

## **IC 34-18-10**

### **Chapter 10. Medical Review Panel**

#### **IC 34-18-10-1**

##### **Establishment of medical review panels**

Sec. 1. This chapter provides for the establishment of medical review panels to review proposed malpractice complaints against health care providers covered by this article.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-2**

##### **Request for formation of panels**

Sec. 2. Not earlier than twenty (20) days after the filing of a proposed complaint, either party may request the formation of a medical review panel by serving a request by registered or certified mail upon all parties and the commissioner.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-3**

##### **Members; chairman; powers and duties**

Sec. 3. (a) A medical review panel consists of one (1) attorney and three (3) health care providers.

(b) The attorney member of the medical review panel shall act as chairman of the panel and in an advisory capacity but may not vote.

(c) The chairman of the medical review panel shall expedite the selection of the other panel members, convene the panel, and expedite the panel's review of the proposed complaint. The chairman may establish a reasonable schedule for submission of evidence to the medical review panel but must allow sufficient time for the parties to make full and adequate presentation of related facts and authorities.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-4**

##### **Selection of panel members**

Sec. 4. A medical review panel shall be selected in the following manner:

(1) Within fifteen (15) days after the filing of a request for formation of a medical review panel under section 2 of this chapter, the parties shall select a panel chairman by agreement. If no agreement on a panel chairman can be reached, either party may request the clerk of the supreme court to draw at random a list of five (5) names of attorneys who:

(A) are qualified to practice;

(B) are presently on the rolls of the supreme court; and

(C) maintain offices in the county of venue designated in the proposed complaint or in a contiguous county.

(2) Before selecting the random list, the clerk shall collect a twenty-five dollar (\$25) medical review panel selection fee from the party making the request for the formation of the random list.

- (3) The clerk shall notify the parties, and the parties shall then strike names alternately with the plaintiff striking first until one (1) name remains. The remaining attorney shall be the chairman of the panel.
- (4) After the striking, the plaintiff shall notify the chairman and all other parties of the name of the chairman.
- (5) If a party does not strike a name within five (5) days after receiving notice from the clerk:
  - (A) the opposing party shall, in writing, request the clerk to strike for the party; and
  - (B) the clerk shall strike for that party.
- (6) When one (1) name remains, the clerk shall within five (5) days notify the chairman and all other parties of the name of the chairman.
- (7) Within fifteen (15) days after being notified by the clerk of being selected as chairman, the chairman shall:
  - (A) send a written acknowledgment of appointment to the clerk; or
  - (B) show good cause for relief from serving as provided in section 12 of this chapter.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-5**

##### **Eligibility for panel membership**

Sec. 5. Except for health care providers who are health facility administrators, all health care providers in Indiana, whether in the teaching profession or otherwise, who hold a license to practice in their profession shall be available for selection as members of the medical review panel. Health facility administrators may not be members of the medical review panel.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-6**

##### **Selection of members by parties**

Sec. 6. Each party to the action has the right to select one (1) health care provider, and upon selection, the two (2) health care providers thus selected shall select the third panelist.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-7**

##### **Selection of panel members by multiple parties**

Sec. 7. If there are multiple plaintiffs or defendants, only one (1) health care provider shall be selected per side. The plaintiff, whether single or multiple, has the right to select one (1) health care provider and the defendant, whether single or multiple, has the right to select one (1) health care provider.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-8**

##### **Panelists to be members of defendant's profession**

Sec. 8. If there is only one (1) party defendant who is an individual, two (2) of the panelists selected must be members of the profession identified in IC 34-18-2-14(1) of which the defendant is a member. If the individual defendant is a health care professional who specializes in a limited area, two (2) of the panelists selected must be health care professionals who specialize in the same area as the defendant.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-9**

##### **Selection periods; notification; selections by chairman**

Sec. 9. Within fifteen (15) days after the chairman is selected, both parties shall select a health care provider and the parties shall notify the other party and the chairman of their selection. If a party fails to make a selection within the time provided, the chairman shall make the selection and notify both parties. Within fifteen (15) days after their selection, the health care provider members shall select the third member within the time provided and notify the chairman and the parties. If the providers fail to make a selection, the chairman shall make the selection and notify both parties.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-10**

##### **Challenges to panel member selections**

Sec. 10. Within ten (10) days after the selection of a panel member, written challenge without cause may be made to the panel member. Upon challenge or excuse, the party whose appointee was challenged or dismissed shall select another panelist. If the challenged or dismissed panel member was selected by the other two (2) panel members, the panel members shall make a new selection. If two (2) such challenges are made and submitted, the chairman shall within ten (10) days appoint a panel consisting of three (3) qualified panelists and each side shall, within ten (10) days after the appointment, strike one (1) panelist. The party whose appointment was challenged shall strike last, and the remaining member shall serve.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-11**

##### **Formation of panel; notice to commissioner and parties**

Sec. 11. When a medical review panel is formed, the chairman shall within five (5) days notify the commissioner and the parties by registered or certified mail of the following:

- (1) The names and addresses of the panel members.
- (2) The date on which the last member was selected.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-12**

##### **Excusing members from service**

Sec. 12. (a) A member of a medical review panel who is selected

under this chapter shall serve unless:

- (1) the parties by agreement excuse the panelist; or
- (2) the panelist is excused as provided in this section for good cause shown.

(b) To show good cause for relief from serving, the attorney selected as chairman of a medical review panel must serve an affidavit upon the clerk of the supreme court. The affidavit must set out the facts showing that service would constitute an unreasonable burden or undue hardship. The clerk may excuse the attorney from serving. The attorney shall notify all parties, who shall then select a new chairman as provided in section 4 of this chapter.

(c) To show good cause for relief from serving, a health care provider member of a medical review panel must serve an affidavit upon the panel chairman. The affidavit must set out the facts showing that service would constitute an unreasonable burden or undue hardship. The chairman may excuse the member from serving and notify all parties.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-13**

##### **Panel expert opinion; time for issuance**

Sec. 13. (a) The panel shall give its expert opinion within one hundred eighty (180) days after the selection of the last member of the initial panel. However, if:

- (1) the chairman of the panel is removed under section 15 of this chapter, another member of the panel is removed under section 16 of this chapter, or any member of the panel, including the chairman, is removed by a court order; and
- (2) a new member is selected to replace the removed member more than ninety (90) days after the last member of the initial panel is selected;

the panel has ninety (90) days after the selection of the new member to give an expert opinion.

(b) If the panel has not given an opinion within the time allowed under subsection (a), the panel shall submit a report to the commissioner, stating the reasons for the delay.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-14**

##### **Sanction for failure to act as required by chapter**

Sec. 14. A party, attorney, or panelist who fails to act as required by this chapter without good cause shown is subject to mandate or appropriate sanctions upon application to the court designated in the proposed complaint as having jurisdiction.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-15**

##### **Removal of chairman**

Sec. 15. (a) The commissioner may remove the chairman of the panel if the commissioner determines that the chairman is not

fulfilling the duties imposed upon the chairman by this chapter.

(b) If the chairman is removed under this section, a new chairman shall be selected under this chapter.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-16**

##### **Removal of panel member**

Sec. 16. (a) The chairman may remove a member of the panel if the chairman determines that the member is not fulfilling the duties imposed upon the panel members by this chapter.

(b) If a member is removed under this section, a new member shall be selected under this chapter.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-17**

##### **Evidence; oath**

Sec. 17. (a) The evidence in written form to be considered by the medical review panel shall be promptly submitted by the respective parties.

(b) The evidence may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, and any other form of evidence allowable by the medical review panel.

(c) Depositions of parties and witnesses may be taken before the convening of the panel.

(d) The chairman shall ensure that before the panel gives its expert opinion under section 22 of this chapter, each panel member has the opportunity to review every item of evidence submitted by the parties.

(e) Before considering any evidence or deliberating with other panel members, each member of the medical review panel shall take an oath in writing on a form provided by the panel chairman, which must read as follows:

"I (swear) (affirm) under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties, and that I have not and will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-18**

##### **Communication with panel by parties or their agents prohibited**

Sec. 18. Neither a party, a party's agent, a party's attorney, nor a party's insurance carrier may communicate with any member of the panel, except as authorized by law, before the giving of the panel's expert opinion under section 22 of this chapter.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-19**

##### **Preparation of opinion by chairman**

Sec. 19. The chairman of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel as provided in section 22 of this chapter.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-20**

##### **Convening and questioning of panel**

Sec. 20. (a) Either party, after submission of all evidence and upon ten (10) days notice to the other side, has the right to convene the panel at a time and place agreeable to the members of the panel. Either party may question the panel concerning any matters relevant to issues to be decided by the panel before the issuance of the panel's report.

(b) The chairman of the panel shall preside at all meetings. Meetings shall be informal.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-21**

##### **Duties of panel in conduct of inquiry; access to information**

Sec. 21. (a) The panel has the right and duty to request all necessary information.

(b) The panel may consult with medical authorities.

(c) The panel may examine reports of other health care providers necessary to fully inform the panel regarding the issue to be decided.

(d) Both parties shall have full access to any material submitted to the panel.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-22**

##### **Expert opinions**

Sec. 22. (a) The panel has the sole duty to express the panel's expert opinion as to whether or not the evidence supports the conclusion that the defendant or defendants acted or failed to act within the appropriate standards of care as charged in the complaint.

(b) After reviewing all evidence and after any examination of the panel by counsel representing either party, the panel shall, within thirty (30) days, give one (1) or more of the following expert opinions, which must be in writing and signed by the panelists:

(1) The evidence supports the conclusion that the defendant or defendants failed to comply with the appropriate standard of care as charged in the complaint.

(2) The evidence does not support the conclusion that the defendant or defendants failed to meet the applicable standard of care as charged in the complaint.

(3) There is a material issue of fact, not requiring expert opinion, bearing on liability for consideration by the court or jury.

(4) The conduct complained of was or was not a factor of the resultant damages. If so, whether the plaintiff suffered:

- (A) any disability and the extent and duration of the disability; and
- (B) any permanent impairment and the percentage of the impairment.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-23**

##### **Report of panel as evidence at trial; members as witnesses**

Sec. 23. A report of the expert opinion reached by the medical review panel is admissible as evidence in any action subsequently brought by the claimant in a court of law. However, the expert opinion is not conclusive, and either party, at the party's cost, has the right to call any member of the medical review panel as a witness. If called, a witness shall appear and testify.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-24**

##### **Immunity from civil liability**

Sec. 24. A panelist has absolute immunity from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of duties prescribed by this article.

*As added by P.L.1-1998, SEC.13.*

#### **IC 34-18-10-25**

##### **Compensation of members**

Sec. 25. (a) Each health care provider member of the medical review panel is entitled to be paid:

- (1) up to three hundred fifty dollars (\$350) for all work performed as a member of the panel, exclusive of time involved if called as a witness to testify in court; and
- (2) reasonable travel expense.

(b) The chairman of the panel is entitled to be paid:

- (1) at the rate of two hundred fifty dollars (\$250) per diem, not to exceed two thousand dollars (\$2,000); and
- (2) reasonable travel expenses.

(c) The chairman shall keep an accurate record of the time and expenses of all the members of the panel. The record shall be submitted to the parties for payment with the panel's report.

(d) Fees of the panel, including travel expenses and other expenses of the review, shall be paid by the side in whose favor the majority opinion is written. If there is no majority opinion, each side shall pay fifty percent (50%) of the cost.

*As added by P.L.1-1998, SEC.13. Amended by P.L.111-1998, SEC.13.*

#### **IC 34-18-10-26**

##### **Copies of reports**

Sec. 26. The chairman shall submit a copy of the panel's report to:

- (1) the commissioner; and
- (2) all parties and attorneys;

by registered or certified mail within five (5) days after the panel gives its opinion.

*As added by P.L.1-1998, SEC.13.*