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Montana Rules of Court

Title: Chiropractic Legal Panel Rules of Procedure

Date of Last Amendment to these Rules: 24OCT1990

Administrative File Number for these Rules: AF 13-0429

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FILED

October 24 1990

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF13-0429

IN THE MATTER OF THE MONTANA

CHIROPRACTIC LEGAL PANEL

O R D E R

FILED

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ED SMITH, CLERK
MONTANA SUPREME COURT

Pursuant to § 27-12-204, MCA, the Director of the Montana Chiropractic Legal Panel, in consultation with the State Bar of Montana, and with the approval of this Court, may adopt and publish rules of procedure necessary to implement and carry out the duties of the Panel. On October 2, 1990, the Director of the Montana Chiropractic Legal Panel submitted to this Court a set of proposed rules of procedure for the Panel. The proposed rules are substantially the same, with some stylistic improvements, as those offered in June 1990 and recommended by a committee of the State Bar of Montana.

Having reviewed the attached Montana Chiropractic Legal Panel Rules of Procedure, and the Court approving thereof,

IT IS HEREBY ORDERED that the attached rules may be adopted and published.

DATED this 24th day of October, 1990.

A. Turnage
Chief Justice
John Conway Harrison
John L. Steeby
W. G. Long
William E. Hunter
R. C. McPhee
Justices

Montana Chiropractic Legal Panel
Rules of Procedure

RULE 1. Definitions. As used in these rules, the following definitions apply:

(1) "Act" means the Montana Chiropractic Legal Panel Act provided for in 27-12-101 through 27-12-703, MCA.

(2) "Substantial evidence" means 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 a jury trial.

Authority: 27-12-204, MCA Implemented: 27-12-101 through 27-12-703, MCA

RULE 2. Scope of rules -- applicability. (1) These rules apply to all proceedings before the Montana Chiropractic Legal Panel created in 27-12-104, MCA, that are conducted pursuant to the act.

(2) These rules apply to a malpractice claim arising from a chiropractic physician's acts or omissions occurring on or after January 1, 1990. A claim arising prior to that date may be submitted to the panel for review upon the consent of the affected parties.

Authority: 27-12-204, MCA Implemented: 27-12-101 through 27-12-703, MCA

RULE 3. Fees. A claimant may not be required to pay a fee or other charge as a condition for bringing a malpractice claim before the panel.

Authority: 27-12-204, MCA Implemented: 27-12-204, MCA

RULE 4. Representation by and appearance of legal counsel. (1) A party may be represented by legal counsel in proceedings before the panel, although the party is not required to be represented. If a party chooses to retain legal counsel, his attorney shall

informally enter an appearance with the director.

(2) If a party is represented by legal counsel and the attorney has entered an appearance, a notice or communication required by the act or these rules and any other communication must be transmitted to the party's legal counsel, with a copy transmitted to the director, except that the notice of hearing required by 27-12-501, MCA, must be provided to all parties and their respective legal counsel, if any.

Authority: 27-12-204, MCA Implemented: 27-12-306, MCA

RULE 5. Presentation of claim -- application. (1) A claimant shall submit a malpractice claim for the panel's consideration by delivering, by certified mail, to the office of the director, a written application signed by the claimant or the claimant's legal counsel.

(2) The application must:

- (a) be submitted on a form provided by the director; and
- (b) comply with the requirements of 27-12-302, MCA.

(3) The director shall immediately notify the chiropractic physician against whom the claim is made that a claim has been filed and furnish him with a copy of the claim.

(4) This rule does not provide for discovery of information that would be privileged or otherwise beyond discovery pursuant to Rule 26(b)(4)(B), Montana Rules of Civil Procedure, Title 25, chapter 20, MCA.

Authority: 27-12-204, MCA Implemented: 27-12-301 and 27-12-302, MCA

RULE 6. Amendment of application -- request for continuance of hearing. (1) A claimant may amend the application as a matter of course within 20 days of the date the director receives it. Thereafter, the claimant may amend it only with the director's approval, or if a panel has been selected, with the approval of the panel chairman.

(2) The following persons may request that the claimant amend the application to provide additional details of the claim:

(a) the director or, if a panel has been selected, the panel chairman; and

(b) the chiropractic physician against whom the claim is made, upon written request to the director, or, if a panel has been selected, to the panel chairman.

(3) (a) The claimant shall deliver an amendment to the director within 20 days of the date the claimant receives:

(i) the written request for additional information from the director or panel chairman; or

(ii) notice of approval by the director or panel chairman of the chiropractic physician's request.

(b) The claimant shall provide sufficient copies of the amendment for service by the director on all other parties.

(c) If an amendment is filed less than 30 days prior to the date set for hearing, the director or, if a panel has been selected, the panel chairman may continue the hearing upon a showing of good cause.

Authority: 27-12-204, MCA

Implemented: 27-12-303, MCA

RULE 7. Answer to application -- amended answer. (1) The chiropractic physician against whom the malpractice claim is made shall answer the application within 20 days after he receives it. He shall answer by delivering, by certified mail, to the office of the director, a written statement signed by the chiropractic physician or his legal counsel, with copies for service by the director on all other parties.

(2) The director or, if a panel has been selected, the panel chairman may extend the answer period upon a showing of good cause.

(3) The chiropractic physician against whom the malpractice claim is made shall submit an answer to an amended application within 20 days of the date the chiropractic physician receives the amended application. If he does not answer within 20 days, his original statement is considered the answer to the amended application.

(4) When the director receives an answer or amended answer, the director shall serve a copy of it upon the claimant in the manner provided in Rule 8 for service of the application.

Authority: 27-12-204, MCA Implemented: 27-12-306, MCA

RULE 8. Transmittal of documents. (1)(a) When the director receives an application or an amendment to an application, the director shall serve a copy of it upon the chiropractic physician against whom the malpractice claim is made. Service must be effected by mailing a certified copy of the application or amendment to the chiropractic physician at the chiropractic physician's last-known address, postage prepaid, return receipt requested.

(b) The director shall also mail a copy of the application to the directors of the chiropractic physician's professional society or association and the state bar. If the chiropractic physician does not belong to a professional society or association, the director shall mail a copy of the application to the chiropractic physician's state licensing board.

(2) When the director receives the names of the panelists selected pursuant to 27-12-402, MCA, the director shall transmit, by certified mail, to all parties a list of those selected and a brief professional biographical sketch of each panelist.

(3) At least 10 days prior to the date set for hearing, the director shall furnish each panelist with copies of all claims, briefs, medical or hospital records, and other documents pertaining to the claim. If the panel chairman, or the director if a chairman has not yet been selected, determines it is impractical to reproduce or mail a medical record or other document, the record or document must be made available to panel members at the hearing and at the director's office prior to the hearing. Each panelist must be notified of the decision of the chairman or the director and of the availability of the records or documents.

(4) Except as provided in Rule 7 and this rule relating to the service of the application, answer, and any amendments to the application or answer, all motions, memoranda, and other papers presented to the panel must be served upon the parties and copies filed with the director in a manner provided by Rule 5, Montana Rules of Civil Procedure, Title 25, chapter 20, MCA, relating to service and filing of pleadings and other papers.

Authority: 27-12-204, MCA Implemented: 27-12-305, 27-12-308, 27-12-402, 27-12-502, 27-12-603, 27-12-702, 27-12-703, MCA

RULE 9. Selection of panelists and panel chairman. (1) Upon selection of proposed panelists pursuant to 27-12-402, MCA, the directors of the chiropractic physician's professional society or association and the state bar shall transmit to the director a list of those selected, their respective business addresses and telephone numbers, and a brief professional biographical sketch of each proposed panelist.

(2) Pursuant to 27-12-601, MCA, the three attorney members of the panel shall select a panel chairman, who must be an attorney, as soon as possible after selection of the panelists and, if possible, at least 10 days prior to the date set for the hearing. Authority: 27-12-204, MCA Implemented: 27-12-402 and 27-12-601, MCA

RULE 10. Disqualification -- excuse of panelist. (1) An affidavit of disqualification of a panelist filed by a party pursuant to 27-12-404, MCA, must be filed within 15 days of the date the director transmits the panelists' names by mail to the parties. Nothing in these rules may be construed to defeat a party's right to the disqualification.

(2) The director may excuse a proposed panelist from serving on the panel at the panelist's request.

(3) If a panelist has been disqualified or excused, a replacement panelist must be selected pursuant to 27-12-402, MCA. The director shall promptly notify the professional society or association or the state bar of the need to select a replacement panelist. The organization, within 5 days of receipt of the notice, shall select another panelist and notify the director of the replacement.

Authority: 27-12-204, MCA Implemented: 27-12-402 and 27-12-404, MCA

RULE 11. Expert consultant. (1) Pursuant to 27-12-307, MCA, a claimant may request the director's cooperation in retaining a chiropractic physician as an expert consultant by submitting a written request to the director within 30 days of the date the director transmitted the claimant's application to the chiropractic physician against whom the claim is made. The director shall cooperate fully with the claimant in retaining a chiropractic physician qualified in the field of chiropractic who will consult for purposes of the panel hearing.

(2) Communications between the consultant and the claimant or the claimant's legal counsel are privileged unless the privilege is waived by the claimant or is otherwise required to be disclosed by Rule 26(b), Montana Rules of Civil Procedure, Title 25, chapter 20, Authority: 27-12-204, MCA Implemented: 27-12-307, MCA

RULE 12. Time and place of hearing. (1) When the director receives the claimant's application, the director shall set a date, time, and place for the hearing and provide prompt notice of the hearing to the parties, their respective legal counsel, if any, and the panelists.

(2) The date may not be set more than 120 days after transmittal of the application by the director unless the panelists, by majority vote, find that good cause exists for extending the time period. The vote may be taken by letter or telephone.

Authority: 27-12-204, MCA

Implemented: 27-12-501, MCA

RULE 13. Prehearing telephone conference. At least 5 days prior to the date set for hearing, the claimant and his legal counsel, if the claimant is represented, the chiropractic physician against whom the claim is made and his legal counsel, if the chiropractic physician is represented, and the director shall confer with the panel chairman by telephone conference call or in person. The purposes of the prehearing conference are to:

- (1) identify and simplify issues;
- (2) secure stipulations to, or admissions of, facts not remaining in dispute;
- (3) confirm the authenticity of documents;
- (4) limit the number of expert witnesses to be called and the schedule of their appearances;
- (5) estimate the length of the hearing;
- (6) consider, if applicable, a transcription request; and
- (7) consider any other matter that may aid in expeditious consideration and determination of the claim.

Authority: 27-12-204, MCA.

Implemented: 27-12-502, MCA

RULE 14. Exhibits and other documentary evidence -- return of documents by panelists. (1) At least 30 days prior to the date set for hearing, each party shall furnish all other parties a copy, and the director with seven copies, of all records, exhibits, and documents other than medical records obtained by the panel, properly identified, upon which the party intends to rely at the hearing. However, if a party proves that competent evidence was not available within this period, the party producing the evidence shall notify the director, other parties, and all panelists of the evidence as soon as it becomes available and serve copies upon those persons. The panel chairman may admit later-acquired evidence upon terms and conditions he considers just and equitable.

(2) A panelist shall return the copies of the application and answer and any amendments to the application or answer, medical records, exhibits, and all other documents relating to the claim to the director's office upon completion of the hearing and issuance of the panel's decision. A party may retain his copies of any evidentiary materials. The acquiescence of a party to the consideration of such materials by the panel may not be construed as the party's consent to the admission of the material into evidence in a subsequent judicial proceeding.

Authority: 27-12-204, MCA. Implemented: 27-12-308 and 27-12-502, MCA

RULE 15. Conduct of hearing -- hearing procedures -- application of rules of evidence. (1) The panel chairman shall order the conduct of the hearing.

(2) The claimant must be present personally unless his presence is:

(a) waived by the chiropractic physician against whom the claim is made; or

(b) excused by the director, or the panel chairman if a chairman has been selected, upon a timely request to be excused. A request is timely if made at least 30 days before the hearing date unless the request is based on facts not reasonably known 30 days before the hearing date.

(3) At the hearing, the claimant shall proceed first, followed by the chiropractic physician against whom the claim is made, if the chiropractic physician appears.

(4) Both parties may call witnesses who must be sworn and who are subject to cross-examination. Records, exhibits, and other documents relied on by either party may be offered and admitted into evidence if relevant and timely submitted under Rule 14. The panel may review written statements of fact by the claimant and by treating chiropractic physicians.

(5) The hearing is confidential and informal. The panel may not make, pay for, or retain any transcript of the hearing or proceedings relating to the hearing. A party may make, pay for, and retain a transcript with the consent of the panel chairman and the other parties.

(6) The Montana Rules of Evidence, Title 26, chapter 10, MCA, do not apply to the hearing. However, the panel chairman may exclude irrelevant, immaterial, or unduly repetitious evidence.

(7) A panelist and a party, or a party's legal counsel if the party is represented, may examine a party and its witnesses, subject to the control of the panel chairman.

Authority: 27-12-204, MCA. Implemented: 27-12-502, MCA

RULE 16. Compensation of panelists. (1) A panelist must be paid a fee of \$40 an hour, up to a maximum of \$320 a day in which a hearing or part of a hearing is held, for the time spent in hearing the claim. The panel chairman must be paid the same fee for time spent hearing and deciding any preliminary matter. A panelist must also be a paid fee of \$10 an hour for time spent preparing for the hearing.

(2) The director may pay additional compensation for travel time and other services under circumstances including but not limited to consideration of weather and distance.

(3) A claim for fees is subject to the approval of the director.

(4) To obtain compensation, a panelist and panel chairman shall present a bill for the approval of the director stating the nature of the services performed and itemizing to the one-tenth of an hour time spent.

Authority: 27-12-204, MCA.

Implemented: 27-12-203(1), MCA