought before the panel that each group
 2 constitutes. The total number and group of health care
 3 providers brought before the panel must be determined from
 4 the annual report of the panel for the years preceding the
 5 year of assessment, as to all claims closed since April 19,
 6 1977. The amount of the assessment for the group of all
 7 hospitals must be proportionately assessed against each
 8 hospital on the basis of each hospital's total number of
 9 licensed hospital beds, whether used or not, as reflected in
 10 the most recent compilation of the department of health and
 11 environmental sciences. The amount of the assessment for the
 12 group of all physicians must be equally assessed against all
 13 physicians. The amount of the assessment for the group of
 14 all dentists must be equally assessed against all dentists.
 15 The amount of the assessment for the group of all other
 16 health care facilities must be equally assessed against all
 17 other health care facilities. Surplus funds, if any, over
 18 and above the amount required for the annual administration
 19 of the chapter shall be retained by the director and used to
 20 finance the administration of this chapter in succeeding
 21 years, in which event the director shall reduce the annual
 22 assessment in subsequent years, commensurate with the proper
 23 administration of this chapter.

24 (3) The annual surcharge shall be paid on or before
 25 the date physicians' and dentists' annual registration or

1 renewal fees are due under 37-3-313 and 37-4-307. All unpaid
 2 assessments bear a late charge fee equal to the judgment
 3 rate of interest. The late charge fee is part of the annual
 4 surcharge. The director has the same powers and duties in
 5 connection with the collection of and failure to pay the
 6 annual surcharge as the department of commerce has under
 7 37-3-313 and 37-4-307 in connection with physicians' and
 8 dentists' annual registration or renewal fees."

9 Section 3. Section 27-6-302, MCA, is amended to read:
 10 "27-6-302. Contents of application -- waiver of
 11 confidentiality of medical and dental records. The
 12 application shall contain the following:

13 (1) a statement in reasonable detail of the elements
 14 of the health care provider's conduct which are believed to
 15 constitute a malpractice claim, the dates the conduct
 16 occurred, and the names and addresses of all physicians,
 17 dentists, and hospitals having contact with the claimant and
 18 all witnesses;

19 (2) a statement authorizing the panel to obtain access
 20 to all medical, dental, and hospital records and information
 21 pertaining to the claim and, for the purposes of its
 22 consideration of this matter only, waiving any privilege as
 23 to the contents of those records. Nothing in that statement
 24 may in any way be construed as waiving that privilege for
 25 any other purpose or in any other context, in or out of

1 court."

2 Section 4. Section 27-6-306, MCA, is amended to read:

3 "27-6-306. Health care provider's appearance and
4 answer -- waiver of confidentiality of records. (1) If a
5 health care provider involved chooses to retain legal
6 counsel, his attorney shall informally enter his appearance
7 with the director.

8 (2) The health care provider shall answer the
9 application for review and shall submit a statement
10 authorizing the panel to inspect all medical, dental, and
11 hospital records and information pertaining to the
12 application and, for the purposes of such inspection only,
13 waiving any privilege as to the contents of those records.
14 Nothing in the statement waives that privilege for any other
15 purpose."

16 Section 5. Section 27-6-401, MCA, is amended to read:

17 "27-6-401. Composition of panel. (1) Those eligible to
18 sit on the panel are health care providers licensed pursuant
19 to Montana law and residing in Montana and the members of
20 the state bar of Montana. Six panel members shall sit in
21 review of each case. Three panel members who are physicians
22 and three panel members who are attorneys shall sit in
23 review of each case in which the claim is heard only against
24 one or more physicians. Three panel members who are dentists
25 and three panel members who are attorneys shall sit in

1 review of each case in which the claim is heard only against
2 one or more dentists. If the claim is heard only against one
3 or more health care facilities, two of the panel members
4 must be administrators of the same type of health care
5 facility or facilities, one panel member must be a
6 physician, and three panel members must be attorneys.

7 (2) In all other cases, two of the panel members must
8 be physicians, one panel member must be an administrator of
9 the same type of health care facility, and three panel
10 members must be attorneys, except that when a claim is heard
11 against a dentist, a dentist must be substituted for one of
12 the physicians on the panel."

13 NEW SECTION. Section 6. Applicability. This act
14 applies to malpractice claims occurring on or after the
15 effective date of this act.

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APPROVED BY COMM. ON BUSINESS AND LABOR

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(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to

practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

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

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted

SECOND READING

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1 standards of health care which proximately results in damage
 2 to the claimant, whether the claimant's claim or potential
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14 Nothing in the statement waives that privilege for any other
15 purpose."

16 SECTION 5. SECTION 27-6-307, MCA, IS AMENDED TO READ:

17 "27-6-307. Assistance to claimant in obtaining expert
18 consultation. The panel director shall cooperate fully with
19 the claimant in retaining, to consult with the claimant,
20 upon payment of a reasonable fee by the claimant, in claims
21 involving:

22 (1) a physician, a physician qualified in the field of
23 medicine involved, ~~who will consult with the claimant upon~~
24 payment of a reasonable fee by the claimant; or

25 (2) a dentist, a dentist qualified in the field of

1 dentistry involved."

2 SECTION 6. SECTION 27-6-308, MCA, IS AMENDED TO READ:

3 "27-6-308. Director to furnish panel members with
4 documents. At least 10 days prior to the hearing, the
5 director shall furnish to each panel member copies of all
6 claims, briefs, medical or dental records, and other
7 documents the director considers necessary."

8 Section 7. Section 27-6-401, MCA, is amended to read:

9 "27-6-401. Composition of panel. (1) Those eligible to
10 sit on the panel are health care providers licensed pursuant
11 to Montana law and residing in Montana and the members of
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13 review of each case. Three panel members who are physicians
14 and three panel members who are attorneys shall sit in
15 review of each case in which the claim is heard only against
16 one or more physicians. Three panel members who are dentists
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18 review of each case in which the claim is heard only against
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20 or more health care facilities, two of the panel members
21 must be administrators of the same type of health care
22 facility or facilities, one panel member must be a
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24 (2) In all other cases, two of the panel members must
25 be physicians, one panel member must be an administrator of

1 the same type of health care facility, and three panel
2 members must be attorneys, except that when a claim is heard
3 against a dentist, a dentist must be substituted for one of
4 the physicians on the panel."

5 NEW SECTION. Section 8. Applicability. This act
6 applies to malpractice claims occurring on or after the
7 effective date of this act.

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1 standards of health care which proximately results in damage
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14 and three panel members who are attorneys shall sit in
15 review of each case in which the claim is heard only against
16 one or more physicians. Three panel members who are dentists
17 and three panel members who are attorneys shall sit in
18 review of each case in which the claim is heard only against
19 one or more dentists. If the claim is heard only against one
20 or more health care facilities, two of the panel members
21 must be administrators of the same type of health care
22 facility or facilities, one panel member must be a
23 physician, and three panel members must be attorneys.

24 (2) In all other cases, two of the panel members must
25 be physicians, one panel member must be an administrator of

1 the same type of health care facility, and three panel
2 members must be attorneys, except that when a claim is heard
3 against a dentist, a dentist must be substituted for one of
4 the physicians on the panel."

5 NEW SECTION. Section 8. Applicability. This act
6 applies to malpractice claims occurring on or after the
7 effective date of this act.

-End-

HOUSE BILL NO. 196

INTRODUCED BY MILES, GOULD, DALY, BULGER

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE JURISDICTION OF THE MONTANA MEDICAL LEGAL PANEL TO CLAIMS AGAINST DENTISTS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-302, 27-6-306 THROUGH 27-6-308, AND 27-6-401, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 27-6-103, MCA, is amended to read:

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

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to

practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

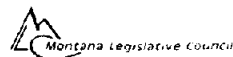
(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

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

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted



1 standards of health care which proximately results in damage
2 to the claimant, whether the claimant's claim or potential
3 claim sounds in tort or contract, and includes but is not
4 limited to allegations of battery or wrongful death.

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

7 ~~(6)~~(7) "Physician" means:

8 (a) for purposes of the assessment of the annual
9 surcharge, an individual licensed to practice medicine under
10 the provisions of Title 37, chapter 3, who at the time of
11 the assessment:

12 (i) has as his principal residence or place of medical
13 practice the state of Montana;

14 (ii) is not employed full-time by any federal
15 governmental agency or entity; and

16 (iii) is not fully retired from the practice of
17 medicine; or

18 (b) for all other purposes, a person licensed to
19 practice medicine under the provisions of Title 37, chapter
20 3, who at the time of the occurrence of the incident giving
21 rise to the claim:

22 (i) was an individual who had as his principal
23 residence or place of medical practice the state of Montana
24 and was not employed full-time by any federal governmental
25 agency or entity; or

1 (ii) was a professional service corporation,
2 partnership, or other business entity organized under the
3 laws of any state to render medical services, and whose
4 shareholders, partners, or owners were individual physicians
5 licensed to practice medicine under the provisions of Title
6 37, chapter 3."

7 Section 2. Section 27-6-206, MCA, is amended to read:

8 "27-6-206. Funding. (1) There is created a pretrial
9 review fund to be administered by the director exclusively
10 for the purposes stated in this chapter. The fund and any
11 income from it shall be held in trust, deposited in an
12 account, and invested and reinvested by the director with
13 the prior approval of the director of the Montana medical
14 association. The fund may not become a part of or revert to
15 the general fund of this state but shall be open to auditing
16 by the legislative auditor.

17 (2) To create the fund, an annual surcharge shall be
18 levied on all health care providers. The amount of the
19 assessment must be annually set by the director and must be
20 apportioned among physicians, dentists, hospitals, and other
21 health care providers by group. As to the group of all
22 physicians, the group of all dentists, the group of all
23 hospitals, and the group of all other health care
24 facilities, the amount of the assessment must be
25 proportionate to the respective percentage of total health

1 care providers brought before the panel that each group
 2 constitutes. The total number and group of health care
 3 providers brought before the panel must be determined from
 4 the annual report of the panel for the years preceding the
 5 year of assessment, as to all claims closed since April 19,
 6 1977. The amount of the assessment for the group of all
 7 hospitals must be proportionately assessed against each
 8 hospital on the basis of each hospital's total number of
 9 licensed hospital beds, whether used or not, as reflected in
 10 the most recent compilation of the department of health and
 11 environmental sciences. The amount of the assessment for the
 12 group of all physicians must be equally assessed against all
 13 physicians. The amount of the assessment for the group of
 14 all dentists must be equally assessed against all dentists.
 15 The amount of the assessment for the group of all other
 16 health care facilities must be equally assessed against all
 17 other health care facilities. Surplus funds, if any, over
 18 and above the amount required for the annual administration
 19 of the chapter shall be retained by the director and used to
 20 finance the administration of this chapter in succeeding
 21 years, in which event the director shall reduce the annual
 22 assessment in subsequent years, commensurate with the proper
 23 administration of this chapter.

24 (3) The annual surcharge shall be paid on or before
 25 the date physicians' and dentists' annual registration or

1 renewal fees are due under 37-3-313 and 37-4-307. All unpaid
 2 assessments bear a late charge fee equal to the judgment
 3 rate of interest. The late charge fee is part of the annual
 4 surcharge. The director has the same powers and duties in
 5 connection with the collection of and failure to pay the
 6 annual surcharge as the department of commerce has under
 7 37-3-313 and 37-4-307 in connection with physicians' and
 8 dentists' annual registration or renewal fees."

9 Section 3. Section 27-6-302, MCA, is amended to read:
 10 "27-6-302. Contents of application -- waiver of
 11 confidentiality of medical and dental records. The
 12 application shall contain the following:

13 (1) a statement in reasonable detail of the elements
 14 of the health care provider's conduct which are believed to
 15 constitute a malpractice claim, the dates the conduct
 16 occurred, and the names and addresses of all physicians,
 17 dentists, and hospitals having contact with the claimant and
 18 all witnesses;

19 (2) a statement authorizing the panel to obtain access
 20 to all medical, dental, and hospital records and information
 21 pertaining to the claim and, for the purposes of its
 22 consideration of this matter only, waiving any privilege as
 23 to the contents of those records. Nothing in that statement
 24 may in any way be construed as waiving that privilege for
 25 any other purpose or in any other context, in or out of

1 court."

2 Section 4. Section 27-6-306, MCA, is amended to read:

3 "27-6-306. Health care provider's appearance and
4 answer -- waiver of confidentiality of records. (1) If a
5 health care provider involved chooses to retain legal
6 counsel, his attorney shall informally enter his appearance
7 with the director.

8 (2) The health care provider shall answer the
9 application for review and shall submit a statement
10 authorizing the panel to inspect all medical, dental, and
11 hospital records and information pertaining to the
12 application and, for the purposes of such inspection only,
13 waiving any privilege as to the contents of those records.
14 Nothing in the statement waives that privilege for any other
15 purpose."

16 SECTION 5. SECTION 27-6-307, MCA, IS AMENDED TO READ:

17 "27-6-307. Assistance to claimant in obtaining expert
18 consultation. The panel director shall cooperate fully with
19 the claimant in retaining, to consult with the claimant,
20 upon payment of a reasonable fee by the claimant, in claims
21 involving:

22 (1) a physician, a physician qualified in the field of
23 medicine involved, who will consult with the claimant upon
24 payment of a reasonable fee by the claimant; or

25 (2) a dentist, a dentist qualified in the field of

1 dentistry involved."

2 SECTION 6. SECTION 27-6-308, MCA, IS AMENDED TO READ:

3 "27-6-308. Director to furnish panel members with
4 documents. At least 10 days prior to the hearing, the
5 director shall furnish to each panel member copies of all
6 claims, briefs, medical or dental records, and other
7 documents the director considers necessary."

8 Section 7. Section 27-6-401, MCA, is amended to read:

9 "27-6-401. Composition of panel. (1) Those eligible to
10 sit on the panel are health care providers licensed pursuant
11 to Montana law and residing in Montana and the members of
12 the state bar of Montana. Six panel members shall sit in
13 review of each case. Three panel members who are physicians
14 and three panel members who are attorneys shall sit in
15 review of each case in which the claim is heard only against
16 one or more physicians. Three panel members who are dentists
17 and three panel members who are attorneys shall sit in
18 review of each case in which the claim is heard only against
19 one or more dentists. If the claim is heard only against one
20 or more health care facilities, two of the panel members
21 must be administrators of the same type of health care
22 facility or facilities, one panel member must be a
23 physician, and three panel members must be attorneys.

24 (2) In all other cases, two of the panel members must
25 be physicians, one panel member must be an administrator of

1 the same type of health care facility, and three panel
2 members must be attorneys, except that when a claim is heard
3 against a dentist, a dentist must be substituted for one of
4 the physicians on the panel."

5 NEW SECTION. Section 8. Applicability. This act
6 applies to malpractice claims occurring on or after the
7 effective date of this act.

-End-