

Introduction to the
PATIENT-PHYSICIAN ARBITRATION AGREEMENT

What is the Patient-Physician Arbitration Agreement?

The Patient-Physician Arbitration Agreement is an agreement between you and your doctor to resolve disputes without going to court.

What claims are covered?

All present or future claims of any kind between you and your family and your doctor for which you might sue your doctor are covered, except for claims for limited amounts of money which may be resolved in small claims court.

What is arbitration?

Arbitration is an alternative way of resolving disputes. Instead of taking your disagreement through the long and expensive process of court litigation, you and your doctor agree in advance to submit any disputes to a panel of arbitrators. After a hearing, which is usually less formal than a court proceeding, the arbitrators make the decision. Although the procedures are different, generally the same laws and same measure of damages applied in court proceedings apply in arbitration.

Who is bound by the Agreement?

If you choose to sign the Arbitration Agreement found at the end of this booklet, you will be agreeing to bind yourself and anyone who could bring suit in connection with treatment or services provided to you by your doctor. If you sign on behalf of a family member or some other person for whom you have responsibility, you will bind that person as well as anyone who could sue in connection with treatment or services provided to that person by the doctor with whom the patient enters into the Agreement. Likewise, the doctor, or anyone suing on behalf of the doctor, is bound by the Agreement. If the doctor is temporarily absent from practice and refers you to a substitute physician who has agreed in advance to be bound by the terms of the Agreement, then any disputes between you and the substitute physician, or vice versa, will also be subject to arbitration. Any other person with an interest in the dispute will be permitted to participate in the arbitration proceeding so that the entire matter may be arbitrated at one time.

May I be represented by an attorney of my choice?

Yes. Any party to arbitration may be represented by an attorney of his or her choice, at his or her own expense. The arbitrators will hear the facts and decide the case whether or not the parties are represented by lawyers.

What does arbitration cost?

The arbitrators' fees are shared equally by the parties. While the total amount of the arbitrators' fees and the other costs of having a claim(s) adjudicated will depend upon the complexity and length of the case as well as other factors, generally speaking, arbitration can be less expensive for the parties than litigating in court.

If either party does not like the arbitration result, could there still be a jury in court?

Generally the answer is "no." The whole purpose of arbitration is to avoid the expense, delay and inconvenience of going to court. Arbitration awards may be appealed to a court under very limited circumstances.

Do I really have a choice?

Once you sign the agreement you can cancel it by giving written notice of such cancellation to your doctor within 30 days of the date you sign the agreement.

If you have questions which are not answered by this booklet, you should ask your doctor or seek legal advice.

MEDICAL ARBITRATION RULES OF THE CALIFORNIA MEDICAL ASSOCIATION AND THE CALIFORNIA HOSPITAL ASSOCIATION

All parties understand that they will resolve any claim according to these rules and **not by lawsuit**.

1. General

Except as expressly provided in the Patient-Physician Arbitration Agreement and these Rules, the arbitration shall be governed by the California Code of Civil Procedure provisions relating to arbitration, and the California laws applicable to actions against health care providers, including but not limited to the Medical Injury Compensation Reform Act of 1975 (including any amendments thereto).

2. Arbitration On Behalf of Minor, Unborn Child, Or Incompetent Person

a. A person who is under 18 years of age, unmarried, and dependent on his/her parents or guardians for support is not legally able to sign this Arbitration Agreement. Instead, a parent, guardian or other person legally responsible for the minor may decide whether or not to sign the Agreement on behalf of the minor. If the person responsible decides to sign the Agreement on behalf of the minor, the Agreement will be binding on the child for all treatment received before the child becomes of age.

b. If the patient is pregnant and knows of her pregnancy at the time of signing, her signature binds her unborn child to the Arbitration Agreement with respect to any claims by that child arising out of services rendered prior to, during, or following delivery.

c. Women who become pregnant after the Arbitration Agreement has been signed shall have 30 days from the date they discover they are pregnant to rescind the Arbitration Agreement on behalf of the unborn child only. Cancellation shall become effective only by notifying the other party to the Agreement in writing within those 30 days that the Agreement shall not apply to the unborn child. Otherwise, unborn children shall be subject to the Arbitration Agreement.

d. The signature of the person responsible **for a patient who is incompetent** will bind the patient to the Arbitration Agreement for all treatment rendered while the patient remains incompetent and unless and until the patient resumes competency and rescinds the Arbitration Agreement by written notification to the other party within 30 days of resuming competency.

3. Procedure for Initiating Arbitration

Unless barred by the statute of limitations, any party bound by the Arbitration Agreement may initiate an arbitration at any time by serving, as in a California civil action, all parties with notice of the nature of the claim and a demand for arbitration. **A claim shall be waived and forever barred if on the date the demand for arbitration is received, the claim, if asserted in a civil action, would be barred by the applicable California statute of limitations.**

4. Arbitrators

Within 30 days after initial service of the demand for arbitration, claimant and respondent each must designate an arbitrator and give written notice of this designation to the other. Within 30 days after these notices have been received, the two arbitrators so selected shall select a neutral arbitrator and give notice of the selection to the claimant and respondent. The parties agree that the arbitrators have the immunity from civil liability of a judicial officer when acting in the capacity of arbitrator under this contract. This immunity shall supplement, not supplant, any other applicable statutory or common law.

5. Time and Place of Arbitration

Except where otherwise agreed to by the parties, the arbitration shall be held at the time and place designated by the neutral arbitrator in the county where the alleged wrongful act occurred.

6. Administrative Fees

Each party shall pay the fees of the arbitrator that party has selected. Each party shall pay that party's pro rata share of the expenses and fees of the neutral arbitrator, as well as the expenses of arbitration approved by the neutral arbitrator, not including attorney fees or witness fees or other expenses incurred by a party for that party's own benefit.

7. Bifurcation

Either party shall have the right to arbitrate separately the issues of liability and damages upon written request to the neutral arbitrator.

8. Prohibition On Claim Splitting

All claims based upon the same incident, transaction or related circumstances shall be arbitrated in one proceeding.

9. Intervention and Joinder

Prior to the date set for the arbitration hearing, any persons (including corporations or other entities) whose participation is considered by the neutral arbitrator to be material or relevant to a complete resolution of the dispute may intervene in the arbitration. Similarly, any party to the arbitration may make a written request that additional persons (including corporations or other entities) be joined in the arbitration. If the neutral arbitrator considers the participation of the requested new party to be material or relevant to a complete resolution of the dispute, then the request shall be approved. Only one party to the arbitration needs to make such a request. All parties to the arbitration are deemed to have consented to the joinder or intervention of any person (including corporations or other entities) when the joinder or intervention is allowed pursuant to this rule. The neutral arbitrator will notify the other parties to the arbitration of the request. The neutral arbitrator will send a copy of all demands, answers or counterclaims presently on file, together with a copy of these rules, to the person whose joinder has been requested. If within 30 days of receipt of this information that person signs the agreement to arbitrate and returns it to the neutral arbitrator, that person shall be able to participate fully in the arbitration. He or she shall have the same rights and privileges as any other party to the arbitration and will be fully bound by the arbitration award. All parties agree to stay any judicial proceeding against the new party which arises out of the same transaction or occurrence. This rule is to be liberally construed in favor of allowing intervention and joinder and in favor of promoting arbitration as the primary and final means of resolving disputes.

10. Discovery

If an action is commenced in a California court, the court in which the action was filed may retain active supervision over the action until the completion of discovery, if both parties so stipulate. Participation in such court-supervised discovery shall not constitute, nor be evidence of, a waiver of the right to arbitrate. Alternatively, discovery shall be conducted pursuant to Code of Civil Procedure

Section 1283.05; however, depositions may be taken without prior approval of the arbitrator(s).

11. Summary Judgment/Adjudication

Any party may bring before the arbitrators a motion for summary judgment or summary adjudication in accordance with the Code of Civil Procedure.

12. Dismissal

A claim shall be waived and forever barred if the claimant fails to pursue the arbitration claim in accordance with the procedures described herein with reasonable diligence.

13. Scope of Award

The arbitrators shall have the power to grant any relief they deem equitable and just, subject to the limitations set forth in Section 1 of these Rules. In assessing relief, the arbitrators shall ascertain the degree to which each party to the arbitration was at fault for the total damages accruing to any other party to the arbitration as a result of the factual situation upon which the arbitration was based. The arbitrators' award shall be based on such responsibility, not counting the damages attributable to persons not parties to the arbitration. For purposes of contribution among the parties to the arbitration, the arbitrators shall prepare a schedule of contributions according to their assessment of the relative fault of all parties to the arbitration which shall be binding as between them. Under no circumstances shall a party be entitled to a duplicate recovery or double payment from any source for the same damages. All parties understand and agree to recognize any arbitration award given pursuant to these rules to be final and binding subject only to confirmation, correction, or vacation under Code of Civil Procedure Sections 1285 et seq.

14. Notices

All notices or other papers required to be served or convenient in the conduct of the arbitration proceedings following the initial service of the demand shall be served personally or by registered or certified mail, and, if mailed, shall be deemed to have been received 5 days after the date of the postmark.

15. Amendment of These Rules

These Rules may be reasonably amended by the California Hospital Association and the California Medical Association as circumstances warrant, provided however, that such amendments are generally applicable to all participants statewide.