

# SUPREME COURT OF LOUISIANA

*No. 97-CC-2221*

DIANA LEBRETON

Versus

FELIX O. RABITO, M.D., PATRICK C. BREAU, M.D.  
AND THOMAS A. KREFFT, M.D.

LEMMON, J., Concurring

I agree with the result and with much of the reasoning in the opinion by the majority, but would prefer to rest the result on the basis that the prescriptive period for instituting a medical malpractice action is inapplicable once a timely claim has been filed for a medical review panel and the panel has rendered a decision.

After a medical malpractice victim asserts a cause of action against a qualified health care provider under La. Rev. Stat. 40:1299.47A(2)(a), the amount of time remaining in the prescriptive period is only relevant if the action is dismissed prior to completion of the medical review panel procedure. Prescription is suspended during the panel procedure, but once the procedure is completed and the medical review panel renders a decision, then the prescriptive period for instituting the initial proceeding becomes totally irrelevant.<sup>1</sup> The question thereafter is not when the prescriptive period for instituting an action accrues on the cause of action that has already been asserted, but whether the instituted action remains alive by timely filings in the district and

---

<sup>1</sup>The Medical Malpractice Act contemplates one procedure with specific time delays between the required steps of the request for a medical review panel (which suspends prescription), the petition to the district court after the panel decision, and the petitions for appeal to the court of appeal and for certiorari to this court. The scheme does not contemplate an additional interruption of prescription by an improperly filed suit in district court which is immediately subject to dismissal on prematurity.

appellate courts.