

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #011

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **3rd day of April, 2020** are as follows:

BY Crain, J.:

2019-C-01162

NEVILLE KIRT; ALVIN KIRT; AND LAMONT KIRT, INDIVIDUALLY AND ON BEHALF OF ELAINE KIRT, DECEASED VS. REBECCA C. METZINGER, M.D.; THEODORE D. STRICKLAND, III, M.D.; ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND D/B/A TULANE; PAULINE TAQUINO, CRNA; GAYLE MARTIN, CRNA; PARISH ANESTHESIA ASSOCIATES, LTD, A PROFESSIONAL MEDICAL CORPORATION (Parish of Orleans Civil)

We granted a writ of certiorari to consider the proper interpretation and application of Louisiana Revised Statutes 40:1231.8A(1)(e) where a claimant fails to pay the filing fee for adding a defendant to a pending medical review panel proceeding. The trial court found the failure to pay the fee invalidated the proceeding as to all named defendants and granted an exception of prescription. The court of appeal affirmed. We reverse and remand.

REVERSED AND REMANDED.

Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for Justice Marcus R. Clark.

SUPREME COURT OF LOUISIANA

No. 2019-C-1162

**NEVILLE KIRT; ALVIN KIRT; AND
LAMONT KIRT, INDIVIDUALLY AND ON BEHALF OF
ELAINE KIRT, DECEASED**

VERSUS

**REBECCA C. METZINGER, M.D.;
THEODORE C. STRICKLAND III, M.D.; ADMINISTRATORS OF THE
TULANE EDUCATIONAL FUND D/B/A TULANE; PAULINE TAQUINO,
CRNA; GAYLE MARTIN, CRNA; PARISH ANESTHESIA ASSOCIATES,
LTD, A PROFESSIONAL MEDICAL CORPORATION**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS**

CRAIN, J.¹

We granted a writ of certiorari to consider the proper interpretation and application of Louisiana Revised Statutes 40:1231.8A(1)(e) where a claimant fails to pay the filing fee for adding a defendant to a pending medical review panel proceeding. The trial court found the failure to pay the fee invalidated the proceeding as to all named defendants and granted an exception of prescription. The court of appeal affirmed. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

Elaine Kirt died on September 28, 2010, due to complications that developed shortly after undergoing eye surgery. On September 23, 2011, her son, Neville Kirt, appearing in proper person and on behalf of his deceased mother and his two brothers, Alvin Keith Kirt Jr. and Lamont Kirt, filed a request with the Division of Administration asking for a medical review panel to review the care provided to Elaine Kirt by three defendants: Dr. Rebecca C. Metzinger, the attending surgeon;

¹ Retired Judge James Boddie, Jr., appointed Justice *ad hoc*, sitting for Justice Clark.

Dr. Theodore C. Strickland III, the anesthesiologist for the procedure; and Tulane Medical Center.

In a reply letter to Neville dated October 4, 2011, the Patient's Compensation Fund Oversight Board (PCF) acknowledged receipt of the request; confirmed Dr. Metzinger, Dr. Strickland, and Tulane University Hospital & Clinic were qualified under the Louisiana Medical Malpractice Act (Act); informed Kirt a filing fee of \$100 per qualified defendant was due within forty-five days; and requested payment of \$300. The notice stated the failure to pay would render the request invalid, without effect, and would not suspend the time to file suit.

On October 17, 2011, the Kirts, now appearing through counsel, sent a second letter to the Division of Administration, acknowledging receipt of the October 4, 2011 correspondence and asking to amend their request "to add . . . Pauline Taquino CAN" and an "Unidentifiable CRNA whose signature is presented below." Beneath that statement is the image of a signature presumably reproduced from a medical record. Counsel for the Kirts requested that Taquino and the "unidentifiable CRNA" be notified of the filing, requested confirmation of their qualified status, and enclosed a \$500 check "to cover the filing of this request for medical review panel."

The PCF then informed the Kirts' counsel the "proposed panel request submitted by you and received by this office is being returned to you for failure to comply with the indicated provisions" of the Act. A box with an X appears next to the statement: "Failure to provide the full name of the (Unidentifiable Nurse) defendant health care provider." The PCF next advised that "verification is being obtained on Pauline Taquino." Counsel was informed the Act requires a \$100 filing fee per qualified defendant, but no request for payment was made. The PCF did acknowledge "receipt on October 25, 2011 of your check in the amount of \$500 dated October 19, 2011." In closing, the letter states "no further action can be taken

on the request at this time,” but cautions that the notice does not suspend the time to appoint an attorney chairman for the panel.

On November 17, 2011, plaintiffs’ counsel forwarded a “Second Amended Request” for medical review panel explaining that despite diligent efforts they were unable to identify the unknown CRNA. The letter requested “Parish Anesthesia,” the alleged employer of the unknown CRNA, be added to the panel proceeding.²

The PCF acknowledged receipt of the “supplemental letter” and confirmed Parish Anesthesia was qualified under the Act. The PCF also advised, “Please note that verification is being obtained on Pauline Taquino.” The notice does not mention a filing fee.

On March 9, 2012, the Kirts forwarded another letter, this time identifying Gayle Martin as the unknown CRNA and requesting she be added as a defendant. The letter focused solely on adding Martin, with no new allegations or mention of Taquino.

The PCF sent a notice on March 21, 2012 confirming the qualified status of Martin *and Taquino*, although Taquino’s name had not appeared in any correspondence to the PCF for over five months. The PCF requested payment of a \$100 filing fee. Failure to pay the fee, according to the notice, “shall render the request invalid and without affect.”

The Kirts did not pay the requested \$100 filing fee. In a final notice dated May 17, 2012, the PCF informed the plaintiffs the failure to pay the \$100 filing fee rendered their request invalid and without effect “as to Gayle Martin.”

² The alleged employer identifies itself in pleadings as “Parish Anesthesia of Tulane, LLC,” but was identified by the PCF as “Parish Anesthesia Assoc. LTD. APMC.” We will generally refer to this party as “Parish Anesthesia.”

The medical review panel convened on May 22, 2013. The panel reviewed the care provided by all named healthcare providers, including Martin, and found no breach of the standard of care.

The Kirts filed suit on August 20, 2013, against Dr. Metzinger, Dr. Strickland, Taquino, Martin, Tulane, and Parish Anesthesia. The claims against Dr. Metzinger, Dr. Strickland, and Tulane were dismissed by summary judgments because there was no proof they breached the standard of care while treating Elaine Kirt. Those judgments expressly barred allocating fault to the dismissed parties and prohibited introducing evidence at trial to establish their fault.

Taquino, Martin, and Parish Anesthesia (collectively “nurses” or “exceptors”) then filed peremptory exceptions of prescription. They asserted the request for a medical review panel was invalid because the Kirts failed to pay the final \$100 filing fee; therefore, prescription was not suspended for any claims pursuant to Louisiana Revised Statutes 40:1231.8A(1)(e).³ Alternatively, if the request was valid, the nurses were added after expiration of the one-year prescriptive period under Louisiana Revised Statutes 9:5628A and Louisiana Civil Code articles 2315.2B and 3492.

Opposing the exceptions, the Kirts argued the medical review panel proceeding involved several requests for review, including separate requests for Taquino and Parish Anesthesia. The filing fees for those requests were timely paid. While not paying the \$100 filing fee to add Martin invalidated that particular claim, it should not retroactively invalidate claims already perfected against Taquino and Parish Anesthesia. The exceptors’ alternative argument, according to the Kirts, has no merit as to Taquino and Parish Anesthesia because those claims were filed within

³ Before 2015 claims against private healthcare providers were governed by Louisiana Revised Statutes 40:1299.41-47. In 2015 the Act was redesignated to Louisiana Revised Statutes 40:1231.1-1231.10. See H.C.R. No. 84, 2015 Regular Session. For ease of reference, all citations are to the current statutory designation.

one year of the discovery of Taquino's negligence and within three years of her malpractice, making them timely under Louisiana Revised Statutes 9:5628A.

At the hearing on the exceptions, the parties introduced numerous exhibits including copies of the correspondence between the plaintiffs and the PCF; excerpts from the depositions of Dr. Strickland, Dr. Metzinger, Taquino, and another CRNA, Garry Brydges; medical records; and other correspondence and email communications. After taking the matter under advisement, the trial court issued written reasons in favor of the exceptors. The trial court concluded the Kirts named six qualified healthcare providers and thus owed "a filing fee of \$600," but only paid \$500. The failure to pay "the appropriate fee by or before the deadline" rendered "their request" invalid and without effect under Subparagraph (e) of Subsection 40:1231.8A(1), resulting in all claims prescribing. The trial court signed a judgment granting the exceptions and dismissed the claims against Taquino, Martin, and Parish Anesthesia, with prejudice.

The court of appeal affirmed, finding the Kirts' failure to pay the "full filing fee within the applicable 45-day period" rendered "the entire request for review" invalid. *Kirt v. Metzinger*, 19-0180 (La. App. 4 Cir. 6/19/19), 274 So. 3d 1271, 1274-75 (quoting *Medical Review Complaint by Downing*, 18-1027 (La. App. 4 Cir. 5/8/19), 272 So. 3d 55, 65, *writs denied*, 19-939 (La. 9/24/19), 278 So. 3d 979, 936; internal quotation marks omitted).

DISCUSSION

To resolve the issue presented, we must interpret provisions of Louisiana Revised Statutes 40:1231.8 (sometimes referred to as "Section 1231.8" or "the statute"). The interpretation of a statute presents a question of law subject to *de novo* review. See *Pierce Foundations, Inc. v. Jaroy Construction, Inc.*, 15-0785 (La. 5/3/16), 190 So. 3d 298, 303.

Our interpretation of the relevant statutory provisions is guided by well-established rules of statutory construction. Legislation is the solemn expression of the legislative will; thus, the interpretation of legislation is primarily the search for legislative intent. See La. Civ. Code art. 2; *Cat's Meow, Inc. v. City of New Orleans Through Department of Finance*, 98-0601 (La. 10/20/98), 720 So. 2d 1186, 1198. The starting point for interpreting any statute is the language of the statute itself, as the text of the law is the best evidence of legislative intent. See La. R.S. 1:4 and 24:177B(1); *In re Tillman*, 15-1114 (La. 3/15/16), 187 So. 3d 445, 451. When the law is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect; and its provisions must be construed to give effect to the purpose indicated by a fair interpretation of the language used. See La. Civ. Code art. 9; La. R.S. 1:4; *McGlothlin v. Christus St. Patrick Hospital*, 10-2775 (La. 7/1/11), 65 So. 3d 1218, 1227-28. Words and phrases must be read in context and construed according to the common and approved usage of the language. La. R.S. 1:3.

It is presumed that every word, sentence, or provision in a law is intended to serve some useful purpose, that some effect is given to each such provision, and that no unnecessary words or provisions were employed. *Colvin v. Louisiana Patient's Compensation Fund Oversight Board*, 06-1104 (La. 1/17/07), 947 So. 2d 15, 19. Courts are bound to give effect, if possible, to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to and preserving every word can legitimately be found. *Colvin*, 947 So. 2d at 19-20. Where two statutes deal with the same subject matter, they should be harmonized and reconciled if possible. *McGlothlin*, 65 So. 3d at 1228.

All malpractice claims against healthcare providers qualified under the Act must be reviewed by a medical review panel prior to suit. See La. R.S. 40:1231.8A(1)(a) and B(1)(a)(i). The formation of the medical review panel is

subject to a number of requirements, one being payment of a filing fee, or filing *fees*, depending on the construction of the relevant provisions. See La. R.S. 40:1231.8A(1)(c) and (g). A review of the statutory procedure for initiating a medical review panel proceeding is necessary to understand the calculation, notification, and payment of the proper filing fee in this case.

To initiate a panel proceeding, a claimant must file a written request, sometimes identified in Section 1231.8 as a “request for review of a malpractice claim,” with the Division of Administration. See La. R.S. 40:1231.8A(1)(b).⁴ After file-stamping the document, the Division must forward the request to the PCF within five days. See La. R.S. 40:1231.8A(2)(b)(ii).

Within fifteen days of receiving the request from the Division, the PCF is statutorily mandated to (1) confirm to the claimant, by certified mail, the filing was received and whether the “named defendant or defendants have qualified under this Part”; and (2) inform the claimant of the “amount of the filing fee due and the time frame within which such fee is due,” and that failure to timely pay the fee or obtain a waiver shall render the request for review of a malpractice claim invalid and without effect, even as to the suspension of prescription. See La. R.S. 40:1231.8A(3). The PCF must notify all defendants by certified mail of the filing and forward a copy of the proposed complaint to each of them. *Id.*

The PCF’s duty to determine and confirm the qualified status of each defendant is critical because the claimant must pay “a filing fee in the amount of one hundred dollars per named defendant qualified under this Part.” La. R.S. 40:1231.8A(1)(c) (sometimes referred to as “Subparagraph (c)”). When a request is filed, the claimant will likely not know which, if any, of the named defendants is

⁴ The statute uses other phrases or terms interchangeably to refer to the initial filing with the Division, including “request for review of a malpractice claim or a malpractice complaint,” “claim,” “complaint,” and “filing.” See La. R.S. 40:1231.8A(1)(b), A(3), A(3)(a), B(2)(a), and C.

qualified, and the amount of money, if any, due the PCF. Consequently, the PCF must provide that information to the claimant in the written confirmation of receipt. See La. R.S. 40:1231.8A(3).

The PCF's confirmation of receipt letter triggers a forty-five day period to pay the filing fee, as set forth in Subparagraph (c):

A claimant shall have forty-five days from the date of receipt by the claimant of the [PCF's] confirmation of receipt of the request for review in accordance with Subparagraph (3)(a) of this Subsection to pay to the [PCF] a filing fee in the amount of one hundred dollars per named defendant qualified under this Part.⁵

If the filing fee is timely paid, filing the request "shall be complete." La. R.S. 40:1231.8A(2)(b)(ii).⁶

If the filing fee is not timely paid or waived, the statute provides:

Failure to comply with the provisions of Subparagraph (c) or (d) of this Paragraph within the specified forty-five day time frame in Subparagraph (c) of this Paragraph shall render the request for review of a malpractice claim invalid and without effect. Such an invalid request for review of a malpractice claim shall not suspend time within which suit must be instituted in Subparagraph (2)(a) of this Subsection.

La. R.S. 40:1231.8A(1)(e) (sometimes referred to as "Subparagraph (e)"). The PCF must notify the claimant and all named defendants by certified mail whether the filing fee was or was not timely received. See La. R.S. 40:1231.8A(4)(a) and (d).

⁵ Prior to a 2016 amendment, the 45-day period under this provision began on the mailing date of the PCF's confirmation of receipt letter. See 2016 La. Acts No. 275. This difference in statutory language is not material to the issues presented herein. We also note Subparagraph (d) of the same subsection permits a claimant to obtain a waiver of the filing fee by securing an affidavit from a physician certifying certain information about the claim, or by obtaining a *forma pauperis* order. See La. R.S. 40:1231.8A(1)(d). Those provisions are not at issue herein.

⁶ Under the version of the statute in effect in 2011, timely payment of the filing fee was the final step for a request to be "deemed filed." See La. R.S. 40:1299.47A(2)(b) (2011). A 2017 amendment addressing facsimile filings separated the original provision into multiple parts, with the first subpart specifying the date the request is deemed filed, and the second subpart confirming the filing fee must be paid to "complete" the process. The amendment legislatively adopted the interpretation of the pre-amendment statute in *In re Tillman*, 15-1114 (La. 3/15/16), 187 So. 3d 445, 456, where this court determined the filing date for a fax-filed request was the day it entered the Division's fax system. See La. Acts 2017, No. 294; La. Bill Dig. Engr. 6/5/17, 2017 Reg. Sess. H.B.137. The amendment was not directed at the filing fee, and for present purposes, we find no material distinction between the pre- and post-amendment language declaring the request "deemed filed" or the filing being "complete" when the fee is timely paid.

After a request is filed, Section 1231.8 allows a claimant to add healthcare providers not named in the initial request. The statute provides:

The filing fee of one hundred dollars per named defendant qualified under this Part shall be applicable in the event that a claimant identifies additional qualified health care providers as defendants. The filing fee applicable to each identified qualified health care provider shall be due forty-five days from the mailing date of the confirmation of receipt of the request for review for the additional named defendants in accordance with Subparagraph (3)(a) of this Subsection.

La. R.S. 40:1231.8A(1)(g) (sometimes referred to as “Subparagraph (g)”). This provision incorporates essentially the same process applicable to the original request: the PCF, upon receipt of “the request for review for the additional named defendants,” confirms receipt of the request, the qualified status of the new defendants, and provides notice of the \$100 filing fee for each qualified defendant. The claimant then has forty-five days from the mailing date of the PCF’s notice to pay the filing fee.⁷

The exceptors successfully argued to the lower courts that the Kirts’ failure to pay \$100 to add Martin rendered the “entire request for review” invalid and without effect “as to all defendants.” Therefore, prescription was never suspended as to any defendant. *Kirt*, 274 So. 3d at 1275. The lower courts found this result mandated by Subparagraph (c), which requires payment of “a filing fee” of \$100 per qualified defendant named in the request, and Subparagraph (e), which says the failure to comply with Subparagraph (c) “shall render the request for review of a malpractice claim invalid and without effect.” See La. R.S. 40:1231.8A(1)(c) and (e).

Finding the lower courts’ interpretation inconsistent with the statutory language, we hold the failure to timely pay a filing fee invalidates only the request to review a malpractice claim against the specific qualified healthcare provider for

⁷ The 2016 amendment to Subparagraph (c), mentioned in footnote 5, did not make the same change for Subparagraph (g), resulting in the statute ostensibly providing different triggers for the payment delay applicable to the initial request for review (“date of receipt” by the claimant of the PCF’s confirmation) and a subsequent request adding a defendant (“mailing date” of the PCF’s confirmation). See La. R.S. 40:1231.8A(1)(c) and (g).

whom no fee was timely paid. This interpretation gives effect to all parts of the statute, particularly Subparagraphs (c), (e), and (g), which provide a claim-based, “per qualified defendant” filing fee, subject to a corresponding forty-five day payment period triggered by a letter from the PCF confirming a specific defendant’s qualified status.

We begin by recognizing that Section 1231.8 permits the filing of multiple requests for review asserting claims against numerous defendants in the same medical review panel proceeding. The statute expressly authorizes adding defendants by filing a “request for review for the additional named defendants.” *See* La. R.S. 40:1231.8A(1)(g). Like an original request, all “requests for review of a malpractice claim identifying additional healthcare providers” must be filed with the Division of Administration. *See* La. R.S. 40:1231.8A(2)(a). Each request may seek review of claims against multiple defendants. *See* La. R.S. 40:1231.8A(1)(b)(iv) and (vi); *see also* La. R.S. 40:1231.8C(3)(j).

In this multi-defendant proceeding, the claimants failed to pay a fee for the claim against one defendant. Under these circumstances, when Subparagraph (e) declares “the request for review of a malpractice claim” invalid and without effect, the question is *which* request for review and, more specifically, *which* malpractice claim? The language of Subparagraphs (c) and (e) reveals the answer: the claim against the specific qualified healthcare provider for whom no filing fee was paid.

Subparagraph (e) applies if a claimant fails “to comply with the provisions of Subparagraph (c) . . . within the specified forty-five day time frame in Subparagraph (c).” As previously explained, Subparagraph (c) requires payment of “*a filing fee in the amount of one hundred dollars per named defendant qualified*” under the Act. *See* La. R.S. 40:1231.8A(1)(c) (emphasis added). This language suggests a distinct charge for each qualified defendant, not a global fee for the entire proceeding. The statute does not assess a fee “per panel proceeding” or “per request for review.”

Rather, it imposes a fee of a specific amount for each named defendant qualified under the Act. The “specified forty-five day time frame” to pay the fee is triggered by the PCF’s confirmation letter that a given defendant is qualified. *See* La. R.S. 40:1231.8A(1)(c), (e), and (3)(a). The statute thus ties each filing fee and its applicable payment delay to a particular defendant: the fee is \$100 “per” qualified defendant, and the delay to pay that fee is triggered by the PCF’s confirmation that the defendant is qualified.

As evidenced by this case, the PCF may send more than one confirmation letter, either because the PCF confirmed the qualified status of the originally named defendants on different dates, or because the PCF confirmed the status of a defendant added to an existing proceeding. Each such letter triggers an obligation to pay a filing fee that is subject to its own forty-five day payment period for a particular defendant. *See* La. R.S. 40:1231.8A(1)(c), (g), and A(3). Subparagraph (g) implicitly recognizes the distinct nature of each filing fee:

The filing fee applicable to each identified qualified health care provider shall be due forty-five days from the mailing date of the confirmation of receipt of the request for review for the additional named defendants in accordance with Subparagraph (3)(a) of this Subsection.

La. R.S. 40:1231.8A(1)(g) (emphasis added). The notion of “one filing fee” for every panel proceeding cannot be reconciled with the different payment deadlines that arise when the PCF sends separate letters confirming defendants’ qualified status. A single filing fee cannot be subject to different payment deadlines.

Absent statutory language to the contrary, if a claimant fails to timely pay a filing fee, the adverse consequences resulting therefrom only affect the claim against the defendant for whom the fee was owed. The claimant either timely pays the filing fee and preserves the claim against that defendant; or the claimant fails to timely pay the filing fee, rendering the request for review of a malpractice claim *against that defendant* invalid and without effect. Our holding rejects the overgeneralization in

prior appellate court decisions that when a claimant in a multi-defendant proceeding fails to timely pay the “full filing fee,” the “entire request for review” is invalid and without effect as to all named providers. *See Medical Review Complaint by Downing*, 272 So. 3d at 65; *In re Rideaux*, 12-1096 (La. App. 3 Cir. 3/6/13), 2013WL811628, *2; *see also Medical Review Panel Proceedings for Claim of Ferguson v. Howell*, 53,139 (La. App. 2 Cir. 11/20/19), 284 So. 3d 1231, 1237.

Applying this statutory construction to the facts of this case, the original request filed by the Kirts named three defendants, all of whom were confirmed “qualified” by the PCF. That confirmation started a forty-five day time period for the Kirts to pay \$100 for each qualified defendant, which the Kirts timely paid. For those three defendants, the Kirts complied with Subparagraph (c) within the forty-five day time period. Thus, Subparagraph (e) has no application to those claims. The filing of the request for a medical review panel for each of those defendants was complete. *See La. R.S. 40:1231.8A(2)(b)(ii)*.

The Kirts then forwarded a second request adding Taquino. Five months later, the PCF confirmed Taquino was qualified. That confirmation triggered a forty-five day time period to pay the \$100 filing fee for Taquino. Those funds had previously been forwarded to the PCF in the \$500 check. Consequently, when the PCF confirmed Taquino’s qualified status, it had the funds to cover that filing fee. The PCF properly applied those funds to the Taquino claim.

The exceptors contend the PCF’s allocation of \$100 of the \$500 check to Taquino was an impermissible exercise of discretion. We recognize the PCF, as a creature of the legislature, can have no greater authority than that given it by the legislature. *Franks v. Louisiana Patient’s Compensation Fund Oversight Board*, 16-0765 (La. App. 1 Cir. 5/3/17), 220 So. 3d 862, 867, *writs denied*, 17-0868, 0877 (La. 9/29/17), 227 So. 3d 294. The duties imposed on the PCF by Section 1231.8 are mandatory and ministerial in nature to facilitate the medical review process. *Franks*,

220 So. 3d at 868. In that regard, the PCF stands in the same position as clerks of court, who are charged by the legislature with the duty to receive and process pleadings filed in judicial proceedings. *Id.* But here the PCF was specifically instructed to use the \$500 check to cover the filing fee for the defendants named in the proceeding at that time, which included Taquino. Upon confirming Taquino’s qualified status, the PCF performed its ministerial duty by allocating \$100 in available funds to the Taquino claim as directed. There was no discretionary act or decision by the PCF.

With respect to Taquino, the Kirts complied with Subparagraph (c) within the applicable forty-five day time period. Thus, Subparagraph (e) has no application to that claim. The lower courts erred in finding the claimants failed to timely pay the filing fee for the claim against Taquino. *See* La. R.S. 40:1231.8A(1)(c) and (e).⁸

The Kirts added Parish Anesthesia to the proceeding before the PCF confirmed Taquino was qualified. When that request was filed, the PCF had \$200 remaining from the \$500 paid by the Kirts.⁹ The PCF properly applied \$100 to cover the filing fee for adding Parish Anesthesia. The Kirts complied with Subparagraph (c) within the applicable forty-five day time period for the claim against Parish Anesthesia. Thus, Subparagraph (e) has no application to that claim. The lower courts erred finding the claimants failed to timely pay the filing fee for Parish Anesthesia. *See* La. R.S. 40:1231.8A(1)(c) and (e).

The Kirts concede they did not pay the \$100 filing fee to add Martin to the proceeding. The failure to pay that fee rendered the request to review the claim against Martin invalid and without effect, resulting in that claim prescribing. *See*

⁸ These facts are distinguishable from a case such as *In re Rideaux*, where the PCF received a \$100 check in a proceeding naming two qualified defendants, with no instruction how to apply the funds. *In re Rideaux*, 2013WL811628 at *1. Under those circumstances, the PCF lacks the authority to choose which claim will be assigned the fee payment.

⁹ The inclusion of an “unidentifiable CRNA” in the second request is not a claim against a “named defendant” and has no legal significance. *See* La. R.S. 40:1231.8A(1)(c).

La. R.S. 40:1231.8A(1)(e); La. R.S. 9:5628; La. Civ. Code art. 2315.2B. The trial court correctly sustained the exception of prescription and dismissed the claim against Martin, with prejudice.

The exceptors argue in the alternative that the claims against Taquino and Parish Anesthesia are prescribed because they were filed more than one year after Elaine Kirt's death. The exceptors point out that while the claims against Dr. Metzinger, Dr. Strickland, and Tulane were timely filed, those defendants were found free from fault and dismissed by summary judgment. Therefore, the dismissed defendants were not "joint and solidary obligors" with Taquino and Parish Anesthesia, which, according to the exceptors, means the timely claims filed against the dismissed defendants did not suspend prescription against Taquino and Parish Anesthesia under Louisiana Revised Statutes 40:1231.8A(2)(a). The Kirts argue the claims against Taquino and Parish Anesthesia were filed within three years of their mother's death and are subject to the one year "discovery rule" embodied in Louisiana Revised Statutes 9:5628A. The Kirts maintain they could not have reasonably known about the claims against Taquino and Parish Anesthesia until Taquino was deposed and disclosed treatment information not reasonably ascertainable from the medical records.

Because the lower courts did not consider or decide the merits of this basis for the exception of prescription, which may turn on factual findings, we pretermitt consideration of these arguments and remand the matter to the trial court for further disposition of the exception.

CONCLUSION

The dismissal of the claims against Gayle Martin is affirmed. In all other respects, the court of appeal's decision affirming the trial court's judgment is reversed. The trial court's judgment is vacated, in part, to the extent it sustained the exception of prescription and dismissed the claims against Pauline A. Taquino and

04/03/20

Parish Anesthesia of Tulane, LLC. The matter is remanded to the trial court for consideration and disposition of the alternative basis urged in support of the exception of prescription.

**AFFIRMED, IN PART; REVERSED, IN PART; VACATED, IN PART;
REMANDED.**