

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE: RULES OF PROCEDURE _____)
)
MONTANA MEDICAL LEGAL PANEL) ORDER

The Director of the Montana Medical Legal Panel, after consultation with the State Bar of Montana, having presented proposed Rules changes to the Court with respect to the Rules of Procedure of the Panel, and the approval of the State Bar of Montana being forthcoming for such proposed changes or the position of the Panel and the State Bar having been set forth where there was disagreement,

And § 27-6-204, MCA authorizing the Director of the panel, in consultation with the State Bar of Montana, and subject to the approval of this Court, to adopt and publish Rules of Procedure necessary to implement and carry out the duties of the Panel,

IT IS HEREBY ORDERED that, effective the date of this Order, the Rules of Procedure of the Montana Medical Legal Panel are hereby amended in the manner set out following this Order.

DATED this 30th day of August, 2001.

(Signed)

CHIEF JUSTICE

(And Each Associate Justice)

FILED August 30, 2001, Clerk of Supreme Court, State of Montana

RULE 1. DEFINITIONS

As used in these Rules:

(a) "Health care provider" means a "physician", "dentist", "podiatrist", or a "health care facility".

(b) "Physician" means, for all purposes other than assessment of the annual surcharge required under 27-6-206(3), an individual or business entity, who at the time of the occurrence of the incident giving rise to the claim:

(1) was an individual, licensed to practice medicine under the provisions of Title 37, Chapter 3, who had the State of Montana as his or her principal residence or place of medical practice and was not employed full-time by any federal governmental agency or entity; or

(2) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services, whose shareholders, partners, or owners were all individual physicians licensed to practice medicine under the provisions of Title 37, Chapter 3, or included a shareholder, partner, owner or employee who was a physician under (b)(i) of this Rule and is a proper party to the claim.

(c) "Dentist" means, for all purposes other than assessment of the annual surcharge required under

§ 27-6-206(3), an individual or business entity, who at the time of the occurrence of the incident giving rise to the claim:

(1) was an individual, licensed to practice dentistry under the provisions of Title 37, Chapter 4, who had the State of Montana as his or her principal residence or place of dental practice and was not employed full-time by any federal governmental agency or entity; or

(2) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services, and whose shareholders, partners, or owners were all individual dentists licensed to practice dentistry under the provisions of Title 37, Chapter 4, or included a shareholder, partner, owner or employee who was a dentist under (c)(i) of this Rule and is a proper party to the claim.

(d) "Health care facility" means, for all purposes other than assessment of the annual surcharge required under 27-6-206(3), a facility (other than an infirmary) licensed as a health care facility under Title 50, Chapter 5 at the time of the occurrence of the incident giving rise to the claim, excluding an end-stage renal dialysis facility, home infusion therapy agency, or a residential care facility.

(e) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care in the rendering of professional services which causes injury to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(f) "Panel" means the Montana Medical Legal Panel provided for in Section 27-6-104, MCA.

(g) "Act" means the Montana Medical Legal Panel Act as established by Sections 27-6-101 through 27-6-704, MCA.

(h) "Director" means the Director of the Panel, or an authorized member of the Director's staff.

(i) "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, or, stated another way, enough evidence to justify refusal to direct a verdict on a factual issue in jury trial.

(j) "Claimant" is the person or persons who was the patient who received or was to receive services from the health care provider against whom the claim is made, is the authorized representative of the patient.

(k) "Patient" is the person who received or was to receive services from the health care provider against whom the claim is made or who received services from other health care providers prior or subsequent to that of the health care provider against whom the claim is made.

(l) "Hospital" means a hospital as defined in 50-5-101, MCA, licensed as a hospital at the time of the occurrence of the incident giving rise to the claim.

(m) "Podiatrist" means, for all purposes other than assessment of the annual surcharge required under

§ 27-6-206(3), an individual licensed to practice podiatry under the provisions of Title 37, Chapter 6, who at the time of the occurrence of the incident giving rise to the claim:

(1) was an individual, licensed to practice podiatry under the provisions of Title 37, Chapter 6, who had the State of Montana as his or her principal residence or place of podiatric practice and was not employed full-time by any federal governmental agency or entity; or

(2) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services, and whose shareholders, partners, or owners were all individual podiatrists licensed to practice podiatry under the provisions of Title 37, Chapter 4, or included a shareholder, partner, owner or employee who was a podiatrist under (c)(i) of this Rule and is a proper party to the claim.

RULE 2. SCOPE OF RULES

These Rules apply to all proceedings before the Montana Medical Legal Panel established by the Act.

RULE 3. PURPOSE OF THE PANEL

The purpose of the Panel is to prevent, where possible, the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

RULE 4. FEES

No fees or charges are to be levied upon claimants as a precondition to the bringing of a malpractice claim before the Panel.

RULE 5. REPRESENTATION AND APPEARANCE - COUNSEL

The parties may be represented by counsel in proceedings before the Panel though it shall not be required. Any party acting as their own counsel will be required to adhere to these Rules of Procedure.

If any party retains legal counsel, such legal counsel shall informally enter his or her appearance with the Director, by letter if representing a pro se claimant, or upon by the filing of the required Application, a responsive Motion to the Application, or an Answer. Thereafter, all communications required by these Rules to be transmitted to a party and all other communications directed to a represented party shall be directed to the appropriate counsel, with a copy to the Director, except that the Notice of Hearing required by Rule 12 shall be provided to all parties involved and their counsel, if any.

RULE 6. PRESENTATION OF CLAIMS

(a) These Rules shall apply to all malpractice claims arising from a health care provider's acts and/or omissions, unless the claim is the subject of a valid arbitration agreement under the Uniform Arbitration Act, at § 27-5-111, et seq., MCA, where the agreement to arbitrate was signed after the alleged incident occurred:

(1) as to all physicians and health care facilities, where the alleged incident occurred on or after April 1, 1977;

(2) as to all dentists, where the alleged incident occurred on or after October 1, 1987.

(3) as to all podiatrists, where the alleged incident occurred on or after January 1, 1999.

(4) with respect to (1), (2) and (3) above, claims arising prior to the respective dates may be submitted to the Panel upon all parties consenting thereto.

(b) Prior to filing a complaint in any State District or Justice Court in Montana, claimants shall submit a case for consideration of the Panel, and no malpractice claim to which the Act is applicable may be filed in any such court against a health care provider before an application is made to the Panel and its decision rendered. If a complaint has been filed in any such court prior to the filing of an application before the Panel, the claimant, at the time of filing an application

with the Panel, shall notify the Panel of such fact by providing to the Panel a conformed copy of the complaint and a conformed copy of any order related to the submission of the claim to the Panel, along with a brief report as to the status of the case.

(c) Claimants shall submit a case for consideration of the Panel by delivery of an application in writing and signed by the claimant or his or her attorney, by certified mail, to the office of the Director. Facsimile copies of applications received by the Panel shall be shown as received by the Panel on the date of receipt, and shall be placed in the claim file. The use of such a procedure shall not relieve a party from the requirements of the first sentence of this paragraph.

(d) The application, on a form provided by the Director, must be signed by the claimant or his or her attorney and must contain the following:

(1) A statement in reasonable detail of the elements of the health care provider's conduct that are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all persons having knowledge of any facts relating to the claim or defense to it, and the names and addresses of all physicians, dentists, podiatrists, hospitals, long-term care facilities or other persons or entities (whether named as parties to the claim or not) who have possession, custody, or control of any medical, dental, podiatric, hospital or long-term care facility records (such as x-rays) or other such information pertaining to the claim. Any claim against an employee of a health care provider who is other than a health care provider as defined in Rule 1 shall be brought only by naming the employer as a party before the Panel.

(2) A statement signed by the claimant, and dated, on a form provided by the Director, for each health care provider involved (whether a party or not), authorizing the Panel to obtain access to all medical, dental, podiatric, and hospital records and information pertaining to the claim and, for purposes of its consideration of the matter only, which includes distribution of such records only to the health care providers named in the claim before the Panel or their attorneys and the panelists reviewing the claim, waiving any privilege as to the contents of

those records. The statement may not in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court nor is this Rule intended to provide for discovery of information which would be privileged or otherwise beyond discovery, pursuant to Rule 26(b)(4)(B), Montana Rules of Civil Procedure.

(3) A claimant may amend the application as a matter of course within twenty (20) days of the receipt of the application by the Panel, but thereafter only upon approval of the Director, or the Chairperson of the Panel, if one is selected. The Director or, the Chairperson in the event of the selection a Panel Chairperson, may, upon his or her own initiative or upon the written request of the health care provider, request the application be amended to provide additional details of the claim. Such an amendment, and any other amendments to the application, must be delivered to the Director within twenty (20) days of receipt of a written request or authorization by the Director or Chairperson, along with sufficient copies for service by the Panel on all other parties. In the event an amendment to the claim is filed less than thirty (30) days prior to hearing, upon request of the Director, Panel Chairperson or health care provider, the hearing may be continued by the Panel Chairperson or the Director without a request from a party, or upon the request of a party upon a showing of good cause and in the manner required by Rule 12(b) of these Rules.

(4) Upon receipt of a completed application, the Director shall immediately notify the health care provider of filing of the claim and furnish the health care provider a copy thereof. For purposes of this paragraph, a completed application shall be one which is in compliance with subsection (1) and (2) of section (d) this Rule. If a claimant revokes the required written consent provided in section(d)(2) of this Rule, the application shall not be a completed application,

(e) If a claimant or health care provider has retained or otherwise obtained legal counsel for prosecution or defense of a claim during or subsequent to any panel proceeding, that attorney shall file an appearance with the Director, pursuant to Rules of Procedure.

RULE 7. ANSWER TO APPLICATION

(a) Within twenty (20) days after receipt of the claim, the health care provider shall answer the application for review, by delivery of the answer in writing and signed by the health care provider or his or her attorney, by certified mail, to the

office of the Director, with sufficient copies for service by the Panel on all other parties. For good cause shown, the Director may extend the answer time.

The answer shall be deemed an answer to any amended application, unless within twenty (20) days after the receipt of the amended application, the health care provider delivers in the same manner as required above, an amended answer.

(b) The health care provider shall, on a form provided by the Director, authorize the Panel to inspect all medical, dental, podiatric and hospital records and information pertaining to the application and, for the purposes of such inspection only, which includes distribution of such records only to the claimant or his or her attorney and the panelists reviewing the claim, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose or in any other context, in or out of court nor is this Rule intended to provide for discovery of information which would be privileged or otherwise beyond discovery, pursuant to Rule 26(b)(4)(B), Montana Rules of Civil Procedure.

(c) Upon the receipt of an answer or an amended answer to an application, the Director shall serve a true copy of the same upon the claimant and all other health care providers in the same manner as provided for service of the application in Rule 8(a).

RULE 8. TRANSMITTAL OF RECORDS AND DOCUMENTS

(a) Upon receipt of an application for review or an amendment thereto, the Director shall serve a true copy of the same upon all health care providers whose conduct is claimed by the application to have constituted the basis for a malpractice claim. Service shall be effected by mailing, certified, a copy of the claim to the health care provider, postage prepaid, return receipt requested, to the provider's last-known address.

(b) Additionally, upon the receipt of the application for review, the Director shall mail a copy of the application to the directors of the health care provider's professional society or association and the State Bar. If no state professional society or association exists with respect to such health care provider, or if the

health care provider does not belong to such a society or association, the Director shall transmit the application to the health care provider's state licensing board.

(c) Upon receipt of the names of selected panelists pursuant to Rule 9, the Director shall transmit by mail to all parties a list of all panel members selected, including a short professional biographical sketch of each panelist.

(d) At least ten (10) days prior to the hearing date set for a claim, the Director shall furnish to each panel member copies of all claims, briefs, medical, podiatric, hospital, or dental records of the patient which have been obtained by the Panel, and other documents pertaining to the claim; except when the Chairperson, or Director if a Chairperson has not been selected, of the Panel determines that it is impractical to reproduce or mail a medical, podiatric, hospital, or dental record or other document, or where the Panel Chairperson has ruled after application of a party and a telephonic hearing that certain records should not be transmitted on grounds of relevancy, privilege, or prohibition in state or federal law. Where access to health care information is denied by a health care provider under 50-16-542(1), the Panel Chair may order disclosure of health care information, with or without restrictions as to its use, as the Panel Chair considers necessary, subject to an allowance for any party being provided a full opportunity for district court review of the Panel Chair's decision. In deciding whether to order disclosure, the Panel Chair shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties. Such records or documents as are required or allowed to be transmitted shall be made available to panel members at the hearing and at the Panel office prior to the hearing, and each panel member and party shall be notified of the decision of the Chairperson or Director and the availability of the materials.

At or prior to the above time, the Director shall furnish to each party, or their attorney if represented, a copy of the medical, podiatric, hospital, or dental records of the patient which have been obtained by the Panel and which are required and allowed to be transmitted and which have been determined to be practical to reproduce or mail. At or prior to such time, the Panel shall notify the parties which records are deemed to be impractical to reproduce or mail, which records shall then be available for inspection by the parties, or their attorneys if they are

represented, at the offices of the Panel, during regular business hours, upon reasonable notice of the intended time and date of inspection.

If a party claims that medical or other records or information which pertain to the claim are in the possession, custody and control of another party to the claim or persons other than a party to the claim, or if the application to the claim alleges that the mental or physical condition of a health care provider who is a party to the Panel claim is an element of the claim, or if a party has failed or refuses to execute the necessary consent forms required by Rule 6(d)(2) or 7(b) of these Rules, a party who seeks such records and information shall, as a condition of obtaining a subpoena: (a) make a request in writing to the Panel that the Panel obtain specified records or information on behalf of the party, stating how the records or information pertain to the claim and the name and address of the custodian of those records; and (b) comply with the notice requirements of MCA 50-16-536(1) and provide proof of compliance to the Panel; and (d) shall provide the Panel with the written certification required under MCA 50-16-536(2); and (e) shall request the issuance of a subpoena by the Panel Chairperson.

The cost of a request for records or other information, either pursuant to an appropriate consent form or a subpoena, and the reproduction and transmission of the records or other information to the parties, shall be at the expense of the Panel, but not including the cost of service of subpoenas or witness fees, which shall be at the expense of the party seeking service of the same.

The Panel Chairperson, upon being selected, shall issue a subpoena for all such records and information which pertain to the claim unless relieved of the responsibility therefore by order of a district court. The Panel shall report the results of the service to the parties, including any denial of information from the holder of the records and the reasons therefore.

(e) It is the responsibility of each panel member to return the copies of the claim, medical, podiatric, or dental records, exhibits and other documents to the Panel office upon completion of the claim.

(f) Except as otherwise provided in Rule 7 and Rule 8 of these Rules with respect to the service of the application, answer, and any amendments thereto by the Director, all motions, memoranda, and other papers presented to the Panel shall be served upon all parties and a copy filed with the Panel in the manner provided by Rule 5 of the Montana Rules of Civil Procedure.

RULE 9. SELECTION OF PANEL MEMBERS

(a) Except as otherwise provided in Rule 9(f), those eligible to sit on the Panel are health care providers licensed pursuant to Montana law residing in Montana and members of the State Bar of Montana residing in Montana.

(b) Except as otherwise provided in Rule 9(f), the health care provider's professional association or society and the State Bar shall, as to each claim, select twelve (12) prospective panel members within fourteen (14) days from the date of transmittal of the application for re-view to said societies, for use by the Panel and parties as the pool of available panelists for a claim. If no such society or association exists or if the health care provider does not belong to such a society or association, the health care provider's state licensing board shall, within the same time period as required above, select such twelve (12) persons from the health care provider's profession and, where applicable, persons specializing in the same field or discipline as the health care provider. Alternatively, the entire list of available prospective panel members shall be annually provided by such association, society or licensing board to the Panel as a pool of available panelists for the claims filed during that year. The Panel shall provide to the parties, or their counsel if a counsel has appeared before the Panel, a list of 12 selected prospective panelists for a claim, either as the 12 provided to the Panel as required by this subsection or as randomly selected by the Panel from the annual lists provided to the Panel as allowed in this subsection.

(c) Whenever there are multiple health care providers the claim against each health care provider may be reviewed by a separate Panel, or at the discretion of the Panel initially appointed or by stipulation of the parties, a single Panel may review all the claims against all parties.

(d) Except as otherwise provided in (f), six (6) panel members shall sit in review of each case. Where a panel has six members, each claim shall have three (3) panel members who are health care providers, as specified in subsection (e) and three (3) panel members who are attorneys. Not later than ten (10) days prior to the date set for the hearing of the claim, the Panel Director shall select one of

the attorney panelists as Chairperson of the Panel, unless one of the parties object to the Chairperson selected, in which case the Chairperson selected by the Panel shall thereafter cease to act as the Chairperson and the attorney panelists shall select any one of the attorney panelists as Chairperson within the time requirements of this provision.

(e) The health care provider panel members shall consist of:

(1) Three (3) physicians when the claim is only against one or more physicians; or three (3) dentists when the claim is only against one or more dentists; or three (3) podiatrists when the claim is only against one or more podiatrists. If the claim is only against one or more health care facilities, two (2) of the panel members must be administrators of the same type of facility or facilities and one (1) panel member must be a physician.

(2) In cases against physicians and/or dentists and/or podiatrists, and a health care facility, two (2) panel members must be chosen from the physician's and/or dentist's and/or podiatrist's profession(s) and one (1) panel member must be an administrator from the same type of facility.

(3) In cases against one or more physicians and one or more dentists or one or more podiatrists and no facility, two (2) panel members must be physicians and one (1) panel member must be a dentist, if there is a dentist in the claim, or one (1) panel member must be a podiatrist, if there is a podiatrist in the claim, unless the number of dentists or podiatrists named exceeds the number of physicians named, then in that event two (2) panel members must be dentists if dentists exceed the number of physicians named, or two (2) panel members must be podiatrists if podiatrists exceed the number of physicians named, and one (1) panel member must be a physician.

(f) Provided, however, that in each instance the parties may stipulate to a lesser number of health care provider or attorney panelists, which stipulation shall be effective only upon approval of the director, or of the Panel Chairperson if one be

selected. There shall be no requirement that a physician, dentist, or podiatrist panelist be in the same specialty or sub-specialty as one or more of the individual health care providers against whom a claim is made if all such panelists as are selected would otherwise be competent to act as an expert witness in a suit at law involving the individual health care providers and if the number of prospective panelists available in the specialty or sub-specialty would be insufficient from which to select a panel.

(g) Upon selection of panel members, the names of those selected shall be communicated to the Director, along with short professional biographical sketches of the persons selected and their business telephone numbers and addresses.

RULE 10. DISQUALIFICATION OF PROPOSED PANELISTS.

(a) Any panel member shall disqualify himself or herself from consideration of any case in which, by virtue of circumstances, the panel member feels his or her presence on the panel would be inappropriate, considering the purpose of the Panel.

(b) The Director may excuse a proposed panelist from serving on the Panel.

(c) Whenever a party makes and files an affidavit that a panel member selected by these Rules cannot, according to the belief of the party making an affidavit, sit in review of the application nor review the claim with impartiality, that panel member may proceed no further. A party may not disqualify by affidavit more than three panel members in any single malpractice claim. Any such affidavit to be effective must be filed within fifteen (15) days of the transmittal by mail to the parties by the Director of the name or names of the panel member selected proposed panelist[s] who is [are] sought to be disqualified. Nothing in these rules shall additionally be construed so as to defeat a party's right to such disqualification.

(d) To replace any panel member disqualified or excused under these Rules, a replacement panel member shall be selected, pursuant to Rule 9 of these Rules, by the entity originally selecting the panel member under that rule. The replacement shall be selected by said entity within five (5) days of receipt of notification, from the Director, of the panel member disqualified or excused. Notification of replacement panel members shall be made by the Director pursuant to Rule 8 (c).

RULE 11. MEDICAL AND DENTAL CONSULTATION

A claimant request for Director cooperation in retaining a consultant must be made within four (4) weeks of transmittal of the application to the defendants. The Director shall cooperate fully with the claimant in retaining a physician, dentist, podiatrist, or other health care provider qualified in the field of medicine, dentistry, or podiatry in-volved, who will consult for purposes of the panel hearing with the claimant upon payment of a reasonable fee by the claimant. The fee shall be calculated on an hourly rate and, upon claimant's request, reviewed by the Panel. If the full Panel selected to hear the claim determines the consulting fee charged the claimant is unreasonably high, that Panel shall, upon vote of majority, reduce the same to a reasonable fee. Communications between the consultant and the claimant or the claimant's attorney are privileged unless that privilege is waived by the claimant or is otherwise required to be disclosed by Rule 26(b) of the Montana Rules of Civil Procedure.

RULE 12. TIME AND PLACE OF HEARING

(a) Except as otherwise provided in Rule 12(d), after the application has been received, a date, time and place for the hearing shall be fixed by the Director, and prompt notice thereof shall be given by the Director to the parties involved and the members of the Panel.

A telephonic hearing shall be authorized upon the written stipulation of all parties and upon the approval of the Panel Chairperson, where the interests of justice would not be served by requiring an in-person hearing and then only under the following specific circumstances where the circumstances of the case and the requirements of orderly processing of the claim: (i) make physical travel to the Panel offices in Helena, Montana impractical for panelists who must be utilized; (ii) impose an unusual economic burden upon a party; or (iii) the issues as represented by each of the parties are such that the use of a telephonic hearing would allow full consideration of the matter by the panel selected to hear the claim.

(b) In no instance may the date of the hearing set be more than one hundred twenty (120) days after the transmittal by the Director to the health care provider of the application for review, unless the Panel Chairperson or the Director finds good cause exists for extending the period. All requests for a continuance and change of hearing date must be submitted to the Panel in writing, stating the reasons therefore, and must include a selection of four alternative future dates for the hearing which are known to be available to each of the parties to the claim. If the request is on an emergency basis within five (5) calendar days from the date of the scheduled hearing, facsimile requests to the Panel are acceptable if the original is mailed on the date of the request.

(c) Panel hearings may be held in any county the Panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the Director, suitable facilities for any such hearing.

(d) A hearing need not be held, telephonic or otherwise, and a decision shall be rendered by the Panel only on the written record, where all of the parties or their counsel have stipulated in writing to the waiver of a hearing.

RULE 13. PRE-HEARING TELEPHONE CONFERENCE

(a) At least five (5) days prior to the hearing date set, the following parties shall confer, by telephone conference call or personally, with the Chairperson of the Panel: claimant or the claimant's attorney, the health care provider or the health care provider's attorney, and the Director of the Panel. During the pre-hearing conference call, the parties shall consider the following:

- (1) Simplification and identification of issues;
- (2) Obtaining of admissions to or stipulations of facts not remaining in dispute and of the authenticity of documents;
- (3) Limitation of the number of witnesses to be called and scheduling of their appearances;

(4) Estimation of length of hearing and, if applicable, consideration of any transcription request;

(5) Any other matters that might aid in expeditious consideration and determination of the claim;

(6) Any materials submitted pursuant to Rule 14.

RULE 14. EXHIBITS AND DOCUMENTARY EVIDENCE

No later than fourteen (14) days prior to the hearing date set for the claim, the parties shall furnish each other a copy and the Director seven (7) copies of all records and other documents and exhibits other than medical, hospital, podiatric or dental records obtained by the Panel, properly identified, upon which they intend to rely at the time of the hearing. If a party makes a sufficient showing by affidavit, filed with the Panel and provided to the parties and the Panel Chairperson, that documents or records upon which they intend to rely were not available within such fourteen (14) day period, the Chairperson shall have the discretionary authority to admit such later acquired-evidence upon such terms and conditions as are just and equitable in the premises. At the time of filing the required affidavit, the party providing the same shall serve copies of the documents or records in dispute on the Panel, the Chairperson and all other parties.

RULE 15. HEARING PROCEDURES

(a) At the time set for hearing, the claimant submitting the case for review shall be present, personally, unless that presence is: (1) waived by all health care providers; or (2) excused by the Panel Chairperson or the Director upon a timely request stating the reasons therefore. The claimant or claimant's counsel shall make a brief introduction of the case, including a re-sume of the facts constituting the alleged professional malpractice which he or she is prepared to prove. The health care provider against whom the claim is brought shall also be present, which presence may be excused in like manner as the claimant as provided by this Rule, and may make an introductory statement of his or her case, personally or through counsel.

(b) Claimant shall proceed first with his or her case, followed by the health care provider. Both parties may call witnesses to testify, who shall be subject to cross-examination and who shall be sworn. Medical, hospital, podiatric, or dental texts, journals and other documentary evidence relied upon by either party may be offered and admitted, if relevant, and if submitted timely under Rule 14. Written statements of fact by treating health care providers or claimants may be reviewed by the Panel.

(c) The hearing will be confidential and informal, and the Panel shall not make, pay for or retain any transcript; with the consent of the Chairperson of the Panel and all parties to the claim, the parties may provide for the making, payment and retention of a transcript. The Montana Rules of Evidence shall not apply to hearings before the Panel; however, irrelevant, immaterial or unduly repetitious evidence may be excluded by the Chairperson.

(d) All members of the Panel and counsel to the parties, or the parties if unrepresented, shall have the right to examine the parties and witnesses, including the parties when called as witnesses, subject to the control of the Chairperson.

(e) At the conclusion of the hearing, the Panel may take the claim under advisement or may request that additional facts, records, witnesses or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than thirty (30) days from the date of the original hearing, unless the party bringing the matter for review consents in writing to a longer period.

(f) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties and their attorneys may be present.

(g) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions and internal proceedings of the Panel.

RULE 16. PANEL DELIBERATIONS AND DECISIONS

(a) The deliberations of the Panel are confidential. Upon consideration of all the relevant material, the Panel shall decide:

(1) Is there substantial evidence such the acts or omissions constitute a departure from the accepted standards of health care;

(2) If the answer to (1) is "Yes", whether there is a reasonable probability that the patient was injured thereby.

(b) All votes of the Panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the Panel who sat on the entire case. The decision shall be communicated in writing to the parties and their attorneys of record, or to a party if that party has no attorney, and a copy thereof shall be retained in the permanent files of the Panel.

(c) The decision shall, in every case, be signed for the Panel by the Chairperson and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. Upon request of any party, the majority shall briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

(d) The decision and the reasoning and basis for the decision of the Panel is not admissible as evidence in any action subsequently brought in any court of law. A copy of the decision shall be sent by the Director to the health care provider's professional licensing board.

(e) Panelists and witnesses are immune from civil liability for all communications, findings, opinions and conclusions made in the course and scope of the duties prescribed by the Act.

(f) The Panel's decision is without administrative or judicial authority and is not binding upon any party. The Panel may, however, recommend an award, approve settlement agreements consented to by the parties and discuss the same and all such approved settlement agreements are binding on the parties.

RULE 17. TRAVEL EXPENSES

All members of the Panel, the Director, and the Director's staff are entitled to travel expenses incurred while on the business of the Panel, as provided in Sections 2-18-501 through 2-18-503, MCA, but such expenses shall be approved by the Director before payment is made.

RULE 18. COMPENSATION OF THE PANEL

All members of the Panel shall be paid a fee of Forty Dollars (\$40.00 per hour, up to a maximum of Three Hundred Twenty Dollars (\$320.00) per day in which a hearing or part of a hearing is held, for the time spent in hearing claims, subject to the approval of the Director and upon presentation of a billing itemizing to the one-tenth(1/10th) of an hour the nature of the services performed and the time involved. Upon the effective date of an amendment to § 27-6-203, MCA authorizing the same, the amount of such compensation shall be increased to Fifty Dollars (\$50.00) per hour, up to a maximum of Five Hundred Dollars (\$500.00) per day in which a hearing or part of a hearing is held, for the time spent in hearing claims. Additional compensation for travel time and other services shall be considered by the Director under circumstances including, but not limited to, weather or distance.

RULE 19. ADDITIONAL AUTHORITY OF PANEL

The Panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by the Act, the issuance of subpoenas in

connection with the administration of the Act, and the performance of other acts to fairly and effectively administer the Act.

RULE 20. STATUTE OF LIMITATIONS - SEPARATELY-DESIGNATED NECESSARY OR PROPER PARTIES

(a) The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the Director of the application for review, as to all health care providers named in the application as parties to the Panel proceeding, and as to all other persons or entities named in the application as necessary or proper parties, for any court action which might subsequently arise out of the same factual circumstances set forth in the application.

(b) The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against re-filing, is issued from the Panel Chairperson or from the Director upon the consent of the parties to the claim, or the Panel's final decision, whichever occurs first, is entered in the permanent files of the Panel and a copy is served upon the complainant or claimant's attorney, if he or she is represented by counsel, by certified mail.

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[REVISED 12-7-2001]