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SENATE BILL 467

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Richard C. Martinez

AN ACT

RELATING TO TORTS; ENACTING THE DENTAL PROFESSIONAL LIABILITY ACT; LIMITING LIABILITY; CREATING THE NEW MEXICO DENTAL-LEGAL REVIEW COMMISSION; PROVIDING FOR DENTAL-LEGAL REVIEW PANELS; PROVIDING HEARING PROCEDURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1. SHORT TITLE.**--This act may be cited as the "Dental Professional Liability Act".

**SECTION 2. PURPOSE.**--The purpose of the Dental Professional Liability Act is to provide for the review of dental malpractice claims, assure adequate funding of awards, protect access to dental care and advance the oral health and welfare of the people of New Mexico.

**SECTION 3. DEFINITIONS.**--As used in the Dental Professional Liability Act:

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1           A. "board" means the New Mexico board of dental  
2 health care;

3           B. "commission" means the New Mexico dental-legal  
4 review commission;

5           C. "dental care and related benefits" means all  
6 reasonable dental, surgical, physical rehabilitation and  
7 custodial services, and includes drugs, prosthetic devices and  
8 other similar materials reasonably necessary in the provision  
9 of such services;

10          D. "dental care provider" means a person,  
11 corporation, organization, facility or institution licensed or  
12 certified by this state to provide dental care or professional  
13 services as a doctor of dental medicine, doctor of dental  
14 surgery or corporate entity owned by a New Mexico licensed  
15 dental professional, acting within the bounds of their scope of  
16 practice;

17          E. "dental professional liability claim" includes  
18 any cause of action arising in this state against a dental care  
19 provider for professional treatment, lack of professional  
20 treatment or other claimed departure from accepted standards of  
21 health care that proximately results in injury to the patient,  
22 whether the patient's claim or cause of action is based in tort  
23 or contract law, and includes, but is not limited to, actions  
24 based on battery or wrongful death;

25          F. "director" means the director of the commission;

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1           G. "insurer" means an insurance company engaged in  
2 writing dental professional liability insurance in this state;

3           H. "panel" means a dental-legal review panel;

4           I. "patient" means a natural person who received or  
5 should have received dental professional care from a licensed  
6 dental care provider, under a contract, expressed or implied;  
7 and

8           J. "superintendent" means the superintendent of  
9 insurance.

10           SECTION 4. DAMAGES CLAUSE.--A patient, or the patient's  
11 representative, having a dental professional liability claim  
12 for bodily injury or death may file a complaint in any court of  
13 law having requisite jurisdiction and demand right of trial by  
14 jury. No dollar amount or figure shall be included in the  
15 demand in any complaint asserting a dental professional  
16 liability claim and filed after the effective date of this  
17 section, but the request shall be for such damages as are  
18 reasonable.

19           SECTION 5. QUALIFICATIONS.--

20           A. To be qualified pursuant to the provisions of  
21 the Dental Professional Liability Act, a dental care provider  
22 shall establish its financial responsibility by filing proof  
23 with the superintendent via the board that the dental care  
24 provider is insured by a policy of dental professional  
25 liability insurance issued by an authorized insurer in the

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1 amount of at least one million dollars (\$1,000,000) per  
2 occurrence or, for an individual health care provider, by  
3 having continuously on deposit the sum of one million dollars  
4 (\$1,000,000) in cash with the superintendent or such other like  
5 deposit as the superintendent may allow by rule; provided that,  
6 in the absence of an additional deposit or policy as required  
7 by this subsection, the deposit or policy shall provide  
8 coverage for not more than three separate occurrences.

9 B. A dental care provider that does not qualify  
10 pursuant to Subsection A of this section shall not have the  
11 benefit of any of the provisions of the Dental Professional  
12 Liability Act in the event of a professional liability claim  
13 against it.

14 SECTION 6. LIMITATION OF RECOVERY.--

15 A. Except for punitive damages and dental care and  
16 related benefits, the aggregate dollar amount recoverable by  
17 all persons for or arising from any injury or death to a  
18 patient as a result of malpractice shall not exceed two hundred  
19 fifty thousand dollars (\$250,000) per occurrence. In jury  
20 cases, the jury shall not be given any instructions dealing  
21 with this limitation.

22 B. The value of accrued dental care and related  
23 benefits shall not be subject to the two-hundred-fifty-  
24 thousand-dollar (\$250,000) limitation.

25 C. Monetary damages shall not be awarded for future

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1 dental expenses in malpractice claims.

2 D. For the purposes of Subsections A and B of this  
3 section, the two-hundred-fifty-thousand-dollar (\$250,000)  
4 aggregate amount recoverable by all persons for or arising from  
5 any injury or death to a patient as a result of malpractice  
6 shall apply only to malpractice occurring on or after the  
7 effective date of the Dental Professional Liability Act.

8 SECTION 7. FUTURE DENTAL EXPENSES.--

9 A. In all dental professional liability claims  
10 where liability is established, the jury shall be given a  
11 special interrogatory asking if the patient is in need of  
12 future incident-related dental care and related benefits. No  
13 inquiry shall be made concerning the value of future dental  
14 care and related benefits, and evidence relating to the value  
15 of future dental care and related benefits shall not be  
16 admissible. In actions upon malpractice claims tried to the  
17 court, where liability is found, the court's findings shall  
18 include a recitation that the patient is or is not in need of  
19 future incident-related dental care and related benefits as  
20 well as the amount of funds already received by the patient or  
21 expended in the patient's interest prior to trial.

22 B. Except as provided in Section 6 of the Dental  
23 Professional Liability Act, once a judgment is entered in favor  
24 of a patient who is found to be in need of future incident-  
25 related dental care and related benefits or a settlement is

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1 reached between a patient and a dental care provider in which  
2 the provision of dental care and related benefits is agreed  
3 upon, and continuing as long as dental attention is reasonably  
4 necessary, the patient shall be furnished with all dental care  
5 and related benefits directly or indirectly made necessary by  
6 the dental care provider's malpractice, subject to a  
7 semi-private room limitation in the event of hospitalization,  
8 unless the patient refuses to allow them to be so furnished.

9 C. Awards of future dental care and related  
10 benefits shall not be subject to the two-hundred-fifty-  
11 thousand-dollar (\$250,000) limitation imposed in Section 6 of  
12 the Dental Professional Liability Act.

13 D. Payment for dental care and related benefits  
14 shall be made as expenses are incurred.

15 E. This section shall not be construed to prevent a  
16 patient and a dental care provider from entering into a  
17 settlement agreement whereby dental care and related benefits  
18 are provided for a limited period of time only, or to a limited  
19 degree.

20 F. The court in a supplemental proceeding shall  
21 estimate the value of the future dental care and related  
22 benefits reasonably due the patient on the basis of evidence  
23 presented to it. That figure shall not be included in any  
24 award or judgment but shall be included in the record as a  
25 separate court finding.

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1           G. A judgment of punitive damages against a dental  
2 care provider shall be the personal liability of the dental  
3 care provider. Punitive damages shall not be paid from the  
4 proceeds of the dental care provider's insurance contract  
5 unless the contract expressly provides coverage or the  
6 insurance provider agrees to such payment. Nothing in Section  
7 6 of the Dental Professional Liability Act precludes the award  
8 of punitive damages to a patient. Nothing in this subsection  
9 authorizes the imposition of liability for punitive damages on  
10 a derivative basis where that imposition would not be otherwise  
11 authorized by law.

12           **SECTION 8. DENTAL BENEFITS PRIOR TO JUDGMENT.--**A dental  
13 care provider named as a defendant in a dental professional  
14 liability claim, or named as a respondent in a proceeding  
15 before the commission, shall have the option of paying for the  
16 patient's dental care and related benefits at any time prior to  
17 the entry of a judgment. Except as provided in Section 6 of  
18 the Dental Professional Liability Act, evidence of a dental  
19 care provider's payment for such benefits shall not be  
20 admissible in the trial of the professional liability claim  
21 brought against it.

22           **SECTION 9. DISTRICT COURT--CONTINUING JURISDICTION.--**

23           A. The district court from which final judgment  
24 issues shall have continuing jurisdiction in cases where dental  
25 care and related benefits are awarded pursuant to Section 6 of

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1 the Dental Professional Liability Act.

2 B. In all cases where the patient's continued need  
3 of such benefits, or the degree to which such benefits are  
4 needed, is challenged at a point in time after a judgment is  
5 entered, the court, sitting without a jury, shall determine  
6 whether such need continues to exist and the extent of such  
7 need.

8 C. Whenever a patient petitions the district court  
9 for an increase in dental care and related benefits, the  
10 petition shall be set down for hearing at the earliest possible  
11 time and takes precedence over all matters except older matters  
12 of the same character and motions for preliminary injunctions  
13 filed pursuant to Rules 1-065 and 1-066 New Mexico Rules  
14 Annotated.

15 D. The dental care provider shall have the burden  
16 of proving that the patient's need for dental care and related  
17 benefits has subsided or abated, or that dental care and  
18 related benefits are not reasonably necessary, which it shall  
19 establish by clear and convincing evidence. The patient shall  
20 have the burden of proving that the patient's need for dental  
21 care and related benefits has increased, which the patient  
22 shall establish by a preponderance of the evidence.

23 SECTION 10. PATIENT--FUTURE EXAMINATIONS AND HEARINGS.--

24 A. A dental care provider shall be entitled to have  
25 an examination of the patient by a dentist or physician of the

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1 dental care provider's choice from time to time for the purpose  
2 of determining the patient's continued need of dental care and  
3 related benefits, subject to the following requirements:

4 (1) notice in writing shall be delivered to or  
5 served upon the patient specifying the time and place where the  
6 examination is to be conducted. The notice shall be given at  
7 least ten days prior to the time stated in the notice.

8 Delivery by certified mail is permitted;

9 (2) the examination shall be by a dentist or  
10 physician qualified to practice dentistry or medicine under the  
11 law of this state or of the state or county wherein the patient  
12 resides;

13 (3) the place at which the examination is to  
14 be conducted shall not require the patient to travel an  
15 unreasonable distance. It shall not be necessary for a patient  
16 who resides outside of this state to come into this state for  
17 such an examination unless so ordered by the court;

18 (4) within thirty days after the examination,  
19 the patient shall be compensated by the party requesting the  
20 examination for all necessary and reasonable expenses  
21 incidental to submitting to the examination, including the  
22 reasonable cost of travel, meals, lodging, loss of pay or other  
23 like direct expense;

24 (5) examinations shall not be required more  
25 frequently than at six-month intervals, except that upon

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1 application to the court having jurisdiction of the claim and  
2 after reasonable cause shown therefor, examination within a  
3 shorter interval may be ordered. In considering such  
4 application, the court shall exercise care to prevent  
5 harassment to the patient;

6 (6) the patient shall be entitled to have a  
7 dentist, physician or attorney of the patient's own choice  
8 present at the examination. The patient shall pay that  
9 dentist, physician or attorney; and

10 (7) the patient shall be promptly furnished  
11 with a copy of the report of the examination made by the  
12 dentist or physician making the examination on behalf of the  
13 dental care provider.

14 B. If a patient fails or refuses to submit to  
15 examination in accordance with the notice, and the requirements  
16 of Subsection A of this section have been satisfied, the court  
17 may forfeit all dental care and related benefits that would  
18 accrue or become due to the patient.

19 C. If a patient persists in any injurious practice  
20 that imperils, retards or impairs the patient's recovery or  
21 increases the patient's injury or if a patient refuses to  
22 submit to such dental treatment as is reasonably essential to  
23 promote the patient's recovery, the court may in its discretion  
24 reduce or suspend the patient's dental care and related  
25 benefits.

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1           D. A dentist or physician selected by the dental  
2 care provider and paid by the dental care provider who makes or  
3 is present at an examination of the patient conducted pursuant  
4 to this section may be required to testify as to the conduct  
5 thereof and the findings made. Communications made by the  
6 patient upon the examination to the dentist or physician shall  
7 not be considered privileged.

8           E. The dental care provider shall pay all  
9 reasonable legal fees, the cost of dental examinations and the  
10 cost of the fees of dental expert witnesses in any proceeding  
11 in which the patient succeeds in increasing the patient's  
12 dental care and related benefits or in any unsuccessful  
13 proceeding brought by the dental care provider to reduce the  
14 dental care and related benefits.

15           **SECTION 11. SET-OFF OF ADVANCE PAYMENTS.--**

16           A. Evidence of an advance payment is not admissible  
17 until there is a final judgment in favor of the patient, in  
18 which event the court shall reduce the judgment to the patient  
19 to the extent of the advance payment. In jury cases where  
20 there is a factual dispute concerning an alleged advance  
21 payment, all questions of fact relating to the advance payment  
22 shall be resolved by the jury after it has reached its verdict.  
23 The advance payment shall inure to the exclusive benefit of the  
24 dental care provider or a party making the payment in its  
25 behalf. In the event the advance payment exceeds the liability

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1 of the defendant or the insurer making it, the court shall  
2 order any adjustment necessary to equitably apportion the  
3 amount that each defendant is obligated to pay, exclusive of  
4 costs. In no case shall an advance payment in excess of an  
5 award be repayable by the person receiving it.

6 B. If a dental care provider elects to pay for  
7 dental care and related benefits at any time prior to the entry  
8 of a judgment, as provided in Section 6 of the Dental  
9 Professional Liability Act, and subsequently is found not to be  
10 liable, its legal and equitable right of recovery for all such  
11 payments shall not be foreclosed or prejudiced in any way.

12 SECTION 12. LIMITATIONS.--A dental professional liability  
13 claim arising out of an act of malpractice that occurred  
14 subsequent to the effective date of the Dental Professional  
15 Liability Act shall not be brought against a dental care  
16 provider unless filed within three years after the date that  
17 the act of malpractice occurred, except that a minor under the  
18 age of six shall have until the minor's ninth birthday in which  
19 to file. This subsection applies to all persons regardless of  
20 minority or other legal disability.

21 SECTION 13. DENTAL-LEGAL REVIEW COMMISSION.--

22 A. The "New Mexico dental-legal review commission"  
23 is created. The function of the commission is to provide  
24 panels to review all dental professional liability claims  
25 against dental care providers qualified pursuant to the Dental

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1 Professional Liability Act.

2 B. Those eligible to sit on a panel shall be  
3 dentists licensed pursuant to New Mexico law and residing in  
4 New Mexico or members of the state bar of New Mexico residing  
5 in New Mexico.

6 C. Cases to be considered by a panel include all  
7 cases involving an alleged act of malpractice occurring in New  
8 Mexico by dental care providers qualified pursuant to the  
9 Dental Professional Liability Act.

10 D. An attorney shall submit a case for the  
11 consideration of a panel prior to filing a complaint in any  
12 district court or other court sitting in New Mexico by  
13 addressing an application, in writing, signed by the patient or  
14 the patient's attorney, to the director.

15 E. The director shall be an attorney appointed by  
16 and serving at the pleasure of the chief justice of the New  
17 Mexico supreme court.

18 F. The chief justice of the New Mexico supreme  
19 court shall set the director's salary and report the same to  
20 the president of the board in the chief justice's capacity as  
21 administrator of the commission.

22 SECTION 14. COMMISSION DECISION REQUIRED--APPLICATION.--

23 A. A dental professional liability claim shall not  
24 be filed in any court against a qualifying dental care provider  
25 before application is made to the commission and its decision

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1 is rendered.

2 B. The application shall contain the following:

3 (1) a brief statement of the facts of the  
4 case, naming the persons involved and the dates and  
5 circumstances, so far as they are known, of the alleged act or  
6 acts of malpractice; and

7 (2) a statement authorizing the panel to  
8 obtain access to all dental records and information pertaining  
9 to the matter giving rise to the application and, for the  
10 purposes of its consideration of the matter only, waiving any  
11 claim of privilege as to the contents of those records.

12 Nothing in that statement shall in any way be construed as  
13 waiving that privilege for any other purpose or in any other  
14 context, in or out of court.

15 SECTION 15. APPLICATION PROCEDURE.--

16 A. Upon receipt of an application for review, the  
17 director or the director's designee shall cause to be served a  
18 true copy of the application on the dental care provider  
19 involved. Service shall be effected pursuant to New Mexico  
20 law. If the dental care provider involved chooses to retain  
21 legal counsel, the dental care provider's attorney shall  
22 informally enter the dental care provider's appearance with the  
23 director.

24 B. The dental care provider shall answer the  
25 application for review and in addition shall submit a statement

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1 authorizing the panel to obtain access to all dental records  
2 and information pertaining to the matter giving rise to the  
3 application and, for the purposes of its consideration of the  
4 matter only, waiving any claim of privilege as to the contents  
5 of those records. Nothing in that statement shall in any way  
6 be construed as waiving that privilege for any other purpose or  
7 in any other context, in or out of court.

8 C. In instances where applications are received  
9 employing the theory of respondeat superior, a common law  
10 doctrine that makes an employer liable for the actions of an  
11 employee when the actions take place within the scope of  
12 employment, or some other derivative theory of recovery, the  
13 director shall forward such applications to the state  
14 professional societies, associations or licensing boards of  
15 both the individual dental care provider whose alleged  
16 malpractice caused the application to be filed and the dental  
17 care provider named as a principal under the theory of  
18 respondeat superior or some other derivative theory of  
19 recovery.

20 D. The party making application, by doing so,  
21 agrees to report to the director the final disposition of the  
22 claim upon its conclusion.

23 SECTION 16. PANEL SELECTION.--

24 A. Applications for review shall be promptly  
25 transmitted by the director to the directors of the New Mexico

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1 dental association and the state bar of New Mexico, who shall  
2 each select three panelists within thirty days from the date of  
3 transmittal of the application.

4 B. If the dental care provider does not belong to  
5 the New Mexico dental association, the director shall transmit  
6 the application to the board, which shall in turn select three  
7 dentists and, where applicable, two persons in the same  
8 recognized specialty as the dental care provider.

9 C. In cases where there are multiple dental care  
10 provider defendants, the case against each dental care provider  
11 may be reviewed by a separate panel, or a single combined panel  
12 may review the claim against all defendants, at the discretion  
13 of the director.

14 D. Three panel members from the dental care  
15 provider's profession and three panel members from the state  
16 bar of New Mexico shall sit in review in each case.

17 E. In those cases where the theory of respondeat  
18 superior or some other derivative theory of recovery is  
19 employed, two of the panel members shall be chosen from the  
20 individual dental care provider's profession and one panel  
21 member shall be chosen from the profession of the dental care  
22 provider named as a principal under the theory of respondeat  
23 superior or some other derivative theory of recovery.

24 F. The director or the director's designee, who  
25 shall be an attorney, shall sit on each panel and serve as

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1 chair.

2 G. A member shall disqualify the member's self from  
3 consideration of any case in which, by virtue of the member's  
4 circumstances, the member feels the member's presence on the  
5 panel would be inappropriate, considering the purpose of the  
6 panel. The director may excuse a proposed panelist from  
7 serving.

8 H. When a party makes and files an affidavit that a  
9 panel member selected pursuant to this section cannot,  
10 according to the belief of the party making the affidavit, sit  
11 in review of the application with impartiality, that panel  
12 member shall proceed no further. Another panel member shall be  
13 selected by the New Mexico dental association, the board or the  
14 state bar of New Mexico, as the case may be. A party shall not  
15 disqualify more than three proposed panel members in this  
16 manner in any single malpractice claim.

17 SECTION 17. TIME AND PLACE OF HEARING.--A date, time and  
18 place for hearing shall be fixed by the director, and prompt  
19 notice thereof shall be given to the parties involved, their  
20 attorneys and the members of the panel. In no instance shall  
21 the date set be more than sixty days after the transmittal by  
22 the director of the application for review, unless good cause  
23 exists for extending the period. Hearings may be held anywhere  
24 in the state of New Mexico, and the director shall give due  
25 regard to the convenience of the parties in determining the

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1 place of hearing.

2 SECTION 18. HEARING PROCEDURES.--

3 A. At the time set for hearing, the attorney  
4 submitting the case for review shall be present and shall make  
5 a brief introduction of the attorney's client's case, including  
6 a resume of the facts constituting alleged professional  
7 malpractice that the attorney is prepared to prove. The dental  
8 care provider against whom the claim is brought and its  
9 attorney may be present and may make an introductory statement  
10 of its case.

11 B. Both parties may call witnesses to testify  
12 before the panel, which witnesses shall be sworn. Dental  
13 texts, journals, studies and other documentary evidence relied  
14 upon by either party may be offered and admitted if relevant.  
15 Written statements of fact of other treating dental care  
16 providers may be reviewed. The monetary damages in any case  
17 shall not be a subject of inquiry or discussion.

18 C. The hearing is informal and no official  
19 transcript shall be made. Nothing contained in this subsection  
20 shall preclude the taking of the testimony by the parties at  
21 their own expense.

22 D. At the conclusion of the hearing, the panel may  
23 take the case under advisement, or it may request that  
24 additional facts, records, witnesses or other information be  
25 obtained and presented to it at a supplemental hearing, which

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1 shall be set for a date and time, not longer than thirty days  
2 from the date of the original hearing unless the attorney  
3 bringing the matter for review consents in writing to a longer  
4 period.

5 E. A supplemental hearing shall be held in the same  
6 manner as the original hearing, and the parties concerned and  
7 their attorneys may be present.

8 SECTION 19. PANEL DELIBERATIONS AND DECISION.--

9 A. The deliberations of the panel shall be and  
10 remain confidential. Upon consideration of all relevant  
11 material, the panel shall decide only two questions:

12 (1) whether there is substantial evidence that  
13 the acts complained of occurred and that they constitute  
14 malpractice; and

15 (2) whether there is a reasonable probability  
16 that the patient was injured thereby.

17 B. All votes of the panel on the two questions for  
18 decision shall be by secret ballot. The decision shall be by a  
19 majority vote of those voting members of the panel who have sat  
20 on the entire case. The decision shall be communicated in  
21 writing to the parties and attorneys concerned and a copy  
22 thereof shall be retained in the permanent files of the  
23 commission.

24 C. The decision shall in every case be signed for  
25 the panel by the chair, who shall vote only in the event the

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1 other members of the panel are evenly divided, and shall  
2 contain only the conclusions reached by a majority of the panel  
3 members and the number of members, if any, dissenting  
4 therefrom; provided, however, that if the vote is not  
5 unanimous, the majority may briefly explain the reasoning and  
6 basis for its conclusion, and the dissenters may likewise  
7 explain the reasons for disagreement.

8 D. The report of the panel shall not be admissible  
9 as evidence in any action subsequently brought in a court of  
10 law. A copy of the report shall be sent to the dental care  
11 provider's professional licensing board.

12 E. Panelists and witnesses shall have absolute  
13 immunity from civil liability for all communications, findings,  
14 opinions and conclusions made in the course and scope of duties  
15 prescribed by the Dental Professional Liability Act.

16 F. The panel's decisions shall be without  
17 administrative or judicial authority and shall not be binding  
18 on any party. The panel shall make no effort to settle or  
19 compromise any claim, nor shall it express any opinion on the  
20 monetary value of any claim.

21 **SECTION 20. DIRECTOR--RULES OF PROCEDURE.**--The director  
22 is authorized to adopt and publish rules of procedure necessary  
23 to implement and carry out the duties of the commission. No  
24 rule shall be adopted, however, that requires a party to make a  
25 monetary payment as a condition to bringing a malpractice claim

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1 before the panel.

2           **SECTION 21. TOLLING OF STATUTE OF LIMITATION.**--The  
3 running of the applicable limitation period in a malpractice  
4 claim shall be tolled with one day remaining if application for  
5 consideration was made with sixty or more days remaining and  
6 shall not commence to run again until ten days after the  
7 panel's final decision is entered in the permanent files of the  
8 commission and a copy is served upon the claimant and the  
9 claimant's attorney by certified mail. Applications made with  
10 less than sixty days remaining are subject to the applicable  
11 limitation period and may only be heard if the director can  
12 reasonably convene a qualified panel, and the panel can render  
13 a decision within that period.

14           **SECTION 22. PROVISION OF EXPERT WITNESS.**---In a  
15 malpractice claim where the panel has determined that the acts  
16 complained of were or reasonably might constitute malpractice  
17 and that the patient was or may have been injured by the act,  
18 the panel, commission members, the director and the  
19 professional association concerned shall cooperate fully with  
20 the patient in retaining a dentist, qualified in the field of  
21 dentistry involved and licensed to practice in the state of New  
22 Mexico, who shall consult with, assist in trial preparation for  
23 and testify on behalf of the patient, upon the patient's  
24 payment of a reasonable fee to the same effect as if the  
25 dentist had been engaged originally by the patient.

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1           **SECTION 23. MAINTENANCE OF RECORDS.**--The director shall  
2 maintain records of all proceedings before a panel, which  
3 records shall include the nature of the acts or omissions  
4 complained of, a brief summary of the evidence presented, the  
5 decision of the panel, any majority or dissenting opinions  
6 filed and the final dispositions of claims as reported by  
7 plaintiffs. The records shall not be made public and shall not  
8 be subject to subpoena but shall be used solely for the purpose  
9 of compiling statistical data and facilitating ongoing studies  
10 of dental malpractice in New Mexico.

11           **SECTION 24. MALPRACTICE COVERAGE.**--

12           A. The filing of proof of financial responsibility  
13 with the superintendent, as provided in Section 5 of the Dental  
14 Professional Liability Act, shall constitute a conclusive and  
15 unqualified acceptance by the dental care provider of the  
16 provisions of the Dental Professional Liability Act.

17           B. A provision in a policy attempting to limit or  
18 modify the liability of the insurer contrary to the provisions  
19 of the Dental Professional Liability Act is void.

20           C. Every policy issued under the Dental  
21 Professional Liability Act is deemed to include the following  
22 provisions:

23                   (1) the insurer assumes all obligations to pay  
24 an award imposed against its insured pursuant to the provisions  
25 of the Dental Professional Liability Act; and

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1                   (2) a termination of a policy by an insurer  
2 shall not be effective unless written notice of the termination  
3 has been mailed by certified mail to both the insured and the  
4 superintendent at least ninety days prior to the date the  
5 cancellation is to become effective, except that an insurer may  
6 terminate a policy if a billed premium payment is thirty days  
7 past due upon ten days' prior written notice mailed by  
8 certified mail to the insured of the failure of the insured to  
9 pay premiums, and an insured may terminate the insured's policy  
10 by written request to the insurer but the effective date of the  
11 termination shall not be earlier than ten days after the  
12 receipt by the insurer of the written request to terminate. In  
13 all cases in which a policy is terminated for failure of the  
14 insured to pay premiums or at the request of the insured, the  
15 insurer shall notify the superintendent in writing immediately  
16 of the effective date of the termination of the policy. The  
17 insurer shall remain liable for all causes of action accruing  
18 prior to the effective date of the termination, unless  
19 otherwise barred by the provisions of the Dental Professional  
20 Liability Act.

21                   **SECTION 25. REPORT BY DISTRICT COURT CLERKS.**--Within  
22 thirty days of entry of judgment, the clerk of the district  
23 court from which judgment issues shall forward the names of all  
24 dental care providers against whom a judgment is rendered under  
25 the Dental Professional Liability Act to the board for review

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1 of the fitness of each dental care provider to practice the  
2 dental care provider's profession. In cases where judgments  
3 are entered against hospitals or other institutional health  
4 care providers, on the basis of respondeat superior or some  
5 other derivative theory of recovery, the clerk of the district  
6 court shall forward the name of the individual dental care  
7 provider whose negligence caused the injury to the board or  
8 equivalent licensing board in the jurisdiction where that  
9 dental care provider currently resides for such review. Review  
10 of the dental care provider's fitness to practice shall be  
11 conducted in accordance with law.

12 **SECTION 26. PAYMENT OF COMMISSION EXPENSES.--**Unless  
13 otherwise provided by law, expenses incurred in carrying out  
14 the powers, duties and functions of the commission, including  
15 the salary of the director, shall be paid by the board from  
16 funds collected as licensing fees. The board shall disburse  
17 fund money to the director upon receipt of vouchers itemizing  
18 expenses incurred by the commission. The director shall supply  
19 the chief justice of the New Mexico supreme court with  
20 duplicates of all vouchers submitted to the board. Expenses  
21 paid by the fund shall not exceed one hundred fifty thousand  
22 dollars (\$150,000) in any single calendar year; provided,  
23 however, that expenses incurred in defending the commission  
24 shall not be subject to that maximum amount.