

10/16/01 “See News Release for any concurrences and/or dissents.”

**SUPREME COURT OF LOUISIANA**

**NO. 01-C-0209**

**ELENA LEDO BENNETT AND MICAH KEITH BENNETT**

**versus**

**DR. ROBERT KRUPKIN AND ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY**

KNOLL, Justice, concurring.

I concur specifically to emphasize that our determination today represents the first time that the Louisiana Patient’s Compensation Fund Oversight Board (the “Board”) has asked us to determine if it has standing to appeal a decision which directly affects the threshold issue of the applicability of the Medical Malpractice Act (the “MMA”). Today’s decision should not be seen as a retreat from or dilution of the well-settled jurisprudence compiled in note 8 in the majority opinion that recognizes that the Board has no standing to involve itself in a medical malpractice action *against a qualified healthcare provider relating to issues of liability* unless there is a judgment or settlement pursuant to the provisions of LA. REV. STAT. ANN. § 40:1299.44(C)(5).

To the contrary, our decision recognizes that the Board has standing under the present facts to determine the threshold issue of whether the healthcare provider has met the requirements of the MMA to be Board qualified. Because there is a question of the applicability of the MMA implied in the trial court’s grant of Dr. Krupkin’s dilatory exception of prematurity, the need to avoid the myriad problems which may arise if the MMA is misapplied calls for our recognition of the Board’s standing under these particular facts.