

What's Inside

SUPREME COURT TO REHEAR *BOREL V. YOUNG*

The Louisiana Supreme Court recently held in *Borel v. Young*, 2007-0419 (La. 11/27/07), -- So. 2d --, 2007 WL 4171208 that La. R. S. 9:5826(A) provided for both a one year prescriptive period and a three year preemptive period to file a claim for medical malpractice. The decision in *Borel* made it clear that a plaintiff had to file suit against a health care provider no later than three years from the date of the alleged act, omission, or negligence giving rise to the claim. Otherwise, the plaintiff's action would be extinguished, and all rights to pursue the action would be lost. This ruling was favorable to health care providers, as it protected them from stale claims being brought years after the date of the alleged malpractice. However, the Louisiana Supreme Court granted a rehearing of the *Borel v. Young* case, and it remains to be seen whether the current ruling will stand or whether it will be modified or vacated.

La. R. S. 9:5826(A) governs the time limitations in which a party may bring a medical malpractice action against a health care provider. To understand the significance of the *Borel* ruling, one must understand the crucial difference between a prescriptive period and a preemptive period. A prescriptive period designates the deadline by which an action must be brought. However, prescriptive periods can be suspended, interrupted, or renounced by a variety of

occurrences. Preemption is defined as a period of time fixed by law for the existence of a right. Unlike a prescriptive period, a preemptive period cannot be renounced, interrupted or suspended. Therefore, the right to bring an action against a health care provider would cease to exist if not timely exercised within three years after the date of the alleged act, omission or negligence.

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