

RULE 28. Medical malpractice arbitration

(Sec. 2711.21 et seq. R.C.)

(A) Cases for Arbitration

(1) Upon filing of a medical malpractice claim as defined in Revised Code Section 2305.11(D)(3) in the Court of Common Pleas, said claim shall be assigned in accordance with Rule 7, supra.

(2) All pre-trial matters relative to motions, pleadings, discovery, et al., and all matters subsequent to the arbitration proceeding shall be determined pursuant to the individual assignment system in accordance with Rule 7.

(3) Before reference is made to a medical malpractice panel, a pre-trial conference shall be held according to Rule 15 unless waived in writing by the parties with consent of the Court.

(4) Reference to Arbitration

The attorneys may agree at any time after the filing of a complaint to one arbitrator instead of three to be selected by the Arbitration Commissioner, or their own panel of one or three arbitrators.

(5) All times provided herein shall be computed from the date the entry is docketed in the office of the Clerk of Courts, except as otherwise specifically provided herein.

(B) Exception to order or arbitrators

(1) Exceptions to an order placing a case on the arbitration list shall be raised by a motion filed within ten (10) days of the mailing of notice of such order, and shall be heard by the assigned judge.

(2) Exceptions to an arbitrator shall be raised by motion filed within five (5) days of the mailing of notice of assignment and shall be heard by the assigned judge.

(C) Selection of arbitrators

In all cases subject to arbitration the members of the panel shall be appointed by the Arbitration Commissioner as follows:

(1) The Arbitration Commissioner shall cause to be received the names of two members of the panel to be appointed by the plaintiff and defendant, respectively.

(2) If there is a failure of one or more parties to appoint one or more arbitrators as in (1) above, the court shall, on application, appoint an arbitrator or arbitrators pursuant to Revised Code Section 2711.04.

(3) Panel Chairperson

The Arbitration Commissioner shall maintain a list of medical malpractice arbitration panel chairpersons, who have been approved by the Court's Arbitration Committee, and who have previously consented to serve.

(D) Manner of appointment

(1) When the Court refers a case to medical arbitration, the Court will set a time within which Counsel shall advise the Arbitration Commissioner and opposing counsel, in writing, the names of their designated arbitrators. (Amended January 1, 1986)

(2) Upon receipt of such names, the Arbitration Commissioner will advise the Court which will promptly designate a person to serve as Chairperson and will advise counsel of its designation. (Amended January 1, 1986)

(3) If no exceptions are filed to the designated arbitrators, or if exceptions are filed, then after such exceptions are ruled on, the Court will set the case on its docket for determination of a mutually convenient date for the arbitration hearing. Trial counsel and the arbitrators shall all be present at such docket call for the selection of hearing date. (Amended January 1, 1986)

(E) Composition of board: disqualification from appointment

Not more than one member of a professional firm shall be appointed to the same board nor shall an attorney be appointed to a board who is a law partner or an associate of any attorney of record in the case.

(F) Assignment of cases

(1) The Arbitration Commissioner shall assign no more than one case to each board at the time of its appointment. Said cases shall be taken in order from the medical malpractice arbitration list. No case shall be assigned by the Arbitration Commissioner to a Board within thirty (30) days from the time such case is ordered onto the arbitration list unless a judge directs that the case be assigned specifically within the thirty-day period or in the event that a companion case may be subject to assignment within the thirty-day period.

(2) No disclosure shall be made to the arbitrators prior to the filing of the report and award referred to in Para. (P) infra of any offers of settlement made by any party. Prior to the delivery of the Court file to the Chairperson of the Board of Arbitrators, the Arbitration Commissioner shall remove from the file and retain all papers or notations referring to demands or offers for settlement.

(G) Hearings: when and where held: notice

(1) Hearings shall be held at a place scheduled by the Arbitration Commissioner. Unless counsel for all parties and the entire Board 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 Board of Arbitration and the Arbitration Commissioner shall notify the arbitrators and the parties or their counsel in writing at least fifteen (15) days before hearing of the time and place of the hearing. The forty-five (45) day period may be extended by the Arbitration Commissioner. 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 forthwith at the scheduled time. There shall be no communications by counsel or the parties with the arbitrators concerning the merits of the controversy prior to the commencement of the hearing.

(H) Inability of party to proceed

In the event that a party is unable to proceed when the case has been scheduled, the Arbitration Commissioner may mark the case continued, and shall assess a \$25.00 continuance fee against such party.

(I) Oath of arbitrator

When the whole number of the arbitrators shall be assembled, they shall be sworn or affirmed justly and equitably to try all matters properly at issue submitted to them, which oath or affirmation may be administered to them by any person having authority to administer oaths.

(J) Default of a party

The arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. 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.

(K) Conduct of hearing: general powers

(1) The three members of the panel, unless the parties agree to a lesser number, shall be the judges 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 all the parties except where any of the parties is absent, in default, or any of the parties has waived the right to be present. The panel may receive the evidence of witnesses by 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.

(2) Counsel shall upon request, whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

(L) 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 Board and to request the issuance of an attachment according to the practice of the courts for failure to comply therewith.

(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 or affirmations 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.

(M) Supervisory powers of Court

Any 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.

(N) Witness fees

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

(O) Transcript of testimony

The court shall provide an official reporter for each medical malpractice arbitration. The cost shall be assessed pursuant to Revised Code Section 2301.21.

(P) Report and award

Within thirty (30) days after the hearing, the Chairperson of the panel shall file a report and award with the Arbitration Commissioner and on the same day shall mail or otherwise forward copies thereof 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 the word "Dissents" before that member's signature. The Arbitration Commissioner shall make a note of the report and award on the arbitration docket and file the original report with the Clerk of Courts forthwith.

(Q) Legal effect of report and award; entry of judgment

The report and award shall be final unless rejected, in accordance with paragraph (S) below, within ninety days of its filing with the Clerk of Courts. (Amended January 1, 1986)

(R) Compensation of arbitrators

(1) Each member of a panel who has signed an award or files a minority report, unless that member shall have waived the right to compensation prior to the hearing, shall receive as compensation for services in each case a fee of Two Hundred Dollars (\$200.00) per day. When more than one case arising out of the same transaction is heard at the same hearing or hearings, it shall be considered as one case insofar as compensation of the arbitrators is concerned. The members of a Board shall not be entitled to receive their fees until after filing the report and award with the Arbitration Commissioner. Fees paid to arbitrators shall be assessed pursuant to Revised Code Section 2711.21. (Amended July 1, 1989.)

(2) All compensation for arbitrators shall be paid upon proper warrant, from the funds of Hamilton County, Ohio.

(S) Time limit to amend pleadings

Pursuant to R.C. Section 2711.21 any and all parties may reject the report and award of the Board of Arbitrators. The rejection shall be subject to the following conditions, all of which shall be complied with within ninety (90) days after the entry of the award of the Arbitration Board is docketed in the office of the Clerk of Courts:

1. Any and all parties not accepting the decision of the Arbitration Board shall file with the Clerk of Courts and the Arbitration Commissioner a Notice of Rejection accompanied by an affidavit that the rejection is not being taken for delay. A copy of such instruments shall be served upon opposing parties or their counsel.

2. In addition to (1), the rejecting party(s) shall file an Amended Pleading(s) to aver the fact that the controversy was submitted to an arbitration panel, the date(s) of the arbitration proceeding, and the decision of said Arbitration Board. The amending of a pleading by a rejecting party(s) shall relieve all other parties of the necessity of amending any other pleading previously filed in the action and shall bring all parties in conformity with R.C. Section 2711.12.

(Amended January 1, 1986)

(T) Poverty affidavit

In a claim accompanied by a poverty affidavit supported by written motion, the cost of arbitration shall be borne by the Court.