Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE NEWS RELEASE #004

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **29th day of January, 2020** are as follows:

BY Chehardy, J.:

2019-C-00507 C/W 2019-C-00524 MEGAN THOMAS, ET AL. VS. THE REGIONAL HEALTH SYSTEM OF ACADIANA, LLC, ET AL. (Parish of Lafayette)

We granted writs in these consolidated matters to consider whether allegations of negligent credentialing against two healthcare providers are claims that fall within the purview of Louisiana's Medical Malpractice Act ("LMMA") or, alternatively, sound in general negligence. For the reasons that follow, we reverse the ruling of the court of appeal and reinstate the trial court's judgment sustaining the hospital defendants' exceptions of prematurity.

REVERSED.

Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, heard this case as Justice pro tempore, sitting in the vacant seat for District 1 of the Supreme Court. She is now appearing as an ad hoc for Justice William J. Crain. Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

Johnson, C.J., additionally concurs and assigns reasons.
Weimer, J., concurs and assigns reasons.
Hughes, J., dissents with reasons.
Genovese, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

Nos. 2019-C-00507 c/w 2019-C-0524

MEGAN THOMAS, ET AL.

VS.

THE REGIONAL HEALTH SYSTEM OF ACADIANA, LLC, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

CHEHARDY, J.[1]

We granted writs in these consolidated matters to consider whether allegations of negligent credentialing against two healthcare providers are claims that fall within the purview of Louisiana's Medical Malpractice Act ("LMMA") or, alternatively, sound in general negligence. For the reasons that follow, we reverse the ruling of the court of appeal and reinstate the trial court's judgment sustaining the hospital defendants' exceptions of prematurity.

FACTS

Mariah Charles was born prematurely in October 2014 at Lafayette General Medical Center (LGMC) and hospitalized there until March 2, 2015, when she was transferred to Women's and Children's Hospital of Lafayette (W&C) until her April 1, 2015 release. Dr. Geeta Dalal, (Dr. Dalal) a pediatric cardiologist with clinical privileges at both hospitals, contributed to Mariah's care during and after Mariah's hospitalization.

While Mariah remained at LGMC, Dr. Dalal ordered and interpreted eight echocardiograms that, according to the petition, revealed abnormal findings that can

[1] Chief Judge Susan M. Chehardy of the Court of Appeal, Fifth Circuit, heard this case as Justice pro tempore, sitting in the vacant seat for District 1 of the Supreme Court. She is now appearing ad hoc for Justice William J. Crain. Retired Judge James Boddie, Jr., appearing ad hoc for Justice Marcus R. Clark.

cause pulmonary artery hypertension, yet, the petition alleges Dr. Dalal took no action other than ordering additional echocardiograms. After Mariah's transfer to W&C, Dr. Dalal interpreted three more echocardiograms, again noted abnormalities, and allegedly failed to properly diagnose or treat Mariah.

Mariah remained under Dr. Dalal's care as an outpatient after her April 1, 2015 discharge from the hospital. Two weeks later on April 15, Dr. Dalal performed another echocardiogram, concluded that Mariah was stable, and scheduled a one-month follow-up. On May 8, Mariah was admitted to the pediatric intensive care unit at W&C and examined by another pediatric cardiologist who diagnosed pulmonary artery hypertension. Mariah was transferred by helicopter to Children's Hospital of New Orleans where medical staff confirmed the diagnosis and performed a heart catheterization procedure.

Mariah's mother, Megan Thomas (Thomas), appearing individually and on behalf of her minor daughter, initiated Medical Review Panel proceedings with the Patient's Compensation Fund against Dr. Dalal and the hospital defendants alleging medical malpractice and seeking damages for their alleged failure to properly diagnose and treat Mariah. In addition to the Medical Review Panel proceedings, Thomas filed the present suit against the hospitals—The Regional Health System of Acadiana, LLC, Women's & Children's Hospital, Inc., HCA Holdings, Inc., and Health Care Indemnity, Inc. (W&C), as well as Lafayette General Medical Center, Inc. and/or Lafayette General Health System, Inc. (LGMC)—for damages related to Mariah's care. The petition for damages at issue here asserts in a single cause of action that LGMC and W&C are liable under general tort law because they "negligently credentialed Dr. Dalal and negligently provided her with privileges to practice" in their facilities "even though [they] knew or should have known she was not board certified in the field of pediatric cardiology."

LGMC and W&C filed dilatory exceptions of prematurity to this suit, asserting that they are qualified healthcare providers under the MMA and are entitled to have Thomas's negligent credentialing claims presented first to a medical review panel pursuant to R.S. 40:1231.8(B)(1)(a)(i).

At the time the hospitals filed their exceptions of prematurity, *Billeaudeau v. Opelousas Gen'l Hosp. Auth.*, 2016-0846 (La. 10/19/16), 218 So. 3d 513, a negligent credentialing case, was pending before this court, and the parties agreed to stay the hearing on the exceptions until this court rendered an opinion.

In *Billeaudeau*, the plaintiff sued a physician for injuries arising from the alleged malpractice committed in the hospital's emergency department. Plaintiff also alleged that the hospital was negligent in credentialing the doctor citing specific acts of administrative negligence when it hired her, including failing to adhere to hospital bylaws requiring emergency physicians to have a year of prior Emergency Room experience; failing to follow up on a "qualified" reference from another physician; failing to investigate prior malpractice allegations against the physician; and failing to investigate whether the doctor had completed a continuing medical education course, also required by the hospital's by-laws.

The parties in *Billeaudeau* settled the underlying malpractice claims leaving only the negligent credentialing claims. This court, in a majority decision authored by Justice Knoll, determined that plaintiff's negligent credentialing claim sounded in general negligence rather than within the confines of the LMMA. *Billeaudeau*, 16-0846, 218 So. 3d at 522-23. The court stated: "the treatment-related medical decisions and dereliction of skill with which the LMMA is concerned, and for which a hospital can be held liable for malpractice, fall under the 'supervision and training of the health care providers' once they enter the building and engage in the practice of medicine therein." *Id.* at 523. The majority opinion also distinguished the facts presented in *Billeaudeau* from cases involving "mixed allegations of negligent

credentialing and supervision." *Id*. at 523 n.9.

Concurring, Justice Weimer agreed that the issue was a "close call" and found that the six factor test of *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So. 2d 303 requires that an analysis be conducted only after analyzing the issue according to the rules of statutory interpretation. *Id*. at 530-31. Justice Weimer's concurrence recognized that "plaintiffs' credentialing claim focuses on different times and on different duties than a 'training and supervision' claim," thus, he stated, "the legislature's omission of credentialing in its detailed list of definitions" when defining malpractice was an "important indicator of the legislature's intent not to subject a credentialing claim to the constraints of the LMMA." *Id*. at 530. Because of the Court's observation that the LMMA is intended to apply strictly to claims arising from medical malpractice, it was also important to analyze the facts under *Coleman*, which he found the majority properly applied.

In dissent, Chief Justice Johnson found negligent credentialing to be within the scope of the LMMA, noting: "[o]ne of a hospital's primary functions is to provide a place in which doctors dispense health care services, and its ability to grant, deny or revoke privileges demonstrates a degree of control over the quality of medical care provided. Thus, a hospital's decision to grant privileges to physicians to treat patients in the hospital's care is fundamentally and inherently related to the delivery of health care and therefore related to medical treatment." *Id*. at 528 (Johnson, C.J., dissenting). Further, negligent credentialing alone will not result in injury to a patient unless the physician commits a negligent act. "There can never be a negligent credentialing claim in the abstract, separated from associated negligent treatment or some other negligent act." *Id*. Separating the negligent credentialing claims from the malpractice allegations, according to Chief Justice Johnson, "gives medical malpractice plaintiffs a back door to avoid the LMMA relative to negligent acts committed by non-employee physicians who are extended privileges to practice

at a hospital." *Id*. at 529.

Justice Guidry similarly found that "negligent credentialing is so intertwined with the substantive malpractice claim underlying the suit against the health care provider that the legislature could not have intended to separate the two claims." *Id*. at 532 (Guidry, J., dissenting). Justice Clark agreed with Justice Guidry and further stated that the majority's exclusion of the negligent credentialing claims from the LMMA "clearly conflicts with the purpose of the act, *i.e.*, to ensure the availability of safe and affordable health care services to the public and simultaneously limit the significant liability exposure of health care providers." *Id.* (Clark, J., dissenting).

With *Billeaudeau* having been decided, and after considering the parties' arguments in the instant matter, the trial court in the present case granted the hospitals' exceptions of prematurity and dismissed Thomas's claims without prejudice. Thomas appealed, and the court of appeal reversed, finding negligent re-credentialing claims do not fall under the LMMA. *Thomas v. Regional Health System of Acadiana, LLC*, 2018-215 (La. App. 3 Cir. 2/27/19), 266 So. 3d 354. The Third Circuit majority rejected the hospitals' argument that *Billeaudeau* involves only the initial credentialing of a physician, stating: "[c]redentialing is credentialing, whether it was done one time or thirty-five times, and it applies to both the initial credentialing process and the re-credentialing process." *Id*. at 362. The court also noted that negligent re-credentialing is not explicitly mentioned in R.S. 40:1299.41(A)(8) and thus is not included in the LMMA based upon the legal maxim that "when a law specifically enumerates certain items but omits other items, the omission is deemed intentional." *Billeaudeau*, 218 So. 3d at 529-30 (Weimer, J., concurring). The majority opinion then analyzed the instant facts under *Coleman v. Deno*, and concluded that the application of that precedent weighed in favor of negligent re-credentialing falling outside of the purview of the LMMA.

The dissent in the Third Circuit decision focused on footnote 9 in *Billeaudeau*, which distinguished cases that involve "mixed allegations of negligent credentialing and supervision" from negligent credentialing allegations alone. *Thomas*, 266 So. 3d at 363 (Keaty, J., dissenting). The dissent further referenced *Plaisance v. Our Lady of Lourdes Regional Med. Ctr., Inc.*, 10-348 (La. App. 3 Cir. 10/6/10), 47 So. 3d 17, which found that negligent credentialing claims that are intertwined with medical malpractice claims must be presented first to a medical review panel, and *Matranga v. Parish Anesthesia of Jefferson, LLC*, 17-73 (La. App. 5 Cir. 8/29/18), 254 So. 3d 1238, *writ denied*, 18-1561 (La. 2/18/19), 265 So. 3d 772, which relied on the distinction enunciated in *Billeaudeau* between "'supervision and training of the health care providers' once they enter the building and engage in the practice of medicine therein" and "negligent credentialing," which takes place in the initial hiring process, prior to the physician being given administrative privledges. The dissent concluded that Thomas's negligent re-credentialing allegations against the hospitals in this case, unlike the facts presented in *Billeaudeau*, necessarily encompass the "the training or supervision" of Dr. Dalal and fall under the LMMA.

LGMC and W&C separately applied to this court for writs of certiorari to reinstate the trial court's ruling sustaining their exceptions of prematurity. We granted writs and granted the parties' joint motion to consolidate to evaluate whether the present claims fall within the purview of the LMMA or sound in general negligence.

DISCUSSION

A dilatory exception of prematurity asks whether a cause of action is ripe for judicial determination. *Williamson v. Hosp. Serv. Dist. No. 1 of Jefferson*, 04-0451 (La. 12/1/04), 888 So. 2d 782, 785. In evaluating an exception of prematurity, a court may look to the evidence offered at the hearing as well as the allegations of the petition. La. C.C.P. art. 926; *LaCoste v. Pendleton Methodist Hosp., L.L.C.*, 2007-

0008 (La. 9/5/07), 966 So. 2d 519, 523-24. If no other evidence is offered at trial, the allegations in the petition must be accepted as true. *Id*. at 525. The party asserting the prematurity exception has the burden of proving that it is entitled to a medical review panel because the allegations fall within the LMMA. *Id*. at 523-24.

The Louisiana Legislature enacted the LMMA in response to a "perceived medical malpractice insurance 'crisis.'" *Williamson v. Hospital Serv. Dist. No. 1 of Jefferson*, 04-0451 (La. 12/1/04), 888 So. 2d 782, 785. The legislature "intended the LMMA to reduce or stabilize medical malpractice insurance rates and to assure the availability of affordable medical service to the public" by giving qualified health care providers two advantages: a limit on the amount of damages, and the right to an opinion from a medical review panel before a plaintiff may proceed in litigation. *Dupuy v. NMC Operating Co., L.L.C.*, 2015-1754 (La. 3/15/16), 187 So. 3d 436, 439. As such, the LMMA is special legislation in derogation of the rights of tort victims, and its limitations on tort liability "apply strictly to claims 'arising from medical malpractice.'" *Billeaudeau*, 218 So. 3d at 520 (quoting *Coleman v. Deno*, 813 So. 2d at 315).

Statutory interpretation begins with the language of the statute itself. *Arabie v. CITGO Petroleum Corp*., 10-2605 (La. 3/13/12), 89 So. 3d 307, 312. The meaning and intent of a law is determined by considering the law in its entirety and all other laws on the same subject matter, and placing a construction on the provision in question that is consistent with the express terms of the law and with the obvious intent of the legislature in enacting it. *City of Pineville v. American Federation of State, County, & Municipal Employees, AFL-CIO, Local 3352*, 00-1983 (La. 6/29/01), 791 So. 2d 609, 612. Courts are bound to construe all parts of a statute and to construe no sentence, clause, or word as meaningless if a construction giving force to and preserving all words legitimately can be found. *McGlothlin v. Christus St. Patrick Hosp*., 10-2775 (La. 7/1/11), 65 So. 3d 1218, 1228-29.

The LMMA defines "malpractice" as:

> [A]ny unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failures of prosthetic devices implanted in or used on or in the person of a patient.

La. R.S. 40:1231.1(A)(13). "Health care" is defined in the LMMA as "any action or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement." La. R.S. 40:1231.1(A)(9). Whether a claim sounds in medical malpractice is a question of law reviewed under a *de novo* standard. *Matherne v. Jefferson Parish Hosp. Dist. No. 1*, 11-1147 (La. App. 5 Cir. 5/8/12), 90 So. 3d 534, 536.

Thomas argues that the court of appeal in this case properly applied the rules of statutory construction where the definition of "malpractice" in the LMMA does not include the terms credentialing or re-credentialing, yet the terms credentialing and re-credentialing are included in other contexts. *See, e.g.,* La. R.S. 46:460.51; La. R.S. 22:1009.[2] Thomas argues that by excluding "credentialing" from the LMMA's definition of "malpractice," the Legislature clearly intended for a negligent credentialing or re-credentialing claim to fall outside the purview of the LMMA.

---

[2] La. R.S. 46:460.51(3), which is part of Louisiana's Medicaid Managed Care statute, provides: "'Credentialing' or re-credentialing' means the process of assessing and validating the qualifications of healthcare providers applying to be approved by a managed care organization to provide healthcare services to Medicaid enrollees."
La. R.S. 22:1009 A(3), a part of the insurance statutes entitled "Health care provider credentialing," indicates: "'Credentialing' or 're-credentialing' means the process of assessing and validating the qualifications of health care providers applying to be approved by a health insurance issuer to provide health care services to the health insurance issuer's enrollees or insureds."

On the other hand, the hospitals argue that while the initial act of credentialing a physician may be administrative in nature and not subject to the LMMA pursuant to *Billeaudeau*,[3] "the treatment-related medical decisions and dereliction of skill with which the LMMA is concerned, and for which a hospital can be held liable for malpractice, fall under the 'supervision and training of the health care providers' once they enter the building and engage in the practice of medicine therein." *Billeaudeau*, 218 So. 3d at 523. They specifically emphasize Billeaudeau's statement that the "supervision and training" definition of malpractice governs "once [physicians] enter the building and engage in the practice of medicine therein." Therefore, the hospitals contend, the periodic re-credentialing of Dr. Dalal over the years, after her initial hiring and credentialing, qualifies as "training or supervision" within the statutory definition provided in the act.

LGMC introduced the affidavit of Ms. Kathleen Degeyter, LGMC's System Director of Medical Staff Services, which states that the hospital initially credentialed Dr. Dalal and granted her clinical privileges in June 1987. She was re-credentialed every two years, and every year after she turned 65 until her retirement in 2017, through an ongoing process that included peer review of her patient care. The hospitals contend that peer review and re-credentialing are the means by which a medical institution continually supervises physicians, a process that is distinct from the administrative decision to initially credential the physician upon hiring presented in *Billeaudeau*.

After considering these factors, we find that Thomas's allegations against the hospitals for negligent re-credentialing necessarily fall within the definition of "malpractice" under the LMMA because they constitute an "unintentional tort …

[3] At the hearing on the exceptions of prematurity, the hospitals noted that initial credentialing of Dr. Dalal occurred in 1987 and suggested that if plaintiff were to pursue a claim against the hospital for initial credentialing rather than "recredentialing," the claim for initial credentialing would be met with an exception of prescription.

based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient … in the training or supervision of health care providers." La. R.S. 40:1231.1(A)(13). Our holding comports with this court's statement in *Billeaudeau* that "the treatment-related medical decisions and dereliction of skill with which the LMMA is concerned, and for which a hospital can be held liable for 'malpractice,' fall under the 'supervision and training of the health care providers' once they enter the building and engage in the practice of medicine therein." 218 So. 2d at 523. To the extent that plaintiff's allegations against the hospital include the hospital's *initial* credentialing of Dr. Dalal in 1987, we distinguish *Billeaudeau* on its facts.

Unlike the allegations in *Billeaudeau*, plaintiff's petition here does not involve a hospital's alleged failures to follow its own bylaws, follow up on references, or review the applicant's compliance with professional education requirements before granting initial privileges. Indeed, many of the specific allegations of negligent credentialing in *Billeaudeau* could be asserted against any number of employers not just in the realm of healthcare for negligently hiring an unqualified professional.

The instant petition includes 17 paragraphs of allegations directly related to Mariah's care by Dr. Dalal. With regard to the hospitals' alleged negligence, Paragraph 6 states: "On or about October 13, 2014, an echocardiogram was read by Dr. Dalal, a non-board certified pediatric cardiologist. Dr. Dalal had hospital privileges at LGMC even though LGMC knew or should have know[n] she was not board certified in the field of pediatric cardiology." Two additional paragraphs, Nos. 23 and 24, state simply: "[LGMC] negligently credentialed Dr. Dalal and negligently provided her with privileges to practice in its hospital," and "[W&C] negligently credentialed Dr. Dalal and negligently provided her with privileges to practice in its hospital." No additional allegations of negligence are asserted against either hospital. The petition clearly presents claims that arise from the medical treatment provided

by Dr. Dalal, and the allegations of negligence against the hospitals specifically arise from that medical treatment.

Thomas's argument that the Legislature must not have intended to include "credentialing" or "re-credentialing" within the strictures of the LMMA because it rejected proposed changes to the definition of "malpractice" to include those terms fails to acknowledge that the definition is drafted broadly enough to include "*any* unintentional tort … based on health care … by a health care provider, to a patient … in the training or supervision of health care providers."[4] In refusing to further amend the definition, the Legislature could have concluded that within the confines of the LMMA, "credentialing" was covered by the "supervision and training of health care providers" already delineated therein. Moreover, since the last legislative attempt in 2008 to include "credentialing" within the definition of malpractice, *Plaisance v. Our Lady of Lourdes Regional Med. Ctr., Inc.*, 2010-348 (La. App. 3 Cir. 10/6/10), 47 So. 3d 17, held that a negligent credentialing claim was really a negligent supervision claim that fell under the LMMA. The Third Circuit in that decision determined that it must look beyond the title of plaintiff's allegations to whether the conduct on which the claim is based fits within the definition of "malpractice." Analyzing the matter through application of the *Coleman* factors, *Plaisance* found that the credentialing allegations were sufficiently intertwined with the malpractice allegations and therefore fell under the LMMA. The plaintiff's claims encompassed "not only the initial decision to provide credentials but the subsequent decision to retain those credentials in light of what it alleges were multiple unsatisfactorily performed medical procedures." 47 So. 3d at 21.

---

[4] As noted in *Billeaudeau*, in 2005, House Bill No. 257 sought to revise the definition of "malpractice" under the LMMA to specifically include "acts or omissions in a peer review process or the credentialing of a health care provider," but HB 257 did not pass. The same amendment was sought in House Bill No. 260 in 2006. In 2008, Senate Bill No. 509, Senate Bill No. 668, and House Bill No. 70 sought to amend the definition of "malpractice" to include "acts or omissions in the credentialing or re-credentialing of a health care provider," but these proposed bills did not pass either.

After *Plaisance*, the Legislature could have amended the LMMA definition of "malpractice" to exclude negligent credentialing or re-credentialing, but it did not. Additionally, the definition of "malpractice" uses the terms "including" or "include" three times, providing specific examples of malpractice without indicating that the listed actions/inactions are exclusive.

Analogously, in *Dupuy v. NMC Operating Co., LLC*, 2015-1754 (La. 3/15/16), 187 So. 3d 436, 441, we held that a hospital's alleged failure to properly maintain equipment used to sterilize the instruments used in plaintiff's surgery constituted allegations of medical malpractice under the LMMA because the hospital's alleged failure was "an extension of the general duty to render professional services related to medical treatment and is 'treatment related'." Furthermore, "there is no requirement that an action must be contemporaneous with a patient's treatment in order to fall under the MMA." *Id*. at 442. Although "sterilization of equipment" is not included in the list of items that constitute "malpractice" nor within the definition of "health care," we recognized in *Dupuy* that these definitions were sufficiently broad to encompass the allegations asserted, and more importantly, involved treatment of a patient by the healthcare provider.

In short, asserting claims of "credentialing" or "re-credentialing" against a healthcare provider cannot be a talismanic incantation that automatically excludes a plaintiff's claims from the strictures of the LMMA. If that were so, all medical malpractice plaintiffs could sidestep the statutory limitations of the LMMA.

Our holding does not necessarily foreclose a future plaintiff from alleging negligent credentialing or re-credentialing claims against a health care provider that are *not* so intertwined with malpractice claims as to fall outside of the purview of the LMMA. Theoretically, a plaintiff could pursue claims against a physician while also pursuing negligent credentialing claims against the hospital that are wholly unrelated to a patient's medical care, and instead relate to the physician's negligent

conduct as a hospital employee. But no such claims have been alleged here.

Our conclusion that the LMMA encompasses the present claims also is supported by application of the *Coleman* factors.[5] First, as to whether the particular wrong is treatment related or caused by a dereliction of professional skill, we note that the allegations in the petition are treatment related for failure to diagnose a heart condition. Moreover, in light of evidence that LGMC engages in continuous peer review as part of its re-credentialing process, professional skill is a necessary element, and this factor would favor application of the LMMA.

Second, because re-credentialing invokes the professional assessment of a physician's peers, expert medical testimony will be required to determine whether the hospital's conduct in re-credentialing Dr. Dalal fell below the applicable standard of care. This factor also favors application of the LMMA. Third, while the pertinent act of re-credentialing Dr. Dalal did not necessarily involve specific assessment of Mariah's condition, the process involved ongoing review of Dr. Dalal's patient care. Under the fourth factor, credentialing is unquestionably within the scope of activities a hospital is licensed to perform under R.S. 40:2114(E). Fifth, the patient's alleged damages would not have occurred if she did not receive care at LGMC or W&C, thereby satisfying this factor in favor of application of the LMMA. As to the last factor asking whether the tort alleged was intentional, there are no allegations of

[5] The *Coleman* factors to consider when determining whether certain conduct by a qualified health care provider constitutes "malpractice" under the LMMA are:

1. Whether the particular wrong is "treatment related" or caused by a dereliction of professional skill;
2. Whether the wrong requires expert medical evidence to determine whether the appropriate standard of care was breached;
3. Whether the pertinent act or omission involved assessment of the patient's condition;
4. Whether an incident occurred in the context of a physician-patient relationship, or was within the scope of activities which a hospital is licensed to perform;
5. Whether the injury would have occurred if the patient had not sought treatment; and
6. Whether the tort alleged was intentional.

813 So. 2d at 315-316.

intentional misconduct.[6] In the instant matter, The *Coleman* factors weigh in favor of applying the LMMA to the claims presented in this petition.

DECREE

Based on the allegations presented by the petition in the instant matter, the provisions of the LMMA, and application of the *Coleman* factors, we find the trial court correctly sustained the exceptions of prematurity asserted by Lafayette General Medical Center and Women's and Children's Hospital of Lafayette. We therefore reverse the judgment of the court of appeal and reinstate the trial court's judgment.

[6] If there were allegations of intentional misconduct, those acts would likely fall outside of the LMMA pursuant to the portion of the definition of "malpractice" providing that the act must be an "*unintentional* tort or breach of contract…".

01/29/20

SUPREME COURT OF LOUISIANA

No. 2019-C-00507 c/w 2019-C-0524

MEGAN THOMAS, ET AL.

VS.

THE REGIONAL HEALTH SYSTEM OF ACADIANA, LLC, ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF LAFAYETTE**

JOHNSON, C.J. additionally concurs and assigns reasons.

For the reasons set forth in my dissent in *Billeaudeau v. Opelousas Gen. Hosp. Auth*., 16-0846 (La. 10/19/16), 218 So. 3d 513 (Johnson, C.J., dissenting), I find claims for "negligent credentialing" and "negligent recredentialing" both fall within the scope of the LMMA and must first be presented to a medical review panel. Thus, I concur in the result, finding defendants' exceptions of prematurity properly sustained.

01/29/20

SUPREME COURT OF LOUISIANA

Nos. 2019-C-00507 c/w 2019-C-00524

MEGAN THOMAS, ET AL.

VS.

THE REGIONAL HEALTH SYSTEM OF ACADIANA, LLC, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit,
Parish of Lafayette

WEIMER, J., concurring.

I concur in the majority's holding in this case, and write separately to explain my reasons for doing so, which stem largely from my concurrence in **Billeaudeau v. Opelousas General Hospital Authority**, 16-0846 (La. 10/16/19), 218 So.3d 513.

Billeaudeau presented this court with the *res nova* issue of whether a claim for negligent credentialing falls within the purview of the Louisiana Medical Malpractice Act (LMMA). In concurring in the majority's determination that a negligent credentialing claim sounds in general negligence, I noted (as does the majority herein), that any analysis as to whether particular conduct falls within the purview of the LMMA must begin with the words of the statute itself. In this case, as in **Billeaudeau**, the relevant statutory language is found in the LMMA's definition of malpractice:

> "Malpractice" means any unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, **in the training**

> **or supervision of health care providers**, of from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failure of prosthetic devices implanted in or used on or in the person of a patient. [Emphasis added.]

La. R.S. 40:1231.1(A)(13).

After examining the statutory language in **Billeaudeau**, I concluded that the LMMA's definition of malpractice does not include "credentialing *or its equivalent*."[1] **Billeaudeau**, 16-0846 at 1, 218 So.3d at 529 (emphasis added). That same conclusion does not obtain in this case, which does not involve an allegation of negligent credentialing, but an allegation of negligent re-credentialing. As to negligent re-credentialing, I find such conduct firmly encompassed in the LMMA's definition of malpractice as the *equivalent* of conduct involving "the training or supervision of health care providers."

As I noted in the **Billeaudeau** concurrence, "credentialing is distinct from 'training and supervision.'" **Billeaudeau**, 16-0846 at __, 218 So.3d at 530. Credentialing involves granting a physician privileges; whereas "training and supervision" occur after privileges are granted, and evidence the hospital's ongoing responsibility to ensure that a credentialed physician is given appropriate direction in the performance of his or her duties. ***Id.*** Because acts involving "credentialing" and "training and supervision" focus on different time periods and on different duties, I concluded in **Billeaudeau** that there was no equivalent of "credentialing" in the LMMA's definition of malpractice. ***Id.***

The temporal distinction between "credentialing" claims and "training and supervision" claims I pointed out in **Billeaudeau** is particularly relevant here, in

---

[1] In **Billeaudeau**, I did not intend to suggest that the absence of the specific term "credentialing" in the LMMA's definition of "malpractice" is itself dispositive of whether particular conduct falls within the ambit of the LMMA. It is but one factor to consider.

which the issue is whether a claim of negligent re-credentialing is simply a "credentialing" claim by another name and, thus, a general negligence claim or whether it is the equivalent of a negligent training and supervision claim that falls within the purview of the LMMA.

The resolution of the issue presented is, I believe, found in the **Billeaudeau** opinion itself. As **Billeaudeau** recognizes, "credentialing allows a physician access to the hospital." **Billeaudeau**, 16-0846 at 15-16, 218 So.3d at 523. "Re-credentialing," by its very definition, can only occur after an initial credentialing, *i.e.,* after access is granted and the physician enters the hospital and engages in the practice of medicine therein. **Billeaudeau** instructs that it is at this point–after the physician enters the building and begins practicing medicine–that "the treatment-related medical decisions and dereliction of skill with which the LMMA is concerned and for which a hospital can be held liable for 'malpractice" fall under the 'supervision and training of the health care providers.'" **Billeaudeau**, 16-0846 at 16, 218 So.3d at 523. What was initially an administrative decision to hire becomes a supervisory process in which the performance of the physician is assessed to determine whether he or she should be retained; in other words "training and supervision" occurs. ***Id.***

The evidence adduced in this case supports this conclusion. The affidavit of Kathleen Degeyter, the System Director of Medical Staff Services for Lafayette General Medical Center (LGMC), explains that the physician at issue, Dr. Dalal, practiced medicine at LGMC for over 25 years and, as part of the ongoing supervisory function of the medical staff, she was peer reviewed, monitored, evaluated, and reappointed. Such peer review and reappointment is the primary method hospitals have at their disposal to supervise, monitor, and evaluate physicians

at their facilities. This is exactly the type of conduct that is contemplated by the "training and supervision" language of the LMMA.

As I explained in **Billeaudeau**, while statutory language and the omission of certain terms from the definition of "malpractice" may serve as important indicators of legislative intent for some questions, the inclusion or omission of certain terms is by no means determinative; rather because the LMMA is intended to apply strictly to claims arising from medical malpractice, it is appropriate also to examine the entirety of the conduct on which plaintiffs' claim is based to determine whether such conduct falls within the statutory definition of malpractice, using the six-factor test from **Coleman v. Deno**, 01-1517, 01-1519, 01-1521 (La. 1/25/02), 813 So.2d 303, to assist in that inquiry. **Billeaudeau**, 16-0846 at __, 218 So.3d at 531. In this case, I agree with the majority's analysis of the **Coleman** factors and the conclusion that such an analysis weighs in favor of applying the LMMA to the plaintiff's "re-credentialing" claim.

Again, I wish to emphasize that I write separately merely to point out that my conclusions in this matter were presaged by my concurrence in **Billeaudeau**, in which I noted that in determining whether a particular claim falls within the purview of the LMMA, the inquiry should begin with the words of the statute and then, secondarily, turn to the **Coleman** factors. In this case, taking into consideration primarily the statutory language and secondarily applying the **Coleman** factors, I believe the plaintiffs' allegation of negligent "re-credentialing" against the hospitals necessarily encompasses "training and supervision" and, therefore, falls under the purview of the LMMA, regardless of the labels affixed to the alleged wrongful conduct.

01/29/20

SUPREME COURT OF LOUISIANA

No. 2019-C-00507 c/w 19-C-00524

MEGAN THOMAS, ET AL.

VS.

THE REGIONAL HEALTH SYSTEM OF ACADIANA, LLC, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

Hughes, J., dissents and assigns reasons.

Given the Legislature's specific rejection of recredentialing as malpractice and this court's prior opinion in **Billeaudeau**, I respectfully dissent.

Recredentialing does not equal "supervision". There is no indication that, once this doctor was allowed in the door of the hospital, that she was negligently trained on how to do her job, or that she was negligently supervised while performing her duties to treat patients.

Rather, the allegation at hand is that she should not have been allowed back in the door in the first place. This claim does not involve actual treatment of a particular patient, or the hospital's oversight of such, but rather the negligence of the hospital in allowing this doctor in the door to treat any patients.

The hospital's contention that they use the recredentialing process as a form of "supervision" indicates only a failure to supervise. It does not change the meaning of the word and blurring the line established by the Legislature and **Billeaudeau** and creating a distinction between credentialing and recredentialing will only lead to further confusion.

01/29/20

SUPREME COURT OF LOUISIANA

Nos. 2019-C-00507 c/w 2019-C-0524

MEGAN THOMAS, ET AL.

VS.

THE REGIONAL HEALTH SYSTEM OF ACADIANA, LLC, ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

GENOVESE, J., dissents and assigns reasons.

I would affirm the court of appeal's opinion. In *Billeaudeau v. Opelousas General Hospital Authority*, 16-0846 (La. 10/19/16), 218 So.3d 513, this Court found that the plaintiffs' claim of negligent credentialing fell outside the scope of Louisiana's Medical Malpractice Act ("LMMA"), and I find no meaningful circumstances which would distinguish *Billeaudeau* from the present case.

Importantly, the LMMA is in derogation of tort victims' established rights and must be **strictly construed**. *Khammash v. Clark*, 13-1564, p. 13 (La. 5/7/14), 145 So.3d 246, 256; *Sewell v. Doctors Hosp.*, 600 So.2d 577, 578 (La. 1992). Instead, the majority errantly stretches to broadly construe the phrase "supervision and training of the health care providers" to include re-credentialing, which the court below correctly noted is an **administrative** decision of employee retention in the same way that initial credentialing is the administrative act of hiring. *Thomas v. Reg'l Health Sys. of Acadiana*, 18-215, p. 9 (La. App. 3 Cir. 2/27/19), 266 So. 3d 354, 361.

Here, Megan Thomas alleges that Lafayette General Medical Center negligently granted Dr. Dalal privileges to practice in its hospital even though it knew or should have known that she was not board certified in the field of pediatric cardiology. I find that this constitutes a valid negligent credentialing claim which

clearly falls outside of the scope of the LMMA. Although the majority complains that Thomas's petition lacks numerous, detailed allegations of administrative failures (as were alleged in the plaintiffs' petition in *Billeaudeau*), this goes to the merits of the negligent credentialing claim and is not relevant for the lone inquiry before this Court—namely, whether the claim is encompassed by the LMMA. As the court below succinctly and incisively stated (and I wholeheartedly agree):

> **Credentialing is credentialing, whether it was done one time or thirty-five times,** and it applies to both the initial credentialing process and the re[-]credentialing process. Just as a physician's prior performance, including past claims for malpractice, are considered in the initial credentialing decision, they will also affect subsequent credentialing decisions. **That does not equate the credentialing or re[-]credentialing process to a supervisory function.**

Thomas, 266 So.3d at 362 (emphasis added).

For the foregoing reasons, I respectfully dissent and would affirm the court of appeal's decision.