Judgment rendered August 26, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 56,993-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

PAULA PATTERSON, JON CRUMPLER AND CAREY CRUMPLER, INDIVIDUALLY AND ON BEHALF OF THEIR MOTHER, ANITA CAREY, DECEASED — Plaintiffs-Appellants

versus

CLAIBORNE OPERATOR GROUP, L.L.C., AND PARAMOUNT HEALTHCARE CONSULTANTS, L.L.C., BOTH D/B/A CLAIBORNE REHABILITATION CENTER — Defendants-Appellees

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Appealed from the
Second Judicial District Court for the
Parish of Claiborne, Louisiana
Trial Court No. 42,671

Honorable Walter Edward May, Jr., Judge

* * * * *

KOSMITIS BOND APLC — Counsel for Appellants
By: Georgia P. Kosmitis
Avery Bond Allums

HUDSON, POTTS & BERNSTEIN, LLP — Counsel for Appellees
By: Gordon L. James
Donald H. Zeigler, III
Sara G. White

* * * * *

Before COX, MARCOTTE, and ELLENDER, JJ.

**COX, J.**

This civil appeal arises from the Second Judicial District Court, Claiborne Parish, Louisiana. Plaintiffs/Appellants, Paula Patterson, John Crumpler, and Carey Crumpler, individually and on behalf of their mother, Anita Crumpler, (collectively "Appellants") appeal the trial court's judgment granting the exception of prematurity filed by Claiborne Operator Group, L.L.C. and Paramount Healthcare Consultants, L.L.C., both d/b/a/ Claiborne Rehabilitation Center (collectively, "Appellees"), finding that the claims fell within the purview of medical malpractice, and therefore, were required to be presented before a medical review panel. For the reasons stated herein, we affirm the trial court's judgment.

## FACTS & PROCEDURAL HISTORY

This is the second time this matter has come before this Court on appeal. A more detailed recitation of the underlying facts which gave rise to this matter is contained in this Court's opinion in *Patterson v. Claiborne Operator Grp., L.L.C.*, 55,264 (La. App. 2 Cir. 11/15/23), 374 So. 3d 299, detailed as follows:

> Mrs. Anita Carey was admitted to Claiborne Rehabilitation Center ("CRC"), a nursing home/long term care rehabilitation center on May 21, 2021. While there, she is alleged to have sustained bed sores from not being kept clean, dry, turned, and fed. Mrs. Carey was admitted to the hospital on October 30, 2021. She was found to have an infected Stage IV pressure injury with inflammation, infection, dehydration to the point of acute renal failure and brain damage, malnutrition, and sepsis. Unable to recover from her injuries, Mrs. Carey died on December 12, 2021.
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> On May 3, 2022, plaintiffs, Paula Patterson, John Crumpler, and Carey Crumpler, Individually and on Behalf of Their Mother, Anita Carey ("Mrs. Carey") (collectively "plaintiffs"), filed a request to form a medical review panel to review the conduct of Claiborne Operator Group, L.L.C. and Paramount Healthcare Consultants, L.L.C., d/b/a Claiborne Rehabilitation

> Center ("CRC"), concerning care and treatment received by Mrs. Carey while in the nursing home/long term care facility. Two weeks later, plaintiffs filed a petition for damages in the Second Judicial District Court, seeking tort damages for acts not covered by the LMMA.
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> Plaintiffs have made, *inter alia*, allegations that CRC knowingly and intentionally accepted more residents than their staff could care for, and that this intentional failure to have a sufficient number of trained personnel to provide the basic necessities of food, water, bathing, and hygiene caused Mrs. Carey to sustain damages, including the loss of dignity, loss of respect, and abuse. According to plaintiffs' petition, CRC knew they did not have sufficient personnel per resident yet they continued to accept residents knowing they were not able to meet their needs. It is plaintiffs' position that these "custodial claims" are not medical treatment and therefore fall outside of the LMMA. Plaintiffs also argue that CRC's knowledge that they were understaffed is an intentional decision not to provide adequate basic care, which constitutes intentional conduct as an utter disregard for their residents' rights.
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> CRC disputes all of plaintiffs' allegations. On June 8, 2022, CRC filed an exception of prematurity, claiming that they are members of the La. Patients' Compensation Fund, and ***all*** of plaintiffs' claims against them were premature and must first be presented to a medical review panel. Plaintiffs opposed the exception, arguing that while some of their claims fell under the LMMA, those raised in their petition filed in the district court should be analyzed independently. The trial court granted the exception of prematurity, finding that all of plaintiffs' claims should be "handled in the normal fashion." The trial court denied plaintiffs' request to amend their petition.

On appeal, this Court affirmed the trial court's judgment in part but amended the judgment in part to grant Appellants an opportunity to cure their petition for claims related to inadequate nutrition, improper hydration, and negligent diaper changes which arose outside of treatment plans or physician orders. The trial court's judgment was affirmed as to all other claims. *Patterson*, *supra*.

On December 15, 2023, Appellants filed an amended petition for damages. Appellees filed another exception of prematurity, arguing that

Appellants were only permitted to modify their petition on limited grounds, yet Appellants exceeded the scope of those limitations by asserting the same or similar claims which this Court previously determined fell under the LMMA. On December 1, 2025, the trial court issued a judgment granting Appellees' exception of prematurity.

**DISCUSSION**

Appellants now present two assignments of error on appeal for this Court's review. Appellants maintain that they explicitly amended their petition for damages, alleging claims related to custodial negligence; i.e., that Appellees intentionally failed to provide basic room and board, clean linens, a working bed, proper nutrition, clean water, and proper hygiene. Appellants contend that their claims remain custodial in nature as the claims did not arise from a treatment plan, did not occur within the context of a physician/patient relationship, and do not require medical evidence.

Appellants highlight the following amended claims,[1] arguing that they are custodial in nature:

> **Paragraph 7:** "Defendants. . . were under a duty to provide these custodial needs of a clean room, board, including food, water, and supplies, which included safe working beds, mattresses, pillows, and clean and fresh bed linens, along with a wheelchair and other safety devices such as alarming devices, call bell buttons and routine supplies of diapers, wipes, wedges, and laundry which are custodial in nature as guaranteed by their own agreement with the patient and CMS payment guidelines."
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> **Paragraph 10:** "It is alleged, that despite these payments and agreement to provide basic necessities of a clean bed, clean linens, supplies, water, food and bathing and those staff able to provide those items, that the defendant did not provide these basic care items…"

[1] Appellants also highlight paragraphs 8, 9, 14, 15, 18, and 19 of their amended petition to show that their amended claims concerned issues related to custodial care such that it is in conformity with this Court's previous ruling in *Patterson*, *supra*.

> **Paragraph 11:** "It will further be shown that [Carey] was not provided with items which are required by CMS and payments they received pursuant to their contract, and thereby committed fraud by failing to provide these basic custodial necessities which included: a clean and accessible water pitcher; a wheelchair in good working condition to meet [Carey's] needs; access and assistance for needed water, hydration; a working bed frame and air mattress which was in good condition and not deflated and broken; bed linens, pillows, wedges, and supplies that were regularly maintained, and cleaned on a regular basis; pads and diapers to keep her clean and dry; hot appetizing meals to meet her preferences and choices, a wheelchair for her specifications; a call bell light in her reach for ease and accessible use; supplies for prevention of pressure injury including positioning devices and fall prevention devices including a low bed and safety devices such as alarms or other."
>
> **Paragraph 12:** "Specifically, it will be shown that despite payment and receipt of patient funds, [Carey] was provided with unrepaired supplies and was placed on a bed which was deflated and without support causing her to experience [lying] on the metal of bed frame causing her injury and pressure injury."

As in the previous appeal, Appellants argue that the trial court did not address these amended claims distinctly and separately, recognizing that they were custodial in nature and included dignity claims that fell outside the realm of the LMMA. Instead, Appellants argue that the trial court simply "adopted the [Appellees'] argument" that the Appellants "merely re-word[ed] an allegation that contains the same substance" rather than utilizing the six-factor test outlined in *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So. 2d 303, to assess whether their claims fell within the purview of the LMMA.

Appellants aver that the *Coleman* factors show that their allegations are not related to medical malpractice:

1) Providing food, water, hygiene, cleanliness, suppling beds and wheelchairs in working order are not a result of any dereliction of professional skill and are not treatment related as they are to be provided to all persons and arise outside of a treatment plan;

2) Medical evidence is not required to determine whether a patient is to be provided with these basic necessities to constitute a breach of duty, all residents require these basic necessities of life and room and board supplies which are to be paid to the nursing home to be supplied;

3) The omission or act of not providing water, food, hygiene, bathing, bed and wheelchairs in acceptable condition is not dependent upon any assessment of the patient's condition; it is expected that they be clean, in working order and is not dependent on assessment of the patient at all;

4) These basics do not require a physician order or treatment plan but are to be provided by nursing homes as part of the payment they received from federal, state, and individual payments granted to them and do not require a physician order;

5) Plaintiff could have suffered harm from not being provided with food, water, hygiene/bathing supplies in another setting, and in fact if occurred at home would have been a concern of Louisiana Elder Protective Services; and

6) [Appellees'] decision not to provide these basic necessities of life and misallocate the money paid to them for these supplies all the while knowing that patients could sustain harm excludes these claims from protection of the LMMA as intentional fraudulent conduct.

Appellants urge this Court to find that the trial erred in finding that their claims did not sound in custodial negligence and intentional tort and instead fell within the scope of the LMMA.

In contrast, Appellees urge that the trial court did not err in granting the exception of prematurity, correctly finding that Appellees replaced their initial claims of gross negligence with claims of fraud while maintaining the substance of their allegations from their initial petition which this Court previously ruled against. Specifically, Appellees highlight Appellants' prior claims that:

> [Appellees] knowingly and with full disregard by failing to ensure adequate number of staff per patients, failing to ensure that their staff was adequately trained, failed to adequately hire, train staff appropriately in wound care; represented to have wound care specialty, and yet, failed to provide such specialty

> care to Mrs. Carey; failed to supervise staff; and failed to allocate sufficient money to obtain and maintain sufficient numbers of competent and knowledgeable personnel/staff to carry out the needs for the patients they accepted; failed to provide basic interventions for infection control, repositioning, bathing, food, water, and medical care as promised and expected; failed to inform the patient's family/responsible party of their inability to care for their patient, [Carey], or others; failed to ensure adequate number of patient-staff ratio to accommodate the needs of the patients or inform the responsible parties of their inability to provide such care, failed to provide care including those with specialized needs of dementia care, dysphagia care, fall prevention, pressure sore prevention, and specialized care as required by plaintiff herein.
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> It will be shown that [Appellants] knew or should have known that this pattern of under staffing and inadequate staffing would and did cause harm to [Carey].

Appellees argue that this Court previously determined that these claims could not be converted from gross negligence to an intentional tort; instead, they were allegations that belonged before a medical review panel, and "no amendment [would] be allowed[.]" Appellees further note that this Court determined that Appellants' claims of custodial negligence as it related to consultations with healthcare providers, patient transfers, medication, and treatment and/or prevention related to decubitus ulcers were each claims that belonged before a medical review panel.

Appellees maintain that this Court afforded Appellants a window by which to amend their claims but assert that the opportunity was narrow and limited only to Appellants' allegations regarding nutrition, hydration, and negligent diapering, i.e., care that could arise outside of a treatment plan or a physician's orders. Appellees assert that Appellants exceeded the scope this Court afforded in their amended petition as Appellants have essentially urged the same claims which this Court previously determined fell within

the purview of the LMMA and could not be reasonably converted into an intentional tort.

Specifically, Appellees argue that while Appellants argue that the crux of their claims concerns allegations of fraud, the amended petition still raises issues related to medical malpractice, including, but not limited to staffing (e.g., hiring, adequate training, allocation of staff funds quality of care, etc.), and medical supplies and equipment (e.g., positioning and assistive devices). For example, Appellees highlight the following paragraphs in Appellants' petition:

> **Paragraph 8:** At all times relevant, [Appellees] held themselves out to the Louisiana Department of Health and Hospitals and the public at large to appropriate equipment, supplies, food, water, and bed and wheelchairs, and support services and the appropriate number of staff to meet the total needs of their patient and [Carey].
>
> **Paragraph 10:** It is alleged that despite these payments and agreement to provide basic necessities of a clean bed, clean linens, supplies, water, food and bathing and those staff able to provide these items, that the [Appellees] did not provide these basic care items, knowingly made decisions to not provide the items required for basic, custodial care, and moreover, acted intentionally and fraudulently by accepting funds and not spending these funds on the basics promised to [Carey].
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> **Paragraph 11:** It will further be shown that [Carey] was not provided with items which are required by CMS and payments they received pursuant to their contract, and thereby committed fraud by failing to provide these basic custodial necessities which included: a clean and accessible water pitcher; a wheelchair in good working condition to meet [Carey's] needs; access and assistance for needed water, hydration; a working bed frame and air mattress which was in good condition and not deflated and broken; bed linens, pillows, wedges, and supplies that were regularly maintained, and cleaned on a regular basis; pads and diapers to keep her clean and dry; hot appetizing meals to meet her preferences and choices; a wheelchair for her specifications; a call bell light in her reach for easy and accessible use; supplies for prevention of pressure injury including positioning devices and fall prevention devices including a low bed and safety devices such as alarms or other.

> **Paragraph 14:** It will be shown that the failure to provide basic daily needs including water, food, bathing, hygiene, wedges and positioning devices, equipment, and supplies along with staff to maintain and attain the highest practicable level owed to their resident was willful and constituted fraud by accepting money and failing to provide these basic necessities required of their institution.
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> **Paragraph 19:** It is alleged that [Appellees] failed to inform their patients of the lack of such supplies and equipment knowingly providing substandard supplies, inoperable beds, and substandard pillows.
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> **Paragraph 27:** [Appellees] breached their duty of care, their fiduciary obligations, in failing to provide the needed staff, failing to keep their patient safe, clean, dry, nourished and fed; failing to provide basic supplies and items in good working order that will be shown to have contributed to a severe deterioration in [Carey's] condition; and significantly contributed to causing the premature death of [Carey] on December 12, 2021.
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> **Paragraph 29:** As a direct and proximate result of [Appellees'] intentional and willful disregard of the minimum standards for payment in this case, the decisions of accepting patients when they were aware of inadequate numbers of staff when compared to the number of patients, failing to inform the patient and families of the lack of care, supplies and abilities for staff to assist with bathing, feeding and hydration, and yet, their continued charging and seeking reimbursement for care that was not able to be provided in conformity with minimum standards for payment constitutes fraud and intentional conduct. As a result of the intentional fraudulent conduct by [Appellees] of failing to comply with basic rules and regulations despite being paid to do so, it will be shown that [Appellees] caused [Appellants] herein to suffer damages. . .

Appellees assert that merely labeling a claim as "intentional" or "fraudulent" does not change the nature of Appellants' claims from gross negligence to an intentional tort, which this Court previously ruled would not be permitted. We agree.

La. C.C.P. art. 926 sets forth the objections which may be raised through the dilatory objection, including prematurity. A dilatory exception of prematurity asks whether a cause of action is ripe for judicial

determination. *Thomas v. Regional Health System of Acadiana, LLC*, 19-00507 (La. 1/29/20), 347 So. 3d 595; *Patterson*, *supra*. The exception of prematurity is the proper procedural mechanism for a qualified healthcare provider to invoke when a medical malpractice plaintiff has failed to submit a claim to the medical review panel before filing suit against the provider. *Patterson*, *supra*; *McDowell v. Garden Court Healthcare, LLC*, 54,645 (La. App. 2 Cir. 8/10/22), 345 So. 3d 506, *writ denied*, 22-01364 (La. 11/15/22), 349 So. 3d 999.

In evaluating an exception of prematurity, a court may look to the evidence offered at the hearing, as well as the allegations of the petition. La. C.C.P. art. 926; *Id*.; *Thomas*, *supra*. The party asserting the prematurity exception has the burden of proving it is entitled to a medical review panel because the allegations fall within the LMMA. *Id*.; La. C.C.P. art. 933(B) provides:

> When the grounds of the other objections pleaded in the dilatory exception may be removed by amendment of the petition or other action by plaintiff, the judgment sustaining the exception shall order plaintiff to remove them within the delay allowed by the court, and the action, claim, demand, issue or theory subject to the exception shall be dismissed only for a noncompliance with this order.

An action against health care providers is subject to the LMMA. La. R.S. 40:1231.1, *et seq*.; *Perritt v. Dona*, 02-2601 (La. 7/2/03), 849 So. 2d 56. The LMMA requires that all claims against health care providers arising from medical malpractice be reviewed through a medical review panel before proceeding to any other court. *Patterson*, *supra*. The filtering process is done to pressure either the claimant to abandon a worthless claim or the defendant to settle the case reasonably. *Id*.; *Perritt*, *supra*. The LMMA and its limitations on tort liability for a qualified health care

provider apply strictly to claims arising from medical malpractice. *Id*.; *Blevins v. Hamilton Medical Center, Inc.*, 07-127 (La. 6/29/07), 959 So. 2d 440; *Coleman, supra*. All other tort liability on the part of the qualified health care provider is governed by general tort law. *Id.* A tort suit that is subject to the LMMA filed before the completion of the medical review panel process is subject to dismissal on an exception of prematurity. *Id*.; *Blevins*, *supra*.

At the time Appellants filed their petition for damages, the LMMA defined "malpractice" under La. R.S. 40:1231.1(A)(13) as:

> [A]ny unintentional tort or any breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient, including failure to render services timely and the handling of a patient, including loading and unloading of a patient, and also includes all legal responsibility of a health care provider arising from acts or omissions during the procurement of blood or blood components, in the training or supervision of health care providers, or from defects in blood, tissue, transplants, drugs, and medicines, or from defects in or failure of prosthetic devices implanted in or used on or in the person of a patient.

"Health care" is defined as "any action or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement." La. R.S. 40:1231.1(A)(9). Whether a claim sounds in medical malpractice is a question of law reviewed under a *de novo* standard. *Patterson*, *supra*; *Jackson v. Willis-Knighton Health System*, 54,405 (La. App. 2 Cir. 4/13/22), 337 So. 3d 625.

In *Coleman*, *supra*, the Supreme Court implemented a six-factor test to determine whether an action sounds in medical malpractice under the LMMA: (1) whether the specific wrong is treatment related or caused by a failure of professional skill; (2) whether the specific wrong will require

expert medical evidence to determine if the appropriate standard of care was breached; (3) whether the pertinent act or omission involved assessment of the patient's condition; (4) whether an incident occurred in the context of a physician-patient relationship or was within the scope of activities that a hospital is licensed to perform; (5) whether the injury would have occurred if the patient did not seek treatment; (6) whether the alleged tort was intentional.

As Appellees have noted, this Court granted Appellants leave to amend their petition only as to the type of claims recognized in *Wendling v. Riverview Care Center, LLC*, 54,958 (La. App. 2 Cir. 4/5/23), 361 So. 3d 557. This Court recognized that "[n]ot all negligent acts by a nursing home will constitute medical malpractice under the LMMA" because "[n]ursing home residents present a special case, as the resident is not always receiving medical care or treatment, but is always confined to the facility." *Id*. This Court specified that such negligent acts for which Appellants were permitted to amend their petition following the reasoning in *Wendling*, *supra*, included negligent diapering and inadequate care as to nutrition and hydration.

After a thorough review of the record before us, we do not find that the Appellees have asserted these types of claims in their amended petition. In *Patterson*, *supra*, this Court highlighted Paragraphs 22 and 23 of Appellant's petition, which provided:

> [Appellants] knowingly and with full disregard by failing to ensure adequate number of staff per patients, failing to ensure that their staff was adequately trained, failed to adequately hire, train staff appropriately in wound care; represented to have wound care specialty, and yet, failed to provide such specialty care to Mrs. Carey; failed to supervise staff; and failed to allocate sufficient money to obtain and maintain sufficient numbers of competent and knowledgeable personnel/staff to carry out the needs for the patients they accepted; failed to

> provide basic interventions for infection control, repositioning, bathing, food, water, and medical care as promised and expected; failed to inform the patient's family/responsible party of their inability to care for their patient, [Carey], or others; failed to ensure adequate number of patient-staff ratio to accommodate the needs of the patients or inform the responsible parties of their inability to provide such care, failed to provide care including those with specialized needs of dementia care, dysphagia care, fall prevention, pressure sore prevention, and specialized care as required by plaintiff herein.
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> It will be shown that [Appellants] knew or should have known that this pattern of under staffing and inadequate staffing would and did cause harm to [Carey].

This Court determined that, "there is no rational cure for the defects in paragraphs 22 and 23 that would convert the assertions therein from gross negligence to an intentional act. Our examination of the claims stated therein shows that they are all related to an alleged failure to ***provide care***, which is the very essence of the LMMA." *Patterson*, *supra* (emphasis added).

In the present case, Appellants have presented almost similar claims in their amended petition. Notably, paragraphs 8, 9, 10, 14, 27, and 29 of the amended petition present issues related either to staffing, the failure of staff to provide a certain quality of care for Carey's needs, the ability of staff to provide for Carey's needs, and/or the staff's and facility's failure to maintain or provide certain amenities, equipment, and supplies needed for Carey's level of care. These claims relate to the degree of care that was, or at least should have been, provided for Carey while she was a resident of the facility. In *Broden v. Priority Mgmt. Grp., L.L.C.,* 25-01651 (La. 2/12/26), 427 So. 3d 726, the Louisiana Supreme Court addressed the issue of whether plaintiff's claim constituted medical malpractice within the meaning of the LMMA.

Although the claims in *Broden*, *supra*, were couched in terms of administrative negligence, the Court nevertheless addressed the underlying issue of poor staff and understaffing as it related to the care provided to a resident. The Court provided:

> The claims of understaffing and poor staffing directly relate to the degree of care that was, or should have been, provided to [the decedent]. Importantly, expert medical evidence will be required to establish both the standard of care for the sufficiency of nursing staff based on [the decedent's] needs, whether those medical needs were properly assessed, and whether [the defendant] breached the standard of care by failing to ensure [the facility] had sufficient resources to care for [the decedent] in accordance with his needs. . . The alleged acts or omissions of [the defendant], including the failure to provide sufficient competent staff to meet [the decedent's] needs, would require an assessment of his condition and plan of care during his stay at [the facility].

The Court determined that plaintiff's claims were subject to the LMMA, as their claims "embod[ied] the very policies the Act is meant to promote." Likewise, in the present case, the core of each of these allegations remains an alleged failure of the Appellees' ability or failure to *provide care*. As this Court has previously stated, such issues are the "the very essence of the LMMA" and thus, fall within the ambit of medical malpractice. *Patterson*, *supra*.

Appellants argue their amended petition asserts intentional acts of the Appellees that resulted in inadequate care for Carey which ultimately led to her death. Although Appellants have stated that Appellees "knowingly" or "intentionally" made decisions not to provide basic items or amenities to Carey, the Court in *Broden*, *supra*, has established that merely alleging that understaffing or underfunding are "intentional" acts does not establish an intentional tort sufficient to circumvent the requirements and protections of

the LMMA.[2] *Broden*, *supra*.; *See also*, *Bennett v. Pathway Mgm't of Louisiana, L.L.C.*, 56, 943 (La. App. 2 Cir. 7/15/26), ---So. 3d---, 2026 WL 2035869. This Court has made clear that simply alleging acts as intentional because Appellees "under-or inadequately staffed its facility will not morph the negligent acts or inactions of that staff into intentional acts." *Patterson*, *supra*. It is this Court's view that Appellants have simply presented similar conclusory allegations of intentional conduct, which we have previously determined belong before a medical review panel.

Moreover, Appellants have further asserted claims related to the Appellees' failure to inform them of the lack of resources or the inability to provide care to Carey, as well as the failure to implement tools or strategies for fall prevention or prevention of pressure injuries. Such claims have been previously addressed by this Court and found to have been properly before a medical review panel. Importantly, we note this Court previously allowed Appellants to amend their claims regarding issues of inadequate hydration and nutrition and negligent diapering, i.e., care that could arise outside of a treatment plan or a physician's orders.

However, a review of the record and the amending petition reflects that Appellants have failed to present these claims to assert specific allegations that Appellees failed to provide basic care for Carey outside the context of a treatment plan. Instead, Appellants have only presented broad conclusory statements that Appellees failed to provide adequate nutrition,

[2] The Supreme Court further provided in a footnote that: "Intent for these purposes requires that the person committing the action 'consciously desires the physical result of his act' or that the injuries were 'substantially certain to follow from his conduct, whatever his desire may be'" and "[s] imply using the word 'intentional' does not convert a medical malpractice claim into an intentional tort."

hydration, and diapering for Carey (e.g., Paragraph 11; Appellants have only broadly stated that a failure to provide "hot appetizing meals to meet her [Carey's] preferences and choices" without specifying whether those meals fell below the standard of care generally, or whether the meals provided were inadequate because of a specific diet Carey required for her health).

Accordingly, we cannot say that the trial court erred in finding that Appellants' claims, as amended, fell within the purview of the LMMA.

Appellants further argue that in their amended petition, they alleged Appellees breached their contract and ultimately committed fraud. Fraud is defined as a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. La. C.C. art. 1953. Fraud may also result from silence or inaction. *Id*. Fraud need only be proved by a preponderance of the evidence and may be established by circumstantial evidence. La. C.C. art. 1957.

Specifically, Appellants allege Appellees committed fraud when they misrepresented their ability to properly care for and provide resources toward Carey's health and did so with the intent to benefit financially from multiple sources of income, including the Appellants as well as state and federal funding. In support, Appellants cite *Riley v. Paramount Healthcare Consultants*, *LLC*, 24-127 (La. App. 3 Cir. 10/30/24), 396 So. 3d 470.

In *Riley*, *supra*, the Third Circuit considered whether claims of fraud against a nursing home and management company were required to be presented before a medical review panel first. The court held, in part:

> The Rileys have made specific claims of intentional misrepresentations by the nursing home that it had the staff to care for her specific needs when it knew it could not provide the

> necessary care that her circumstances required. They have alleged that these misrepresentations resulted in injuries and death to Ms. Riley because the nursing home knowingly could not provide the appropriate health care, protective, and support services. We find that these allegations are sufficient to support a claim that an intentional tort occurred, and the trial court erred in granting the exception of prematurity in favor of Cornerstone [nursing home].

Appellants similarly argue that Appellees knowingly and fraudulently made representations of their ability to provide the necessary care, resources, and amenities for Carey's care, while receiving financial compensation for care not rendered, which adversely affected Carey's health.

Upon review, we find that *Riley* is distinguishable from the present case. In *Riley*, the Third Circuit noted that in the claims of fraud, plaintiffs made specific allegations of the defendants' actions or inactions which resulted in injury, such as:

> a) failing to have sufficient qualified personnel to properly operate the nursing facility to assure the health, safety, proper care and treatment of Ms. Riley as required by La. Admin. Code. [sic] tit. 48 § I-9757, *et seq.* and 42 C.F.R. § 483.35, *et seq.*;
>
> b) failing to properly assess, re-assess [a] care plan for Ms. Riley's self-care deficits, risk of falls, risks of developing pressure ulcers and infections, having actually developed pressure ulcers to her body, and her risk of dehydration and malnutrition, as required by La. Admin. Code. [sic] tit. 48 § § I-9763, *et seq.* and I-9825(A) and 42 C.F.R. § 483.25, *et seq.*.;
>
> c) failing to have sufficient nursing staff to provide nursing and related services that met the needs of Ms. Riley as required by La. Admin. Code. [sic] tit. 48 § I-9821(A) and 42 C.F.R. § 483.35, *et seq*. . .

We note however, that *Riley*, *supra*, was published after the Supreme Court issued its opinion in *Broden*, *supra*, that claims of understaffing or poor staffing directly relate to the degree of care, and therefore, fall under the LMMA. The Supreme Court's holding is binding on this Court; therefore,

we find Appellants' claims of fraud based on misrepresentations of staffing, as discussed in this opinion, sound in medical malpractice and must be brought before a medical review panel.

Additionally, we highlight that Appellants' claims continued to allege broad and conclusory allegations of fraud, including:

> ". . . despite these payments and agreement to provide basic necessities of a clean bed, clean linens, supplies, water, food[,] and bathing and those staff available to provide these items, that the [Appellees] did not provide these basic care items, knowingly made decisions to not provide the items required for basic, custodial care, and moreover, acted intentionally and fraudulently by accepting funds and not spending those funds on the basics promised to be provided to Ms. Carey."
>
> "It will be further shown that Ms. Carey was not provided with items which are required by [Appellees] and payment they received pursuant to their contract, and thereby committed fraud. . ."
>
> "It will be shown that the failure to provide basic daily needs including water, food, bathing, hygiene wedges and positioning devices, equipment, and supplies along with staff to maintain and attain the highest practicable level owed to their resident was willful and constituted fraud by accepting money and failing to provide these basic necessities required of their institution."

This Court has specifically provided that fraud cannot be predicated on unfulfilled promises or statements as to future events. *Bennett*, *supra*, *citing*, *Johnson v. Unopened Succession of Alfred Covington, Jr*., 42,488 (La. App. 2 Cir. 10/31/07), 969 So. 2d 733. Further, this court has held that something more than a conclusory allegation of intentional conduct is required.[3] *Self v. Willis-Knighton Medical Center*, 55,130 (La. App. 2 Cir.

[3] The Third Circuit in *Riley*, *supra*, upon which Appellants rely, also noted that "[t]o sufficiently plead an intentional tort in the context of medical malpractice, the petition must contain specific facts sufficient to establish the medical provider consciously desired the physical result of his acts or knew the result was substantially certain to follow from [its] conduct."

8/9/23), 369 So.3d 455. "Where special statutes limit the tort cause of action to claims based on intentional conduct, the plaintiff is required to allege at least some facts; the mere invocation of the word 'intentional' will not create a cause of action." *Id.*

In this case, Appellants have simply presented broad, vague, and conclusory statements that Appellees engaged in fraud. These claims are insufficient to establish the requisite intent to negate the application of the LMMA. For these reasons, we find that the trial court did not err in granting the exception of prematurity.

**CONCLUSION**

For the reasons set forth herein, the judgment of the trial court granting the exception of prematurity in favor of the Appellees is hereby affirmed. Costs of this appeal are assessed to the Appellants.

**AFFIRMED.**