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NEWS RELEASE # 76

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of November, 2007**, are as follows:

BY KNOLL, J.:

2007-C -0419 MINOS BOREL, SR., ET AL. vs. DR. CLINTON YOUNG AND LOUISIANA MEDICAL MUTUAL INSURANCE COMPANY (Parish of Lafayette)
For the foregoing reasons, the result reached by the court of appeal is affirmed, defendant's peremptory exception is sustained, and plaintiff's action against Dr. Young and LAMMICO is dismissed with prejudice as extinguished by peremption.
AFFIRMED.

CALOGERO, C.J., dissents and assigns reasons.
JOHNSON, J., dissents for reasons assigned by Calogero, C.J.

11/27/07

SUPREME COURT OF LOUISIANA

NO. 07-C-0419

MINOS BOREL, SR. ET AL.

VERSUS

DR. CLINTON YOUNG AND LOUISIANA MEDICAL MUTUAL INSURANCE COMPANY

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

KNOLL, Justice

This medical malpractice action presents the question of whether a lawsuit is perempted by virtue of La. Rev. Stat. §9:5628 because it was not filed within three years from the date of the alleged malpractice. The plaintiffs filed the instant suit against defendant physician over five years after the alleged malpractice occurred. In response, defendant filed a peremptory exception of prescription and argued before the district court the claim was perempted. The district court agreed and dismissed plaintiffs' claims with prejudice. The court of appeal affirmed, finding, however, the claims had prescribed. We granted this writ to determine whether the three-year time period found in La. Rev. Stat §9:5628 for filing actions under the Louisiana Medical Malpractice Act ("LMMA") is prescriptive, and therefore susceptible to interruption, or peremptive. *Minos Borel, Sr., et al. v. Dr. Clinton Young and Louisiana Medical Mutual Insurance Company*, 07-419 (La. 5/4/07), 956 So.2d 617. For the following reasons we affirm the result of the court of appeal, finding the plaintiffs' action is perempted by the clear language of La. Rev. Stat. §9:5628.

FACTS AND PROCEDURAL HISTORY

In April 1999, Mary Borel, age 65, underwent an abdominal ultrasound, which revealed the presence of a mass within her left lower abdomen. Mrs. Borel's

internist, Dr. Clinton Young, referred Mrs. Borel to Dr. Aldy Castor, an OB/GYN, for surgical evaluation. Dr. Castor recommended surgery, and on August 18, 1999, Mrs. Borel was admitted to Lafayette General Medical Center ("LGMC"). Dr. Castor performed a left ovarian cystectomy and appendectomy on August 19, 1999. Mrs. Borel tolerated the procedure well. However, Mrs. Borel's condition worsened on the morning after surgery. By 5:30 p.m. that afternoon, her oxygen saturation dropped, her pulse was elevated, and her temperature spiked to 103.8 degrees. She was moved to ICU, intubated, and placed on a ventilator. It was determined that Mrs. Borel was suffering from congestive heart failure of an unknown cause.

On August 21, 1999, Dr. Castor and Dr. Kinchen performed an exploratory laparotomy for possible pelvic abscess. Mrs. Borel was placed on antibiotics, and Dr. Gary Guidry was consulted for pulmonary management. Mrs. Borel developed multiple organ failure and was taken back to surgery on August 25, 1999. She remained on antibiotic therapy, but continued to have difficulty oxygenating and remained unresponsive. By October 15, 1999, Mrs. Borel was transferred to St. Brendan's Long Term Care Facility, where she remained until her death on May 23, 2000.

On August 14, 2000, Mr. Minos Borel, Mrs. Borel's husband, and their children ("plaintiffs") filed a medical malpractice claim with the Patient Compensation Fund ("PCF") against Dr. Young, Dr. Castor, and LGMC. On January 17, 2002, the medical review panel rendered a unanimous opinion finding no breach in the standard of care rendered to Mrs. Borel by Dr. Young, Dr. Castor, or LGMC. The record indicates the plaintiffs received the opinion on January 22, 2002.

On March 28, 2002, the plaintiffs filed suit in district court against LGMC; however, Drs. Young and Castor *were not named* in this lawsuit. Two years later,

pursuant to discovery, in January 2004, plaintiffs learned that LGMC would utilize Dr. James Falterman as an expert witness. Plaintiffs contend they "discovered" for the first time during his deposition taken on February 17, 2005, that Dr. Falterman would testify that the medical treatment provided by Drs. Young and Castor fell below the applicable standard of care in their treatment of Mrs. Borel. Plaintiffs assert, prior to this date, they had no reasonable cause to believe there was negligence by Dr. Young or Dr. Castor from any source qualified to testify on the standard of care required of an internist or an OB/GYN.

Plaintiffs attempted to amend their original petition to add Dr. Young, Dr. Castor, and the physicians' insurer Louisiana Medical Mutual Insurance Company ("LAMMICO") as defendants; however, plaintiffs' motion to amend was denied by the district court. On March 21, 2005, plaintiffs filed a separate lawsuit for malpractice against Dr. Young, Dr. Castor, and LAMMICO, asserting "Dr. Castor and/or Dr. Clinton Young jointly, severally and *in solido* with Lafayette General Hospital were negligent in the treatment of Mary Borel August 18 through 20, 1999...." In response to this second lawsuit, Dr. Young and LAMMICO ("Defendants") filed an exception of prescription.[1] Plaintiffs argued in response that the filing of suit against LGMC, a joint tortfeasor, interrupted prescription as to all other joint tortfeasors, including Dr. Young, citing La. Civ. Code art. 2324(C).[2] The lawsuits were ultimately consolidated by motion of the court, and a hearing on defendants' exception was conducted on August 22, 2005.

The district court determined that plaintiffs' claim as to Dr. Young and LAMMICO was perempted. Thus, the district court granted defendants' exception

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[1]It is not apparent from the record if Dr. Castor filed a similar exception.

[2]La. Civ. Code art. 2324(C) provides: "Interruption of prescription against one joint tortfeasor is effective against all joint tortfeasors."

and dismissed plaintiffs' claim against defendants, Dr. Young and LAMMICO, with prejudice. In its written reasons, the district court stated:

> The rules governing the time within which a medical malpractice action can be brought are clearly set forth in La. R.S. 9:5628(A), which provides in pertinent part:
>
> > No action for damages for injury or death against any physician . . . . whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought unless filed within one year from the date of the alleged act, omission or neglect or within one year from the date of discovery of the alleged act, omission or neglect; however, even as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at the latest within a period of three years from the date of the alleged act, omission or neglect. (Emphasis added)
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> La. R.S. 9:5628(A) means that in an action against a physician under the medical malpractice act, the plaintiff has one year from the alleged act, omission or neglect or one year from discovery of the alleged act, omission or neglect within which to bring an action. This one year period is, presumably, subject to all of the normal rules applied to suspension and interruption of prescription found elsewhere in the law.
>
> But the second period of time that must be applied to all actions under the medical malpractice act is "peremptive" in nature and may not be interrupted or suspended. No action may be brought once three years have passed after the alleged act of malpractice under any circumstances.....
>
> * * *
>
> The plaintiffs filed suit on March 28, 2002 only against Lafayette General Medical Center. Plaintiffs did not file suit against Dr. Clinton Young and LAMMICO until March 21, 2005, far past three years from the date of the alleged act, omission or negligence and more than three years even after Mary Borel's demise. The plaintiffs assert that suit was filed after they learned that, as part of its defense, Lafayette General Medical Center plans to offer physician expert testimony to the effect that Dr. Clinton Young's treatment of Mary Borel fell below the standard of care required under the circumstances. Clearly, under these undisputed facts, any action against these defendants is "perempted" under the provisions of La. R.S. 9:5628(A).

Plaintiffs appealed this decision, and the Third Circuit Court of Appeal affirmed, but for different reasons. *Borel v. Young*, 06-352, 06-353 (La. App. 3 Cir. 12/29/06), 947 So.2d 824. The court of appeal, relying on *Hebert v. Doctors Memorial Hosp.*, 486 So.2d 717 (La. 1986), found both time provisions prescriptive, and examined defendants' exception of prescription in light of *LeBreton v. Rabito*, 97-2221 (La. 7/8/98), 714 So.2d 1226. The appellate court held the more specific provisions found in the LMMA control the time in which suit must be filed against health care providers covered by the Act, rather than the general codal provisions contained in La. Civ. Code art. 2324(C), and finding La. R.S. 40:1299.47(A)(2)(a)[3] controlling, the court concluded suit against Dr. Young was barred by prescription.

> The alleged malpractice occurred on May 23, 2000 and a timely medical review panel proceeding was filed against Dr. Young and LGMC, joint tortfeasors, on August 14, 2000. The medical review panel proceedings extended for a period of two years following the alleged date of malpractice. During the pendency of the proceedings, the prescription was suspended. The Plaintiffs were notified of the medical review panel decision on January 22, 2002. Accordingly, we find under La. R.S. 40:1299.47(A)(2)(a), Plaintiffs had until January 29, 2003, to bring Dr. Young, who had been previously named in the medical review panel,

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[3]La Rev. Stat. §40:1299.47(A)(2)(a) provides:

> The filing of the request for a review of a claim shall suspend the time within which suit must be instituted, in accordance with this Part, until ninety days following notification, by certified mail, as provided in Subsection J of this Section, to the claimant or his attorney of the issuance of the opinion by the medical review panel, in the case of those health care providers covered by this Part, or in the case of a health care provider against whom a claim has been filed under the provisions of this Part, but who has not qualified under this Part, until ninety days following notification by certified mail to the claimant or his attorney by the board that the health care provider is not covered by this Part. The filing of a request for review of a claim shall suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to health care providers, both qualified and not qualified, to the same extent that prescription is suspended against the party or parties that are the subject of the request for review. Filing a request for review of a malpractice claim as required by this Section with any agency or entity other than the division of administration shall not suspend or interrupt the running of prescription. All requests for review of a malpractice claim identifying additional health care providers shall also be filed with the division of administration.

> into the suit. Their attempt to bring him into the suit on March 15, 2005 was well beyond the time period designated by the statute.

Borel, 06-352, 06-353 at pp. 16-17, 947 So.2d at 835.

The seminal issue raised by this writ is whether the three-year time limitation contained in La. Rev. Stat. §9:5628 is prescriptive and, therefore, susceptible to interruption as the plaintiffs suggest, or peremptive.

LAW AND ANALYSIS

Actions for medical malpractice against certain health care providers, such as the defendant physician herein, are governed by special legislation. *LeBreton v. Rabito*, 97-2221, p. 7 (La. 7/8/98), 714 So.2d 1226, 1229. La. Rev. Stat. §9:5628 delineates the time limitations applicable to the filing of actions for medical malpractice in district court:

> No action for damages for injury or death against any physician, chiropractor, nurse, licensed midwife practitioner, dentist, psychologist, optometrist, hospital or nursing home duly licensed under the laws of this state, or community blood center or tissue bank as defined in R.S. 40:1299.41(A), whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought unless filed within one year from the date of the alleged act, omission, or neglect, or within one year from the date of discovery of the alleged act, omission, or neglect; however, even as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect.

In sum, the statute provides that suit must be brought within one year from the date of the alleged act, omission, or neglect, or within one year from the date of discovery of same. With respect to the latter, the claim shall be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect. Clearly, the statute sets forth more than one period–the basic one year prescriptive period for delictual actions, coupled with the "discovery" exception of our jurisprudential doctrine of *contra non valentem*, and a separate and independent

three-year time period for filing "at the latest." The issue in this case is whether the three-year provision is interpreted as prescriptive or peremptive. If the provision is peremptive, plaintiffs' claim against Dr. Young, filed more than three years after the alleged act of malpractice, has been extinguished, and plaintiffs' suit must be dismissed. If the provision is prescriptive, it is potentially susceptible to interruption based on the general codal provisions of La. Civ. Code art. 2324(C).

In *Hebert v. Doctors Memorial Hosp.*, 486 So.2d 717 (La. 1986), this Court held that La. Rev. Stat. §9:5628 was in both its features a prescription statute interpreting for the first time 1975 La. Acts. No. 808, which enacted this provision. Within a year of the *Hebert* decision, the Legislature amended and reenacted La. Rev. Stat. §9:5628 by passing 1987 La. Acts. No. 915. The most substantial amendments to the provisions relevant to this opinion changed the language as to the three-year period from – "; ***provided, however, that*** even as to claims filed within one year from the date of such discovery, in all events such claims ***must*** be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect"– to read –"; ***however***, even as to claims filed within one year from the date of such discovery, in all events such claims ***shall*** be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect." Based on our research, this Court has never addressed the effect of the amendments and the reenactment. In this case, the court of appeal relied on *Hebert* without noting the change in the law.

A long line of jurisprudence holds that those who enact statutory provisions are presumed to act deliberately and with full knowledge of existing laws on the same subject, with awareness of court cases and well-established principles of statutory construction, with knowledge of the effect of their acts and a purpose in view, and that when the Legislature changes the wording of a statute, it is presumed to have

intended a change in the law. *State v. Louisiana Riverboat Gaming Com'n*, 94-1872, 94-1914, p. 17, n.10 (La. 5/22/95), 655 So.2d 292, 301, n. 10; *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 00-1695, p. 17 (La. 6/29/01), 808 So.2d 294, 305; *Brown v. Texas-LA Cartage, Inc.*, 98-1063, p. 7 (La. 12/1/98), 721 So.2d 885, 889; *Louisiana Civil Service League v. Forbes*, 258 La. 390, 414, 246 So.2d 800, 809 (1971). Based on these well established presumptions, we now examine and interpret the amended and reenacted provisions of La. Rev. Stat. §9:5628.

Peremption is a period of time fixed by law for the existence of a right, and unless timely exercised, the right is extinguished upon the expiration of the peremptive period. La. Civ. Code art. 3458. Thus, peremption is a period of time, fixed by law, within which a right must be exercised or be forever lost. *Guillory v. Avoyelles Ry. Co.*, 104 La. 11, 15, 28 So. 899, 901 (1900). Consequently, peremption may not be renounced, interrupted, or suspended. La. Civ. Code art. 3461. It may, however, be pleaded or supplied by the court on its own motion at any time prior to final judgment. La. Civ. Code art. 3460.

Peremption differs from prescription in several respects. While liberative prescription merely prevents the enforcement of a right by action, it does not terminate the natural obligation; peremption, however, destroys or extinguishes the right itself. *Ourso*, 02-1978 at p. 4, 842 So.2d at 349; *Hebert*, 486 So.2d at 723; *Pounds v. Schori*, 377 So.2d 1195, 1198(La. 1979). Public policy requires that rights to which peremptive periods attach are extinguished after passage of a specific period of time, and accordingly, nothing may interfere with the running of a peremptive period. *Ourso*, 02-1978 at p. 4, 842 So.2d at 349; *Hebert*, 486 So.2d at 723; *Reeder v. North*, 97-0239 (La. 10/21/97), 701 So.2d 1291, 1298. The peremptive period may not be interrupted or suspended or renounced, and exceptions such as *contra non*

valentem are not applicable. *Ourso*, 02-1978 at p. 4, 842 So.2d at 349; *Hebert*, 486 So.2d at 723; *Reeder*, 701 So.2d at 1298. On the other hand, as an inchoate right, prescription may be renounced, interrupted, or suspended, and *contra non valentem* applies an exception to the statutory prescriptive period where in fact and for good cause a plaintiff is unable to exercise his cause of action when it accrues. *Ourso*, 02-1978 at p. 4, 842 So.2d at 349; *Hebert*, 486 So.2d at 723; *Reeder*, 701 So.2d at 1298.

It is not always easy to determine whether a period of time fixed by law is peremptive or prescriptive, and the determination must be made in each case in light of the purpose of the rule in question and in light of whether the intent behind the rule is to bar an action or to limit the duration of a right. La. Civ. Code art. 3458, Comment (c). Thus, the pertinent question in this case becomes whether the Legislature intended the three-year provision to be prescriptive or peremptive.

This Court has also explained that the Civil Code gives no guidance on how to determine whether a particular time limitation is prescriptive or peremptive and more often than not, the language used in a particular statutory time limitation does not easily admit on its face of a conclusion as to its prescriptive or peremptive nature. *Ourso*, 02-1978 at pp. 4-5, 842 So.2d at 349; *State v. McInnis Bros. Const.*, 97-0742, p. 4 (La. 10/21/97), 701 So.2d 937, 940. Consequently, this Court has resorted to an exploration of the legislative intent and public policy underlying a particular time limitation, for it is primarily whether the Legislature intended a particular time period to be prescriptive or peremptive that is the deciding factor. *Ourso*, 02-1978 at pp. 4-5, 842 So.2d at 349; *McInnis*, 97-0742 at p. 4, 701 So.2d at 940. Thus, courts look to the language of the statute, the purpose behind the statute, and the public policy mitigating for or against suspension, interruption or renunciation of that time limit.

Ourso, 02-1978 at p. 5, 842 So.2d at 349; *McInnis*, 97-0742 at p. 12, 701 So.2d at 946.

We turn now to the issue of whether La. Rev. Stat. §9:5628 is peremptive and, therefore not susceptible of suspension, interruption, or renunciation for any reason, or prescriptive. We do so ever mindful of the jurisprudence of this Court holding that peremption is a matter to be determined by legislative intent and public policy. We begin with a search for legislative intent.

What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *State v. Williams*, 00-1725, p. 13 (La. 11/28/01), 800 So.2d 790, 800; La. Rev. Stat. §24:177(B)(1). When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature, nor shall the letter of the law be disregarded under the pretext of pursuing its spirit. La. Civ. Code art. 9; La. Rev. Stat. §1:4; La. Code Civ. Proc. art. 5052. The plain meaning of the legislation should be conclusive. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989); *State v. Benoit*, 01-2712, p. 3 (La. 5/14/02), 817 So.2d 11, 13.

The plain language of La. Rev. Stat. §9:5628 as reenacted by 1987 La. Acts No. 915 does clearly indicate the Legislature's intent that the three-year time period is peremptive, *i.e.*, an extinguishment of the right upon lapse of a specified period of time: "No action ... ***shall*** be brought unless filed within one year ...; however, even as to claims filed within one year ... of such discovery, in all events such claims ***shall*** be filed at the latest within ... three years...."[4] *See* Frank L. Maraist & Thomas C.

[4]Even the *Hebert* court apparently conceded that the language of the then existing statute suggested that peremption was intended: "Defendant's strongest argument in support of peremption is that the language of the statute suggests that peremption is intended.... However, not one case in the jurisprudence considering the distinction between prescription and peremption has accentuated the language used in a given statute as determinative of which was intended." 486 So.2d at 724.

Galligan, Jr., *Louisiana Tort Law* §§ 10.05, 10.06, n.12 (2006 ed.); *see also*, *Spradlin v. Acadia-St. Landry Medical Foundation*, 98-1977, p. 6 (La. 2/29/00), 758 So.2d 116, 120 (describing the time limitations contained in La. Rev. Stat. §9:5628 as "special prescriptive and peremptive periods for malpractice actions"). The use of the word "shall," which must be interpreted as a mandatory provision, *see* La. Rev. Stat. §1:3, lends further credence to this conclusion. The language used in this particular three-year statutory time limitation does easily admit on its face of a conclusion as to its peremptive nature. Therefore, the plain meaning of this legislation, which is conclusive, clearly indicates both the intent and the purpose of the Legislature in reenacting La. Rev. Stat. §9:5628 to extinguish actions for medical malpractice after the lapse of three years from the date of the alleged act, omission, or neglect,[5] *i.e.*, to limit the duration of the right to bring a medical malpractice claim. Accordingly, there can be no doubt from the clear and unambiguous language of the statute that it was the intent of the Legislature to set forth a precise peremptive period to govern the filing of medical malpractice suits against specific health care providers.

As to the public policy concerns underlying the enactment of La. Rev. Stat. §9:5628, the legislative limitation on the amount of time within which an injured patient may bring a malpractice action directly responded to sharp increases in medical malpractice insurance rates that created a crisis, whether real or imagined, which carried with it the threat of curtailing health care to patients. Kandy G. Webb, Comment: Recent Medical Malpractice Legislation–A First Checkup, 50 *Tul.L.Rev.* 655, 655 (1975-76); *Hebert*, 486 So.2d at 722, n.9; *see also*, Maraist & Galligan, *supra* at §§ 21.02, 21.03. With doctors unwilling to practice without reasonably

[5]Further support for this conclusion can be found in La. Rev. Stat. §§9:5604, 5605, 5606, in which the Legislature utilized essentially identical language to that contained in the three-year provision at issue to establish a three-year peremptive period for actions for professional accounting liability, legal malpractice, and professional insurance agent liability, respectively.

priced liability insurance, the Legislature responded by adopting measures designed to rectify the situation. Webb, *supra.*

The most direct impact on the insurance crisis was quite possibly made by legislation like La. Rev. Stat. §9:5628, which limited the amount of time within which to bring a medical malpractice action. Webb, *supra* at 672. Under La. Rev. Stat. §9:5628, a fixed prescriptive period of short duration, one year, begins to run upon discovery of the injury; superimposed upon this, however, is a peremptive period of three years from the date of the malpractice, after which the suit is barred regardless of when discovered. *Id.* at 673. It was believed that lengthy periods for filing suit brought about by the discovery rule (a mechanism by which the statute of limitations commenced running only upon discovery of an injury rather than upon the malpractice being committed) had contributed to the increasing number of malpractice claims, and that, if the number of suits brought were restricted, insurance risks would be reduced and rates would decline. *Hebert*, 486 So.2d at 722, n.9; Webb, *supra* at 673. Straining the interpretation of the three-year time limitation to provide a prescriptive period would create the same effect sought to be prevented by the enactment of the three-year limitation on the discovery rule. If the period is prescriptive, it can be interrupted, suspended, or even renounced, thus lengthening the time periods for filing suit for potentially years, increasing risks and simultaneously insurance rates. The public interest in controlling insurance costs to ensure the availability of health care for citizens does mitigate against suspension, interruption, or renunciation of the three-year time limitation in favor of certainty in the termination of causes of action and directly reducing the number of malpractice claims and ostensibly liability rates.

Considering the plain, explicit language of the statute, the obvious purpose behind the statute, and the readily apparent public policy, which mitigates against suspension, interruption, or renunciation of the time limit and in favor of certainty in terminating causes of action, we find La. Rev. Stat. §9:5628 establishes a peremptive time period. According to plaintiffs' petition for damages, Dr. Young was allegedly negligent in the treatment of Mrs. Borel from August 18 through August 20, 1999. The date of the alleged malpractice falls within that time period, yet plaintiffs did not file suit against Dr. Young for malpractice until March 2005, over five years after the date of the alleged malpractice and almost five years after Mrs. Borel's death. Therefore, because plaintiffs' action against Dr. Young was brought over three years after the alleged act of malpractice, under La. Rev. Stat. §9:5628, their action is extinguished by peremption.

DECREE

For the foregoing reasons, the result reached by the court of appeal is affirmed, defendants' peremptory exception is sustained, and plaintiffs' action against Dr. Young and LAMMICO is dismissed with prejudice as extinguished by peremption.

AFFIRMED.

11/27/07

SUPREME COURT OF LOUISIANA

No. 07-C-0419

MINOS BOREL, SR. ET AL.

VERSUS

DR. CLINTON YOUNG AND LOUISIANA MEDICAL MUTUAL INSURANCE COMPANY

CALOGERO, Chief Justice, DISSENTS AND ASSIGNS REASONS:

According to the majority decision, this case raises a "seminal" issue concerning "whether the three-year time limitation contained in La. Rev. Stat. § 9:5628 is prescriptive and, therefore, susceptible to interruption as the plaintiffs suggest, or peremptive." However, that issue is not "seminal," because that exact question was definitively decided by this court more than 20 years ago. Specifically, in *Hebert v. Doctors Memorial Hosp*., this court found that both the one-year period and the three-year period set forth in La. Rev. Stat. § 9:5628 are prescriptive in nature. 486 So. 2d 717 (La. 1986).

The majority implies however that the 1987 legislative amendments to La. Rev. Stat. § 9:5628 require this court to reconsider this issue. However, the only changes to the pertinent language of La. Rev. Stat. § 9:5628 by 1987, La. Acts., No. 915 were the substitution of the word "however" for the phrase "provided, however, that" and the substitution of the word "shall" for the word "must." Thus, the amendment can not reasonably be considered to have changed the meaning of the prescriptive statute, and certainly cannot be considered to have changed the character of the provision from a prescriptive statute to a preemptive statute. Further, nothing in 1987, La. Acts., No. 915, indicates that the legislature intended to overrule this court's decision in *Hebert*. In fact, the primary changes made by the act were unrelated to the

prescriptive provision. The primary change was the addition of "psychologists" as health-care providers covered by the Medical Malpractice Act, and that addition was later deleted from the statute.

Further, during the 20-year period between the 1987 amendments and this decision, this court has continued to rely on the holding in *Hebert* and has never even suggested that the 1987 amendment might have changed the law in any way. In fact, as recently as 2003, this court reaffirmed *Hebert* in *State Board of Ethics v. Ourso*, 02-1978, p. 4 (La. 4/9/03), 842 So. 2d 346, 349. During the same year, this court held in *David v. Our Lady of the Lake Hosp., Inc.*, that the "three-year limitation is prescriptive, not peremptive." 02-2675, p. 2, n.1 (La. 7/2/03), 849 So. 2d 38, 41,, 02-1978 n. 1. Other cases from this court that discussed and/or applied *Hebert* include *Naquin v. Lafayette City-Parish Consol. Gov't*., 06-2227 (La. 2/22/07), 950 So.2d 657, 668; *Bailey v. Khoury*, 04-0620, pp. 9-10 (La. 1/20/05), 891 So.2d 1268, 1275; *State Bd. of Ethics v. Ourso*, 02-1978, p. 4 (La. 4/9/03), 842 So.2d 346, 349; *Campo v. Correa*, 01-2707, p. 8 (La. 6/21/02), 828 So.2d 502, 508; *Boutte v. Jefferson Parish Hosp. Serv. Dist. No. 1*, 99-2402, p. 4 (La. 4/11/00), 759 So.2d 45, 49; *Reeder v. North*, 97-0239, p. 9, n. 3 (La. 10/21/97), 701 So.2d 1291, 1297, n. 3; *Whitnell v. Silverman*, 95-0112, p. 6 (La. 12/6/96), 686 So.2d 23, 27; *Taylor v. Giddens*, 618 So.2d 834, 842 (La. 1993); *Whitnell v. Menville*, 540 So.2d 304, 309 (La. 1989); *Plaquemines Parish Com'n Council v. Delta Development Co., Inc.*, 502 So.2d 1034, 1055 (La. 1987); *Crier v. Whitecloud*, 496 So.2d 305, 307 (La. 1986).

Despite this long line of cases discussing and applying *Hebert*, the majority chooses now to revisit the issue, and justifies that decision by stating that "this Court has never addressed the effect of the amendments and the reenactment." *Borel v. Young* , 07-0419, p. 7 (La. _____), ___ So. 2d ___, ___. The reason that this court

has never addressed the amendments and the reenactment is that the minor changes to the prescriptive provision made by the 1987 amendments were not intended to change the law.

Further, the majority decision herein ignores the well-settled principle that provisions of the Medical Malpractice Act must be strictly construed because they grant immunities or advantages to special classes in derogation of the general rights available to tort victims. *Kelty v. Brumfield*, 93-1142 (La. 2/25/94), 633 So.2d 1210, 1216. It also ignores the fact that "prescriptive statutes must be strictly construed against prescription and in favor of the obligation sought to be extinguished, with the effect that, of two possible constructions, that which favors maintaining, as opposed to barring, an action should be adopted. *Lima v. Schmidt*, 595 So. D 624, 629 (La. 1992.

Finally, I would note that this case involves exactly the type of factual situation where interruption of prescription is appropriate. This court has stated that "when a petition notifies a defendant that legal demands are made for a particular occurrence, prescription is interrupted." *Parker v. Southern American Ins. Co.*, 590 So.2d 55, 56 (La. 1991). In this case, Dr. Young received notice of plaintiffs' claims against him when he was named in the plaintiffs' request for a medical review panel. Thus, the medical malpractice action later filed against him was hardly a surprise.

I would reverse the decision of the court of appeal, deny the defendant's exception of prescription, and remand to the district court for further proceedings. Thus, I dissent from the majority's decision affirming the court of appeal.