

In the Indiana Supreme Court

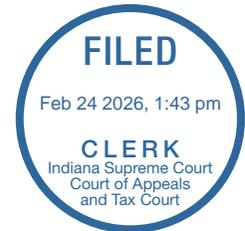
Dewight Allen,
Appellant(s),

v.

Anonymous Physician; Anonymous
Provider 1; Anonymous Provider 2,
Appellee(s).

Court of Appeals Case No.
24A-CT-02260

Trial Court Case No.
02D02-2202-CT-63



Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 2/24/2026.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

Massa and Goff, JJ., concur.

Slaughter, J., concurs in the denial of transfer with separate opinion.

Molter, J., concurs in the denial of transfer with separate opinion in which Rush, C.J., joins.

Slaughter, J., respecting the denial of transfer.

I share Justice Molter’s concern that appellate jurisdiction is lacking on this record. *Post*, at 10. The court of appeals purported to exercise jurisdiction from the trial court’s entry of a final judgment under Trial Rule 54(B). But the trial court entered **no** final judgment as to **any** claim or party, contrary to the rule. Without a final judgment, the proper path to appellate review, as Justice Molter notes, though not pursued here, was to seek a discretionary appeal under Appellate Rule 14(B), *ibid.*, which requires the consent of both the trial and appellate courts to proceed. Yet, despite the lack of appellate jurisdiction, the court of appeals reached the merits anyway. The proper disposition was to dismiss the appeal without prejudice. That should be our disposition, too. We should grant transfer, assume jurisdiction over the case—a court always has jurisdiction to determine its own jurisdiction—and then dismiss the appeal for lack of jurisdiction.

Our Court opts not to follow that path, though a majority agrees that appellate jurisdiction is lacking. So that leaves this jurisdiction nag with one of two options: (a) vote to grant transfer and risk having our Court reach the appeal’s merits, though our jurisdiction (which derives from the court of appeals’ jurisdiction) is no more secure than the appellate court’s, or (b) vote to deny transfer, leaving in place the appellate court’s merits ruling.

Neither option is ideal, but I choose the latter—denying transfer—as the lesser of two bad options. Better to leave the court of appeals’ merits ruling in place, I figure, despite the lack of appellate jurisdiction, than for us to compound the jurisdictional whiff by ignoring it and deciding the merits ourselves.

Molter, J., respecting the denial of transfer.

Dewight Allen sued three medical providers for medical malpractice, and he asked the trial judge to enter a default judgment against them after they repeatedly missed already extended deadlines to submit evidence to a medical review panel under Indiana’s Medical Malpractice Act. The trial judge denied Allen’s request, the Court of Appeals affirmed, and Allen now petitions for transfer asking us to review the trial court’s order.

In most litigation contexts, affirming the trial court would be the obvious call. Trial courts have broad discretion to manage their dockets, including when deciding whether to sanction parties for breaking procedural rules, and appellate courts defer to those judgment calls if they are reasonable. Here, a seasoned trial judge carefully considered Allen’s sanctions request, which was for only the most severe sanction—default judgment. And the judge’s decision to deny that request was one that plenty of good judges would make when confronted with the same circumstances. So it isn’t surprising that the Court of Appeals affirmed through then-Chief Judge Altice’s well-reasoned, published opinion. *See Allen v. Anonymous Physician*, 266 N.E.3d 781 (Ind. Ct. App. 2025).

But even a well-reasoned opinion may not be the best one, and Judge Brown dissented in an opinion that is well reasoned too. She concludes that litigation trends reveal our judiciary’s sanctions decisions overlook some nuance unique to litigation under the Act. In short, she observes that the Act’s deadlines are stricter than other litigation deadlines, that there are important policy and constitutional reasons for that stricter treatment, and that it is problematic for our courts to frequently enforce the deadlines by dismissing plaintiffs’ claims when they miss the deadlines but never by entering judgment against providers when they miss the deadlines.

I’m not yet sure whether Judge Altice’s or Judge Brown’s view presents the more persuasive one, but I think their debate may warrant our deeper consideration at the appropriate time. This just isn’t that time, so I join my colleagues in voting to deny transfer. This isn’t the time because lurking under the surface is an underexplored problem of appellate jurisdiction—this is a discretionary interlocutory appeal, but Allen didn’t comply with

the requirements for those appeals—which would likely preclude us from reaching the important issues Judge Brown’s dissent highlights.

Thus, while I agree with the decision to deny transfer, I write separately to add context from our prior precedents that may inform future review in the Court of Appeals and our Court. First, I briefly recount the often-described history of Indiana’s Medical Malpractice Act. Then, I discuss the interplay between the Act’s deadlines and constitutional demands. And finally, I explain why concerns over appellate jurisdiction lead me to join my colleagues in voting to deny transfer.

I.

Our Court recently recounted the history surrounding Indiana’s Medical Malpractice Act, which the State enacted in 1975. Leading up to the Act, “Indiana’s health care system was on the verge of a crisis.” *Gierek v. Anonymous 1*, 250 N.E.3d 378, 391 (Ind. 2025) (quoting Otis R. Bowen, *Medical Malpractice Law in Indiana*, 11 J. Legis. 15, 15 (1984)). The growth in malpractice claims since World War II, “combined with a ballooning of damage awards and a corresponding rise in malpractice-insurance premiums, prompted many doctors to reduce the services they offered, refuse to perform high-risk procedures, or leave their profession altogether.” *Id.*

In the fifteen years leading up to the Act, premiums increased 1,200 percent, and it became so difficult for insurance companies to calculate an adequate premium to achieve profitability that “seven of the ten insurance companies writing the majority of medical malpractice insurance policies in the State ceased or limited writing such insurance.” *Johnson v. St. Vincent Hosp., Inc.*, 404 N.E.2d 585, 589 (1980), *abrogated by Collins v. Day*, 644 N.E.2d 72 (Ind. 1994), *and overruled by In re Stephens*, 867 N.E.2d 148 (Ind. 2007). Physicians in high-risk specialties found it difficult or even impossible to purchase insurance. *Id.* That led to surgeries being cancelled in rural areas and hospitals discontinuing emergency services. *Id.* As health care providers’ liability exposure continued growing, their options for insurance coverage kept dwindling. *Id.*

The General Assembly responded with a mix of substantive and procedural fixes. *Mayhue v. Sparkman*, 653 N.E.2d 1384, 1386 (Ind. 1995) (explaining that the Act was adopted “to maintain the availability of healthcare services in Indiana,” by better controlling “the costs of medical liability insurance, litigation, settlements, and excessive judgments against healthcare providers”). The Act’s substantive provisions included a damages cap and a “restrictive statute of limitations.” *Gierek*, 250 N.E.3d at 391 (quotations omitted). The Act also changed the litigation procedure for malpractice claims, which is the focus of this appeal.

Now, before a plaintiff can litigate their medical malpractice claim against a health care provider in court, they typically must present a proposed complaint to a medical review panel that then provides an opinion as to whether malpractice was a factor in the plaintiff’s injuries. Ind. Code §§ 34-18-8-4, -10-22(b). That opinion is admissible at trial, but it is not binding on the fact finder. I.C. § 34-18-10-23. “While designed to promote the settlement of claims, the intended purpose of the review panel was not to adversely affect a claimant in pursuing his legal claim.” *Gierek*, 250 N.E.3d at 391 (emphasis omitted) (quotations omitted).

This of course delays the litigation, so the legislature tried to mitigate the delay by limiting it. The panel must issue its opinion within six months after the panel is formed, I.C. § 34-18-10-13(a), and the panel’s chairperson establishes a schedule for the parties to submit evidence with that deadline in mind, I.C. § 34-18-10-3(c); *Galindo v. Christensen*, 569 N.E.2d 702, 705 (Ind. Ct. App. 1991). A party that, “without good cause shown,” fails to comply with the deadlines “is subject to . . . appropriate sanctions.” I.C. § 34-18-10-14. Those sanctions can include dismissing plaintiffs’ claims and entering a default judgment against providers. *See Reck v. Knight*, 993 N.E.2d 627, 631 (Ind. Ct. App. 2013).

We recently reiterated that one of the Act’s primary goals is “to foster prompt litigation” and that the deadlines for the review panel process “facilitate that goal.” *Bojko v. Anonymous Physician*, 232 N.E.3d 1155, 1158 (Ind. 2024) (quotations omitted). Precluding any doubt about this goal, in 2017 the General Assembly enacted a statute emphasizing the importance of complying with these deadlines:

The general assembly emphasizes, to the parties, the courts, and the medical review panels, that adhering to the timelines set forth in this article is of extreme importance in ensuring the fairness of the medical malpractice act. Absent a mutual written agreement between the parties for a continuance, all parties subject to this article, and all persons charged with implementing this article, including courts and medical review panels, shall carefully follow the timelines in this article. No party may be dilatory in the selection of the panel, the exchange of discoverable evidence, or in any other matter necessary to bring a case to finality, and the courts and medical review panels shall enforce the timelines set forth in this article so as to carry out the intent of the general assembly.

I.C. § 34-18-0.5-1. This enactment seems to reflect a sensitivity to the interplay between the Act and at least two constitutional directives.

II.

One constitutional directive is that “[j]ustice shall be administered . . . speedily, and without delay.” Ind. Const. art. 1, § 12. The other directive is that the judiciary has primary responsibility for crafting procedural rules to deliver on that promise. While the Constitution “vests the General Assembly with the ‘[l]egislative authority,’ Ind. Const. art. 4, § 1,” it “vests our state courts with the ‘judicial power,’ *id.* art. 7, § 1, and instructs that neither independent branch ‘shall exercise any of the functions’ of the other. *Id.* art. 3, § 1.” *Mellowitz v. Ball State Univ.*, 221 N.E.3d 1214, 1221 (Ind. 2023). That means “[e]nacting laws to protect Hoosiers’ peace, safety, and well-being is a legislative function,” and “promulgating procedural rules for litigating disputes about those laws is part of the judicial function.” *Id.* (citations and quotations omitted). Thus, “under our separation of powers, if a statute is a substantive law, then it supersedes our Trial Rules, but if such statute merely establishes a rule of procedure, then our Trial Rules would supersede the statute.” *Id.* (quotations omitted).

A statute with procedural rules that slow litigation tests these limits. But we've recognized that "substance and procedure coalesce when the General Assembly concludes there are circumstances when procedures are causing substantive harm—collateral damage that is unnecessary to resolving a legal dispute between parties." *Id.* at 1222. And in those circumstances, we do "what we can to accommodate legislation that predominantly furthers public policy objectives, so long as the legislature is not usurping the judicial prerogative of managing the courts." *Id.* at 1223. Still, "we do not yield to statutes that we conclude interfere with litigation's truth-seeking function or with our ability to fulfill our constitutional obligations, including our obligations to ensure that all litigants are treated equally, that '[a]ll courts shall be open,' that every person 'shall have remedy by due course of law' for any injury, and that justice is administered 'speedily.' Ind. Const. art. 1, § 12." *Id.* Under our Constitution, our Court serves as "the final arbiter in case any conflict arises as a result of legislation." *Id.*

Just a few years after its enactment, we considered the constitutionality of the Act's medical review panel provisions. One of the arguments plaintiffs made was that "the delay and expense attendant to the panel submission requirement denies them due process and due course of law and access to the courts guaranteed by Art. I, § 12, of the Indiana Constitution." *Johnson*, 404 N.E.2d at 593. Our Court acknowledged that "[t]he restriction upon the access to courts for patients under the Act is severe," *id.* at 596, but we concluded the severity of the crisis the legislature was confronting justified the severity of the impairment to accessing the courts. *Id.* at 595 ("As previously concluded the dominant aim of this Act as a whole is to preserve health care services for the community. The delay in instituting suit required by this challenged provision must be reasonable in light of this aim if it is to pass constitutional muster.").

A few years later, the Jasper Superior Court held the Act was unconstitutional. The court believed *Johnson* was distinct because, in that case, we "found the Act constitutional on its face without regard to its application to particular individuals and without having had an opportunity to consider the Act's actual experience." *Cha v. Warnick*, 476

N.E.2d 109, 111 (Ind. 1985). And Florida and Pennsylvania authority that the Court cited in *Johnson* had “since been overruled based on the actual experience of the Florida and Pennsylvania Acts.” *Id.*

We again upheld the Act, and we distinguished the Florida and Pennsylvania statutes. The problem with the Florida statute, we said, was that its ten-month deadline for a panel decision deprived petitioners of due process. *Id.* at 112. In contrast, Indiana’s statute allows only six-months for a panel decision. I.C. § 34-18-10-13(a). The problem with the Pennsylvania statute was that its stated purpose was to ensure prompt resolution, but that goal wasn’t realized through the implementation of the statute. *Id.* We explained that the “state interest in Pennsylvania, of course, was different than that in Indiana since the Indiana Legislature stated that the compelling state interest behind Indiana’s Malpractice Act was to insure the continuation of medical services in the State of Indiana.” *Id.* In the end, we reaffirmed the constitutionality of the statute because the plaintiffs “presented no evidence that there is no longer a medical emergency in this State,” they presented no evidence that “the severity of the delay to malpractice claimants was unreasonable in light of the compelling state interest,” and “[t]here also was no showing by Plaintiffs nor any findings made by the trial court that the delays caused by the Malpractice Act are any greater than those delays occasioned by cases not required to proceed under the Act.” *Id.* at 112–13.

III.

Fast forward roughly forty years to this case. Allen filed suit on February 8, 2022, and he requested the formation of a medical review panel about three months later on May 3. It took a year and a half just to form the panel.

After completing a striking process, the parties selected the panel chairperson on July 22, 2022. One week later, on July 28, the chairperson provided the panel procedures to both sides. Then, over a year later on October 26, 2023, he informed the parties that a panel had been formed and the Department of Insurance Commissioner had certified it. The chairperson also provided a submission schedule to the parties requiring Allen’s submission on December 1, 2023, the providers’ submission on

January 1, 2024, Allen's rebuttal on February 1, 2024, and the providers' reply on March 1, 2024.

Allen's submission was timely, but the providers neither filed a submission on January 1 nor sought an extension of time. On March 26, the providers' counsel emailed Allen's counsel about an upcoming status report to the trial court and recommended the parties report that they were working on selecting a panel. Allen's counsel responded within minutes to remind the providers' counsel that the panel was already formed and the providers' submission was overdue, so the parties instead reported to the trial court that the providers were working on their submission and that the parties anticipated a panel opinion by the end of 2024.

Three weeks later, on April 19, 2024, the chairperson emailed both sides to say that "the suggested submission schedule is now far past due and we are yet to receive [the providers'] submission," so the chairperson requested that submission by a new May 1, 2024 deadline. App. Vol. 2 at 68. On May 20, 2024, the chairperson reached out again to remind the parties that the providers still had not made their submission, and he proposed "one final date of June 14, 2024 for [the providers] to provide their submission." *Id.* at 69.

That same day, Allen asked the trial judge to enter a default judgment against the providers for failing to tender their submission to the panel in a timely manner. The providers then tendered their submission four days later and opposed Allen's request for a default judgment. Defense counsel explained that he first forgot a panel had been formed; he began preparing his submission when he realized his mistake; he was also drafting submissions for five other cases; his mistakes were inadvertent; Allen suffered no prejudice; and default judgments are disfavored.

The trial judge held a hearing at which defense counsel expressed regret for his mistakes, and the judge noted these sorts of delays were uncommon for counsel. Defense counsel also argued courts have wide discretion, but "there are no cases in which a defendant has been defaulted as a sanction under timeliness." *Allen*, 266 N.E.3d at 785. The judge denied the sanctions request after finding that defense counsel was

credible in explaining he had an innocent misunderstanding about when the panel was formed, and counsel made his submission before the final extended deadline. That, the court concluded, was good cause for the delay, and even if that wasn't good cause, default judgment was too harsh a sanction.

Allen then asked the trial court to certify its order under Trial Rule 54(B), which provides that “the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” The trial court granted the request and the Court of Appeals affirmed the denial of sanctions.

Judge Altice explained that the Court of Appeals reviews these sorts of sanctions decisions only for an abuse of discretion. *Allen*, 266 N.E.3d at 786. And when trial judges consider sanctions decisions, they should consider “whether the breach of duty was intentional or contumacious and whether prejudice resulted.” *Id.* (quotations omitted). Moreover, the only sanction Allen requested was a default judgment, and “default judgments are generally disfavored.” *Id.* Here, the trial judge reasonably considered all these factors, so the Court of Appeals deferred to the trial judge’s decision.

Judge Brown disagreed. She focused on the Act’s statutory requirement for “good cause” to justify any delay, and she found no good cause here. *Id.* at 787 (Brown, J., dissenting). By her count, “Providers’ counsel received at least five clear and unequivocal notices of his responsibility to tender a submission on behalf of Providers, but it took Allen’s petition seeking a preliminary determination of law requesting a default judgment to finally grab counsel’s attention.” *Id.* at 788. And by that point, even the original deadline for the panel’s decision had passed. *Id.* Making matters worse, from Judge Brown’s perspective, “Providers’ counsel not only missed repeated and extended deadlines, but he also wholly failed to communicate with Allen or [the chairperson] regarding these failures or the status of the case despite multiple requests and opportunities to do so.” *Id.* She believed the trial judge and the Court of Appeals majority

confused “counsel’s lack of intentionality with a showing of good cause.” *Id.* at 790.

Judge Brown also agreed with Allen’s counsel that this all illustrates a troubling pattern: The Act’s “timelines are routinely not met by defendant healthcare providers, and medical malpractice plaintiffs need help from the courts to ensure the fairness of the medical malpractice act and its mandate that all parties shall carefully follow the timelines in this article and that no party may be dilatory as to the adherence to the timelines set forth.” *Id.* at 789 (quotations and brackets omitted). Judge Brown noted many cases where courts have dismissed plaintiffs’ claims as a sanction for failing to meet the Act’s deadlines. And she believes “it is unfair that our courts are quick to strictly hold plaintiffs accountable for their failures to adhere to evidentiary submission schedules but are reluctant or unwilling to hold defendant healthcare providers accountable for those same failures.” *Id.* She warned: “Healthcare provider defendants will continue to thumb their noses at the statutory requirements until and unless they are shown they will also be sanctioned appropriately for such behavior.” *Id.* at 790. So what the providers’ counsel saw as a reason for denying a default judgment—that courts never impose that sanction when providers miss the Act’s deadlines—Judge Brown sees as cause for great concern.

Her concern may warrant our review. One of our responsibilities is to ensure that court procedures facilitate prompt resolution, and this case illustrates the challenge. It took a year and a half just to reach the starting line—forming a medical review panel. Then, adding more sand in the gears, the providers didn’t even tender their initial submission until after the panel’s deadline to issue its opinion. It would seem paradoxical if the judiciary’s only response to plaintiffs’ constitutionally grounded concerns about these sorts of delays was to dismiss plaintiffs’ claims when plaintiffs don’t move fast enough, while never sanctioning providers when providers drag their feet.

Of course, further review may reveal this isn’t an accurate picture of the litigation landscape, and appellate review must maintain appropriate deference to the reasonable judgment calls our trial judges make. My

point is not that Judge Brown’s view should carry the day, only that we may want to further consider it. But we should await a case where appellate jurisdiction is certain rather than questionable.

IV.

Allen sought appellate review through Trial Rule 54(B), which permits a trial judge to certify as final and appealable an order “as to one or more but fewer than all of the *claims or parties.*” T.R. 54(B) (emphasis added). Here, the judge did not enter a final judgment as to any claim or party. Instead, he entered an interlocutory order denying Allen’s sanctions request. To appeal that decision before a final judgment, Allen needed to follow Appellate Rule 14(B)’s procedures for discretionary interlocutory review, which he did not do. *See Bernacchi v. Lindborg*, 260 N.E.3d 1006, 1009–10 (Ind. Ct. App. 2025), *trans. denied*. If we granted transfer, it appears that mistake would deprive us of appellate jurisdiction, which is an issue we review even *sua sponte*. *Matter of Adoption of S.L.*, 210 N.E.3d 1280, 1282 (Ind. 2023). So even if we granted transfer, it’s likely we would not reach the issues Judge Brown identified in her dissent.

Of course, appellate jurisdiction was no more secure in the Court of Appeals than it would be in our Court. But the Court of Appeals broke no new ground, and it merely affirmed the denial of sanctions, which we could still review following a final judgment if we wished, so no harm comes of the mistake. And our review should await another day.

Rush, C.J., joins.