

## **LOCAL RULE 28**

### **MEDICAL MALPRACTICE**

#### **28.1 Cases for Arbitration**

Cases for arbitration shall be those cases defined as medical malpractice cases as set forth in Section 2305.11 of the Ohio Revised Code.

#### **28.2 Discovery**

The assignment of a case to an Arbitration Board shall not limit the right of the parties to continue discovery pursuant to the Rules of Civil Procedure.

#### **28.3 Hearings; When and Where Held; Notice**

- A. Hearings shall be held at a place scheduled by the Court Assignment Commissioner. This provision shall not, however, limit the right of the Arbitration Panel to hold hearings in an appropriate place of their own choosing. A hearing shall be scheduled not more than forty-five (45) days after the appointment of the Board of Arbitration, and the Assignment Commissioner shall notify the arbitrators and the parties, or their counsel, in writing at least fifteen (15) days before the hearing of the time and place of the hearing. No hearing shall be fixed for Saturdays, Sundays, legal holidays or evenings, except upon agreement of all parties and the arbitrators.
- B. 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.

#### **28.4 Inability of Party to Proceed**

In the event that a party is unable to proceed when the case has been scheduled, and such date is agreed to by all parties, the Assignment Commissioner may mark the case continued and may assess a \$150.00 continuance fee against such party.

#### **28.5 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. Such oath or affirmation may be administered to them by any person having the authority to administer oaths.

#### **28.6 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 evidence as they may require for the making of an award.

#### **28.7 Conduct of Hearing; General Powers**

- A. The three members of the panel 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 of all the parties, except where any of the parties is absent, in default, or has waived the right to be present. In addition to oral testimony, the panel may

receive the evidence of witnesses by affidavit, deposition, video-tape deposition, interrogatories, or written report and shall give it such weight as the panel deems is justified after consideration of any objections which may be made to such evidence. In the instance of affidavits and written reports, copies shall be furnished to counsel for all parties not less than one week in advance of hearing.

- B. Counsel shall, upon request and whenever possible, produce a party or witness at the hearing without the necessity of a subpoena.

## **28.8 Specific Powers**

The panel shall have the general powers of a Court including, but not limited to, the following:

- A. **Subpoena:** 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. Issuance of subpoena will be done in the same manner as is used in other types of cases.
- B. **Production of Documents:** To compel the production of all books, papers and documents which are deemed 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 the panel.

## **28.9 Supervisory Powers of the Court**

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

## **28.10 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 Brown County, Ohio, which shall be taxed as costs.

## **28.11 Transcript of Testimony**

The Court shall provide at the request of any party, an official Court Reporter for each Medical Malpractice Arbitration Hearing. The cost shall be assessed pursuant to Section 2301.21 of the Ohio Revised Code.

## **28.12 Report and Award**

Within thirty (30) days after the hearing, the chairman of the panel shall file a written report and award with the Clerk of Courts of Common Pleas, with a copy to the Judge and on the same day shall mail or otherwise forward copies thereof to all parties or their counsel. In the event that all three members do not agree on the findings and award, the dissenting member shall submit a written dissenting opinion to be filed with the majority report.

## **28.13 Legal Effect of Report and Award; Entry of Judgment**

The report and award, unless rejected pursuant to law, shall be final. If no rejection is made within the manner specified by statute, the Court shall enter Judgment in accordance therewith. After Entry of such Judgment, execution of process may be issued as in the case of other Judgments. Subsequent to the time for rejection, the Judgment Entry and submission to the Judge shall be in accordance with these Local Rules.

## **28.14 Compensation of Arbitrators**

- A. Each member of a panel who has signed an award or filed a dissenting opinion, unless waived in writing their right to compensation prior to the hearing, shall receive as compensation for his/her services in each case a fee of Five Hundred dollars (\$500.00) for the first day, plus Three Hundred Dollars (\$300.00) for each fractional half-day thereafter. 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 Clerk of Courts. Fees paid to arbitrators shall be assessed pursuant to Section 2711.21 of the Ohio Revised Code and shall be taxed as costs, one-half to plaintiff(s) and one-half to defendant(s). These amounts of compensation set forth herein may be subject to modification by the Court in its discretion.

In addition to the deposit required for Civil Actions by Local Rule 4 of these Rules, plaintiff(s) at the time of filing of the Complaint in a Medical Malpractice Action shall deposit Eight Hundred Dollars (\$800.00) to guarantee the fees of the arbitrators, and within forty (40) days of the filing of the Complaint, defendant(s) shall deposit Eight Hundred (\$800.00) as a like guarantee. But in no event shall the full deposit guarantee be deposited later than five (5) days before the date of the Arbitration Hearing. If there are multiple defendants and they cannot agree as to their proportionate share of the deposit, upon proper motion, the Judge to whom the case is assigned shall order the apportionment. When it appears proper, the Court may order additional deposits.

- B. In cases which require additional deposits for payment to the arbitrators due to the arbitration lasting more than one day, the deposit to cover the additional costs shall be made no later than five (5) days after completion of the arbitration.
- C. The chairman of the arbitration panel shall determine, not less than four days prior to and not more than five (5) days following completion of the arbitration hearing, that the proper deposit has been made. If no deposit has been made by one or both sides, the chairman shall, through the Assignment Commissioner, schedule a Show Cause Hearing before the Judge to determine why the plaintiff(s) and/or defendant(s) should not be held in contempt for failure to file the required deposit.
- D. Payment of fees shall be authorized by the Judge via Court Entry on a form to be provided by the Assignment Commissioner.
- E. In all cases in which the plaintiff(s) has filed a Poverty Affidavit, or in which an insufficient deposit has been made to pay plaintiff(s) portion of the compensation due the arbitrators, and in which an award, settlement or judgment has been made in favor of the plaintiff(s), defendant(s) shall first pay to the Clerk of Courts out of such award, settlement or judgment before making any payment to the plaintiff(s), an amount equal to the un-deposited plaintiff(s) portion of the compensation due the arbitrators. Otherwise, all compensation for arbitrators not paid from costs shall be paid upon proper warrant from the funds of Brown County, Ohio.
- F. In all cases in which a settlement is reached or arbitration is waived fewer than sixty (60) days prior to the scheduled Arbitration Hearing, the panel members shall be paid \$100.00 each from the deposit heretofore required.

### **28.15 Time Limit to Amend Pleadings**

If the decision of the arbitrators is rejected pursuant to Section 2711.12 of the Ohio Revised Code, pleadings shall be amended and filed with the Clerk of Courts within thirty (30) days. The parties making such pleading amendments shall serve other parties pursuant to the Ohio Rules of Civil Procedure.