

# Fifth Circuit Court of Appeal State of Louisiana

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No. 26-C-120

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IN RE: MEDICAL REVIEW PANEL CLAIM OF STATIA NELSON

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IN RE UNIVERSITY HEALTHCARE SYSTEM, L.C. D/B/A TULANE LAKESIDE HOSPITAL  
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT  
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE  
ELLEN SHIRER KOVACH, DIVISION "K", No. 870-153

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TRUE COPY

April 27, 2026



LINDA TRAN  
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,  
John J. Molaison, Jr., and Timothy S. Marcel

## WRIT DENIED

In this medical malpractice action, defendant, University Healthcare System, L.C., d/b/a Tulane Lakeside Hospital (“Tulane”), seeks supervisory review of the trial court’s judgment denying its peremptory exception of prescription. We deny the writ application.

Plaintiff Statia Nelson, an expectant mother with severe preeclampsia, was hospitalized on July 5, 2024. According to the allegations in her complaint, she continued to deteriorate and needed multiple IV antihypertensive agents on July 8. On July 9, she reported abdominal pain; fetal monitoring showed no fetal heart tones, which led to an emergency caesarean section and a stillbirth. On August 23, 2024, she received the coroner’s report, which stated: “earlier delivery was medically indicated.” On July 30, 2025, Ms. Nelson filed a request with the Patient’s Compensation Fund for the formation of a medical review panel.

Plaintiff's complaint alleges Tulane breached the standard of care during her July 5 through July 13, 2024 hospitalization, which led to the July 9 stillbirth. Plaintiff contends that Tulane failed to initiate delivery of the baby on July 8, inadequately monitored her complaints, failed to perform a bedside evaluation when she developed new abdominal pain, and unreasonably delayed the implementation of a delivery plan. Plaintiff further alleges she did not become aware of potential malpractice until she reviewed the coroner's report on August 23, 2024.

Tulane filed a peremptory exception of prescription, arguing that plaintiff was put on notice of a potential claim by July 9, 2024, when her baby was stillborn, because her allegations of delayed treatment, resulting in the death of a previously viable fetus, are the kind of allegations that suggest she was put on guard to inquire. Alternatively, Tulane argued plaintiff was on notice of potential malpractice no later than July 12, 2024, when her attorney, Brian Sondes, sent a letter to Tulane's Risk Manager. The letter stated:

This will thank you and acknowledge our phone call this date concerning my client. Statia Nelson who is presently on the second floor of Tulane Lakeside Hospital. Having lost her infant child tragically night before last she is in urgent need for grief counseling by a trained member of the hospital sta[ff].

During our conversation you indicated I was not to speak to any member of the hospital staff. Because the hospital chooses to implement the utmost secrecy concerning the incident my client is more anxious and more upset. The assistance I seek is urgent.

Plaintiff responded that her delay in filing suit was reasonable because she had no reason to believe malpractice had occurred until she received the coroner's report in August of 2024. She claimed her delay is also legally justified because she lacks medical training; the malpractice involves complex issues of medical causation; she was entitled to rely on her treating physician's recommendations; and none of the information available to her before she received the coroner's

report suggested negligence.<sup>1</sup> She argued that prescription began when malpractice became reasonably knowable, not when she experienced a bad outcome, and that she filed her claim within one year of discovery.

After a hearing, the trial court denied Tulane's exception of prescription, finding no indication that plaintiff possessed sufficient facts by July 12, 2024, to commence prescription. The trial court stated at the hearing that "a bad outcome is not notice ... that malpractice was committed."

Tulane seeks supervisory review of that ruling, arguing that constructive notice is all that is necessary to begin the running of prescription; constructive notice means the plaintiff's attention is excited, and she is put on guard to call for inquiry. *See Campo v. Correa*, 01-2797 (La. 6/21/02), 828 So.2d 502, 510.

Under La. R.S. 9:5628(A), a request for a medical review panel must be filed within one year of the alleged malpractice, or, if the claimant can show the doctrine of *contra non valentem* applies, within one year of the plaintiff's discovery of the alleged malpractice. *Campo*, 828 So.2d at 509. Determining whether *contra non valentem* applies to suspend prescription is a decision the court must make on a case-by-case basis. *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 21-61 (La. 10/10/21), 333 So.3d 368, 374.

The exceptor bears the burden of proving prescription, unless the claim is prescribed on the face of the pleadings, in which case the burden shifts to the plaintiff to show her claim is not prescribed. *In re Medical Review Panel of Heath*, 21-1367 (La. 6/29/22), 345 So.3d 992, 996. A petition is not prescribed on the face of the pleadings if it is filed within one year of the date of discovery and particularly alleged facts show the patient was unaware of malpractice before that

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<sup>1</sup> Plaintiff also argued in the trial court that Tulane withheld "critical information" as to the medical circumstances surrounding the death of her baby, but there is no indication that she offered any evidence at the hearing to support this contention.

date, so long as the filing delay was not willful, negligent, or unreasonable. *Id.*, citing *Campo*, 828 So.2d at 509.

When a plaintiff has knowledge of facts strongly suggestive that the untoward condition or result may be the result of improper treatment, and there is no effort by the health care provider to mislead or cover up information that is available to the plaintiff through inquiry or professional medical or legal advice, the cause of action is reasonably knowable to the plaintiff. *In re Medical Review Panel Proceedings of Singleton*, 23-190 (La. App. 5 Cir. 2/28/24), 382 So.3d 1063, 1070. In *Guitreau v. Kucharchuk*, 99-2570 (La. 5/16/00), 763 So.2d 575, the Louisiana Supreme Court stated:

In *Jordan v. Employee Transfer Corp.*, 509 So.2d 420 (La. 1987), we defined the kind of notice that will start the running of prescription. The one-year prescriptive period for a medical malpractice action will not begin to run at the earliest possible indication that a patient may have suffered some wrong. *Jordan*, 509 So.2d at 423. Prescription should not be used to force a person who believes he may have been damaged in some way to rush to file suit against every person who might have caused his damage. *Id.* Mere notice of a wrongful act will not suffice to commence the running of the prescriptive period. Rather, in order for the prescriptive period to commence, the plaintiff must be able to state a cause of action—both a wrongful act and resultant damages. *Gassen v. East Jefferson General Hosp.*, 96-590 (La. App. 5 Cir. 12/30/96), 687 So.2d 120; *writ denied*, 97-738 (La. 5/1/97), 693 So.2d 735, citing *Rayne State Bank and Trust Co. v. National Union Fire Ins. Co.*, 483 So.2d 987 (La. 1986). Ignorance of the probable extent of injuries materially differs from ignorance of actionable harm, which delays commencement of prescription. *Gassen, supra*.

*Guitreau*, 763 So.2d at 579-80.

When evidence is introduced at a hearing on prescription, a court need not accept the allegations of the petition as true, and the lower court decisions are to be reviewed under a manifest error-clearly wrong standard of review. *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 21-61 (La. 10/10/21), 333 So.3d 368, 373.

Under the manifest error standard, if the trial court's factual findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently. *Singleton*, 382 So.3d at 1069.

Tulane contends the trial court erred in refusing to find that hiring an attorney is sufficient to commence prescription, citing cases holding that retaining counsel is sufficient to begin the running of prescription. *See, e.g., Medical Review Panel Proceeding of Williams v. Lewis*, 08-2223 (La. App. 1 Cir. 5/13/09), 17 So.3d 26, 30; *Gore v. Snider*, 590 So.2d 677, 678 (La. App. 3d Cir. 1991). Because plaintiff retained an attorney no later than July 12, 2024, Tulane contends prescription began then.

The July 12, 2024 letter from Ms. Nelson's attorney addresses one issue: obtaining grief counseling for Ms. Nelson in conjunction with her loss. Although the letter also refers to Tulane's "utmost secrecy concerning the incident," the trial court evidently determined that the referenced "incident" was the stillbirth, not Tulane's alleged malpractice. Counsel's letter says nothing about the potential wrongdoing of Tulane or its staff that led to the baby's death, nor does it indicate that plaintiff intends to pursue a malpractice action against Tulane. Plaintiff's petition states that she was not aware of her potential malpractice claim until August of 2024, when the coroner's report indicated that labor should have been induced earlier than July 9, 2024. On this record, we cannot say the trial court manifestly erred in determining that plaintiff lacked constructive notice of a potential malpractice claim on July 12, 2024.

Additionally, the cases Tulane cites to support its argument regarding attorney retention are distinguishable. As seen above, each case must be evaluated according to its specific facts. *Mitchell*, 333 So.3d at 374. Here, plaintiff suffered from severe preeclampsia, a known risk to the fetus. The tragic outcome in this

case, in and of itself, was an insufficient indicator of potential negligence. *See Guitreau*, 763 So.2d at 579-80. In the immediate aftermath of the loss, plaintiff sought information and grief counseling, which she apparently did not receive. Counsel's letter to Tulane's Risk Manager addressed plaintiff's immediate needs, not a suspected malpractice claim. Further, plaintiff alleged she did not discover the potential malpractice until reviewing the coroner's report more than a month after the stillbirth. On this record, we find the trial court did not manifestly err in denying Tulane's exception of prescription. Accordingly, we deny the writ.

Gretna, Louisiana, this 27th day of April, 2026.

**SMC**  
**JJM**  
**TSM**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
SCOTT U. SCHLEGEL  
TIMOTHY S. MARCEL

JUDGES



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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/27/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**26-C-120**

**E-NOTIFIED**

24th Judicial District Court (Clerk)

Honorable Ellen Shirer Kovach (DISTRICT JUDGE)

Richard S. Crisler (Relator)

Tonya S. Johnson (Respondent)

C. William Bradley, Jr. (Relator)

Jada C. Doucet (Relator)

**MAILED**