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[Medical Review Panels: Solving the Malpractice Crisis or Blocking the Courthouse Doors?](#)

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Medical Review Panels: Solving the Malpractice Crisis or Blocking the Courthouse Doors?

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Emily J. Bertram^[1]

Earlier this month, the Kentucky Supreme Court heard oral arguments on Senate Bill 4, which was passed by the 2017 General Assembly.^[2] The Medical Review Panel Act was signed into law by Gov. Matt Bevin and took effect June 29, 2017.^[3] The Act, in part, provides the following: “All malpractice and malpractice-related claims against a health care provider, other than claims validly agreed for submission to a binding arbitration procedure, shall be reviewed by a medical review panel.”^[4] According to the Cabinet for Health and Family Services, the Medical Review Panels are the



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“first step toward tort reform,” creating a way for claims of malpractice against healthcare providers to be reviewed prior to the filing of legal action in court.^[5] The day the Act was signed into law, a lawsuit was filed in Franklin Circuit Court. The Plaintiff asserted that the Act was unconstitutional based on thirteen separate sections of the Kentucky Constitution: Sections 1, 2, 3, 7, 14, 27, 28, 54, 59, 60, 109, 116, and 241.^[6] The Act was deemed unconstitutional by the Franklin Circuit Court and the Commonwealth appealed.

The Act, which was enacted with the purpose of screening lawsuits before they actually go to court, may assist in eliminating frivolous lawsuits that would be waste of a court’s time. In its brief, the Commonwealth asserts that the present “unfavorable” medical liability climate is creating a “medical liability crisis” which is ultimately driving doctors away and causing a spike in liability insurance.^[7] As of 2013, Kentucky only had roughly 70 percent of the physicians that its citizens needed.^[8] The Commonwealth explains that the General Assembly based Senate Bill 4 on published professional studies, as well as Indiana’s positive experience with medical review panels.^[9] The Commonwealth states that the panels make way for everyone involved in litigation to have “a low-cost, unbiased evaluation of medical malpractice claims before being burdened with onerous litigation costs.”^[10]

Others, however, view the panels as an obstruction of justice. Those against the panels view the Act as a way of blocking the courthouse door for malpractice plaintiffs. While the case screenings do eliminate frivolous lawsuits, the payoff may not be worth the arguably unfair delay to the injure parties seeking relief. Those in opposition look to the statistical trends in medical malpractice claims that have been filed in the year since the law went into effect. From June 29, 2017 to July 27, 2018, 531 complaints were filed. Of those complaints, 11% were actually assigned to a medical review panel and only 3% were adjudicated by the panel.^[11] By further breaking down the adjudicated cases, statistics show that nine of those cases resulted in a finding for the defendant, one resulted in a finding for the claimant, and three resulted in a finding that standard of case was violated without causing an injury.^[12] Further reports suggest that the panels actually increase overall litigation costs, have no consistent impact on claim amounts paid, and have no consistent effect on premiums.^[13] The statistics strongly support the assertion that the panels are causing a roadblock for claimants, but only time will tell how the Supreme Court will rule.

The Kentucky Supreme Court is expected to issue a ruling on the constitutionality of the Medical Review Panel Act in the coming weeks. No matter the outcome, one thing is clear: The Kentucky Supreme Court’s decision will shape the future of malpractice suits for the state.

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^[2] S.B. 4 Gen. Assemb., Reg. Sess. (Ky. 2017).

^[3] Ky. Rev. Stat. Ann. § 216C (2017).

^[4] Ky. Rev. Stat. Ann. § 216C.020 (2017).

^[5] *Policy and Procedure Documents*, KY. CABINET FOR HEALTH & FAM. SERVS., [https://chfs.ky.gov/agencies/dph/dmch/ecdb/Policy and Procedures Documents/Payor of Last Resort.pdf](https://chfs.ky.gov/agencies/dph/dmch/ecdb/Policy%20and%20Procedures%20Documents/Payor%20of%20Last%20Resort.pdf) (last visited Aug. 27, 2018).

^[6] Brief on Behalf of Appellee Ezra Claycomb at 1, *Commonwealth v. Claycomb*, Nos. 2017-SC-000614, 2017-SC-000615 (Ky. Feb. 13, 2018).

^[7] Reply Brief of Appellant Commonwealth of Kentucky at 2–4, *Commonwealth v. Claycomb*, Nos. 2017-SC-000614, 2017-SC-000615 (Ky. Feb. 21, 2018).

^[8] *Id.* at 2.

^[9] *Id.* at 1.

^[10] *Id.* at 6.

^[11] Andrew Wolfson, *Kentucky's Effort to Screen Medical Malpractice Claims Falls Flat*, *COURIER J.* (Aug. 5, 2018), <https://www.courier-journal.com/story/news/2018/08/05/kentucky-medical-malpractice-screening-panel-falls-flat/865452002/>.

^[12] *Id.*

^[13] Catherine T. Struve, *EXPERTISE IN MEDICAL MALPRACTICE LITIGATION: SPECIAL COURTS, SCREENING PANELS, AND OTHER OPTIONS* 68 (The Pew Charitable Trusts 2003).

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