

Subpart H. ARBITRATION PANELS FOR HEALTH CARE

Chap.		Sec.
171.	RULES OF PRACTICE AND PROCEDURE	171.1

CHAPTER 171. RULES OF PRACTICE AND PROCEDURE

GENERAL PROVISIONS

- Sec.
- 171.1. Definitions.
- 171.2. Rules of construction of this chapter.
- 171.3. Practice before the arbitration panels.
- 171.4. Filing papers.
- 171.5. Computation of time.
- 171.6. Jurisdiction of arbitration panels.
- 171.7. Election of jurisdiction.
- 171.8. Binding arbitration.

ADMINISTRATION

- 171.11. Applicability of laws and rules.
- 171.12. Form of papers filed.
- 171.13. Docket.
- 171.14. Conference and hearing locations.

PLEADINGS AND LEGAL PAPERS

- 171.21. Pleadings allowed.
- 171.22. Captions.
- 171.23. Commencement of proceedings.
- 171.24. Tolling of the statute of limitations.
- 171.25. Service.
- 171.26. Notice of appearance.
- 171.27. Service on attorneys.
- 171.28. Joinder of additional parties.

DISCOVERY

- 171.31. Discovery permitted.
- 171.32. [Reserved].
- 171.33. Discovery limitations.
- 171.34. Filing of discovery.
- 171.35. Subpoenas.

PREARBITRATION HEARING MOTIONS

- 171.41. Ruling on prehearing procedures and discovery.
- 171.42. Presenting motions.
- 171.43. Oral argument.
- 171.44. Supporting legal authority.
- 171.45. Time for filing opposition.
- 171.46. Formal motions.
- 171.47. Withdrawal of motions.

MOTIONS FOLLOWING THE APPOINTMENT OF A CHAIRPERSON

- 171.51. Scope and contents of motions.
- 171.52. Presentation of motions.
- 171.53. Action on motions.

CONCILIATION PROCEDURE

- 171.61. Conciliation conference.
- 171.62. Contents of conciliation conference memorandum.

SELECTION OF ARBITRATION PANEL

- 171.71. Certificate of readiness.
- 171.72. Selection of panelists by stipulation.
- 171.73. Panel selection procedure.
- 171.74. Filling vacancies.
- 171.75. Panel membership requirements.
- 171.76. Invitation and disclosure of interests of panel members.
- 171.77. Transfer to a Court of Common Pleas.

PREHEARING CONFERENCE

- 171.81. Prehearing conference.

ARBITRATION HEARINGS

- 171.91. Hearing location.
- 171.92. Requests for continuance or cancellation of an arbitration hearing.
- 171.93. Grounds for continuance.
- 171.94. Interpreter.
- 171.95. Trial briefs.

- 171.96. Arbitration hearing procedure.
- 171.97. Applicability of laws and rules.
- 171.98. Powers and duties of panel chairperson.
- 171.99. Absence of panel member at hearing.
- 171.100. Hearing in absence of a party.
- 171.101. Hearing testimony under oath or affirmation.
- 171.102. Admission of exhibits and deposition into evidence.
- 171.103. Presentation and effect of stipulations.
- 171.104. Limitation on matters considered.
- 171.105. Recording of proceedings.
- 171.106. Points for charge.
- 171.107. Decision of panel by majority vote.
- 171.108. Panel deliberations.

APPEALS FROM DECISIONS OF THE ARBITRATION PANELS

- 171.111. Admissibility of record on appeal.
- 171.112. Definition of record costs for appeal purposes.
- 171.113. Limitation on panel member participation in appeals.

SETTLEMENT AND DISCONTINUANCE

- 171.121. Offers of settlement.
- 171.122. Approval of settlements.
- 171.123. Mandatory filing of certificates of readiness.
- 171.124. Second action.

COSTS

- 171.131. Arbitration costs.
- 171.132. Payment of fees.
- 171.133. Copy fees.
- 171.134. Witness fees and mileage allowance.
- 171.135. Fees of officers and deponents.

MISCELLANEOUS

- 171.141. Direct communications prohibited.
- 171.142. Authority of attorney.
- 171.143. Notice to Attorney General: constitutionality of statute.
- 171.144. Attorney discipline.

FORMS

- 171.151. Form for caption.
- 171.152. Form for notice complaint.
- 171.153. Form for notice of appearance.
- 171.154. Form for request for conciliation conference.
- 171.155. Form for election of jurisdiction.

Authority

The provisions of this Chapter 171 issued under section 307(a) of the Health Care Services Malpractice Act (40 P. S. § 1301.307(a)) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 171 adopted July 9, 1976, 6 Pa.B. 1625, readopted February 8, 1980, effective February 12, 1980, 10 Pa.B. 690, unless otherwise noted.

Notes of Decisions

Appeals from orders of the Administrator for Arbitration Panels for Health Care are to be taken to the Commonwealth Court. *Knight v. Annon*, 391 A.2d 1101 (Pa. Cmwlth. 1978).

The provisions of 37 Pa. Code § 171.1 et seq. contain no authority for recalling an arbitration panel to determine whether damages for delay should be awarded pursuant to Pa. R.C.P. 238. *Harmer v. Horsham Hospital, Inc., aff'd*, 431 A.2d 1187 (Pa. Cmwlth. 1981).

GENERAL PROVISIONS**§ 171.1. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act—The Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006).

Administrator—Office of the Administrator for Arbitration Panels for Health Care in Harrisburg, Pennsylvania.

Arbitration panel—Arbitration Panels for Health Care.

Complaint—Does not include notice complaint.

Filed—Received by the Administrator at his office in Harrisburg, Pennsylvania.

Legal papers—Includes all papers filed with the Administrator except letters.

Mail—First class United States mail with adequate postage affixed, unless otherwise specified in the act or this chapter.

Motions—Includes petitions and, where applicable, preliminary objections.

§ 171.2. Rules of construction of this chapter.

All references to singular shall include plural, and the plural the singular. All references to masculine shall include feminine and neuter.

§ 171.3. Practice before the arbitration panels.

(a) Only attorneys currently admitted to practice before the Bar of the Supreme Court of Pennsylvania may practice before the arbitration panels unless they are associated in the action with an attorney so admitted.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.22 and 31.23 (relating to appearance by attorney and other representation prohibited at hearings).

§ 171.4. Filing papers.

(a) Unless otherwise directed, all papers shall be sent to:

Office of Administrator
Arbitration Panels for Health Care
#3 Riverside Office Center, Suite K
2101 North Front Street
Harrisburg, Pennsylvania 17110

(b) Subsection (a) supersedes 1 Pa. Code § 31.5 (relating to communications and filings generally).

§ 171.5. Computation of time.

(a) Except as otherwise provided by law, in computing any period of time prescribed or allowed by the act or by this chapter, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor a holiday. A part-day holiday shall be considered as other days and not as a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

§ 171.6. Jurisdiction of arbitration panels.

(a) The arbitration panels shall have jurisdiction to hear and decide any claim brought against a health care provider by a patient or his representative for loss or damages resulting from the furnishing of medical services which were or which should have been provided. The arbitration panels shall also have jurisdiction to hear and decide any claim asserted against a nonhealth care provider who is made a party defendant with a health care provider.

(b) The arbitration panels shall have jurisdiction over any claim:

(1) Commenced before the arbitration panels by a plaintiff, subject to the consent of all parties under § 171.7 (relating to election of jurisdiction).

(2) Referred to the arbitration panels by a court of common pleas or pursuant to 42 Pa.C.S. § 7362, following which the procedures established by the act and this chapter shall control the proceedings before the arbitration panels.

Source

The provisions of this § 171.6 adopted January 23, 1981, effective January 24, 1981, 11 Pa.B. 407.

§ 171.7. Election of jurisdiction.

(a) The commencement of a claim with the Administrator after January 31, 1981, shall constitute a consent of the plaintiff to the jurisdiction of the arbitration panels for proceedings under the act and this chapter. Thereafter, each defendant and additional defendant shall have the right to file an Election of Jurisdiction form requesting transfer of the claim to a court of common pleas with venue. Failure to file the Election of Jurisdiction form requesting transfer within 40 days after service of the initial process upon the defendant or additional defendant shall constitute consent to the jurisdiction of the arbitration panels for proceedings under the act and this chapter. The Election of Jurisdiction shall be made on the form set forth in § 171.155 (relating to form for Election of Jurisdiction). Also, the parties may consent to jurisdiction by written stipulation filed with the Administrator. No action will be taken by the Administrator on any praecipe, motion, preliminary objection or stipulation filed in a claim until all parties to the claim consent to the jurisdiction of the arbitration panels in one of the manners in this subsection.

(b) Any opposition to a request for transfer of a defendant or additional defendant shall be filed within 10 days after service of the Election of Jurisdiction form requesting the transfer. The opposition may question the venue of the court to which transfer is requested and the timeliness of the request to transfer and may raise any other relevant opposition. In addition, within the 10 days after service of the Election of Jurisdiction form requesting transfer, the plaintiff may file with the Administrator a request to transfer the claim to a court of common pleas other than that requested by a defendant or additional defendant, specifying the basis for venue in the county selected by the plaintiff.

(c) The Administrator will transfer the claim to the appropriate court of common pleas with venue following the timely filing of an Election of Jurisdiction form requesting transfer of a claim to a court of common pleas and the passage of time for objections. In determining which of several courts with venue should receive the claim, preference shall be given to the request of the plaintiff, if any.

Source

The provisions of this § 171.7 adopted January 23, 1981, effective January 24, 1981, 11 Pa.B. 407.

Cross References

This section cited in 37 Pa. Code § 171.6 (relating to jurisdiction of arbitration panels).

§ 171.8. Binding arbitration.

At any time, the parties may stipulate in writing to waive their rights under the act to appeal the decision of the arbitration panels. No such waiver shall apply if it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

Source

The provisions of this § 171.8 adopted January 23, 1981, effective January 24, 1981, 11 Pa.B. 407.

ADMINISTRATION**§ 171.11. Applicability of laws and rules.**

(a) Except as provided in the act or in this chapter, Pa.R.C.P. shall govern all proceedings.

(b) Neither local rules of civil procedure nor 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) shall be applicable to proceedings under the act.

(c) Subsection (b) supersedes 1 Pa. Code § 31.1 (relating to scope of part).

§ 171.12. Form of papers filed.

(a) The title of each legal paper, excluding the notice complaint and the complaint, shall designate the name of the filing party and whether the party is a plaintiff, defendant, or additional defendant. All correspondence mailed to the Administrator shall contain the name and docket number of the claim which is the subject of the correspondence and state below the signature the name of the party on whose behalf the correspondence is sent and whether such party is a plaintiff, defendant, or additional defendant.

(b) Any paper filed with the Administrator shall be the original and shall be bound at the top of the page. Only a single original of the paper need be filed. The paper shall be in the size for papers filed in the Pennsylvania Supreme Court.

(c) Unless otherwise provided in this chapter, an exact copy of every paper filed with the Administrator shall be sent to every other party. Neither conciliation conference memoranda nor arbitration panel selection lists returned to the Administrator need be served upon the other parties.

(d) Every paper filed with the Administrator by an attorney shall contain the attorney's signature and address.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.2 (relating to form).

§ 171.13. Docket.

(a) The Administrator will maintain a docket of all claims, and each claim as initiated will be assigned an appropriate designation. The docket will be available

for inspection and copying by the public during the office hours of the Administrator insofar as consistent with the proper discharge of the duties of the Administrator.

(b) Subsection (a) supersedes 1 Pa. Code § 33.51 (relating to docket).

§ 171.14. Conference and hearing locations.

Conciliation conferences, prehearing conferences and arbitration panel hearings will be conducted in the county where the cause of action arose, but may, within the discretion of the Administrator, be held in any other place. The time and place for such conferences and hearings will be set by the Administrator or the arbitration panel chairperson, where appropriate, in accordance with the provisions of this chapter.

PLEADINGS AND LEGAL PAPERS

§ 171.21. Pleadings allowed.

Those pleadings allowed by Pa.R.C.P. No. 1017 shall be allowed in an action brought before the arbitration panel.

§ 171.22. Captions.

Every legal paper shall contain a caption as set forth in § 171.151 (relating to form for caption) indicating the county in which the alleged cause of action arose. The caption of a notice complaint or a complaint shall set forth the names of all the parties; but in other legal papers, it is sufficient to state the name of the first party on each side in the complaint with an appropriate indication of other parties.

§ 171.23. Commencement of proceedings.

(a) An action may be commenced by the filing of the filing fee required by § 171.131 (relating to arbitration costs) and a notice complaint or a complaint with the Administrator. The filing shall be made in person or by certified mail, return receipt requested. The notice complaint shall be in the form set forth in § 171.152 (relating to form for notice complaint).

(b) Each notice complaint and complaint filed with the Administrator shall have attached a certification that, on or before the day of filing, a copy of such notice complaint or complaint was served in accordance with § 171.25 (relating to service) on all parties. The certification shall also contain the date of personal delivery or mailing to the Administrator. The certification shall clearly specify the address where service was sent and the form and date of mailing or personal service.

(c) When an action is transferred to the arbitration panels from another court or tribunal, the plaintiff shall be responsible for paying to the Administrator all necessary fees for the filing of a claim before the arbitration panels.

Cross References

This section cited in 37 Pa. Code § 171.24 (relating to tolling of the statute of limitations).

§ 171.24. Tolling of the statute of limitations.

When an action is commenced before the arbitration panels, the statute of limitations shall be tolled as of the date the notice complaint or complaint is delivered to the Administrator in person or deposited in the mail in accordance with § 171.23 (relating to commencement of proceedings).

§ 171.25. Service.

(a) Except for conciliation conference memoranda and returned arbitration panel selection lists, exact copies of all papers filed with the Administrator shall be served on or before the date of filing by the filing party upon all counsel of record and directly upon any party who has no counsel of record. The paper filed with the Administrator shall contain a certification of such service.

(b) Unless otherwise directed, service of notice complaints, complaints, amended complaints, rules to file a complaint, writs to join additional defendants, and notices of arbitration hearings shall be made personally or by certified mail, return receipt requested. Unless otherwise directed, service of all other papers shall be made personally or by first class mail. Proof of the mailing of documents shall be prima facie evidence of service.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 33.32—33.35 (relating to service by a participant; effect of service upon an attorney; date of service; and proof of service).

Cross References

This section cited in 37 Pa. Code § 171.23 (relating to commencement of proceedings).

§ 171.26. Notice of appearance.

(a) When a party proceeds without counsel, he shall file with the Administrator a written notice containing his telephone number and an address at which any notice or other written communication may be served upon him. This subsection supersedes 1 Pa. Code § 31.24(a) (relating to notice of appearance).

(b) When an attorney appears in a representative capacity for any party, he shall file with the Administrator a written notice of such appearance which shall state his name, firm's name, address, telephone number, current attorney's certificate number, and the name and address of the party on whose behalf he appears. This subsection supersedes 1 Pa. Code § 31.24(b) (relating to notice of appearance).

(c) An attorney's notice of appearance shall be in the form set forth in § 171.153 (relating to form for notice of appearance).

(d) The attorney or party who has entered an appearance shall promptly notify the Administrator of any change or error in the information provided in the notice of appearance.

(e) The Administrator is under no duty to serve papers upon a party or attorney who fails to file a notice of appearance.

(f) If an attorney seeks to withdraw his appearance for a party when no other attorney is representing the party, the withdrawing attorney shall be granted leave to withdraw only upon petition showing good cause and prior notice to the party represented by the attorney. If the party is represented by co-counsel or if another attorney is entering his appearance concurrently with the request to withdraw, an attorney may withdraw his appearance by praecipe alone.

Cross References

This section cited in 37 Pa. Code § 171.27 (relating to service on attorneys).

§ 171.27. Service on attorneys.

(a) Where an attorney has filed an appearance under § 171.26 (relating to notice of appearance), any subsequent notice or other written communication required to be served upon or furnished to the client shall be served upon or furnished to the attorney, or one of such attorneys if the client is represented by more than one attorney, at the stated address of the attorney in the same manner as prescribed for his client, notwithstanding the fact that such communication may in addition be furnished directly to the client.

(b) Subsection (a) supersedes 1 Pa. Code § 31.26 (relating to service on attorneys).

§ 171.28. Joinder of additional parties.

Subject to the limitations of Pa.R.C.P. at any time up to the selection of any panel members, a party may join any additional party who may be necessary and proper to a just determination of the claim.

DISCOVERY

§ 171.31. Discovery permitted.

Except as provided by this chapter or directed by the Administrator, parties to the arbitration may take depositions and obtain discovery regarding the subject matter of the arbitration and may use and exercise the same rights, remedies, and procedures and be subject to the same duties, liabilities and obligations in the arbitration procedure as if the subject matter of the arbitration were pending in a civil action before a court of common pleas of the Commonwealth.

§ 171.32. [Reserved].**§ 171.33. Discovery limitations.**

(a) The time limits on commencing discovery in all claims shall be the same as those set forth in Pa.R.C.P.

(b) Unless otherwise directed, all discovery shall be completed within 30 days after the Administrator confirms that the claim is ready for arbitration pursuant to § 171.71(d) (relating to certificate of readiness). A petition for extension of time for discovery shall clearly demonstrate to the Administrator the petitioner's diligence in the pursuit of discovery in the time permitted, the need for further discovery, and specific plans and schedule for a prompt conclusion to discovery. The time limitation placed on discovery does not relieve an expert witness or a party of a responsibility to file supplemental responses. The parties may file the supplemental responses after the close of discovery without seeking leave of the Administrator.

(c) Absent agreement of the parties or leave of the Administrator, depositions shall be held in the county in which the cause of action arose.

§ 171.34. Filing of discovery.

Unless otherwise provided in this chapter, all discovery which Pa.R.C.P. requires to be filed in a court shall be filed with the Administrator.

§ 171.35. Subpoenas.

(a) Upon payment of the appropriate fee by a party, the Administrator will issue subpoenas to require the attendance of witnesses and the production of documents and tangible things at a deposition or an arbitration hearing.

(b) Any witness who refuses to obey a subpoena issued by the Administrator or an arbitration panel; who refuses to be sworn or affirmed or to testify; or who is guilty of any contempt after summons to appear may be punished for contempt of court. The contempt of court proceedings shall be held in the court of common pleas in the county in which the cause of action arose.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

PREARBITRATION HEARING MOTIONS**§ 171.41. Rulings on prehearing procedures and discovery.**

(a) Prior to the appointment of a chairperson of an arbitration panel, the Administrator will determine all questions involving prehearing procedures, discovery, and motions. After a chairperson has been designated by the Administrator, the chairperson shall assume such responsibilities. Prior to the first meeting

of the arbitration panel, all petitions for approval of compromise, settlement or discontinuance required or authorized by law or rule of court will be determined by the Administrator.

(b) Unless otherwise directed by the act, this chapter or the Administrator, the parties may file any motion permitted under Pa.R.C.P.

(c) Unless the Administrator determines that depositions or oral argument are required, the Administrator will automatically decide motions and preliminary objections after answers thereto have been filed or the time for filing an answer has passed.

§ 171.42. Presenting motions.

All motions made prior to the commencement of the arbitration hearing shall be in writing, unless otherwise directed, and shall be filed with the Administrator.

§ 171.43. Oral argument.

(a) Any party—by filing a formal Request for Oral Argument—or the Administrator may request oral argument on any motion. The oral argument shall be held in Harrisburg, unless otherwise directed. The Administrator may direct that oral argument be made by a telephone conference call.

(b) The Administrator will have the power to control the form, manner and time of each oral argument.

(c) A party's failure to file a specific Request for Oral Argument with his motion or answer to the motion will be deemed an election to proceed without oral argument. The Administrator may deny oral argument if he determines it will serve no useful purpose.

(d) This section may not affect the parties' need to file memoranda of law or answers within the time limits provided by this chapter.

§ 171.44. Supporting legal authority.

(a) A party filing a preliminary objection, motion, answer to preliminary objection, or answer to a motion shall serve and file therewith a memorandum of law to be relied upon. The absence of the memorandum may be deemed by the Administrator as an admission that such party's argument is not meritorious and may provide cause for its denial.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.9, 35.17 and 35.35 (relating to formal complaints generally; petitions generally; and answers to complaints and petitions).

Notes of Decisions

Interlocutory

The dismissal of an administrator of several counts of a complaint is an action for which an interlocutory appeal is permissible. *Gilbert v. Cogan*, 8 Pa. D. & C.3d 322 (1978).

§ 171.45. Time for filing opposition.

(a) A party's answer to preliminary objections and the memorandum of law in support of the answer shall be filed within 20 days after service of the preliminary objections upon the party. A party's answer to all other motions and the memorandum of law in support of the answer shall be filed within ten days after service of the motion upon the party.

(b) A party's failure to timely file formal opposition may be deemed an admission that there is no objection to the preliminary objections or motion.

§ 171.46. Formal motions.

Letters shall not be used as substitutes for pleadings, motions, briefs, praecipes, answers to motions or other legal papers.

§ 171.47. Withdrawal of motions.

(a) Where a party wishes to withdraw his preliminary objections or motion, he shall promptly file a praecipe to withdraw the preliminary objections or motion from consideration.

(b) Subsection (a) supersedes 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

MOTIONS FOLLOWING THE APPOINTMENT OF A CHAIRPERSON**§ 171.51. Scope and contents of motions.**

After a hearing has commenced in a proceeding, a request may be made by motion for any procedural or interlocutory ruling or relief desired and permitted by Pa.R.C.P. except as may be otherwise expressly provided in this chapter. Motions shall set forth the ruling or relief sought, and state the grounds therefor and the legal authority relied upon.

§ 171.52. Presentation of motions.

Motions may be made in writing at any time. Motions made during hearings may be stated orally upon the record or the arbitration panel chairperson may require that such oral motions be reduced to writing and filed separately. Any objections to the motions shall be made promptly.

§ 171.53. Action on motions.

The arbitration panel chairperson is authorized to rule upon any motion not formally acted upon by the Administrator prior to the commencement of the hearing, where immediate ruling is essential in order to proceed with the hearing and upon any motion filed or made after his appointment as panel chairperson.

CONCILIATION PROCEDURE**§ 171.61. Conciliation conference.**

(a) At any time after the filing of the complaint, any party may file a request for a conciliation conference in the form in § 171.154 (relating to form for request for conciliation conference). In addition, at any time, the Administrator may determine that a conciliation conference would be beneficial to the progress of the claim and direct the parties or their counsel to attend.

(b) At a time and place designated by the Administrator with due consideration of those required to attend, the counsel to the parties and those parties for whom there is no counsel of record shall meet with the Administrator or his deputy to discuss possible settlement, compromise, or discontinuance of the claim. The Administrator may require any party or his representative to attend in person.

(c) Unless otherwise directed, at least 14 days prior to the conciliation conference, each party or his counsel shall submit to the Administrator a conciliation conference memorandum stating his view of the case and the terms and conditions of a possible settlement. While such memoranda will be held in confidence by the Administrator and not be given to the members of the arbitration panel, other parties, or members of the public, the parties are encouraged to exchange their memoranda prior to the conciliation conference.

(d) Prior to the conciliation conference, counsel shall discuss the issues of liability, damages and settlement with his client. Counsel shall come to the conciliation conference prepared and authorized to settle the action at an amount approved by his client.

(e) Unless waived by the Administrator, at least one conciliation conference shall be held prior to the filing of a certificate of readiness.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

§ 171.62. Contents of conciliation conference memorandum.

The conciliation conference memorandum shall include or have attached thereto, where appropriate to the respective parties, the following:

(1) A summary of all items of damages which the plaintiff intends to prove, including medical and hospital expenses and loss of earnings. Claims for loss of earnings shall set forth the names of employers, dates of absences and rates of pay. If plaintiff is self-employed, information which forms the basis of the claim for the loss of earnings shall be supplied.

(2) Medical reports of any doctor who treated, examined or was consulted in connection with the injury forming the basis of the claim.

(3) All hospital records pertaining to the injury forming the basis of the claim. If reproduction of all records would be burdensome, the party shall instead produce a copy of the admission and discharge records and any other relevant records.

(4) The written reports of any expert whom the party expects to call at the arbitration hearing. The reports shall include the findings and conclusions of the expert.

(5) A statement fully disclosing all legal theories and contentions which the parties intend to pursue at the arbitration hearing.

(6) A statement indicating whether the parties have conferred previously concerning possible settlement or compromise of the claim and, if so, a statement of the lowest demand of the plaintiff and the highest offer of the defendant.

(7) The party's evaluation of the case and the dollar amount for which the party would settle the case.

SELECTION OF ARBITRATION PANEL

§ 171.71. Certificate of readiness.

(a) A party who believes that a claim is ready for an arbitration hearing may submit to the Administrator a certificate of readiness. The certificate of readiness may be submitted by any party after the expiration of 60 days from the filing of the initial complaint.

(b) The certificate of readiness shall be properly captioned and contain a certification stating:

(1) That the claim is ready for assignment to an arbitration panel.

(2) That the filing party's discovery in the case will be completed within 30 days after the date the Administrator confirms that the claim is ready for arbitration pursuant to subsection (d).

(3) That the filing party has received the opinion of an expert supporting his position or specific reasons why he will not need expert testimony to prevail at the arbitration hearing.

(4) That a conciliation conference has been held or waived by the Administrator.

(5) That serious settlement negotiations have been conducted among the parties, but it does not appear further negotiations will be productive.

(6) Whether the claim involves a hospital administrator, podiatrist or osteopathic physician or surgeon.

(7) That on or before the day of filing, a copy of the certificate of readiness was mailed to or served personally upon all other parties.

(c) Any objection to a certificate of readiness must be properly captioned as such and filed within 14 days after the objecting party has received the certificate

of readiness. The objection to a certificate of readiness shall set forth a detailed and specific explanation of why the claim is not ready for assignment to an arbitration panel.

(d) If, upon review of the record, the Administrator confirms that the claim is ready for arbitration, he will begin the selection of an arbitration panel and will notify the parties in writing of his decision.

(e) Solely for purposes of section 403 of the act (40 P. S. § 1301.403), a certificate of readiness will be considered to be filed when the Administrator receives it and one of the following conditions is satisfied:

(1) The certificate of readiness has been signed by all the parties to a claim.

(2) The certificate of readiness has been signed by one party and a stipulation has been signed by all other parties waiving any objection to the certificate.

(3) No timely objection to a certificate of readiness has been submitted to the Administrator.

(4) If any written objection was submitted, the Administrator has dismissed the objection and confirmed that the claim is ready for arbitration.

Cross References

This section cited in 37 Pa. Code § 171.33 (relating to discovery limitations); 37 Pa. Code § 171.73 (relating to panel selection procedure); and 37 Pa. Code § 171.77 (relating to transfer to a Court of Common Pleas).

§ 171.72. Selection of panelists by stipulation.

(a) The parties may not be restricted to the arbitration panel members selected by the Administrator. Prior to the selection of panel members by the Administrator or at any time there is a vacancy on an arbitration panel, the parties may file with the Administrator a stipulation requesting the Administrator to fill any vacancy with a named person to serve within the appropriate category.

(b) The panel member candidates will be invited to serve by the Administrator.

Cross References

This section cited in 37 Pa. Code § 171.74 (relating to filling vacancies).

§ 171.73. Panel selection procedure.

(a) After a certificate of readiness is filed in accordance with § 171.71(e) (relating to certificate of readiness), the Administrator will select a health care provider, an attorney, and a layperson as arbitration panel members for positions not already filled by stipulation of the parties. The Administrator will send to each party a list of the panel members with a biographical statement and a sample copy of the oath to be signed by each.

(b) Each party may challenge for cause any panel members selected by the Administrator. The Administrator's determination of a challenge for cause shall be conclusive.

(c) Each party may exercise a peremptory challenge against one member of the panel selected by the Administrator. If a party makes one or more challenges for cause, he may indicate in order of preference the panel member against whom he would want to exercise his peremptory challenge after any challenges for cause have been decided. Any peremptory challenge not timely made to the panel members named on the list sent by the Administrator shall be deemed waived as to those members.

(d) Any challenges for cause or peremptory challenges must be received by the Administrator within 14 days from the mailing of the list first naming the challenged panel members. If a party learns of grounds for disqualification of an arbitration panel member, he shall promptly notify the Administrator and all other parties. Any challenges for cause filed more than 14 days after the mailing of the list of panel members will be considered only upon a showing of good cause for the delay in making the challenge and shall be based upon information received after the period for making a timely challenge.

(e) In order to achieve a fair distribution of peremptory challenges, the Administrator may, where there is more than one plaintiff or more than one defendant or more than one additional defendant, consider any one or more of such groups as a single party.

Source

The provisions of this § 171.73 amended June 19, 1981, effective July 12, 1980, 11 Pa.B. 2134. Immediately preceding text appears at serial page (49307).

Cross References

This section cited in 37 Pa. Code § 171.74 (relating to filling vacancies); and 37 Pa. Code § 171.77 (relating to transfer to a Court of Common Pleas).

§ 171.74. Filling vacancies.

(a) If any arbitration panel member should resign, die, withdraw, refuse, be disqualified, or be unable to perform the duties of service, the Administrator will, on proof satisfactory to him, declare the office vacant. Vacancies will be filled in accordance with subsections (b) and (c).

(b) If the office is declared vacant prior to the commencement of the hearing, the Administrator will appoint a substitute member from the same category in which the vacancy exists and the procedure in § 171.73 (relating to panel selection procedure) will be followed; however, only a party who has not previously exercised his peremptory challenge may peremptorily challenge an Administrator's appointee. The parties may stipulate to a substitute member under § 171.72 (relating to selection of panelists by stipulation).

(c) If the office is declared vacant after commencement of the hearing, the matter shall be reheard before a new arbitration panel selected in accordance with § 171.73 unless all the parties, with the approval of the administrator agree otherwise.

§ 171.75. Panel membership requirements.

(a) No arbitration panel member may be related by blood or marriage to a fellow panel member or to any party or attorney of record in the claim.

(b) Panel members may reside in any county in this Commonwealth, not merely the county in which the arbitration hearing will be conducted.

(c) The attorney and the health care provider members of each arbitration panel shall be or have been practicing members of their respective professions. The attorney member shall have at least 3 years of trial experience and be in good standing with the Pennsylvania Supreme Court, and the health care provider member shall have a current, valid license or be a hospital administrator.

(d) No panel member may be a party in a current action based on professional malpractice.

(e) The parties may stipulate to waive any of the requirements in this section and to promptly file the stipulation with the Administrator.

§ 171.76. Invitation and disclosure of interests of panel members.

(a) After determining any challenges for cause and noting peremptory challenges, the Administrator will invite the selected members to serve on the arbitration panel. Prior to the arbitration hearing, each invited member shall sign and file with the Administrator an agreement to serve and an oath of office.

(b) A person invited to serve as an arbitration panel member may decline to serve or shall disclose to the Administrator under oath circumstances which might affect his impartiality.

(c) The Administrator will promptly communicate such disclosure to the parties. Written challenges for cause based on the disclosure must be received by the Administrator within 14 days after the date on the Administrator's notice of disclosure or they shall be deemed waived. Thereafter, the Administrator will determine in his discretion whether the member should be disqualified and will inform the parties of his decision, which will be conclusive.

(d) The fact that a panel member is insured by the same company insuring the professional liability of a defendant or additional defendant in the subject action shall not be grounds for a valid challenge for cause.

(e) If an arbitration panel member knowingly fails to make the required disclosure contained in subsection (b), the Administrator will remove him from the arbitration panel and from the list of future arbitration panel candidates and will report the circumstances of the violation to the appropriate public prosecutor or licensure board or to the Disciplinary Board of the Supreme Court of Pennsylvania.

§ 171.77. Transfer to a Court of Common Pleas.

(a) If an arbitration panel is not selected as defined in subsection (b) by the Administrator within 90 days after the filing of a certificate of readiness as defined in § 171.71 (relating to certificate of readiness), the Administrator upon petition of any party will forthwith transfer the claim to the Court of Common Pleas having venue over the claim as defined in Pa.C.R.P. No. 1807.

(b) For purposes of this section, an arbitration panel shall be considered selected when the Administrator has chosen a health care provider, attorney, and layperson to sit on that arbitration panel. After the selection is made, the Administrator will send the list of panel members to the parties under § 171.73 (relating to panel selection procedure).

PREHEARING CONFERENCE**§ 171.81. Prehearing conference.**

(a) At least 30 days before the date set for the arbitration panel hearing, counsel for the parties and the parties for whom there is no counsel of record shall meet with the panel chairperson in a prehearing conference. The parties to the prehearing conference shall consider:

- (1) Simplification of the issues.
- (2) The exchange of exhibits and other documentary evidence proposed to be offered in evidence.
- (3) The obtaining of admissions or stipulations regarding facts and the authenticity of documents which might properly shorten the hearing.
- (4) Limitation of the number of expert witnesses to be called and scheduling of appearances of expert witnesses.
- (5) The estimated length of the hearing.
- (6) The date for the first hearing and the scheduling of successive hearings.
- (7) Other matters that may aid in the expeditious consideration and disposition of the claim.

(b) All parties shall come to the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto. The preparation should include, among other things, advance study of all relevant material and advance informal communication between the parties, including requests for additional data and information, to the extent it appears feasible and desirable.

(c) The arbitration panel chairperson shall make an order reciting the agreements made at the prehearing conference by counsel or the parties as to any of the matters considered. Copies of the order shall be sent to the Administrator and counsel or the parties for whom there is no counsel of record and shall control the subsequent consideration of the action unless written objection specifying an error in the recitation of such agreements is received by the panel chairperson

from counsel or a party within seven days after receipt of such order or unless modified at the arbitration panel hearing with the approval of the parties and the chairperson.

(d) At the prehearing conference, the parties shall supply to opposing counsel and the chairperson a copy of all exhibits to be offered at the hearing.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).

ARBITRATION HEARINGS

§ 171.91. Hearing location.

Arbitration panel hearings shall be conducted in the county where the cause of action arose, but may, within the discretion of the Administrator, be held in any other place. The time and place for such initial hearing will be set by the Administrator after consultation with the chairperson of the panel. The Administrator or panel chairperson will send by certified mail, return receipt requested, notice of the hearing to each party or counsel of record and to each arbitration panel member at least 14 days in advance unless all parties waive the notice.

§ 171.92. Requests for continuance or cancellation of an arbitration hearing.

(a) A request for a continuance shall be made in writing and filed with the Administrator and a copy sent to the panel chairperson. Following the arbitration hearing, the chairperson shall notify the Administrator of time, costs and expenses incurred by a continuance granted and the Administrator may tax the party who requested the continuance for costs incurred by the Administrator as a result of the continuance which costs would not have been incurred without the continuance.

(b) When an action has been settled or discontinued, the parties shall promptly notify the Administrator and the panel chairperson. If notification is made within 14 days of the scheduled arbitration hearing, each party shall bear an equal share of any fees the Administrator is required to pay the panel members, excluding fees paid to the panel chairperson for preparation for the arbitration hearing.

§ 171.93. Ground for continuance.

The panel chairperson shall rule on a request for a continuance and shall notify the Administrator of his decision and the reason for any continuance granted. The grounds for continuance set forth in Pa.R.C.P. No. 216 shall be applicable to requests for continuance of an arbitration hearing.

§ 171.94. Interpreter.

The Administrator will arrange for the services of an interpreter at the arbitration hearing upon the request of any party made at least 30 days before the arbitration hearing. The cost will be paid by the Administrator.

§ 171.95. Trial briefs.

(a) At least 7 days prior to the beginning of the arbitration hearing, each party, by filing the original with the Administrator and a copy with the panel chairperson, shall submit to the panel a trial brief.

(b) Subsection (a) supersedes 1 Pa. Code § 35.221 (relating to briefs and oral agreement in absence of proposed report).

§ 171.96. Arbitration hearing procedure.

(a) Arbitration hearings shall be opened by the introduction of the oaths of the arbitration panel members and by recording the place, time and date of the hearing and the presence of the members, parties, and counsel.

(b) The plaintiff shall first present his claim and proofs and his witnesses, who shall submit to questions or other examination by the other parties and by the arbitration panel chairperson. The defendant shall then present his defense and proofs and his witnesses, who shall submit to questions or other examination by the other parties and by the arbitration panel chairperson. The plaintiff shall have the right to present evidence in rebuttal and the defendant shall have the right to present evidence in surrebuttal. Panel members, other than the panel chairperson, may question a witness only by submitting questions in writing to the chairperson who shall propound them if he finds such questions to be proper. The decision of the chairperson on the legal propriety of these questions shall be conclusive.

(c) The arbitration panel may in its discretion vary this procedure; but, in all cases, it shall afford full and equal opportunity to all parties for the presentation of any material and relevant proofs.

(d) The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

(e) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.125, 35.126 and 35.137 (relating to order of procedure; presentation by the parties; and oral examination).

§ 171.97. Applicability of laws and rules.

(a) Except as provided in this chapter, the arbitration panel is bound by the common and statutory law of the Commonwealth, Pa.R.C.P. and the Pennsylvania rules of evidence.

(b) Subsection (a) supersedes 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

§ 171.98. Powers and duties of panel chairperson.

The chairperson of the arbitration panel shall supervise the decorum of the proceedings. The chairperson may make and enforce rules and orders:

- (1) Limiting the number of witnesses whose testimony is similar or cumulative.
- (2) Limiting the number of attorneys representing the same party or the same group of parties who may actively participate in the trial of the case or may examine or cross-examine witnesses.
- (3) Regulating the number and length of addresses to the arbitration panel.

§ 171.99. Absence of panel member at hearing.

If any panel member, after having received due notice of his appointment and the date, time and place of the arbitration hearing, fails to attend the hearing and undertake the duties of the appointment or give notice of his necessary absence to the Administrator more than 7 days in advance of the scheduled hearing, unless as a result of illness or other unavoidable cause, the Administrator may require the panel member to pay a sum equal to the costs incurred by the Administrator as a result of his absence.

§ 171.100. Hearing in absence of a party.

- (a) The arbitration hearing may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance.
- (b) The arbitration panel may dismiss the action upon failure of the plaintiff to submit evidence and proof required for the making of an award.
- (c) An award shall not be made solely on the default of a defendant. The arbitration panel members shall require the plaintiff to submit the evidence and proof as they may require for the making of an award.

§ 171.101. Hearing testimony under oath or affirmation.

All testimony taken before an arbitration panel shall be taken under oath or affirmation.

§ 171.102. Admission of exhibits and deposition into evidence.

- (a) No exhibit or portion of a deposition shall be considered by an arbitration panel in its deliberations unless it is admitted into evidence by the arbitration panel chairperson.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.151 (relating to status of deposition as part of record).

§ 171.103. Presentation and effect of stipulations.

- (a) Independently of the orders or rulings issued as a result of the pre-hearing conference, the parties may stipulate as to any relevant matters of fact or the

authenticity of any relevant documents. The stipulations may be received in evidence at a hearing and, when so received, shall be binding on the parties with respect to the stipulated matters.

(b) Subsection (a) supersedes 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations).

§ 171.104. Limitation on matters considered.

(a) Arbitration panel members shall not consider or bring into the deliberations any matters not admitted into evidence, but may consider those facts of which a court could properly take judicial notice and the chairperson shall so charge the panel.

(b) Subsection (a) supersedes 1 Pa. Code § 35.173 (relating to official notice of facts).

§ 171.105. Recording of proceedings.

(a) Unless directed by the Administrator, no official recording or transcript shall be made of the arbitration hearing. This shall not prevent a party from having a record or a transcript of the hearing made at his expense. If a party has a recording or a transcript made, he shall upon request furnish a copy to any other party upon payment of a reasonable charge.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.131 and 35.133 (relating to recording of proceedings; and copies of transcripts).

Source

The provisions of this § 171.105 amended June 6, 1980, effective July 1, 1980, 10 Pa.B. 2332. Immediately preceding text appears at serial pages (49314) to (49315).

§ 171.106. Points for charge.

(a) Counsel shall submit copies of requested points for charge and supporting brief to the arbitration panel chairperson and to the opposing attorneys before any closing addresses to the panel are begun or, if directed by the chairperson, at an earlier time.

(b) The arbitration panel chairperson shall rule on suggested points for charge and shall charge the members of the panel at the hearing in the presence of counsel prior to the beginning of deliberations by the panel. Counsel may object to the charge only before the panel retires to deliberate.

(c) If the arbitration panel chairperson determines during the deliberations of the panel that there is need for additional points for charge or correction of prior points for charge, he shall notify counsel for the parties and shall give the additional or corrected points for charge to the members of the panel in the presence of counsel. Counsel may object to the additional or corrected points for charge only before the panel resumes its deliberations.

Source

The provisions of this § 171.106 amended June 19, 1981, effective July 12, 1980, 11 Pa.B. 2134. Immediately preceding text appears at serial page (50497).

Notes of Decisions*Delayed Damages*

Damages for delay must be requested as a point for charge under 37 Pa. Code § 171.106; absent such request, such damages are presumed to be included in the arbitrator's award. *Harmer v. Horsham Hospital, Inc.*, 431 A.2d 1187 (Pa. Cmwlth. 1981).

§ 171.107. Decision of panel by majority vote.

All decisions of the arbitration panel shall be by majority vote of the members, except decisions on questions of law and admissibility of evidence which shall be decided by the chairperson of the arbitration panel.

§ 171.108. Panel deliberations.

(a) Upon conclusion of the hearing, the arbitration panel members shall remain together and deliberate in private until a decision has been reached in the action and damages, if any, have been awarded.

(b) Upon reaching a decision as to liability and award of damages, if any, the panel shall promptly sign and transmit a statement of their determination, any findings of fact, and any answers to special written interrogatories to the Administrator and copies thereof to the parties.

(c) The Administrator will record on the docket the decision as to liability and award of damages and notify the parties of the docketing.

(d) A party may praecipe for entry of a judgment upon the arbitrators' award if no timely Notice of Appeal has been filed.

APPEALS FROM DECISIONS OF THE ARBITRATION PANELS**§ 171.111. Admissibility of record on appeal.**

(a) Where an appeal is taken, the decision and findings of fact of the arbitration panel shall be admissible as evidence before the court; however, any award of damages shall not be admissible as evidence.

(b) For the purpose of reporting the decision to the court where the appeal is taken, the decision which shall be admissible before the court of common pleas shall state as follows: "The Arbitration Panel for Health Care in this case found (for the plaintiff) (for the defendant(s)) (unanimously) (not unanimously)."

§ 171.112. Definition of record costs for appeal purposes.

(a) For the purpose of appeal under section 509 of the act (40 P. S. § 1301.509), record costs to be deposited by the appellant with the prothonotary of the court to which the appeal is taken shall be those fees received by the Administrator from the appellees pursuant to § 171.131 (relating to arbitration costs).

(b) A party taking an appeal from a decision rendered by an arbitration panel may make a written request for a certified statement of the record costs accrued in the case. A certified statement of the record costs will be furnished in writing by the Administrator within 7 days after receipt of the request.

§ 171.113. Limitation on panel member participation in appeals.

No arbitration panel member may participate as counsel or witness in a trial on appeal of a case heard by him.

SETTLEMENT AND DISCONTINUANCE

§ 171.121. Offers of settlement.

(a) Nothing contained in this chapter shall be construed as precluding any participant in a case from submitting at any time offers of settlement or proposals of adjustments to all parties or from requesting a conference with the Administrator or his deputy for such purpose. Unaccepted proposals of settlement or of adjustment shall be privileged and shall not be admissible in evidence against any counsel or person claiming such privilege.

(b) Subsection (a) supersedes 1 Pa. Code § 35.115 (relating to offers of settlement).

§ 171.122. Approval of settlements.

Approval of a compromise, settlement, or discontinuance involving fiduciaries, minors, or incompetent parties by the Administrator or the arbitration panel shall relieve the parties of obtaining approval by an appropriate court where approval is required by Pa.R.C.P. In those actions in which Pa.R.C.P. requires court appointment of a guardian or other fiduciary in order to effect a compromise, settlement, or discontinuance, such appointment shall be obtained from the local court of common pleas prior to seeking approval of the compromise, settlement or discontinuance from the Administrator or the arbitration panel.

§ 171.123. Mandatory filing of certificates of readiness.

(a) In all actions commenced prior to the effective date of this section, the parties shall file a certificate of readiness within 1 year after the effective date of this section. In all actions commenced on or after the effective date of this section, the parties shall file a certificate of readiness within 1 year after the commencement of the action.

(b) Prior to the expiration of the period limited in subsection (a), any party may move for extension of the period. The motion must set forth the grounds for the request and the length of extension required. The Administrator will grant the extension only upon finding good cause. The order of extension, if any, will set forth the new date for certifying readiness, which may be sooner than that requested but may not be later. This subsection supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

(c) If the documents are not filed within the time limits listed in subsections (a) and (b), the Administrator, with or without motion by any party, will require that good cause be shown why the case should not be dismissed for want of prosecution.

(d) For purposes of this section only:

(1) An action is commenced when the initial notice complaint or complaint is received by the Administrator.

(2) Actions will be processed under subsection (c) in order of their commencement.

Notes of Decisions

Constitutionality

The Pennsylvania Health Care Services Malpractice Act (40 P. S. § 1301.101 et seq.) should not be held unconstitutional on the basis that delays in processing claims under the Act's procedural provisions result in oppressive delay and infringe on the right to trial by jury because amendments to the Act and the provisions of 37 Pa. Code § 171.123(a) mandating filing of certificates of readiness assure litigants that trial will not be unreasonably delayed. *Mattos v. Thompson*, 421 A.2d 190 (Pa. 1980). (Dissenting Opinion.)

§ 171.124. Second action.

(a) After a discontinuance or voluntary nonsuit without prejudice has been entered, the plaintiff may commence a second action on the same cause of action upon payment of the cost required for filing a new action. The second action shall be heard by the same arbitration panel members selected in the first action if such panel members have already been selected and if the members of the original panel agree to serve.

(b) After the entry of a compulsory nonsuit, the plaintiff may not commence a second action upon the same cause of action except by the process of appeal to a court of common pleas in accordance with the act.

(c) The entry by the Administrator of a judgment of non pros, a judgment by default or a dismissal shall be treated as an order of the Administrator with any appeal being made to the Commonwealth Court.

COSTS

§ 171.131. Arbitration costs.

The following fees shall be paid to the Administrator in suits filed under the act:

(1) *Complaint*—\$35 plus \$10 for each extra defendant in cases involving more than one defendant.

(2) *Joinder of additional defendants by a defendant*—\$10 for each defendant joined.

(3) *Appeal*—When an appeal is taken from a decision of an arbitration panel or of the Administrator, the appellant shall pay \$25 to cover the responsibilities of the Administrator. This does not include any fees required by the court hearing the appeal.

(4) *Subpoena*—\$1 for each subpoena issued.

Cross References

This section cited in 37 Pa. Code § 171.112 (relating to definition of record costs for appeal purposes); and 37 Pa. Code § 171.23 (relating to commencement of proceedings).

§ 171.132. Payment of fees.

All fees shall be paid by check or money order made payable to the “Commonwealth of Pennsylvania.”

Source

The provisions of this § 171.132 amended February 8, 1980, effective February 12, 1980, 10 Pa.B. 977.

§ 171.133. Copy fees.

(a) Uncertified copies of documents filed with the Administrator will be furnished at a charge of 25¢ per page. Certified copies of documents filed with the Administrator will be furnished at a charge of \$1 per page.

(b) Fees for copies of documents shall be paid in advance. The Administrator on request will advise as to the cost of preparing a copy of a particular paper.

§ 171.134. Witness fees and mileage allowance.

(a) The fees and mileage allowance for a subpoenaed witness shall be the same as those allowed in an action in the court of common pleas in the county in which the witness testifies.

(b) Subsection (a) supersedes 1 Pa. Code § 35.139 (relating to fees of witnesses).

§ 171.135. Fees of officers and deponents.

(a) A deponent whose deposition is taken and the notarial officer taking the deposition shall be entitled to the same fees as are paid for like services in the court of common pleas in the county where the deposition is taken, which fees shall be paid by the party at whose request the deposition is taken.

(b) Subsection (a) supersedes 1 Pa. Code § 35.152 (relating to fees of officers and deponents).

MISCELLANEOUS**§ 171.141. Direct communications prohibited.**

(a) Other than at the arbitration hearing, the parties and their counsel may not directly communicate in any way with the arbitration panel members concerning the pending arbitration. Any oral or written communications from the parties to an arbitration panel member, other than at hearings, shall be directed to the Administrator for transmittal to the member. Any arbitration panel member who is aware of direct communication shall promptly notify the Administrator; however, the parties and their counsel are permitted to communicate with the panel chairperson as provided by this chapter.

(b) The name of any party, counsel, or arbitration panel member who violates subsection (a) will be reported to the Attorney General to determine if a violation of the law has been committed.

§ 171.142. Authority of attorney.

Any act, other than verification, required or authorized by the act, this chapter or Pa.R.C.P. to be done by a party may be done by his counsel.

§ 171.143. Notice to Attorney General; constitutionality of statute.

(a) In any proceeding before an arbitration panel in which any portion of the act is alleged to be unconstitutional and the Commonwealth is not a party, the party raising the question of constitutionality shall promptly give notice thereof by registered mail to the Attorney General together with a copy of the legal paper raising the issue and shall file proof of the giving of the notice with the Administrator. The Attorney General may intervene as a party or may be heard without the necessity of intervention. The arbitration panel in its discretion may stay the proceedings pending the giving of the notice and a reasonable opportunity to the Attorney General to respond thereto. If the circumstances of the case require, the arbitration panel may proceed without prior notice in which event notice shall be given as soon as possible or the arbitration panel may proceed without waiving action by the Attorney General in response to a notice.

(b) Subsection (a) supersedes 1 Pa. Code § 35.28(b) (relating to eligibility to intervene).

§ 171.144. Attorney discipline.

The Administrator may, upon hearing and good cause shown, preclude any attorney from practice before the arbitration panel, subject to the same right of appeal as from other orders of the Administrator.

FORMS

§ 171.151. Form for caption.

The following is the form for caption:

COMMONWEALTH OF
PENNSYLVANIA
ARBITRATION PANELS FOR
HEALTH CARE

Plaintiff(s) : No.
v. :
Defendant(s) : County:
v. :
Additional Defendant(s) : (Form of action)

(Title of legal paper with indication of the name and party designation of the filing party)

Cross References

This section cited in 37 Pa. Code § 171.22 (relating to captions).

§ 171.152. Form for notice complaint.

The following is the form for notice complaint

COMMONWEALTH OF
PENNSYLVANIA
ARBITRATION PANELS FOR
HEALTH CARE

vs. : No.
County:

NOTICE COMPLAINT

TO: _____
Name of Defendant(s)

You are hereby notified that the Plaintiff(s) _____
allege(s) that the Defendant(s) _____ (has)(have) committed a
tort or breach of contract causing injury or death to _____
resulting from the furnishing of medical services which were or which should
have been provided.

Wherefore, plaintiff(s) request(s) arbitration of this claim under the Health Care Services Malpractice Act, 40 P. S. § 1301.101 et seq., and judgment in (his)(her) (their) favor.

Date By: _____
Attorney for Plaintiffs

Cross References

This section cited in 37 Pa. Code § 171.23 (relating to commencement of proceedings).

§ 171.153. Form for notice of appearance.

The following is the form for notice of appearance:

COMMONWEALTH OF
PENNSYLVANIA
ARBITRATION PANELS FOR
HEALTH CARE

vs. :
: No.
: County:
: (Form of action)

NOTICE OF APPEARANCE FOR (Party's name and designation)

Please enter my appearance in the above-captioned matter on behalf of

(Name of Party)

(Party's address)

I am authorized to accept service on behalf of said party in this matter.

(Signature)

(Name)

(Firm's name)

(Address)

(Telephone number)

(Attorney certificate number)

Cross References

This section cited in 37 Pa. Code § 171.26 (relating to notice of appearance).

§ 171.154. Form for request for conciliation conference.

The following is the form for request for conciliation conference:

COMMONWEALTH OF PENNSYLVANIA ARBITRATION PANELS FOR HEALTH CARE

vs. : : No. : : County: : (Form of action)

REQUEST FOR CONCILIATION CONFERENCE BY (Party's name and designation)

Please schedule a conciliation conference in the above case. I suggest the following possible dates, times, city and conference or court room for the conference.

The following motions, interrogatories, depositions, or other matters remain outstanding and must be completed prior to an arbitration hearing:

Of the above listed matters, the following must and are scheduled to be completed before the conciliation conference is held:

I certify that copies of this Request were sent to all other parties or their counsel by personal service or regular mail.

Date (Signature of counsel, or party if none)

(Name of party represented) (Printed name)

Cross References

This section cited in 37 Pa. Code § 171.61 (relating to conciliation conference).

§ 171.155. Form for Election of Jurisdiction.

The following is the form for an Election of Jurisdiction:

COMMONWEALTH OF PENNSYLVANIA ARBITRATION PANELS FOR HEALTH CARE

: No. : County: : (Form of action)

ELECTION OF JURISDICTION

- I request that this claim be transferred pursuant to Pa. R.C.P. 213(f) to the Court of Common Pleas of _____ County. This county has venue based on the following facts:
- Retain this claim with the Arbitration Panels for Health Care for arbitration pursuant to the provisions of the Health Care Services Malpractice Act and the Rules of Practice and Procedure of the Arbitration Panels for Health Care.

I certify that on or before the day of submitting this form to the Administrator, a copy was mailed to or served personally upon all other parties or their counsel.

Date Signed

Signature

If signed by counsel, print
name of each party represented

Print Name of Signer

Source

The provisions of this § 171.155 adopted January 23, 1981, effective January 24, 1981, 11 Pa.B. 407.

Cross References

This section cited in 37 Pa. Code § 171.7 (relating to Election of Jurisdiction).

[Next page is 181-1.]