



# LHA IMPACT LAW BRIEF

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Louisiana Hospital Association

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## Headlines:

- **Recredentialing Claims Are Now Uncapped**

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## Notices:

**ARTICLE SUBMISSION:** The LHA Society of Hospital Attorneys encourages its members to submit articles on topics of interest. Writing an article that is published in *Lawbrief* is a great way to promote your name in the healthcare community and advertise your knowledge. If you have written an article and would like to have it considered for publication in *Lawbrief*, please email it in Word format (no PDFs please) to LHA Advocacy Coordinator Meaghan Musso at [mmusso@lhaonline.org](mailto:mmusso@lhaonline.org). **NOTE:** To submit articles for publication in *Lawbrief*, the author must be an active member of the LHA Society of Hospital Attorneys, and articles cannot contain footnotes.

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## LEGAL & REGULATORY EDUCATION PROGRAMS & WEBINARS:

- **Blueprints for Transformation: Moving from Case Management to Care Coordination;** May 1; Harahan; [Register](#)
- **Telemedicine: Coding, Billing and Compliance;** May 7; Webinar; [Register](#)
- **LAPS PSO - Engineering the Future of Healthcare: Fundamentals of Human Factors and Ergonomics;** May 8; Baton Rouge; [Register](#)
- **Governance Webinar Series - What Every Hospital Board Member Should Know - Part 1;** May 21; Webinar; [Register](#)
- **Payor Day – Commercial Plans;** May 21; Baton Rouge; [Register](#)
- **Employee Files: Requirements and Best Practices;** June 13; Webinar; [Register](#)

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**SUMMER CONFERENCE:** [Registration](#) is now open for LHA's Annual Meeting & Summer Conference, which is being held July 22-24 in Orange Beach, AL. Once you register for the conference, you can reserve a room in LHA's room block at the Perdido Beach Resort by calling the hotel directly at 1-800-634-8001 and providing the hotel reservation staff with the Order Number from your LHA event confirmation. A block of rooms has been reserved at the rate of \$239 (night/standard room) until the block is full or until June 28. If you need assistance, contact Merle Francis at [mfrancis@lhaonline.org](mailto:mfrancis@lhaonline.org) or Melissa Arthur at [marthur@lhaonline.org](mailto:marthur@lhaonline.org).

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## Articles:

### Recredentialing Claims Are Now Uncapped

By: Adam Thames

In October 2016, the Louisiana Supreme Court reversed course in the landmark decision of *Billeaudeau v. Opelousas Gen. Hosp. Auth.*, finding claims of negligent credentialing to fall under general negligence provisions of Louisiana law and thus specifically outside the monetary damages cap

imposed by the Louisiana Medical Malpractice Act (LMMA). You can read more about that ruling and its impact on healthcare providers [here](#). Recently, the Louisiana Third Circuit Court of Appeals extended *Billeaudeau's* reach by finding claims of “negligent recredentialing” also fall outside the scope of protections afforded by the LMMA.

In *Thomas v. Regional Health System of Acadiana, LLC*, the trial court ruled that a patient’s claims against a hospital for negligent recredentialing of a physician fell under the LMMA (and were thus capped) because it was akin to the hospital’s ongoing supervision of a physician and closely related to treatment. In reversing the trial court’s decision, the Third Circuit primarily emphasized, as did the Supreme Court in *Billeaudeau*, that attempts by the Louisiana Legislature to include credentialing in the list of claims to be covered under the LMMA had repeatedly failed. The appellate court was also not persuaded by the argument that recredentialing of a physician was similar to ongoing supervision by the provider or any different at all from the initial credentialing process analyzed in *Billeaudeau*. Thus, the Third Circuit held that a patient’s claims for negligent recredentialing against the hospital could proceed, uncapped, under Louisiana’s general negligence provisions as opposed to the LMMA.

It is unlikely the Supreme Court will exercise its discretion to hear the *Thomas* case and even more unlikely that it will reverse the Third Circuit’s ruling. Without legislative action to amend the LMMA to include terms like hiring, retention, credentialing, and recredentialing within the definition of malpractice, uncapped credentialing claims will continue to be cause for concern for healthcare providers. In light of *Billeaudeau* and *Thomas*, it is critical for all healthcare providers to ensure that only qualified physicians are credentialed, and now recredentialed, before they are allowed to treat patients in their facilities.

### ***Thomas v. Regional Health System of Acadiana, LLC***

In *Thomas*, the plaintiff, Megan Thomas (Mrs. Thomas), contended that her infant daughter’s pediatric cardiologist, Dr. Greeta Dalal, incorrectly interpreted multiple echocardiograms and failed to diagnose a life-threatening cardiac condition that had to later be corrected by a cardiac surgeon. Mrs. Thomas instituted a medical malpractice claim with the Louisiana Patient Compensation Fund against Dr. Dalal and the multiple hospitals where she was privileged and treated the infant. Mrs. Thomas also filed suit against the same parties in state court alleging liability under Louisiana’s general negligence law; not the LMMA. As to the hospitals where the infant was treated, Mrs. Thomas alleged that they were liable for her daughter’s injuries because they “... negligently credentialed Dr. Dalal and negligently provided her with privileges to practice in [their] hospitals.”

Dr. Dalal was initially credentialed, granted clinical privileges, and appointed to the medical staff in 1987. She was recredentialed every two years, which included peer review of her patient care, on an ongoing basis, through 2011 until she reached the age of 65 and then yearly recredentialed through her retirement in 2017. The hospitals seized on these facts and argued to the trial court that the Supreme Court’s holding in *Billeaudeau* only applied to claims for initial credentialing of a physician and not to recredentialing. The trial court agreed, finding that the recredentialing process was essentially akin to the hospitals’ “supervision” of Dr. Dalal. Because the LMMA defines malpractice to include claims related to the “training or supervision of health care providers” the trial court found that Mrs. Thomas’ recredentialing claims sounded in malpractice under the LMMA, not general negligence. Thus, the state court claims for negligent recredentialing were dismissed as premature prior to being reviewed by the Medical Review Panel.

The Court further found that recredentialing was not “treatment related” and did not involve ongoing supervision or training of Dr. Dalal by the hospital. The following passage from the court’s opinion is particularly pertinent to the Third Circuit’s decision to extend the scope of *Billeaudeau*:

“Credentialing is credentialing, whether it was done one time or multiple times, and it applies to both the initial credentialing process and recredentialing process. Just as a physician’s prior performance, including past claims for malpractice, are considered in the initial credentialing decision, they will also affect the subsequent credentialing decisions. That does not equate the credentialing or recredentialing

process to a supervisory function. It continues to encompass the evaluation of the physician's personal, educational, and skills background in determining whether a physician should be allowed to care for patients within the walls of that particular hospital."

### **Historical Perspective of Louisiana Medical Malpractice Act**

Under the LMMA, the amount of money a patient can recover due to the negligence of his or her healthcare provider is capped as long as the injury arises out of medical treatment. For decades, courts across Louisiana considered claims against healthcare providers for "negligent credentialing" to be medical malpractice and thus capped under the LMMA. *Billeaudeau* and *Thomas* are stark changes in the law that should be recognized by healthcare providers charged with credentialing physicians and physicians who sit on credentialing committees.

*Adam Thames is a Partner at Taylor Porter and a member of the Firm's Healthcare Practice Team. He can be reached at [adam.thames@taylorporter.com](mailto:adam.thames@taylorporter.com).*

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