

**THE IDAHO STATE BOARD OF MEDICINE**  
**APPLICATION AND CLAIM FOR**  
**MEDICAL MALPRACTICE PRELITIGATION HEARING**

**Please use this form if you wish a hearing for prelitigation consideration  
of a personal injury claim for money damages.**

PLEASE NOTE: THIS IS **NOT** A DISCIPLINE COMPLAINT FORM.

Please mail a copy of your printed or typed application and claim to:  
Idaho State Board of Medicine, PO Box 83720, Boise, Idaho, 83720-0058.  
EXPRESS MAIL: 1755 Westgate Dr., Suite 140, Boise, Idaho, 83704

I request consideration of a claim for personal injury or wrongful death by a hearing panel in accordance with Chapter 278, Session Law of Idaho, 1976, I.C., Section 6-1001, et seq.

Signed: \_\_\_\_\_, Complainant

Printed Name: \_\_\_\_\_, Complainant Date: \_\_\_\_\_, 20\_\_

**COMPLAINANT:** \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**COUNSEL:** \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**RESPONDENT:** \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**COUNSEL:** \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**RESPONDENT:** \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

**COUNSEL:** \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ Cell: (\_\_\_\_) \_\_\_\_\_ FAX: (\_\_\_\_) \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_

(If there are additional respondents, please list them all on an additional sheet of paper.)

**CLAIM:** To complete your Application, please set forth in writing and in general terms on this form, by whom, where, when and under what circumstance(s) the healthcare in question was allegedly and improperly provided or withheld that resulted in the untoward result or contributed to the injury as well as damages claimed. Please use additional sheets of paper if necessary.

**BY WHOM:** (FULL name of each physician and/or acute care general hospital)

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**WHERE:** (FULL address for each physician and/or acute care general hospital)

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**WHEN:** (Date(s) (DD/MM/YY) for each alleged incident the healthcare in question was allegedly improperly provided or withheld by the physician and/or acute care general hospital)

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**UNDER WHAT CIRCUMSTANCE(S):**

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**MONEY DAMAGES CLAIMED:**

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The hard copy or CD of your completed application AND claim must include your name, address and contact numbers. Do not send evidence or documents with your application AND claim.

Upon the Board's receipt of a hard copy or CD of your application AND claim, you will be notified of the name and telephone number of the designated Prelitigation Hearing Panel Chairman. You must contact the Panel Chairman to schedule a Prelitigation Hearing. Upon receipt of the date, time and location of the Prelitigation Hearing scheduled by the Panel Chairman, the Board will provide written notification to all parties.

At least ten (10) days prior to the date of the Prelitigation Hearing, you must also serve (mail) a hard copy or CD of your application AND claim AND evidence to each named Respondent(s), Respondent's counsel(s) and all the members of the hearing panel. You may be required to provide hard copies to the panelists. All costs associated with obtaining, copying and mailing the application AND claim AND evidence AND documents are the sole responsibility of the Claimant and Respondent(s). The hard copies or CDs of the application, claim AND all evidence, documents AND exhibits must be identified with names and addresses to facilitate return.

At the close of the Prelitigation Proceedings, all parties and counsels must insure that the hard copies or CDs of the application, claim AND all evidence, documents AND exhibits be returned to the parties or witnesses from whom the same were secured.

Pursuant to **Idaho Code § 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 3, title 9, 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.

If you have any questions or require additional information, please contact Alissa Murphy, (208) 327-7000 ext 226 or long distance, (800) 333-0073, [lisa.murphy@bom.idaho.gov](mailto:lisa.murphy@bom.idaho.gov) Rev. 1/2013



# STATE OF IDAHO

BOARD OF MEDICINE 1755 Westgate Dr., Ste 140 Boise, Idaho 83704  
Telephone: (208) 327-7000 Fax: (208) 327-7005 Website [bom.idaho.gov](http://bom.idaho.gov) E-Mail [info@bom.idaho.gov](mailto:info@bom.idaho.gov)

## PRELITIGATION HEARINGS FOR MEDICAL MALPRACTICE CLAIMS

### IDAHO STATE BOARD OF MEDICINE

The Board of Medicine (hereinafter Board) receives and processes requests for Prelitigation Hearings for claims against Idaho licensed physicians (hereinafter physician) and/or Idaho licensed acute care general hospitals (hereinafter hospital) for personal injury and wrongful death claims for damages arising out of the provision of or alleged failure to provide medical and/or hospital care.

Processing requests for Prelitigation Hearings includes, but is not limited to, appropriate notification and assisting the Panel Chairman in making the necessary arrangements for Prelitigation Hearings.

### PRELITIGATION HEARING APPLICATIONS

Application Forms to request Prelitigation Hearings may be obtained from the Board located at 1755 Westgate Drive, Suite 140, Boise, Idaho, telephoning 208-327-7000 or on line at [www.bom.idaho.gov](http://www.bom.idaho.gov).

After accessing the Board's home page, go to the third column entitled "Quick Links", scroll down and click on "Prelitigation".

Submitted Application Forms must set forth in reasonable detail the claim for personal injury and/or wrongful death arising out of the provision of or alleged failure to provide medical and/or hospital care. The claim must include the name of the physician and/or hospital, the date(s), location(s) and why the provision of or alleged failure to provide care resulting in general and/or special damages.

### PRELITIGATION HEARINGS

Prelitigation Hearings are expeditious and informal; formal Rules of Evidence do not apply.

Panel Chairmen are attorneys appointed by authority vested in the Idaho State Bar to preside over the Prelitigation Hearing. The Panel Chairman schedules and conducts Prelitigation Hearings. Except upon special order of the Panel, and for good cause demonstrating extraordinary circumstances, there shall be no continuation of testimony in a Prelitigation Hearing. Any party wishing to postpone a Prelitigation Hearing must provide a written request setting out the facts of an unreasonable burden or undue hardship. Such a request for postponement must be granted by the Panel prior to the scheduled date of the Prelitigation Hearing.

All parties are responsible for their legal representation. Please note, Idaho law does not require a party to be represented by legal counsel. Any party who does not intend or wish to appear or be represented by legal counsel at a Prelitigation Hearing must notify the Board's Prelitigation Department immediately.

Parties who do not intend to be represented by legal counsel, e.g., "Pro Se", at a Prelitigation Hearing must follow the Board's process. This process includes submission to the Board of a "completed" Application Form for a Prelitigation Hearing setting forth the claim in reasonable detail.

All parties must appear at the time and place the Prelitigation Hearing is scheduled. Lateness or failing to appear causes a substantial loss in time, effort and expense.

**TITLE 6  
ACTIONS IN PARTICULAR CASES  
CHAPTER 10  
MEDICAL MALPRACTICE**

- Idaho Code §6-1001. HEARING PANEL FOR PRELITIGATION CONSIDERATION OF MEDICAL MALPRACTICE CLAIMS -- PROCEDURE.
- Idaho Code §6-1002. APPOINTMENT AND COMPOSITION OF HEARING PANEL.
- Idaho Code §6-1003. INFORMAL PROCEEDINGS.
- Idaho Code §6-1004. ADVISORY DECISIONS OF PANEL.
- Idaho Code §6-1005. TOLLING OF LIMITATION PERIODS DURING PENDENCY OF PROCEEDINGS.
- Idaho Code §6-1006. STAY OF OTHER COURT PROCEEDINGS IN INTEREST OF HEARING BEFORE PANEL.
- Idaho Code §6-1007. SERVICE OF CLAIM ON ACCUSED PROVIDER OF HEALTH CARE.
- Idaho Code §6-1008. CONFIDENTIALITY OF PROCEEDINGS.
- Idaho Code §6-1009. REPRESENTATION OF PARTIES BY COUNSEL.
- Idaho Code §6-1010. FEES FOR PANEL MEMBERS.
- Idaho Code §6-1011. LIMIT ON DURATION OF PROCEEDINGS -- PANEL'S JURISDICTION.
- Idaho Code §6-1012. PROOF OF COMMUNITY STANDARD OF HEALTH CARE PRACTICE IN MALPRACTICE CASE.
- Idaho Code §6-1013. TESTIMONY OF EXPERT WITNESS ON COMMUNITY STANDARD.

**CHAPTER 10  
MEDICAL MALPRACTICE**

**Idaho Code §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 3, title 9, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal.

**Idaho Code §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.

**Idaho Code §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.

**Idaho Code §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.

**Idaho Code §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.

**Idaho Code §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.

**Idaho Code §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.

**Idaho Code §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 3, title 9, 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.

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

**Idaho Code §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 3, title 9, Idaho Code, and privileged.

**Idaho Code §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.

**Idaho Code §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.

**Idaho Code §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.

**IDAPA 22.01.01.081, "RULES OF THE BOARD OF MEDICINE FOR THE LICENSURE TO PRACTICE MEDICINE AND SURGERY AND OSTEOPATHIC MEDICINE AND SURGERY IN IDAHO,"** provides:

**081. PHYSICIAN PANELIST FOR PRELITIGATION CONSIDERATION OF MEDICAL MALPRACTICE CLAIMS.**

**01. Purpose.** The purpose of serving as a physician panelist for prelitigation consideration of medical malpractice claims is to cooperate in the 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 Idaho and 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.

**02. Eligibility.** A physician licensed to practice medicine and surgery or osteopathic medicine or surgery in Idaho shall be available to serve in any two (2) year period, or a longer period not to exceed five (5) years, as determined by the panel chairman, as a physician panelist for prelitigation consideration of a medical malpractice claim.

**03. Excusing Physicians from Serving.** A physician panelist so selected shall serve unless he had served on a prelitigation panel during any previous two (2) year period, or a longer period not to exceed five (5) years, as determined by the panel chairman or for good cause shown, is excused by the panel chairman. To show good cause for relief from serving, the selected physician panelist shall present an affidavit to the panel chairman which shall set out the facts showing that service would constitute an unreasonable burden or undue hardship. The panel chairman shall have the sole authority to excuse a selected physician from serving on a prelitigation panel.

**04. Penalties for Noncompliance.** The Board may condition, limit, suspend, or refuse to renew the license of any physician whom the Board determines has failed to serve as a physician panelist for the prelitigation consideration of a medical malpractice claim.

## **PRELITIGATION HEARINGS FOR MEDICAL MALPRACTICE CLAIMS**

### **FREQUENTLY ASKED QUESTIONS BY PRO SE CLAIMANTS**

(No legal counsel/representation)

#### **WHAT IS THE FIRST STEP IN REQUESTING A PRELITIGATION HEARING FOR A MEDICAL MALPRACTICE CLAIM?**

A person (hereinafter Claimant) wishing to initiate medical malpractice litigation must first utilize the Prelitigation Hearing process. To request a Prelitigation Hearing, a Claimant must submit a completed "Application Form" entitled "Medical Malpractice Prelitigation Screening" to the Idaho State Board of Medicine (hereinafter Board).

Application Forms to request for Prelitigation Hearings may be obtained from the Board, located at 1755 Westgate Drive, Ste. 140, Boise, Idaho, telephoning: 208-327-7000 or on line at [born.idaho.gov](http://born.idaho.gov).

To obtain an Application Form on line, go to the third column entitled "Quick Links" on the Board's home page, scroll down and click on "Prelitigation".

An acceptable and completed Application Form must include a written claim stating, in general but reasonable terms, when, where and under what circumstances the health care in question was allegedly improperly provided or withheld by an Idaho licensed physician(s) (hereinafter physician) and/or Idaho licensed acute care general hospital(s) (hereinafter hospital) and the resulting general and/or special damages.

**NOTE:** A request for a Prelitigation Hearing will not be processed unless and until the Claimant submits a COMPLETED Application Form including the written claim to the Board.

#### **WHY IS THERE A PRELITIGATION HEARING PROCESS?**

In the interest of encouraging consideration of claims informally and without the necessity of litigation, the Idaho Legislature wishes to encourage parties to resolve their disputes informally. Pursuant to the enactment of Title 6, Chapter 10, Idaho Code, all Claimants are required to use the Prelitigation Hearing process before bringing a medical malpractice lawsuit. In Idaho, no one can take legal action, e.g., sue, a physician and/or hospital until a Prelitigation Hearing has been conducted.

#### **WHAT HAPPENS AFTER THE PRELITIGATION HEARING APPLICATION FORM AND CLAIM ARE SUBMITTED?**

Within ten (10) days upon a determination a submitted Application and claim is deemed complete, a Notice of Prelitigation Hearing Request is mailed to the named physician(s) and/or hospital(s). This Notice will identify the attorney who will serve as Panel Chairman of the Prelitigation Hearing Panel and will request each party to send the Panel Chairman a list of the dates they will be unavailable in the upcoming months. A Prelitigation Hearing is usually scheduled within two (2) months after this Notice is mailed.

Another Notice will be mailed to the parties identifying the other panelist(s) approximately two (2) weeks before the Prelitigation Hearing.

#### **WHOM SHOULD I CONTACT ABOUT MATTERS BEFORE THE PRELITIGATION HEARING?**

All communications about matters before the Prelitigation Hearing, including, but not limited to, scheduling, requests to reschedule and other questions, MUST be directed to the Panel Chairman. Do NOT contact the Board or the Board's Prelitigation Department. The Panel Chairman will convey all matters to the Board's Prelitigation Department for the mailing of all Notices.

The Panel Chairman, Panelists, the Board's Prelitigation Department and the Board are PROHIBITED from providing any legal counsel or medical advice.

#### **WHO WILL BE PRESENT AT A PRELITIGATION HEARING?**

The parties present will be the:

- "Claimant(s)", the party who submitted a completed Application Form stating a claim alleging medical malpractice;

- "Respondent(s)", the physician(s) and/or hospital(s) answering the claim alleging medical malpractice;
- "Prelitigation Hearing Panelists," an Idaho licensed physician and an individual who is not a physician, attorney or hospital employee. In cases involving hospitals, one (1) additional member who serves as an administrator of an Idaho licensed acute care general hospital; and
- "Prelitigation Hearing Panel Chairman," an attorney appointed by the Idaho State Bar to preside over the Prelitigation Hearing.

#### **DO I NEED LEGAL COUNSEL?**

No. Legal counsel or representation is not required. Parties, however, may wish to be represented by legal counsel prior to and during a Prelitigation Hearing.

#### **WHAT DOCUMENTATION AND/OR INFORMATION MUST I PROVIDE?**

The Prelitigation Hearing panel relies entirely on documents and information, such as medical records, supplied and presented by the parties. Each party is responsible for providing each panel member with copies of all documents and information relevant to the claim prior to the Prelitigation Hearing.

#### **MAY I ASK FOR DOCUMENTATION AND/OR INFORMATION FROM THE OTHER PARTY?**

No. You, the Claimant, may NOT seek or ask for documentation and/or information from the other party (Respondent(s)). You may NOT request depositions, interrogatories, requests for admission, etc., as the Rules of Evidence do not apply to Prelitigation Hearings. Copies of medical records may, perhaps, be obtained upon submitting a signed Authorization for Release of Medical Records to the Respondent(s).

#### **WHAT MUST I PROVE?**

A Claimant must prove it was more likely than not that the physician(s) and/or hospital(s) negligently failed to meet the applicable standard of health care practice of the community in which such care was or should have been provided.

#### **HOW WILL THE PRELITIGATION HEARING BE CONDUCTED?**

Prelitigation Hearings are expeditious and informal. The Rules of Evidence do not apply; there is no cross-examination or rebuttal; parties are not sworn in; no court reporter is present and no record is made of testimony. During the Prelitigation Hearing, each party appears separately, outside of the other's presence.

#### **IS THE PANEL'S ADVISORY DECISION BINDING ON THE PARTIES?**

No. After the Prelitigation Hearing, the Panel will conclude its deliberations and issue a written advisory decision, called a "Report and Recommendation" which will be mailed to the parties. The Report and Recommendation may find that a claim has merit; has no merit; is frivolous or other description of findings. This Report and Recommendation is advisory only; it has NO binding authority. Regardless of the Report and Recommendation, the Claimant may determine all further action including initiating litigation. Upon issuance of the Report and Recommendation, the Board's role in the Prelitigation Hearing process is completed.

#### **WILL THE PRELITIGATION HEARING PROCESS AND PANEL'S ADVISORY DECISION BE KEPT CONFIDENTIAL?**

Yes. All panelists must state under oath that they are not biased, have no conflict of interest, and will maintain confidentiality regarding all testimony and records disclosed in the prelitigation screening process. Panelists destroy all documents in their possession at the conclusion of the Prelitigation Hearing process.

#### **MAY I APPEAL A PANEL'S ADVISORY DECISION?**

No. There is no repeat or reopening of the Prelitigation Hearing process nor judicial or other review or appeal of a Prelitigation Hearing or Report and Recommendation.

**IS THE PRELITIGATION HEARING PROCESS USED IN MATTERS INVOLVING OTHER HEALTH CARE PROVIDERS?**

Yes. The Prelitigation Hearing process is required for and limited to claims against BONA FIDE hospital employees as well as for physicians and/or hospitals.

**MAY I REQUEST A PRELITIGATION HEARING IN A CLAIM AGAINST AN ACUTE CARE GENERAL HOSPITAL FOR THE NEGLIGENCE OF ITS STAFF?**

Yes. The Prelitigation Hearing process is utilized if one of the hospital staff was a bona fide "employee" at the time of the alleged negligence. Idaho licensed acute care general hospitals are NOT liable or responsible for the actions of nonemployees such as independent contractors.

**WILL THE PRELITIGATION HEARING PANEL ALSO CONDUCT AN INVESTIGATION OR FILE A COMPLAINT AGAINST A PHYSICIAN'S MEDICAL LICENSE?**

No. A Prelitigation Hearing panel only hears claims for alleged malpractice, and damages against a physician and/or hospital and/or hospital employee, made by a patient or on behalf of a patient by a beneficiary whose medical care was allegedly improperly provided or withheld.

A complaint against physician's Idaho medical license is addressed solely by the Committee on Professional Discipline and the Board.

A party wishing to file a complaint against physician's Idaho medical license must submit a separate complaint to the Board. Complaint Forms may be obtained from Board, located at 1755 Westgate Drive, Ste. 140, Boise, Idaho, telephoning: 208-327-7000 or on line at bom.idaho.gov.

To obtain a Complaint Form on line, go to the third column entitled "Quick Links" on the Board's home page, scroll down and click on "Filing a Complaint".

**WHAT IS THE STATUTE OF LIMITATIONS AFTER ISSUANCE OF THE ADVISORY DECISION (REPORT AND RECOMMENDATION)?**

Idaho Code § 5-201 provides:

**LIMITATIONS IN GENERAL.** Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute.

Idaho Code § 5-219(4) provides, in part:

**ACTIONS AGAINST OFFICERS, FOR PENALTIES, ON BONDS, AND FOR PROFESSIONAL MALPRACTICE OR FOR PERSONAL INJURIES.** Within two (2) years:

4. An action to recover damages for professional malpractice, or for an injury to the person, or for the death of one caused by the wrongful act or neglect of another, including any such action arising from breach of an implied warranty or implied covenant; provided, however, when the action is for damages arising out of the placement and inadvertent, accidental or unintentional leaving of any foreign object in the body of any person by reason of the professional malpractice of any hospital, physician or other person or institution practicing any of the healing arts or when the fact of damage has, for the purpose of escaping responsibility therefor, been fraudulently and knowingly concealed from the injured party by an alleged wrongdoer standing at the time of the wrongful act, neglect or breach in a professional or commercial relationship with the injured party, the same shall be deemed to accrue when the injured party knows or in the exercise of reasonable care should have been put on inquiry regarding the condition or matter complained of; but in all other actions, whether arising from professional malpractice or otherwise, the cause of action shall be deemed to have accrued as of the time of the occurrence, act or omission complained of, and the limitation period shall not be extended by reason of any continuing consequences or damages resulting therefrom or any continuing professional or commercial relationship between the injured party and the alleged wrongdoer, and, provided further, that an action within the foregoing foreign object or fraudulent concealment exceptions must be commenced within one (1) year following the date of accrual as aforesaid or two (2) years following the occurrence, act or omission complained of, whichever is later. The term

"professional malpractice" as used herein refers to wrongful acts or omissions in the performance of professional services by any person, firm, association, entity or corporation licensed to perform such services under the law of the state of Idaho. This subsection shall not affect the application of section 5-243, Idaho Code, except as to actions arising from professional malpractice. Neither shall this subsection be deemed or construed to amend, or repeal section 5-241, Idaho Code.

...

**TOLLING OF LIMITATION PERIODS DURING PENDENCY OF PROCEEDINGS.**

Pursuant to Idaho Code § 6-1005:

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.

**STAY OF OTHER COURT PROCEEDINGS IN INTEREST OF HEARING BEFORE PANEL.**

Pursuant to Idaho Code § 6-1006:

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.

**IDAHO STATE BOARD OF MEDICINE  
POSITION STATEMENT ON PRELITIGATION PROCEEDINGS  
NON-LICENSED IDAHO ATTORNEY TO ASSOCIATE WITH  
AN IDAHO LICENSED ATTORNEY**

Pursuant to Idaho Code § 6-1001, the Idaho State Board of Medicine (Board) is charged 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.<sup>1</sup>

Parties may be represented by legal counsel or appear pro se on one's own behalf, rather than being represented by legal counsel, in prelitigation proceedings before the hearing panels for consideration of personal injury and wrongful death claims.<sup>2</sup>

Idaho Bar Commission Rule 227 (i) Agency Admission provides that in "agency proceedings in Idaho, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state attorney who has been retained to appear as counsel in that proceeding pro hac vice." Given a prelitigation proceeding is in the nature of a special civil grand jury and "agency proceeding", the Board has adopted relevant Idaho Bar Commission Rules.

Concurring with Idaho Bar Commission Rule 227, it is the Board's position, except as otherwise provided in the Admission Rules, that only actively licensed Idaho attorneys may represent parties in prelitigation proceedings. Also concurring, it is the Board's position that non-licensed Idaho attorneys wishing to represent parties in prelitigation proceedings obtain Pro Hac Vice Admission. Idaho Bar Commission Rule 227 provides, in part:

**RULE 227. Pro Hac Vice Admission.**

(a) **Requirements.** Except as otherwise provided in the Admission Rules, only an actively licensed Idaho attorney may practice law. Upon order by the affected court and subject to the limitations below, an attorney who is not a member of the Bar or a resident of Idaho may be permitted to appear in an Idaho [agency proceeding] if the attorney:

- (1) Is an active member in good standing of the bar of another state or territory of the United States or the District of Columbia;
- (2) Currently maintains an ongoing law practice in another jurisdiction;
- (3) Files a motion for pro hac vice admission with the affected court as provided below; and
- (4) Pays a \$200 fee to the Bar.

(b) **Local Counsel.**

- (1) As used in this rule, Local Counsel means an active member of the Bar with whom the [Board] and opposing counsel may readily communicate regarding the conduct of the [proceeding].
- (2) Unless specifically excused from attendance by the [hearing chairman], Local Counsel shall personally appear with the pro hac vice attorney on all matters before the [Board].

...

Further, it is the Board's position that an actively licensed Idaho attorney sign and submit the Application for a prelitigation proceeding. In the alternative, the Application may be signed and submitted by a non-licensed Idaho attorney but only if accompanied with a notice of appearance by an actively licensed Idaho attorney.

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<sup>1</sup>Idaho Code § 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 3, title 9, Idaho Code. Formal rules of evidence shall not apply and all such proceedings shall be expeditious and informal.

<sup>2</sup>Idaho Code § 6-1009. Representation of parties by counsel. Parties may be represented by counsel in proceedings before such panels, though it shall not be required.