

HOUSE BILL NO. HB0112

Professional review panel.

Sponsored by: Representative(s) Childers, Jones and McOmie  
and Senator(s) Coe and Scott

A BILL

for

1 AN ACT relating to civil actions; reestablishing a  
2 professional review panel; repealing and reenacting  
3 provisions related to the panel; making additional  
4 amendments; providing for an appropriation; requiring a  
5 report; authorizing the governor to appoint a director;  
6 tolling applicable statutes of limitations; repealing  
7 nonconforming provisions; and providing for an effective  
8 date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-2-1801 through 9-2-1812 are  
13 repealed and recreated to read:

14

15

ARTICLE 18

16

PROFESSIONAL REVIEW PANEL

1

2           **9-2-1801. Short title.**

3

4 This act may be cited as the "Wyoming Professional Review  
5 Panel Act".

6

7           **9-2-1802. Purpose.**

8

9           (a) The purpose of this act is to:

10

11                   (i) Reduce the costs of professional malpractice  
12 claims to both plaintiffs and defendants by a less formal  
13 professional review of claims before litigation is pursued  
14 in the courts; and

15

16                   (ii) Improve the ability of the state to  
17 regulate professions and ensure professional competence.

18

19           **9-2-1803. Definitions.**

20

21           (a) As used in this act:

22

23                   (i) "Malpractice claim" means any claim against  
24 a professional for alleged departure from accepted

1 professional standards which results in damage to the  
2 claimant;

3

4 (ii) "Panel" means the Wyoming professional  
5 review panel provided for under this act;

6

7 (iii) "Professional" means a person required to  
8 be licensed by the state of Wyoming for whom the normal  
9 qualifications for licensure include at least a year of  
10 specialized postsecondary education, or is employed by a  
11 hospital or nursing care facility;

12

13 (iv) "This act" means W.S. 9-2-1801 through  
14 9-2-1812.

15

16 **9-2-1804. Service of pleadings; computation of time.**

17

18 (a) The claim, answer, decision and all other  
19 pleadings required to be served under this act shall be  
20 served in accordance with the Wyoming Rules of Civil  
21 Procedure.

22

1 (b) Computation of time periods prescribed or allowed  
2 under this act shall be in accordance with rule 6 of the  
3 Wyoming Rules of Civil Procedure.

4

5 **9-2-1805. Panel created; compensation; director of**  
6 **panel; appointment and duties; rulemaking.**

7

8 (a) There is created the Wyoming professional review  
9 panel.

10

11 (b) The panel shall have a director who shall be  
12 appointed by and serve at the pleasure of the governor and  
13 shall conduct the administrative business of the panel and  
14 otherwise implement this act. The director may employ  
15 personnel necessary to implement this act. The director  
16 shall promulgate rules and regulations in accordance with  
17 the Wyoming Administrative Procedure Act to implement this  
18 act.

19

20 (c) Members of the panel shall receive compensation  
21 while engaged in the business of the board of forty dollars  
22 (\$40.00) per hour for any hour during which a hearing or  
23 part of a hearing is held. Compensation for travel and  
24 other services shall be as provided by rules and

1 regulations promulgated by the director. Compensation to  
2 any panel member under this subsection shall not exceed  
3 three hundred twenty dollars (\$320.00) per day.

4

5 **9-2-1806. Claims to be reviewed by panel; prohibition**  
6 **on filing claims in court; tolling of statute of**  
7 **limitation; immunity of panel and witnesses;**  
8 **administration.**

9

10 (a) The panel shall review all professional  
11 malpractice claims against professionals filed with the  
12 panel except those claims subject to a valid arbitration or  
13 mediation agreement allowed by law or upon which suit has  
14 been filed prior to July 1, 2004. No complaint alleging  
15 malpractice shall be filed in any court against a  
16 professional before a claim is made to the panel and its  
17 decision is rendered. The running of the applicable  
18 limitation period in a malpractice action is tolled upon  
19 receipt by the director of the application for review and  
20 does not begin again until thirty (30) days after the  
21 panel's final decision is served upon the claimant.

22

23 (b) Panel members and witnesses are absolutely immune  
24 from civil liability for all acts in the course and scope

1 of the duties under this act, including but not limited to  
2 communications, findings, opinions and conclusions.

3

4 (c) The panel may provide for the administration of  
5 oaths, the receipt of claims filed, the promulgation of  
6 forms required under this act, the issuance of subpoenas in  
7 connection with the administration of this act, and the  
8 performance of all other acts required to fairly and  
9 effectively administer this act. A party requesting a  
10 subpoena shall bear all costs of mileage and witness fees.

11

12 **9-2-1807. Claim review procedure; contents of claim;**  
13 **service of claim on provider; answer.**

14

15 (a) Claimants shall submit a case for the  
16 consideration of the panel prior to filing a complaint in  
17 any court in this state by addressing a claim, in writing,  
18 signed by the claimant or his attorney, to the director of  
19 the panel. The claim shall contain:

20

21 (i) A statement in reasonable detail of the  
22 elements of the professional's conduct which are believed  
23 to constitute a malpractice claim, the dates the conduct  
24 occurred, and the names and addresses of all professionals

1 having contact with the claimant relevant to the claim and  
2 all witnesses;

3

4 (ii) A statement authorizing the panel to obtain  
5 access to all records and information pertaining to the  
6 claim and, for the purposes of its consideration of this  
7 matter only, waiving any privilege as to the contents of  
8 those records. Nothing in the statement may in any way be  
9 construed as waiving that privilege for any other purpose  
10 or in any other context, in or out of court.

11

12 (b) The claim may be amended by filing an amendment  
13 not less than fourteen (14) days prior to the hearing date.

14

15 (c) Upon receipt of a claim, the director shall cause  
16 a true copy of the claim to be served on the professionals  
17 against whom the claim has been filed.

18

19 (d) The professional shall answer the claim within  
20 thirty (30) days after service and shall submit a statement  
21 authorizing the panel to inspect all records and  
22 information pertaining to the claim except those records  
23 which are privileged pursuant to law. The answer shall be

1 filed with the director who shall serve a copy on the  
2 claimant.

3

4 **9-2-1808. Panel composition; selection;**  
5 **disqualification of panelist; multiple defendants.**

6

7 (a) The panel for each claim reviewed under this act  
8 shall consist of two (2) professionals licensed in this  
9 state if required by law to be licensed, and three (3) lay  
10 persons who are not professionals or an employee of a  
11 professional. All panel members shall be residents of this  
12 state. If feasible one (1) member of the panel shall be  
13 from the professional's profession or specialty. In those  
14 cases where the theory of respondeat superior or some other  
15 derivative theory of recovery is employed, if feasible one  
16 (1) member shall be from the professional's profession or  
17 specialty and one (1) member shall be from the profession  
18 or specialty of the professional named as employer, master  
19 or principal.

20

21 (b) Within five (5) days of receipt, the director  
22 shall notify the state licensing agency if any, of the  
23 professional involved and the governor of the filing of the  
24 claim. Within fourteen (14) days of notification, the



1 applicable state licensing agency shall provide the  
2 director a list of twelve (12) of its members as proposed  
3 panelists. Within fourteen (14) days of notification, the  
4 governor shall also provide the director with a list of  
5 twelve (12) people willing and able to serve as panelists.  
6 To the extent possible, the state licensing agency shall  
7 include on the list persons specializing in the same field  
8 or discipline as the professional against whom the claim is  
9 made. The director shall select two (2) from each list to  
10 serve as panelists and shall notify the parties and the  
11 panel members selected of their selection. The four (4)  
12 panelists shall unanimously select and appoint one (1)  
13 person as the fifth panelist.

14

15 (c) At or prior to the hearing, the panel shall  
16 select a chairman from among its members. The chairman  
17 shall preside over the panel proceedings.

18

19 (d) If, within fifteen (15) days of receipt of the  
20 notice of selection of panelists, the claimant or the  
21 professional against whom the claim is made files an  
22 affidavit stating his belief that a panelist selected by  
23 the director cannot be impartial in reviewing the claim,  
24 the panel member is disqualified, and the director shall

1 select another from the list. Each party may disqualify  
2 not more than three (3) panel members under this  
3 subsection.

4  
5 (e) The director may excuse a panelist from serving  
6 if the panelist feels his presence on the panel would be  
7 inappropriate under the circumstances of the case.

8  
9 (f) When a claim is filed against two (2) or more  
10 professionals, the claim against each professional shall be  
11 consolidated for hearing unless by stipulation of all  
12 parties or at the discretion of the panel, the claims are  
13 heard separately.

14  
15 **9-2-1809. Hearing procedure; review of decision**  
16 **prohibited.**

17  
18 (a) The director shall set a time and place for the  
19 hearing and provide notice to all parties at least thirty  
20 (30) days prior to the hearing. The hearing date shall not  
21 be more than one hundred twenty (120) days after the  
22 director receives the claim unless the panel finds good  
23 cause to delay the hearing. At least fifteen (15) days  
24 before the hearing the director shall provide each panel

1 member copies of all claims, briefs, records and other  
2 documents the director considers necessary.

3

4 (b) The hearing shall be conducted in accordance with  
5 rules and regulations promulgated by the director. The  
6 hearing shall be informal, and the Wyoming Rules of  
7 Evidence do not apply. No decision of the director or the  
8 panel is subject to review in a court. A record of the  
9 hearing may be made if so stipulated by all the parties and  
10 the panel.

11

12 (c) The panel may take the case under advisement or  
13 may request that additional facts, records, witnesses or  
14 other information be obtained and presented to it at a  
15 supplemental hearing, which shall be set for a date not  
16 later than thirty (30) days from the date of the original  
17 hearing unless the claimant or his attorney consents in  
18 writing to a longer period.

19

20 **9-2-1810. Panel deliberations and decision; decision**  
21 **not binding.**

22

23 (a) Upon consideration of all the relevant material,  
24 the panel shall determine whether there is:

1

2 (i) Substantial evidence that the acts  
3 complained of occurred and that they constitute  
4 malpractice; and

5

6 (ii) A reasonable probability that the claimant  
7 was injured as a result of the acts complained of.

8

9 (b) The deliberations of the panel are confidential.  
10 All votes of the panel on the questions for discussion  
11 shall be by secret ballot. The decision shall be by a  
12 majority vote of the panel and shall be signed by the  
13 chairman.

14

15 (c) The decision shall be in writing and forwarded to  
16 the director who shall serve copies on the parties. A copy  
17 of the decision shall be sent to the professional's state  
18 licensing board, if any.

19

20 (d) The panel's decision is not binding upon any  
21 party. The panel may by stipulation of the parties  
22 recommend an award.

23

1           **9-2-1811. Confidentiality of panel proceedings;**  
2 **privilege; decision not admissible.**

3

4           (a) The director shall maintain records of all  
5 proceedings before the panel, which shall include the  
6 nature of the act or omissions alleged in the claim, a  
7 brief summary of the evidence presented, the decision of  
8 the panel and any majority or minority opinions filed.  
9 Except as otherwise required by law, any records which may  
10 identify any party to the proceedings shall not be made  
11 public and are not subject to subpoena but are to be used  
12 solely for the purpose of compiling statistical data and  
13 facilitating ongoing studies of professional malpractice in  
14 this state.

15

16           (b) No panel member may be called to testify in any  
17 proceeding concerning the deliberations, discussions,  
18 decisions and internal proceedings of the panel.

19

20           (c) The decision of the panel is not admissible as  
21 evidence in any action.

22

23           **9-2-1812. Assessments; funding.**

24

1           (a) The panel shall be funded from assessments levied  
2 against and paid by each professional covered by this act.  
3 The director shall promulgate rules and regulations to  
4 annually establish appropriate assessments based upon the  
5 following guidelines:

6  
7           (i) The total amount of the panel's proposed  
8 annual budget shall be prorated among the professional  
9 classification covered under this act based on the number  
10 of cases reviewed by the panel during the immediately  
11 preceding calendar year involving each professional  
12 classification;

13  
14           (ii) The prorated amount determined for each  
15 professional classification shall be divided by the number  
16 of practicing professionals within each classification to  
17 determine the individual assessment.

18  
19           (b) The director shall certify the amount of each  
20 assessment to the appropriate licensing board, agency or  
21 authority and the board, agency or authority shall levy and  
22 collect the assessments annually at the time annual license  
23 fees are collected. Assessments collected under this  
24 subsection shall be remitted to the director not later than

1 thirty (30) days from the date of collection and paid  
2 immediately by the director to the state treasurer for  
3 deposit into the malpractice review account within the  
4 earmarked revenue fund.

5

6 (c) Monies in the malpractice review account shall be  
7 expended by the panel to carry out the purposes of this  
8 act.

9

10 **Section 2.** 1989 Wyoming Session Laws, Chapter 262,  
11 Sections 1 and 3 through 5 are repealed.

12

13 **Section 3.**

14

15 (a) There is appropriated one hundred thousand  
16 dollars (\$100,000.00) from the general fund to the account  
17 created in subsection (b) of this section for the purposes  
18 of this act. The director of the professional review panel  
19 shall provide a report to the legislature not later than  
20 December 31, 2003 analyzing and recommending alternative  
21 methods of funding the professional review panel.

22

23 (b) There is created a malpractice review account  
24 within the earmarked revenue fund.

1

2           **Section 4.** The governor shall appoint a director of  
3 the professional review panel pursuant to W.S. 9-2-1705(b)  
4 before July 1, 2003.

5

6           **Section 5.** This act is effective immediately upon  
7 completion of all acts necessary for a bill to become law  
8 as provided by Article 4, Section 8 of the Wyoming  
9 Constitution.

10

11

(END)