

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-99

IN RE: MEDICAL REVIEW PROCEEDING OF ISAAC,
SILHOMME

IN RE TAMER ACIKALIN, M.D. AND DAVID TREEN, M.D.
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE E.
ADRIAN ADAMS, DIVISION "G", NUMBER 859-480

TRUE COPY

May 27, 2026



SUSAN BUCHHOLZ
DEPUTY CLERK

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Marc E. Johnson

WRIT GRANTED

Relator, Tamer Acikalin, M.D., seeks review of the trial court's February 11, 2026 judgment that overruled his re-urged peremptory exception of prescription in favor of Plaintiff, Silhomme Isaac. Relator argued that Mr. Isaac's April 1, 2024 medical review panel request and July 1, 2025 amended medical review panel request against him are facially prescribed because they were filed well-outside of the three-year prescriptive period set forth in La. R.S. 9:5628(A)(1)(a). He contended that the requests are untimely because they relate to treatment provided by him to Mr. Isaac on October 29, 2018, and Mr. Isaac failed to carry his burden of proving the claims were timely asserted. In opposition, Mr. Isaac argued that his amended medical review panel request complies with this Court's decision in *In Re: Medical Review Proceeding of Isaac, Silhomme*, 25-250 (La. App. 5 Cir. 6/18/25),

2025 WL 1707226, by pleading facts that explain the delay in discovery of Relator's alleged malpractice.¹

A hearing on Relator's exception of prescription was held on January 12, 2026. No evidence was introduced at the hearing by either party. The trial court took the matter under advisement and subsequently overruled Relator's exception on February 11, 2026.

The burden of proof in an exception of prescription lies with the party asserting it; however, where the petition shows on its face that it has prescribed, the burden shifts to the plaintiff to prove the prescriptive period has been interrupted or suspended. *McClellan v. Premier Nissan, L.L.C.*, 14-726 (La. App. 5 Cir. 2/11/15), 167 So.3d 934, 935. At a hearing on a peremptory exception pleaded prior to trial, evidence may be introduced to support or controvert the exception. *Coleman v. Ace Property & Casualty Ins. Co.*, 19-305 (La. App. 5 Cir. 11/27/19), 284 So.3d 1262, 1268, quoting *In re Med. Review Panel of Gerard Lindquist*, 18-444 (La. App. 5 Cir. 5/23/19), 274 So.3d 750. In the absence of evidence, a peremptory exception must be decided upon the facts alleged in the petition with all of the allegations accepted as true. *Id.* If evidence is introduced at the hearing on the peremptory exception of prescription, the trial court's findings of fact are reviewed under the manifest error/clearly wrong standard of review. *Bailey v. Pinnacle Polymers, LLC*, 24-490 (La. App. 5 Cir. 4/2/25), 412 So.3d 1063, 1076.

In this matter, the issue before us is whether Mr. Isaac's medical panel review requests are prescribed. The prescriptive period for medical malpractice actions is set forth in La. R.S. 9:5628, which states, in pertinent part:

- A. No action for damages for injury or death against any physician, ... arising out of patient care shall be brought unless filed within one year from the date of the alleged act, omission, or neglect, or within one year from the date of discovery of the alleged act, omission, or neglect: however, even

¹ This is the second time that Relator has filed an exception of prescription in reference to Mr. Isaac's medical review panel requests. See, *In Re: Medical Review Proceeding of Isaac, Silhomme, supra*, for the prior decision.

as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at the latest within a period of three years from the date of the alleged act, omission, or neglect.

Thus, La. R.S. 9:5628 establishes the general rule that a victim of medical malpractice has one year from the date of the alleged malpractice to bring his claim for damages. *In re Singleton*, 19-578 (La. App. 5 Cir. 9/2/20), 303 So.3d 362, 366. However, La. R.S. 9:5628 also recognizes an exception to this general rule in cases where the claimant contends that he was initially unaware of the malpractice and that there has been a delay in his discovery of the malpractice. *Id.* The language of La. R.S. 9:5628 makes clear, however, that this *contra non valentum* type exception to the general one-year prescriptive period is expressly made inapplicable after three years from the act, omission, or neglect. *Id.*

In his “Amended and Supplemental Request for Medical Review Panel Pursuant to La. R.S. 40:1231.8,” Mr. Isaac alleges that on or about October 29, 2018, Relator performed an esophagogastroduodenoscopy (“EGD”) at West Jefferson Medical Center. He further alleges that Relator biopsied a semi-sessile 37mm polyp on the greater curvature of the gastric antrum and aspirated part of the tumor; but, Relator failed to fully remove the tumor, did not communicate the risks of leaving part of the tumor intact, and failed to recommend timely surgical intervention or oncologic evaluation. Mr. Isaac averred that Relator’s negligence allowed the tumor to grow undetected and untreated. In an effort to explain the delay in filing, Mr. Isaac claimed that he was unaware that the tumor was not fully removed until October 19, 2023, when he underwent a partial gastrectomy with EGD. He asserted that, not only did he lack knowledge of the negligence, he reasonably relied on the representation and treatment provided by the West Jefferson providers.

Pursuant to La. R.S. 9:5628(A), Mr. Isaac’s medical review panel requests were untimely filed. Relator’s alleged act of medical malpractice occurred on October 29, 2018; however, Mr. Isaac’s first request was not filed until April 1,

2024—years outside of the prescriptive period. After accepting Mr. Isaac’s allegation that he was not initially aware of the alleged malpractice as true, we find that *contra non valentum* is inapplicable to this matter because the initial request was filed more than three years after the date of the alleged October 29, 2018 medical malpractice. *See, Singleton, supra.* Consequently, Mr. Isaac’s claims against Relator are prescribed.

Therefore, we find that the trial court was erroneous in overruling Relator’s exception of prescription. Accordingly, we grant the writ application, sustain Relator’s exception of prescription, and dismiss Mr. Isaac’s medical review panel claims against Relator arising from the alleged October 29, 2018 act of malpractice.

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

MEJ
SMC
FHW

SUSAN M. CHEARDY
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



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

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 **05/27/2026** 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-99

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable E. Adrian Adams (DISTRICT JUDGE)
Connie P. Trieu (Respondent)
C. William Bradley, Jr. (Respondent)
Richard S. Crisler (Respondent)

Bryan J. Knight (Relator)
Lance V. Licciardi, Jr. (Respondent)
Jada C. Doucet (Respondent)

MAILED