

TITLE 6  
ACTIONS IN PARTICULAR CASES

CHAPTER 10  
MEDICAL MALPRACTICE

6-1001. HEARING PANEL FOR PRELITIGATION CONSIDERATION OF MEDICAL MALPRACTICE CLAIMS -- PROCEDURE. The Idaho state board of medicine, in alleged malpractice cases involving claims for damages against physicians and surgeons practicing in the state of Idaho or against licensed acute care general hospitals operating in the state of Idaho, is directed to cooperate in providing a hearing panel in the nature of a special civil grand jury and procedure for prelitigation consideration of personal injury and wrongful death claims for damages arising out of the provision of or alleged failure to provide hospital or medical care in the state of Idaho, which proceedings shall be informal and nonbinding, but nonetheless compulsory as a condition precedent to litigation. Proceedings conducted or maintained under the authority of this act shall at all times be subject to disclosure according to chapter 1, title 74, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal.

[6-1001, added 1976, ch. 278, sec. 2, p. 954; am. 1990, ch. 213, sec. 5, p. 491; am. 2015, ch. 141, sec. 2, p. 380.]

6-1002. APPOINTMENT AND COMPOSITION OF HEARING PANEL. The board of medicine shall provide for and appoint an appropriate panel or panels to accept and hear complaints of such negligence and damages, made by or on behalf of any patient who is an alleged victim of such negligence. Said panels, shall include one (1) person who is licensed to practice medicine in the state of Idaho. In cases involving claims against hospitals, one (1) additional member shall be a then serving administrator of a licensed acute care general hospital in the state of Idaho. One (1) additional member of each such panel shall be appointed by the commissioners of the Idaho state bar, which person shall be a resident lawyer licensed to practice law in the state of Idaho, and shall serve as chairman of the panel. The panelists so appointed shall select by unanimous decision a layman panelist who shall not be a lawyer, doctor or hospital employee but who shall be a responsible adult citizen of Idaho. All panelists shall serve under oath that they are without bias or conflict of interest as respects any matter under consideration.

[6-1002, added 1976, ch. 278, sec. 3, p. 954.]

6-1003. INFORMAL PROCEEDINGS. There shall be no record of such proceedings and all evidence, documents and exhibits shall, at the close thereof, be returned to the parties or witnesses from whom the same were secured. The hearing panel shall have the authority to issue subpoenas and to administer oaths; provided, the parties requesting the presentation of such proof shall provide the funds required to tender witness fees and mileage as provided in proceedings in district courts. Except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances, there shall be no discovery or perpetuation of testimony in said proceedings.

[6-1003, added 1976, ch. 278, sec. 4, p. 954.]

6-1004. ADVISORY DECISIONS OF PANEL. At the close of proceedings the panel, by majority and minority reports or by unanimous report, as the case

may be, shall provide the parties its comments and observations with respect to the dispute, indicating whether the matter appears to be frivolous, meritorious or of any other particular description. If the panel is unanimous with respect to an amount of money in damages that in its opinion should fairly be offered or accepted in settlement, it may so advise the parties and affected insurers or third-party payors having subrogation, indemnity or other interest in the matter.

[6-1004, added 1976, ch. 278, sec. 5, p. 954.]

6-1005. TOLLING OF LIMITATION PERIODS DURING PENDENCY OF PROCEEDINGS. There shall be no judicial or other review or appeal of such matters. No party shall be obliged to comply with or otherwise [be] affected or prejudiced by the proposals, conclusions or suggestions of the panel or any member or segment thereof; however, in the interest of due consideration being given to such proceedings and in the interest of encouraging consideration of claims informally and without the necessity of litigation, the applicable statute of limitations shall be tolled and not be deemed to run during the time that such a claim is pending before such a panel and for thirty (30) days thereafter.

[6-1005, added 1976, ch. 278, sec. 6, p. 955.]

6-1006. STAY OF OTHER COURT PROCEEDINGS IN INTEREST OF HEARING BEFORE PANEL. During said thirty (30) day period neither party shall commence or prosecute litigation involving the issues submitted to the panel and the district or other courts having jurisdiction of any pending such claims shall stay proceedings in the interest of the conduct of such proceedings before the panel.

[6-1006, added 1976, ch. 278, sec. 7, p. 955.]

6-1007. SERVICE OF CLAIM ON ACCUSED PROVIDER OF HEALTH CARE. At the commencement of such proceedings and reasonably in advance of any hearing or testimony, the accused provider of health care in all cases shall be served a true copy of the claim to be processed which claim shall set forth in writing and in general terms, when, where and under what circumstances the health care in question allegedly was improperly provided or withheld and the general and special damages attributed thereto.

[6-1007, added 1976, ch. 278, sec. 8, p. 955.]

6-1008. CONFIDENTIALITY OF PROCEEDINGS. Neither party shall be entitled, except upon special order of the panel, to attend and participate in the proceedings which shall be subject to disclosure according to chapter 1, title 74, Idaho Code, and closed to public observation at all times, except during the giving of his or her own testimony or presentation of argument of his or her position, whether by counsel or personally; nor shall there be cross-examination, rebuttal or other customary formalities of civil trials and court proceedings. The panel itself may, however, initiate requests for special or supplemental participation, in particular respects and of some or all parties; and communications between the panel and the parties, excepting only the parties' own testimony on the merits of the dispute, shall be fully disclosed to all other parties.

[6-1008, added 1976, ch. 278, sec. 9, p. 955; am. 1990, ch. 213, sec. 6, p. 491; am. 2015, ch. 141, sec. 3, p. 380.]

6-1009. REPRESENTATION OF PARTIES BY COUNSEL. Parties may be represented by counsel in proceedings before such panels, though it shall not be required.

[6-1009, added 1976, ch. 278, sec. 10, p. 956.]

6-1010. FEES FOR PANEL MEMBERS. The Idaho state board of medicine shall provide, by uniform policy of the board, for the payment of fees and expenses of members of panels, such payment to be made from the state board of medicine fund created in section 54-1809, Idaho Code. Panel members shall serve upon the sworn commitment that all related matters shall be subject to disclosure according to chapter 1, title 74, Idaho Code, and privileged.

[6-1010, added 1976, ch. 278, sec. 11, p. 956; am. 1979, ch. 177, sec. 1, p. 529; am. 1990, ch. 213, sec. 7, p. 492; am. 2015, ch. 141, sec. 4, p. 380.]

6-1011. LIMIT ON DURATION OF PROCEEDINGS -- PANEL'S JURISDICTION. There shall be no repeat or reopening of panel proceedings. In no case shall a panel retain jurisdiction of any such claim in excess of ninety (90) days from date of commencement of proceedings. If at the end of such ninety (90) day period the panel is unable to decide the issues before it, it shall summarily conclude the proceedings and the members may informally, by written communication, express to the parties their joint and several impressions and conclusions, if any, albeit the same may be tentative or based upon admittedly incomplete consideration; provided, by written agreement of all parties the jurisdiction of the panel, if it concurs therein, may be extended and the proceeding carried on for additional periods of thirty (30) days.

[6-1011, added 1976, ch. 278, sec. 12, p. 956]

6-1012. PROOF OF COMMUNITY STANDARD OF HEALTH CARE PRACTICE IN MALPRACTICE CASE. In any case, claim or action for damages due to injury to or death of any person, brought against any physician and surgeon or other provider of health care, including, without limitation, any dentist, physicians' assistant, nurse practitioner, registered nurse, licensed practical nurse, nurse anesthetist, medical technologist, physical therapist, hospital or nursing home, or any person vicariously liable for the negligence of them or any of them, on account of the provision of or failure to provide health care or on account of any matter incidental or related thereto, such claimant or plaintiff must, as an essential part of his or her case in chief, affirmatively prove by direct expert testimony and by a preponderance of all the competent evidence, that such defendant then and there negligently failed to meet the applicable standard of health care practice of the community in which such care allegedly was or should have been provided, as such standard existed at the time and place of the alleged negligence of such physician and surgeon, hospital or other such health care provider and as such standard then and there existed with respect to the class of health care provider that such defendant then and there belonged to and in which capacity he, she or it was functioning. Such individual providers of health care shall be judged in such cases in comparison with similarly trained and qualified providers of the same class in the same community, taking into account his or her training, experience, and fields of medical specialization, if any. If there be no other like provider in the community and the standard of practice is therefore indeterminable, evidence of such standard in similar

Idaho communities at said time may be considered. As used in this act, the term "community" refers to that geographical area ordinarily served by the licensed general hospital at or nearest to which such care was or allegedly should have been provided.

[6-1012, added 1976, ch. 277, sec. 2, p. 951.]

6-1013. TESTIMONY OF EXPERT WITNESS ON COMMUNITY STANDARD. The applicable standard of practice and such a defendant's failure to meet said standard must be established in such cases by such a plaintiff by testimony of one (1) or more knowledgeable, competent expert witnesses, and such expert testimony may only be admitted in evidence if the foundation therefor is first laid, establishing (a) that such an opinion is actually held by the expert witness, (b) that the said opinion can be testified to with reasonable medical certainty, and (c) that such expert witness possesses professional knowledge and expertise coupled with actual knowledge of the applicable said community standard to which his or her expert opinion testimony is addressed; provided, this section shall not be construed to prohibit or otherwise preclude a competent expert witness who resides elsewhere from adequately familiarizing himself with the standards and practices of (a particular) such area and thereafter giving opinion testimony in such a trial.

[6-1013, added 1976, ch. 277, sec. 3, p. 952.]

6-1014. PATIENT PROTECTION AND AFFORDABLE CARE ACT AND OTHER METRICS NOT USED TO ESTABLISH COMMUNITY STANDARD. (1) In determining whether a health care practitioner has met a standard of care under this chapter or under any other Idaho statute, no criteria, guideline, standard or other metric established or imposed by the patient protection and affordable care act (PPACA), P.L. 111-148, established or imposed by or pursuant to any other law or regulation of the United States or any entity or agency thereof and used for the purpose of determining reimbursement or a rate of reimbursement for the care provided, or established or imposed by another state or by a third party payor, shall be used as a basis for establishing an applicable community standard of care. The fact that a health care practitioner has met or failed to meet any such criteria, guideline, standard or other metric shall not be admissible or considered by a finder of fact in any proceeding or other action concerning a determination of liability of a health care practitioner to a patient or other party seeking damages on account of an injury to a patient or in any proceeding or other action of a state licensing or regulatory authority imposing professional discipline for failure of a health care practitioner to meet the applicable standard of care.

(2) Notwithstanding the provisions of subsection (1) of this section, nothing in this section shall prevent the consideration of facts that establish compliance or lack of compliance with a community standard of care, so long as the facts considered do not include reference to any criteria, guideline, standard or other metric imposed by the PPACA, established or imposed by or pursuant to any other law or regulation of the United States or any entity or agency thereof and used for the purpose of determining reimbursement or a rate of reimbursement for the care provided, or established or imposed by another state or by a third party payor.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Health care practitioner" means a person licensed, registered or otherwise authorized under title 54, Idaho Code, to provide services relating to the prevention, cure or treatment of illness, injury or disease.

(b) "Third party payor" means any entity subject to the jurisdiction of the department of insurance under title 41, Idaho Code, and also includes any federal, state or local government entity and its contractors making payments or administering any plan or program paying for health care services.

[6-1014, added 2014, ch. 346, sec. 1, p. 867.]