



# Claycomb v. Commonwealth of Kentucky, 2018 Ky. LEXIS 504 (KY 2018)

Topics Covered: Professional Liability, Tort Reform

## **Outcome: Very Unfavorable**

### **Issue**

The issue in this case was whether KRS Chapter 216C, which establishes medical review panels (MRPs), is constitutional.

### **AMA Interest**

Medical liability reform is the AMA's top legislative priority.

### **Case Summary**

Chapter 216C, effective June 29, 2017, mandates that any malpractice claims against a health care provider, other than claims voluntarily submitted to binding arbitration, shall be reviewed by an MRP. An MRP consists of an attorney, who is to sit as the chairperson, and three health care providers. The MRP is to determine whether the defendant(s) breached the standard of care and caused the plaintiff's injuries. Upon motion, the trial court is to admit the panel's determination into evidence as an expert opinion.

Ezra Claycomb was born in 2014 with severe birth-related injuries, including brain damage with cerebral palsy. On June 29, 2017, the same day Chapter 216C became effective, Claycomb sued to have the law declared invalid. His complaint asserted that, but for Chapter 216C, he would have had the right to sue for medical malpractice, without following the MRP procedure.

Claycomb contended that Chapter 216C was unconstitutional and sought declaratory and injunctive relief to hold Chapter 216C invalid. On October 30, 2017, the court held Chapter 216C facially invalid as a violation of the following constitutional rights and provisions:

- Equal protection of the laws;
- Due process of law;
- Guarantee of open courts;
- Guarantee of trial by jury;
- Separation of powers; and
- Prohibition against special legislation.

It permanently enjoined enforcement of the law.

The Commonwealth appealed the trial court decision to the Kentucky Court of Appeals and moved for an emergency stay of the trial court injunction. On November 9, 2017, the Court of Appeals granted the requested stay order.

The case was then appealed to the Kentucky Supreme Court, without a Court of Appeals decision on the merits. On November 15, 2018, the Kentucky Supreme Court affirmed, finding that the MRP law violated the Open Courts Provision of the Kentucky Constitution.

### **Litigation Center Involvement**

The Litigation Center and the Kentucky Medical Association filed an *amicus* brief in the Kentucky Supreme Court. Also, the Litigation Center helped to offset some of the expenses KMA incurred in the trial court.

Kentucky Supreme Court brief