

The Supreme Court of the State of Louisiana

BRIANNE WATERS

No. 2022-CC-00098

VS.

DR. JONATHAN LAM AND LOUISIANA
STATE UNIVERSITY HEALTH SCIENCES
CENTER

IN RE: Dr. Jonathan Lam - Applicant Defendant; Louisiana State University Health
Sciences Center - Applicant Defendant; Applying For Supervisory Writ, Parish of
Orleans Civil, Orleans Civil District Court Number(s) 2021-00061, Court of Appeal,
Fourth Circuit, Number(s) 2021-C-0656;

March 22, 2022

Writ application granted. See per curiam.

PDG
JLW
SJC
WJC
JBM

Hughes, J., would deny.
Genovese, J., would deny.

Supreme Court of Louisiana
March 22, 2022

Katie Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-CC-00098

BRIANNE WATERS

VS.

**DR. JONATHAN LAM AND LOUISIANA STATE UNIVERSITY HEALTH
SCIENCES CENTER**

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans

PER CURIAM

On September 28, 2020, plaintiff filed a request for review with the Division of Administration (“DOA”) based on medical malpractice which allegedly occurred on September 29, 2019. On October 9, 2020, the DOA sent a letter to plaintiff advising that based on the allegations in her complaint, the defendants were state health care providers. The letter further advised plaintiff that she had forty-five days from receipt of this letter to pay a filing fee to DOA in the amount of \$100 per named defendant.

Plaintiff did not submit the filing fee to DOA within the forty-five day period. However, on November 6, 2020, she sent the filing fee to the Patients’ Compensation Fund (“PCF”). On February 2, 2021, DOA sent a letter to plaintiff advising its office had not received the filing fee and would be closing the matter.

In the meanwhile, plaintiff filed suit in the district court against defendants on January 5, 2021. Defendants responded by filing a peremptory exception raising the objection of prescription. In support of their exception, defendants argued that because plaintiff failed to pay the required filing fee, her request for review filed with the DOA was without effect and did not serve to suspend prescription.

The district court denied the exception, and the court of appeal denied defendants' application for supervisory writs. Defendants' application to this court followed.

The question in this case turns on whether plaintiff's request for review was valid under La. R.S. 40:1237.2(A)(1), which provides:

(c) A claimant shall have forty-five days from the date of receipt by the claimant of the confirmation of receipt of the request for review in accordance with Subparagraph (3)(a) of this Subsection **to pay to the commissioner** [of the DOA] a filing fee in the amount of one hundred dollars per named defendant state health care provider.

* * *

(e) Failure to comply with the provisions of Subparagraph (c) or (d) of this Paragraph within the specified 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 the time within which suit must be instituted in Subparagraph (2)(a) of this Subsection**. [emphasis added].

Plaintiff concedes she did not submit her fee to the DOA within the forty-five day limit. However, she argues she did submit her fee to the PCF on November 6, 2020, within forty-five days of the DOA's receipt of her complaint on October 9, 2020.

Plaintiff relies on La. R.S. 40:1237.2(C)(1) for the proposition that the fee may be paid to either the DOA or the PCF. However, a careful examination of that statute indicates it is inapplicable under these facts. La. R.S. 40:1237.2(C)(1) addresses the composition of the medical review panel, including the appointment of the attorney member, providing:

C. (1) The state medical review panel shall consist of one attorney and three health care providers who hold unlimited licenses to practice their profession in Louisiana. The parties may agree on the attorney member of the state medical review panel. If no attorney for or a representative of any health care provider named in the complaint has made an appearance in the proceeding or

made written contact with the attorney for the plaintiff within forty-five days of the date of receipt of the notification to the health care provider and the insurer **that the required filing fee has been received by the commissioner or the patients compensation board as required by Subparagraph (A)(1)(c) of this Section**, the attorney for the plaintiff may appoint the attorney member of the state medical review panel for the purpose of convening the panel. Such notice to the health care provider and the insurer shall be sent by registered or certified mail, return receipt requested. If no agreement can be reached, then the attorney member of the state medical review panel shall be selected in the following manner. . . . [emphasis added].

Clearly, this language is not intended to govern the requirements for submitting the filing fee, but simply lists the receipt of the filing fee as a prerequisite for allowing the attorney for the plaintiff to appoint the attorney member of the panel for purposes of convening the panel.

Moreover, any suggestion that a party could file a request for review in either agency is dispelled by La. R.S. 40:1237.1(A)(2)(a), which provides, in pertinent part:

Filing a request for review of a malpractice claim required by this Section with any agency or entity **other than the division of administration** shall not suspend or interrupt the running of prescription. [emphasis added].

In summary, we find plaintiff failed to perfect her request for review because she failed to pay the required filing fee to DOA within the specified time period. By operation of La. R.S. 40:1237.2(A)(1)(e), her filing was invalid and without effect and did not serve to suspend the prescriptive period. Plaintiff's suit is therefore prescribed on its face.

DECREE

For the reasons assigned, the writ is granted. The judgment of the district court is reversed. The peremptory exception raising the objection of prescription is sustained, and the suit is dismissed with prejudice.