

**MAY 16, 2000**

**SUPREME COURT OF LOUISIANA**

**NO. 99-C-2570**

**BEN GUITREAU**

**V.**

**ANDREW KUCHARCHUK, M.D.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

**MARCUS, Justice, dissenting**

I disagree with the majority's conclusion that a medical malpractice claimant is allowed to add any part of the unused one year period of La. R.S. 9:5628A to the ninety day period to institute suit set forth in La. R.S. 40:1299.47(A)(2)(a). The one year period of La. R.S. 9:5628 A applies to the request to convene a medical review panel, which request must be made prior to instituting suit. La. R.S. 40:1299.47(B)(1)(a)(i). Prescription is suspended during the medical review panel procedure, but once the procedure is completed and the medical review panel renders a decision, the time period of La. R.S. 9:5628 A becomes irrelevant. I would interpret the suspension in La. R.S. 40:1299.47(A)(2)(a) as referring to the suspension of the medical malpractice claim or the cause of action while it is being addressed by the medical review panel. Once the panel renders its decision, the claim becomes viable and remains alive by timely instituting the action in the district court within "ninety days following notification, . . . to the claimant or his attorney of the issuance of the opinion by the medical review panel . . . ."

Accordingly, I respectfully dissent.