



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

MEDICAL MALPRACTICE PRELITIGATION HEARING APPLICATION AND CLAIM

**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 COMPLAINT FORM.

Please email, fax, or mail a printed or typed application and claim to:
Mail: Idaho State Board of Medicine, PO Box 83720, Boise, Idaho, 83720-0058.
Express Mail: 1755 Westgate Dr., Suite 140, Boise, Idaho, 83704
Email: lisa.murphy@bom.idaho.gov Fax: (208) 327-7005

APPLICATION

I request consideration of a claim for personal injury or wrongful death by a hearing panel in accordance with Idaho Code Section 6-1001, et seq.

Signed: _____, Complainant

Printed Name: _____, Complainant Date: _____

COMPLAINANT: _____

Telephone: (____) _____ Cell: (____) _____ FAX: (____) _____

Address: _____

City/State/Zip: _____

COUNSEL: _____

Telephone: (____) _____ Cell: (____) _____ FAX: (____) _____

Address: _____

City/State/Zip: _____

RESPONDENT: _____

(FULL name of physician and/or acute care general hospital)

Telephone: (____) _____ Cell: (____) _____ FAX: (____) _____

Address: _____

City/State/Zip: _____

RESPONDENT: _____

(FULL name of physician and/or acute care general hospital)

Telephone: (____) _____ Cell: (____) _____ FAX: (____) _____

Address: _____

City/State/Zip: _____

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

CONTINUE TO CLAIM

CLAIM

To complete your application and claim, please set forth in writing and in general terms for **each Respondent**, *by whom, where, when and facts supporting your claim that malpractice occurred* and the healthcare in question that 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.

RESPONDENT:

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

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

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)

FACTS TO SUPPORT YOUR CLAIM THAT MALPRACTICE OCCURRED:

MONEY DAMAGES CLAIMED:

RESPONDENT:

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

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

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)

FACTS TO SUPPORT YOUR CLAIM THAT MALPRACTICE OCCURRED:

MONEY DAMAGES CLAIMED:

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

CONTINUE TO PRELITIGATION HEARING AGENDA GUIDELINES

PRELITIGATION HEARING AGENDA GUIDELINES

Please email, fax or mail a hard copy of your completed application and claim to the Idaho State Board of Medicine (Board). You must include your name, address and contact numbers. Do not send any evidence or documents with your application and claim.

Upon the Board's receipt 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 conference call and prelitigation hearing. The Board will provide a hearing announcement to all parties upon receipt of the date, time and location of the prelitigation hearing scheduled by the Panel Chairman.

At least ten (10) days prior to the date of the prelitigation hearing, Complainant and Respondent(s) are to serve (mail) a hard copy or CD of the application, claim and all evidence, documents and exhibits **to each** named party(s), counsel and all the members of the hearing panel.

All costs associated with obtaining, copying and mailing the application, claim and any evidence or documents are the sole responsibility of the Claimant(s) and Respondent(s). The hard copies or CDs of the application, claim and evidence, documents and exhibits must be identified with names and addresses to facilitate return at the close of the Prelitigation Hearing.

At the close of the Prelitigation proceedings, the hard copy or CD of the application and claim and all such evidence, documents and exhibits shall be returned to the parties by the Panel Chairman, unless the parties have requested they be destroyed.

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 2511 or long distance, (800) 333-0073, lisa.murphy@bom.idaho.gov



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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, telephone 208-327-7000 or on the Board's website: bom.idaho.gov

After accessing the Board's home page, go to "Quick Links" and click on "Prelitigation" then click on "Malpractice Prelitigation Form". Here you may print the application and claim forms or type in the fillable application and claim form to submit. Completed application and claim forms may be received by the Board by emailing lisa.murphy@bom.idaho.gov or fax 208-327-7005 or mail at 1755 Westgate Drive, Suite 140 Boise, Idaho 83704.

Submitted Application and Claim forms must set forth in reasonable detail the claim for personal injury and/or wrongful death arising out of the provision for or alleged failure to provide medical and/or hospital care. The claim must include the full name of the physician and/or acute care hospital, the date(s), location, 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 Hearings. The Panel Chairman schedules and conducts the 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 for the request. 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 a "completed" application and claim form requesting 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

- [6-1001](#) HEARING PANEL FOR PRELITIGATION CONSIDERATION OF MEDICAL MALPRACTICE CLAIMS -- PROCEDURE.
- [6-1002](#) APPOINTMENT AND COMPOSITION OF HEARING PANEL.
- [6-1003](#) INFORMAL PROCEEDINGS.
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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.

6-1002. 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.

6-1003. 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.

6-1004. 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.

6-1005. 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.

6-1006. 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.

6-1007. 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.

6-1008. 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.

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

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.

6-1011. 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.

6-1012. 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.

6-1013. 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.

6-1014. 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.

**IDAHO STATE BOARD OF MEDICINE
POSITION STATEMENT ON PRELITIGATION PROCEEDINGS
OUT-OF-STATE 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.¹

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.²

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 follows 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 out-of-state 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 \$325 fee to the Bar, \$125 of which shall be remitted by the Bar to the Idaho Law Foundation to support its pro bono legal services program.

**(Section (a) amended 3-4-13 – effective 4-1-13.)*

(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].

***(c) Procedure.** To apply for pro hac vice admission, an attorney shall:

- (1) File a motion with the affected court that:
 - (A) Designates Local Counsel and the address and telephone number of Local Counsel;
 - (B) Provides the written consent of Local Counsel; and
 - (C) Identifies the bar of which the Applicant is an active member in good standing and whether that bar limits the number of pro hac vice admissions;
- (2) Submit to the Bar:
 - (A) Payment of a \$325 fee;
 - (B) A certificate of good standing from the jurisdiction where the attorney currently maintains a law practice; and
 - (C) A copy of the motion;
- (3) Provide proof that all counsel of record in the case have been served with the motion; and
- (4) Submit a copy of the proposed order to the affected court.

**(Section (c) amended 3-4-13 – effective 4-1-13.)*

Please see Rule 227 Section (j) **Form of Motion.**

Further, it is the Board's position that an actively licensed Idaho attorney sign and submit the Application for a prelitigation proceeding.

¹Idaho 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.

²Idaho 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.