

36.0 MEDICAL MALPRACTICE ARBITRATION

(A) SELECTION OF ARBITRATORS

- (1) Before reference is made to a medical malpractice Panel, a case management or pretrial conference shall be held according to Rule 21. Before a scheduled pretrial, the plaintiff (or plaintiffs) shall select one arbitrator and the defendant (or defendants) shall select one arbitrator, to be known as the co-arbitrators. The identities of the co-arbitrators shall be made known to the Court at the pretrial and the parties shall also at the pretrial settle upon a mutually agreeable date or dates for the arbitration and the estimated time the arbitration will take. Co-arbitrators need not be attorneys. The Court shall journalize the selection of the co-arbitrators and shall forward the file to the Arbitration Commissioner with the names of the two Arbitrators. On the basis of the information given to the Court at pretrial, the Court shall then select a Panel chairman from a list of medical malpractice arbitration Panel chairmen consisting of attorneys authorized to practice law in Ohio, who have previously consented to serve, and who have been approved by the Civil Courts Committee. This list shall be maintained and kept current by the Arbitration Commissioner and shall be made available to the Court. The Court shall also journalize the selection of the chairman. The Commissioner shall process the file, verify the hearing date and deliver the file to the Arbitration Chairman prior to the hearing. The parties may agree upon a single arbitrator. In such a case, that single arbitrator shall be qualified to be an arbitration chairman.
- (2) Not more than one member of a legal, medical, or osteopathic professional firm shall be appointed to the same Panel, nor shall an attorney be appointed who is a law partner or an associate of any attorney of record in the case.
- (3) If there is a failure by one or more parties to appoint a co-arbitrator in the manner provided, the Court shall make the appointment.

(B) EXCEPTIONS TO APPOINTMENT OF ARBITRATORS

Exceptions to a chairman or co-arbitrators shall be raised by motion filed within seven (7) days of the receipt of the notice of journalization of the co-arbitrators and the chairman.

(C) HEARINGS: WHEN AND WHERE HELD: NOTICE

- (1) Unless counsel for all parties and the entire Panel agree, the place shall be one of central city location. A hearing shall be scheduled normally not more than forty-five (45) days after the appointment of the Panel of Arbitration. No hearing shall be fixed for Saturdays, Sundays, legal holidays, or evenings except upon agreement by counsel for all parties and the arbitrators.
- (2) Since sufficient time is available to the parties prior to the hearing date to settle or compromise a dispute, once a hearing date is set, the hearing shall proceed at the scheduled time. There shall be no communications by the parties' counsel with the chairman concerning the merits of the controversy prior to the commencement of the hearing.

(B) INABILITY OF PARTY TO PROCEED

In the event that a party is unable to proceed when the case has been scheduled, the Chairman shall notify the Assigned Judge for purposes of continuance.

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(C) DEFAULT OF A PARTY

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present. An award shall not be made solely on the default of the party. The Panel shall require the other party to submit such evidence as they may require for the making of an award. If neither party appears at the time set for the arbitration hearing, the award shall be one dismissing the action for want of prosecution subject to the right to recommence within one year.

(D) CONDUCT OF HEARING: GENERAL POWERS

- (1) The chairman of the Panel, unless the parties agree otherwise, shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrators and of all the parties except where any of the parties is absent, in default, or any of the parties has waived his right to be present. The Panel may receive the evidence of witnesses by deposition, affidavit, or written report and shall give it such weight as they deem it is entitled to after consideration of any objections which may be made to it. In the event of a trial subsequent to arbitration, the parties shall not offer as an expert witness any person who did not testify as an expert in person, by report, by deposition, or by videotape at the arbitration. The Court, for good cause shown, may suspend the operation of this rule.
- (2) Counsel shall upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

(G) SPECIFIC POWERS

- (1) The Panel shall have the general powers of a Court, including, but not limited to, the following powers:
 - (a) Subpoenas. To cause the issuance of subpoenas to witnesses to appear before the Panel and to request the issuance of an attachment according to the practice of the Courts for failure to comply.
 - (b) Production of Documents. To compel the production of all books, papers, and documents which they shall deem material to the case.
 - (c) Administering Oaths, Admissibility of Evidence. To administer oaths of affirmation to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by depositions and to decide the law and the facts of the case submitted to them.

(H) SUPERVISORY POWERS OF THE COURT

The assigned Judge of the General Division of the Court of Common Pleas shall have full supervisory powers with regard to any questions that arise in all arbitration proceedings and in application of these rules.

(I) WITNESS FEES

Witness fees shall be in the same amount as provided for witnesses in trials in the Common Pleas Court of Cuyahoga County, Ohio, which shall be taxed as costs.

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(J) TRANSCRIPT OF TESTIMONY

The arbitrators shall not be required to make a transcript of the proceedings. If any party shall desire a transcript, he shall provide a reporter and cause a record to be made. The party requesting the same shall pay the costs which shall not be considered costs in the case. Any party desiring a copy of any transcript shall be provided a copy by the reporter upon payment, based upon the usual charges made for a copy of a deposition plus a proportionate share of the costs of the reporter at the hearing.

(K) REPORT AND AWARD

Within thirty (30) days after the hearing, the Chairman of the Panel shall file a report and award, containing findings of fact, with the Assigned Judge and on the same day shall mail or otherwise forward copies to all parties or their counsel. In the event all three members do not agree on the finding and award, the dissenting member shall write "Dissents" before his signature. The Assigned Judge shall make a note of the report and award on his docket and file the original report with the Clerk of Courts.

(L) LEGAL EFFECT OF REPORT AND AWARD: ENTRY OF JUDGMENT

- (1) The report and award shall become final thirty (30) days after its filing and the Court shall enter judgment unless prior to said thirty (30) days a party files with the Clerk of Courts a notice of non-acceptance of such report and award.
- (2) If a party files an application to vacate the award accompanied by a detailed affidavit or affidavits alleging one or more of the following:
 - (a) The findings of fact by the Arbitration Panel were clearly erroneous;
 - (b) The decision is not in accordance with applicable law;
 - (c) The procedures required for conducting the hearing and rendering the decision were not followed fairly and properly but with prejudice to a party.

The assigned Judge shall schedule a hearing to inquire into the allegations and determine the merits of the application. If the application is granted, the pleading shall not be amended and neither the decision of the Arbitration Panel nor any dissenting opinion shall be entered into evidence at the subsequent trial, and there shall be no cross-examination of the arbitrators. If the application is denied, the decision of the Arbitration Panel and any dissenting opinion will be admitted into evidence upon the offer of any party and the opposing party may cross-examine the arbitrators.

(M) COMPENSATION OF ARBITRATORS

- (1) Each co-arbitrator who has signed an award or files a minority report, unless their right to compensation has been waived prior to the hearing, shall receive as compensation for their services in each case a reasonable and customary fee agreed upon by the assigning party. The members of a Panel shall not be entitled to receive their fees until after filing the report and award with the Court. Fees paid to arbitrators shall be assessed pursuant to §2711.21, Ohio Revised Code.
- (2) The chairperson of the Panel shall receive as compensation a sum not less than that received by each co-arbitrator. The amount of the compensation shall be a reasonable and customary fee to be determined by the Judge prior to assigning the case for arbitration proceedings.

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(N) TIME LIMIT TO AMEND PLEADINGS

If the notice of non-acceptance referred to in paragraph (L)(1) of this rule is filed, the pleadings shall be amended in accord with §2711.21 of the Ohio Revised Code and filed with the Clerk of Courts after the filing of such notice of non-acceptance. The party making such pleading amendments shall serve the other parties pursuant to the Ohio Rules of Civil Procedure.