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Malpractice Review Panels: Efficiency or Judicial Death - Colton v. Riccobono

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MALPRACTICE REVIEW PANELS: EFFICIENCY OR JUDICIAL DEATH?

Colton v. Riccobono[1]

The constitutionality of state statutes requiring review of medical malpractice claims by a malpractice panel as a condition precedent to trial has been the source of much litigation.[2] These acts (hereinafter "panel acts") were motivated by the so-called medical malpractice "crisis."[3] In the mid-1970's, health care providers and other interested citizens became concerned that many malpractice claims were frivolous and requested unrealistic damages.[4] State legislators responded by trying to find a means to limit malpractice filings to those cases which might have merit,[5] thereby reducing the economic consequences to health care seekers.[6] This note discusses the constitutionality of these statutes as considered by the courts, both before they operated extensively and after experience in their operation.

The panel acts are designed to provide for a process of screening malpractice cases. The screening panels or review boards are used prior to trial to dispense with unmeritorious claims. These panels are distinguished from arbitration panels in that their decision is not final and binding.[7] The panel acts

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1. 67 N.Y.2d 571, 496 N.E.2d 670, 505 N.Y.S.2d 581 (1986).

2. *See infra* notes 8 & 9.

3. The "crisis" has been described by one authority as being "more a product of the way the insurance industry does business than of changes in medical malpractice litigation." Hunter & Borzilleri, *The Liability Insurance Crisis*, 22 TRIAL 42, 43 (1986). Defendants and their insurers are paying more money today than they did in years past, but is it out of proportion to other changes in the world? The Rand study of Chicago litigation found that a large proportion of awards made to plaintiffs are for their injuries and those costs have been rising far faster than inflation. *See* Saks, *In Search of the 'Lawsuit Crisis,'* 14 L., MED. & HEALTH CARE 77-79 (1986). For a look at why and how the "crisis" surfaced in the United States, see Terry, *The Technical and Conceptual Flaws of Medical Malpractice Arbitration*, 30 ST. LOUIS U.L.J. 571 (1986).

4. Terry, *supra* note 3, at 573.

5. *See* State *ex rel.* Cardinal Glennon Memorial Hospital v. Gaertner, 583 S.W.2d 107, 117 (Mo. 1979) (en banc) (Morgan, C.J., dissenting); State *ex rel.* Strykowski v. Wilkie, 81 Wis. 2d 491, 508, 261 N.W.2d 434, 442 (Wis. 1978) (stating the purpose behind the Wisconsin legislature in passing their panel acts). *See also* Redish, *Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications*, 55 TEX. L. REV. 759 (1977).

6. *Wilkie*, 81 Wis. 2d at 508, 261 N.W.2d at 442.

7. *See generally* Comment, *Alternatives to Litigation: Pretrial Screening and Arbitration of Medical Malpractice Claims: Has Missouri Taken a Giant Step Backward?*, 50 UMKC L. REV. 182, 185-86 (1982); *see also* MO. REV. STAT. § 538 (1978).

vary in their provisions. Some statutes require the claim to go to arbitration prior to filing the claim with the courts,[8] others allow for arbitration after filing the claim in court.[9] Some acts allow the panel decision to be allowed into evidence in a subsequent jury trial.[10]

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8. Panel acts which provide for review of the malpractice case prior to filing the claim have been held constitutional in the following cases: WIS. STAT. § 655 (1975), *construed in Wilkie*, 81 Wis. 2d at 491, 261 N.W.2d at 434; MD. CTS. & JUD. PROC. CODE ANN. §§ 3-2A01-2A09 (Cum. Supp. 1977), *construed in* Attorney General v. Johnson, 282 Md. 274, 385 A.2d 57 (Md. 1972); NEB. REV. STAT. §§ 44-2801-2855 (Supp. 1976), *construed in* Pendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (Neb. 1977); IND. CODE §§ 16-9.5-1-1-.5-10-5 (Supp. 1979), *construed in* Johnson v. St. Vincent Hosp., 273 Ind. 374, 404 N.E.2d 585 (Ind. 1980); 40 PA. CONS. STAT. §§ 1301.501-.514 (Supp. 1977), *construed in* Parker v. Children's Hosp., 483 Pa. 106, 394 A.2d 932 (Pa. 1978), *rev'd* Mattos v. Thompson, 491 Pa. 385, 421 A.2d 190 (Pa. 1980); LA. REV. STAT. ANN. §§ 40:1299.41-.48 (West 1977), *construed in* Seoane v. Ortho Pharmaceuticals, 472 F. Supp. 468 (E.D. La. 1979), *aff'd*, 660 F.2d 146 (5th Cir. 1981); *see also* Everett v. Goldman, 359 So. 2d 1256 (La. 1978) (interpreting Louisiana act); MONT. CODE ANN. § 27-6-101 (1977), *construed in* Linder v. Smith, 629 P.2d 1187 (Mont. 1981); FLA. STAT. § 768.133 (1975), *construed in* Carter v. Sparkman, 335 So. 2d 802 (Fla. 1976), *cert. denied*, 429 U.S. 1041 (1977); FLA. STAT. §§ 768.16-.27-.47 (1977), *construed in* Woods v. Holy Cross Hosp., 591 F.2d 1164 (5th Cir. 1979); VA. CODE ANN. §§ 8.01-581.1-.20 (1960), *construed in* Diantonio v. Northampton-Accomack Memorial Hosp., 628 F.2d 287 (4th Cir. 1980).

Panel acts which provide for review of the case prior to filing the claim which have been found unconstitutional are as follows: MO. REV. STAT. § 538 (Supp. 1976), *construed in Cardinal Glennon*, 583 S.W.2d at 107; 40 PA. CONS. STAT. §§ 1301.501-514 (Supp. 1980-81), *construed in Mattos*, 491 Pa. at 385, 421 A.2d at 190; FLA. STAT. § 768.4 (1979), *construed in* Aldana v. Holub, 381 So. 2d 231 (Fla.1980).

9. Panel acts which provide for review of the malpractice case after filing in the court system have been held valid in the following cases: N.Y. JUD. LAW § 148-a (McKinney 1983), *construed in* Comiskey v. Arlen, 55 A.D.2d 304, 390 N.Y.S.2d 122 (N.Y. App. Div. 1976), *aff'd*, 401 N.Y.2d 200 (N.Y. 1977); MASS. GEN. LAWS ANN. ch. 231, § 60B (West 1975), *construed in* Paro v. Longwood Hosp., 373 Mass. 645, 369 N.E.2d 985 (Mass. 1977); ARIZ. REV. STAT. ANN. § 12-567 (1977), *construed in* Eastin v. Bloomfield, 116 Ariz. 576, 570 P.2d 744 (Ariz. 1977) (en banc); DEL. CODE ANN. tit. 18, § 6814 (1974), *construed in* DiFilippo v. Beck, 520 F. Supp. 1009 (D. Del. 1981); DEL. CODE ANN. tit. 18, § 6802 (1974), *construed in* Lacy v. Green, 428 A.2d 1171 (Del. Super. Ct. 1981).

A panel act which provides for review after filing the claim was held unconstitutional in the following case: ILL. REV. STAT. ch. 73, § 1013a, ch. 110, § 58.2-58,10, ch. 83, § 22.1, and ch. 70, § 101 (1975), *construed in* Wright v. Central Du Page Hosp., 63 Ill. 2d 313, 347 N.E.2d 736 (Ill. 1976).

10. *See* Comment, *infra* note 11, at 186-7. The New York statute allows a unanimous decision by the panel to be used as evidence by either party. Arguments have been made that this violates the hearsay rule by not allowing cross examination at the time of the decision. The New York courts have responded that the evidence may not by the sole basis of a judgment, but the jury may weigh the evidence as it sees fit. Therefore, the court states in *Comisky*, "[t]he jury is left as the final arbiter of the fact

The composition of arbitration panels also varies according to statute. Typically, the panels are composed of a member of the legal profession, one or more members of the medical profession, and at least one nonlegal, nonmedical, noninsurer member.[11] New York provides for all hearings to be held before a Justice of the Supreme Court, a physician, and an attorney.[12] A Missouri statute, since held invalid, provided for a panel ("Professional Liability Review Board") composed of six members, including a circuit court judge, two attorneys at law, two professionals, at least one of whom must be a member of one of the specialties involved, and one lay representative.[13]

The constitutionality of the New York panel act was challenged in *Colton v. Riccobono*.[14] The statute was challenged as depriving the plaintiff of her access to the courts and thereby violating her fourteenth amendment due process rights.[15] In the underlying action, the plaintiff sought damages against a hospital and physicians for the wrongful death of her husband as a result of medical malpractice.[16] The statute in *Colton* required that as a condition precedent to the trial of a medical malpractice action, a panel consisting of a judge, physician, and attorney must hear and evaluate the evidence and issue a recommendation on the question of liability.[17] The procedure, as outlined in the *Colton* opinion, specified that after a note of issue is filed, the clerk of the court schedules a prepanel hearing where the parties may discuss the merits of the case and, if no settlement is possible, at least agree upon the particular medical specialty involved.[18] The hearing is to be informal with no record, and if the panel members agree as to liability, a formal written recommendation will be forwarded to all parties.[19] A unanimous recommendation is admissible in the subsequent trial of the action, and the attorney and physician panel members may be called to testify by either party.[20]

The petitioner, Mrs. Colton, claimed her due process rights were violated

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question . . ." *Comisky*, 55 A.D.2d at 304, 390 N.Y.S.2d at 128. *See also* Comment, *Constitutional Challenges to Medical Malpractice Review Boards*, 46 TENN. L. REV. 607, 612 (1979).

11. Note, *Medical Malpractice Mediation Panels: A Constitutional Analysis*, 46 FORDHAM L. REV. 322, 326 (1977).

12. N.Y. JUD. LAW § 148-a.

13. *See* MO. REV. STAT. § 538.025 (held invalid in *Cardinal Glennon*, 583 S.W.2d at 107).

14. 67 N.Y.2d 571, 496 N.E.2d 670, 505 N.Y.S.2d 581 (N.Y. 1986).

15. *Id.* at 574, 496 N.E.2d at 672, 505 N.Y.S.2d at 583.

16. *Id.* The plaintiff alleged the defendents were negligent in recommending and performing a surgical procedure from which her husband ultimately died.

17. N.Y. JUD. LAW § 148-a.

18. *Id.*; *Colton*, 67 N.Y.2d at 575, 496 N.E.2d at 672, 505 N.Y.S.2d at 583.

19. N.Y. JUD. LAW § 148-a; *Colton*, 67 N.Y.2d at 575, 496 N.E.2d at 672, 505 N.Y.S.2d at 583.

20. N.Y JUD. LAW § 148-a; *Colton*, 67 N.Y.2d at 575, 496 N.E.2d at 672, 505 N.Y.S.2d at 583.

in that the statute deprived her of access to the courts because of delay in assembling a hearing panel.[21] The *Colton* court, citing *Bodie v. Connecticut*,[22] recognized that in keeping with due process, a party must have an opportunity to be heard, but how the state chooses to provide for this hearing may vary.[23] The court recognized that only fundamental rights are protected by the United States Constitution and "when no such fundamental interest is at stake, the State is free to condition access to the court. . . ."[24] However, the court did recognize that a state may create a right of access in its own Constitution.[25] Mrs. Colton argued that the New York Constitution created a right of access to the courts for wrongful death claims which should not be denied arbitrarily.[26]

The court concluded that the New York Constitution did not create a per se right to the civil courts, but does expressly provide for claims of wrongful death.[27] Therefore, Mrs. Colton's wrongful death claim could not be denied

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21. *Id.* at 575, 496 N.E.2d at 672-73, 505 N.Y.S.2d at 584. The petitioner also argued that she was denied access to the courts because the panel review could not proceed since a proper specialist, as required by statute, could not be found to sit on the panel. However, the court found this argument was not raised below and hence was not preserved for appeal. *Id.*

Other cases have expounded on the arguments plaintiff raised that the panel acts violate due process:

> (1) During time allowed for review panel the defendant may leave and escape process. (2) Special pleading problems where defendant not required to file answer prior to hearing. (3) Added financial burden in excess of trial, should it go to trial. (Should the case go to trial the plaintiff not only had to produce evidence for the panel but for the trial also). (4) Panel may be weighted with health care providers so as to be biased. (5) Denial of the right to present all claims in one suit.

See Wilkie, 81 Wis. 2d at 491, 261 N.W.2d at 434. *Contra Cardinal Glennon*, 583 S.W.2d at 107. In this regard, Missouri is the only state high court to hold that the procedure is a violation of due process. However, the dissent in *Cardinal Glennon* likens the procedure to a pretrial conference (Morgan, C.J., dissenting). Other courts have found certain aspects of the procedure to be a violation. For example, the Arizona Supreme Court found a violation of free access to the courts where a bond was required prior to proceeding to trial. Eastin v. Bloomfield, 116 Ariz. 576, 570 P.2d 744 (1977) (en banc).

22. 401 U.S. 371, 375-76 (1971).

23. *Bodie*, 401 U.S. at 378, stating that "[T]he formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." The court further held in *Bodie* that the right of access for all individuals is not a right that is, in all circumstances, guaranteed by the due process clause of the fourteenth amendment. *Id.* at 383.

24. *Colton*, 67 N.Y.2d at 573, 496 N.E.2d at 673, 505 N.Y.S.2d at 584.

25. *Id.*

26. N.Y. CONST. Art. I, § 16.

27. *Colton*, 67 N.Y 2d at 573, 496 N.E.2d at 673, 505 N.Y.S.2d at 584.

access to the civil courts as that right is expressly granted in the constitution.[28] Mrs. Colton argued that the panel act was procedurally unfair as it delayed her trial.[29] In evaluating the proceedings, the court held that Mrs. Colton's right of access was not denied in this instance.[30] The court found that there was no "egregious" delay to her trial due to the problems encountered in assembling a medical malpractice review board.[31]

Other challenges to the panel acts have also been constitutional in nature. The common arguments against the panel acts are that they violate equal protection, right to trial by jury, access to the courts, and are an improper delegation of judicial power.[32]

The argument that the screening panel violates the equal protection clause of the fourteenth amendment is the most common challenge. The standard of review most often used for malpractice panel legislation is the "rationale basis" test.[33] The test analyzes whether there is a rational basis for passing the act. The rational basis test is used to determine the constitutionality of legislation which does not involve a fundamental right or a suspect class.[34] The test determines whether any "state of facts reasonably may be conceived to justify it [the legislation]."[35] The panel acts, as a reaction to the medical malpractice crisis, have been held by many courts to be a rational way to curtail any harm resulting from the crisis.[36]

The argument that panel acts violate the right to trial by jury as granted

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28. *Id.* "The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation." N.Y. CONST. Art. I, § 16.

29. *Colton*, 67 N.Y.2d at 574, 496 N.E.2d at 674, 505 N.Y.S.2d at 585.

30. The court stated that Mrs. Colton "failed to demonstrate that her case has not moved toward hearing in timely fashion." *Colton*, 67 N.Y.2d at 574, 496 N.E.2d at 674, 505 N.Y.S.2d at 585.

31. *Id.*

32. *See* Comment, *supra* note 7, at 191-99.

33. *See* Johnson v. St. Vincent Hosp., 273 Ind. 374, 387, 404 N.E.2d 585, 594 (Ind. 1980), stating that in order to be consistent with due process, panel act legislation "need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *See also* Williamson v. Lee Optical, 348 U.S. 483, 487-88 (1955).

34. *See* Comment, *supra* note 10, at 615.

35. McGowan v. Maryland, 366 U.S. 420, 426 (1961). *See also* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1002 (1978).

36. The cases on this issue analyze the history and rise of the malpractice 'crisis' and then decide whether the legislation reasonably addresses the problems. *See, e.g.*, Comiskey v. Arlen, 55 A.D.2d 304, 390 N.Y.S.2d 122, 129 (N.Y. App. Div. 1976), *aff'd*, 401 N.Y.S.2d 200 (N.Y. 1977); Parker v. Children's Hosp., 483 Pa. 106, 394 A.2d 932, 939 (Pa. 1978), *rev'd*, Mattos v. Thompson, 491 Pa. 385, 421 A.2d 190 (Pa. 1980); Seoane v. Ortho Pharmaceuticals, Inc., 472 F. Supp. 468, 472, *aff'd*, 660 F.2d 146, 149 (E. D. Lou. 1981); Linder v. Smith, 629 P.2d 1187, 1192 (Mont. 1981).

in state constitutions has been raised. One argument is that the delay caused by the process of assembling a panel and scheduling hearings violates the right to trial by jury. In addition, admissibility of the panel decision at trial has been argued as an impediment to trial by jury. Most courts have found that these statutes do not prevent the right to trial by jury.[37] Other courts have held that pretrial screening does violate the right to trial by jury.[38]

The argument that the pretrial panel denies free access to the courts is usually rejected by state courts.[39] The typical approach is followed in *Colton* where the court stated that since the act is a response to the medical malpractice crisis, the legislation bears a rational relationship to alienating that problem and "does not violate substantive due process concerns."[40]

The argument that the legislation is an improper delegation of judicial power has been upheld in one jurisdiction.[41] Most courts, however, find these panels do not usurp judicial power because their decisions are not binding on the parties.[42]

The majority view as to constitutionality is that they are valid as not only having a rational basis, but as a means to better use judicial time by sifting out the unmeritorious claims. Malpractice arbitration is seen as a modern means to effectuate the most efficient ends without distorting the cost of medical care.

However, the validity of panel acts as upheld in *Colton* and the other cases cited may not be fully settled.[43] Two states, which initially upheld such acts, held them invalid based on performance in that the procedures utilized imposed a burden upon the right to a jury trial by delays or unfair methods in implementation of the acts.[44]

The Pennsylvania Health Care Services Malpractice Act[45] was held to be

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37. *See Comiskey*, 55 A.D.2d at 304, 390 N.Y.S.2d at 122, *aff'd*, 401 N.Y.S.2d 200 (N.Y. 1977); Eastin v. Bloomfield, 116 Ariz. 576, 570 P.2d 744 (Ariz. 1977) (en banc); Paro v. Longwood Hosp., 373 Mass. 645, 369 N.E.2d 985 (Mass. 1977).

38. The rationale in determining that these acts violate trial by jury is that the particular act either is unconstitutional on its face or is unconstitutional in practice. *See Cardinal Glennon*, 583 S.W.2d at 107; *Mattos*, 491 Pa. at 385, 421 A.2d at 190; Wright v. Central Du Page Hosp., 63 Ill. 2d 313, 347 N.E.2d 736 (Ill. 1976).

39. *See* Carter v. Sparkman, 335 So. 2d 802, 805 (Fla. 1976), *cert. denied*, 429 U.S. 1041 (1977); Johnson v. St. Vincent Hosp., Inc., 273 Ind. 374, 404 N.E.2d 585, 596 (Ind. 1980). *Cardinal Glennon*, 583 S.W.2d at 107. (The Missouri court found that the right of access to the courts traces back to the Magna Carta, is explicitly preserved in the Constitution of Missouri, and no precondition can be imposed).

40. *Colton*, 67 N.Y.2d at 571, 496 N.E.2d at 670, 505 N.Y.S.2d at 581.

41. *Wright*, 63 Ill. 2d at 313, 347 N.E.2d at 736.

42. *Eastin*, 116 Ariz. at 576, 570 P.2d at 744; *Paro*, 373 Mass. at 645, 369 N.E.2d at 985; *Wilkie*, 81 Wis. 2d at 491, 261 N.W.2d at 434.

43. *See supra* text accompanying notes 8-9.

44. *See infra* notes 46, 58.

45. 40 PA. CONS. STAT. § 1301 101 (Supp. 1977).

constitutionally valid in *Parker v. Children's Hospital*.[46] The Pennsylvania court later found the act to be invalid in *Mattos v. Thompson*.[47] The court stated, "the Act has failed in its goal to render expeditious resolution to medical malpractice claims and consequently imposes an oppressive burden upon the right to jury trial guaranteed by our state constitution."[48]

The court in *Mattos* reevaluated their previous decision that the panel act was constitutional. The court conceded that they had been skeptical of the Act because, although valid on a theoretical level, the actual operation of the Act might infringe upon the right to a jury trial.[49] The court further stated their concern over the postponement of the availability of the right in question.[50] The Pennsylvania court analyzed the statistics of the Act and its operation and found the Act to be repugnant to its stated purpose. The court stated, "the arbitration panels provided for under the Act are incapable of providing the 'prompt determination and adjudication' of medical malpractice claims which was the goal of the Act."[51]

The court in *Mattos* agreed with the petitioner's arguments as set forth below:

> (1) The arbitration process created by the Act is filled with such interminable delay that it violates the guarantees in the state constitution of access to the courts, justice without delay and the right to jury trials.
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> (2) By requiring litigants to try a complicated and expensive malpractice action in arbitration prior to being permitted a jury trial, the Act places an onerous and impermissible condition on the right to jury trials.[52]

The court further found that the legislative purpose was to provide a more expeditious disposition to enable the victim to avoid the delays within the judicial system.[53] However, the court recognized that the system was not as expeditious as the legislature had planned.[54] A statistical analysis relied on by the court demonstrated that the average length of time between filing a certificate of readiness and appointment of a chairperson for the panel was 7.57 months.[55] The statistics also show that cases are not being resolved efficiently. As of the time of the *Mattos* opinion, 73 percent of the cases filed had not

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46. 483 Pa. 106, 394 A.2d 932 (Pa. 1978).
47. 491 Pa. 385, 421 A.2d 190 (Pa. 1980).
48. *Id.* at 388, 421 A.2d at 191.
49. *Id.*
50. *Id.* at 388, 421 A.2d at 191.
51. *Id.*, 421 A.2d at 192.
52. *Id.* at 391, 421 A.2d at 193. The court in Mattos does state where a compelling state interest is designed to achieve the objective, there is no encroachment on the right and arbitration is an accepted method of dispute resolution in Pennsylvania. *Id.*
53. *Id.* at 395-96, 421 A.2d at 195. *See* PA. STAT. ANN. tit. 40, § 1301.102 (Purdon 1988).
54. *Id.* at 388, 421 A.2d at 191.
55. *Id.* at 390, 421 A.2d at 193.

been resolved.[56] The court terms "unconscionable" the fact that six of the original cases had not been resolved despite the passage of four years.

The Supreme Court of Florida has also held its state's Medical Mediation Act[57] to be invalid after finding it valid in previous cases. In *Aldana v. Holub*,[58] the court found the Act unconstitutional "because the act in its operation has proven arbitrary and capricious."[59] Although the court stated it was not questioning the previous case holding the Act constitutional,[60] the decision in *Aldana* "was based on the unfortunate fact that the medical mediation statute has proven unworkable and inequitable in practical operation."[61] The court reviewed over seventy cases and found that due to inflexible time limits, congested court dockets, and other reasons, in over fifty percent of the time "a valuable legal right [the right to mediate] has arbitrarily evaporated through no fault of either party."[62]

The highest courts in Pennsylvania and Florida declared their panel acts unconstitutional after they once were held to be valid by the same court. Both courts evaluated the operation of the acts and found that the acts, in practical use, did violate a constitutional right. The cases seem to stand as a warning to other jurisdictions that should operation of the acts consistently prove egregious, the act could be found invalid.

The court in *Colton* did not say New York's Act could never be held invalid but limited the case to the facts presented. There was no argument or evidence before the court regarding the overall operation of New York's panel act, just contentions based on Mrs. Colton's experience with it. Whether additional information might have caused a different result is, of course, unknown.

Proponents of the panel acts should heed the warning of Pennsylvania and Florida by observing the operation of the acts and ensuring that they uphold their legislative purpose without substantially delaying the right to a jury trial. It is not enough to enact such legislation. It must be effectively carried out. If carried out effectively, the operation of the acts should be of benefit to all. Plaintiffs would benefit from the speedy disposition of favorable panel results in prior or subsequent settlement. Defendants would incur less costs without a trial. The public would benefit by reducing judicial time and costs, the loss of medical time, and the potential for lessening insurance rates.

Revisions and close monitoring of the panel acts should keep them working properly and see that they perform as contemplated. More qualified people may have to be solicited to serve on the panels to relieve backlogs which ap-

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56. *Id.* at 396, 421 A.2d at 195.
57. FLA. STAT. § 768.4 (1979).
58. 381 So. 2d 231 (Fla. 1980).
59. *Id.* at 235.
60. Carter v. Sparkman, 335 So. 2d 802 (Fla. 1976), *cert. denied*, 429 U.S. 1041 (1977); *Aldana*, 381 So. 2d at 237.
61. *Id.* at 237.
62. *Id.* at 236-37.

pear to be the principle cause of delay. Better supervision by those in charge of setting up the panels and seeing that they function effectively is necessary. If the panel acts become mired down in bureaucracy and inefficiency, they likely will die by judicial decree with little chance of reincarnation.

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