

Article - Courts and Judicial Proceedings

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§3-2A-04.

(a) (1) (i) A person having a claim against a health care provider for damage due to a medical injury shall file the claim with the Director and, if the claim is against a physician, the Director shall forward copies of the claim to the State Board of Physicians.

(ii) The Director shall cause a copy of the claim to be served upon the health care provider by the appropriate sheriff in accordance with the Maryland Rules.

(iii) The health care provider shall file a response with the Director and serve a copy on the claimant and all other health care providers named therein within the time provided in the Maryland Rules for filing a responsive pleading to a complaint.

(iv) The claim and the response may include a statement that the matter in controversy falls within one or more particular recognized specialties.

(2) A third-party claim shall be filed within 30 days of the response of the third-party claimant to the original claim unless the parties consent to a later filing or a later filing is allowed by the panel chairman or the court, as the case may be, for good cause shown.

(3) A claimant may not add a new defendant after the arbitration panel has been selected, or 10 days after the prehearing conference has been held, whichever is later.

(4) Until all costs attributable to the first filing have been satisfied, a claimant may not file a second claim on the same or substantially the same grounds against any of the same parties.

(b) Unless the sole issue in the claim is lack of informed consent:

(1) (i) 1. Except as provided in item (ii) of this paragraph, a claim or action filed after July 1, 1986, shall be dismissed, without prejudice, if the claimant or plaintiff fails to file a certificate of a qualified expert with the Director attesting to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury, within 90 days from the date of the complaint; and

2. The claimant or plaintiff shall serve a copy of the certificate on all other parties to the claim or action or their attorneys of record in accordance with the Maryland Rules; and

(ii) In lieu of dismissing the claim or action, the panel chairman or the court shall grant an extension of no more than 90 days for filing the certificate required by this paragraph, if:

1. The limitations period applicable to the claim or action has expired; and

2. The failure to file the certificate was neither willful nor the result of gross negligence.

(2) (i) A claim or action filed after July 1, 1986, may be adjudicated in favor of the claimant or plaintiff on the issue of liability, if the defendant disputes liability and fails to file a certificate of a qualified expert attesting to compliance with standards of care, or that the departure from standards of care is not the proximate cause of the alleged injury, within 120 days from the date the claimant or plaintiff served the certificate of a qualified expert set forth in paragraph (1) of this subsection on the defendant.

(ii) If the defendant does not dispute liability, a certificate of a qualified expert is not required under this subsection.

(iii) The defendant shall serve a copy of the certificate on all other parties to the claim or action or their attorneys of record in accordance with the Maryland Rules.

(3) (i) The attorney representing each party, or the party proceeding pro se, shall file the appropriate certificate with a report of the attesting expert attached.

(ii) Discovery is available as to the basis of the certificate.

(4) (i) In this paragraph, “professional activities” means all activities arising from or related to the health care profession.

(ii) A health care provider who attests in a certificate of a qualified expert or who testifies in relation to a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care may not have devoted more than 25% of the expert’s professional activities to activities that

directly involve testimony in personal injury claims during the 12 months immediately before the date when the claim was first filed.

(iii) Once a health care provider meets the requirements of subparagraph (ii) of this paragraph, the health care provider shall be deemed to be a qualified expert as to subparagraph (ii) of this paragraph during the pendency of the claim.

(iv) If a court dismisses a claim or action because a qualified expert failed to comply with the requirements of this subsection, unless there is a showing of bad faith, a party may refile the same claim or action before the later of:

1. The expiration of the applicable period of limitation;
or

2. 120 days after the date of the dismissal.

(v) A claim or an action may be refiled under subparagraph (iv) of this paragraph only once.

(5) An extension of the time allowed for filing a certificate of a qualified expert under this subsection shall be granted for good cause shown.

(6) In the case of a claim or action against a physician, the Director shall forward copies of the certificates filed under paragraphs (1) and (2) of this subsection to the State Board of Physicians.

(7) For purposes of the certification requirements of this subsection for any claim or action filed on or after July 1, 1989:

(i) A party may not serve as a party's expert; and

(ii) The certificate may not be signed by:

1. A party;

2. An employee or partner of a party; or

3. An employee or stockholder of any professional corporation of which the party is a stockholder.

(c) (1) Within 20 days after the filing of the claimant's certificate of a qualified expert, or, in a case in which lack of informed consent is the sole issue, within 20 days after the filing of the defendant's response, the Director shall deliver

to each party the names of six persons chosen at random from the attorney categorical list prepared by him pursuant to § 3–2A–03(c) of this subtitle, together with a brief biographical statement as to each of these persons.

(2) No later than 20 days after receiving notice of the scheduled hearing, the Director shall deliver to each party the names of six persons chosen at random from each of the remaining categorical lists prepared by him pursuant to § 3–2A–03(c) of this subtitle, together with a brief biographical statement as to each of these persons. If the claim or the response states that the matter falls within one or more recognized specialties, the Director, if practicable, shall include persons in the specialty on the list from the health care provider category. Before delivering each list, the Director shall inquire of the persons selected and assure himself that they do not have a personal or economic relationship with any of the parties or their counsel, or any cases in which they are a party before the arbitration office, that can form the basis of any partiality on their part. If, in the judgment of the Director, a person selected has such a relationship with a party, his name shall be replaced by another chosen at random.

(3) The biographical statements sent to the parties under this subsection shall have been updated within 2 years.

(d) (1) Within 15 days after delivery of the list, a party may object in writing stating the reasons therefor to the inclusion of any arbitrator on the list. If the Director finds a reasonable basis for the objection, he shall replace the name of the arbitrator with the name of another arbitrator. Within 30 days after delivery of the initial list or, if an arbitrator is replaced, within 30 days after delivery of the replacement list, each party shall strike from the list in each category any name or names that are unacceptable and return a copy of the list with his strikes to the Director. Upon motion of either party, the panel chairman, for good cause shown and in conjunction with the Director, shall require that subsequent strikes be made in a lesser period of time. A party may not strike more than two names in any category.

(2) If:

(i) The claim is against more than one health care provider, whether directly by a claimant or as a result of a third-party claim, the health care providers claimed against shall be treated as a single party and shall exercise their strikes jointly;

(ii) There is more than one claimant, the claimants shall be treated as a single party and shall exercise their strikes jointly;

(iii) Within the time period specified in paragraph (1) of this subsection, multiple claimants or multiple health care providers fail to agree on their

strikes in any category, they shall notify the Director of their disagreement, and the Director may make the strikes on their behalf with respect to that category; and

(iv) Any party fails to return a copy of the list with his strikes within the time period specified in paragraph (1) of this subsection, the Director may make the strikes for that party.

(e) (1) The Director shall compare the lists returned to him and the lists from which he has stricken names pursuant to subsection (d) of this section, and shall select the first mutually agreeable person in each category as the arbitrators.

(2) The Director shall establish by regulation procedures for selection of alternates to serve in place of arbitrators unable to serve after appointment. Procedures for the selection of alternate arbitrators shall provide that alternate arbitrators are chosen at random from the categorical lists prepared by the Director under § 3–2A–03(c) of this subtitle, and may not be confined to time limitations in subsection (d)(1) of this section. The Director may require the attendance of an appropriate alternate at any proceeding under this subtitle.

(f) (1) The parties may, within the time for returning their lists to the Director, agree in writing upon a single arbitrator. In that event, they shall advise the Director in writing of their choice, and the one arbitrator shall constitute the arbitration panel.

(2) The Director shall prepare a separate list of qualified attorneys willing to serve as single arbitrators.

(g) An arbitrator shall have the immunity from suit described under § 5–615 of this article.

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