

## Rule 142

### MEDICAL AND PROFESSIONAL MALPRACTICE SCREENING PANELS

- (a) **Applicability.** This rule governs the procedure for a medical malpractice screening panel under K.S.A. 65-4901 *et seq.* and a professional malpractice screening panel under K.S.A. 60-3501 *et seq.*
- (b) **Definitions and General Provisions.**
  - (1) **Definitions.** As used in this rule:
    - (A) “Plaintiff” includes:
      - (i) a party that has filed a petition; and
      - (ii) a claimant that has not formalized a dispute by filing a petition.
    - (B) “Defendant” includes:
      - (i) a party that is a defendant in a pending action; and
      - (ii) a health care provider or professional licensee against whom a claim has been made, but no petition has been filed.
    - (C) “Judge” means the judge specified in K.S.A. 65-4901 *et seq.* and 60-3501 *et seq.*
    - (D) “Party” includes a plaintiff or defendant as defined in subparagraphs (A) and (B). If a party is represented, “party” includes counsel.
  - (2) **General Provisions.**
    - (A) Whenever notice is required, notice must be served under K.S.A. 60-205.
    - (B) When this rule requires that a party file a document with a chairperson, the party must include the original and three copies. This requirement does not apply to an x-ray, of which only the original must be provided. The panel chairperson must make the original x-ray available for review by panel members and parties.
    - (C) A screening panel is convened on the date the judge notifies the parties under subsection (e).
- (c) **Requesting a Screening Panel.** A party may request a screening panel by filing a written request with the judge before or after a petition is filed, but not later than 60 days after the defendant subject to the screening panel is served with process.
- (d) **Record Release Authorization.** A plaintiff that files a request for a screening panel before filing a petition must furnish — to all health care providers or professional licensees that have provided

services or treatment to the plaintiff in connection with the claim — an authorization releasing records to the screening panel or parties. The authorization is not a waiver for any other purpose.

- (e) **Notice.** After a request for a screening panel is filed — or when a petition is filed and the judge, under K.S.A. 65-4901, determines a screening panel should be convened — the judge must notify the parties. The notice must include the name of the attorney selected as chairperson and instruct the parties to select the other panel members not later than 14 days after the notice is served.
- (f) **If Multiple Parties Cannot Agree on Panel.** If a claim involves multiple plaintiffs or multiple defendants and the parties cannot agree on a three-member panel or enlarged panel, the judge may:
  - (1) convene one or more screening panels;
  - (2) select the same chairperson for all panels; and
  - (3) suggest or require that all panels meet separately or jointly.
- (g) **Discovery in a Pending Action.** The judge may issue an order partially or completely staying discovery pending a screening panel's report.
- (h) **Plaintiff to Provide Documents.** Not later than 30 days after the judge notifies the parties that a screening panel will be convened, the plaintiff must file a copy with the chairperson — serving a copy on the other party — of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions on which the plaintiff relies.
- (i) **Defendant to Provide Documents.** Not later than 30 days after plaintiff's filing under subsection (h), a defendant must file a copy with the chairperson — serving a copy on the plaintiff — of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions not yet provided on which the defendant relies.
- (j) **Written Contentions.** A party's written contentions under subsection (h) or (i) must contain:
  - (1) a statement of the factual and legal issues;
  - (2) a brief statement of the facts — limited to facts included in material filed with the chairperson — in support of the party's claim or defense; and
  - (3) a brief statement of the applicable law, including citation of authority.
- (k) **Panel Member Qualifications and Requirements.**
  - (1) A health care provider or professional licensee may not serve on a screening panel if the provider or licensee has:
    - (A) knowledge of any material facts in the case; or
    - (B) a relationship with a party that would affect the panel member's impartial consideration of the case.

- (2) To serve on a screening panel, a health care provider or professional licensee must have expertise in the subject matter of the claim.
- (3) A panel member must not discuss the facts of the case outside the regular meetings of the screening panel or permit others to discuss the facts with the panel member. A panel member must report immediately to the chairperson any attempt by anyone to discuss the facts of the case with the panel member.
- (4) A panel member must sign a statement acknowledging the duty to consider the case impartially. The statement must be in substantially the following form:

Statement of Panel Member

I have no knowledge of material facts of the case, or relationship with any of the parties, which might affect my impartial consideration of the case.

I have had no contact with any party concerning the facts of the case other than contacts disclosed to the chairperson of the panel.

I will not discuss the facts of the case outside the regular meetings of the panel and will report immediately to the chairperson any attempt by anyone to discuss the facts of the case with me.

\_\_\_\_\_  
(Signature of Panel Member)

- (5) The chairperson must provide to panel members for signature the statement required by paragraph (4), accompanied by a copy of this rule, the relevant statutes concerning the screening panel, and a letter briefly explaining or describing:
  - (A) the parties involved;
  - (B) the panel's composition;
  - (C) the panel's basic procedure;
  - (D) the general issues the panel must determine;
  - (E) the requirement of impartial consideration; and
  - (F) the panel members' compensation.

(1) **Organization and Conduct of Meetings.**

- (1) As soon as practicable, the chairperson of a screening panel must convene the screening panel at a time and place agreed upon by the panel members and must notify the parties of the meeting date.
- (2) A screening panel may not take oral testimony.
- (3) A party may not attend a screening panel meeting.

- (4) A screening panel must determine whether the parties have provided sufficient material to enable the panel to decide:
  - (A) whether there was a departure from the standard of practice required of the health care provider or professional licensee; and
  - (B) if there was a departure, whether the departure from the required standard of practice caused the plaintiff's claimed damages.
- (5) If a screening panel determines that it requires further information or legal authority, the chairperson may:
  - (A) request the parties to provide the additional information or authority required, which must be limited to the factual issues stated in the parties' contentions; and
  - (B) submit written questions to the parties.
- (6) Requested additional information or authority and answers — which need not be verified under oath — must be filed with the chairperson not later than 14 days after service of the request or written questions under paragraph (5). A copy of additional material or answers provided to the chairperson must be served on the other party.
- (7) A chairperson's duties include:
  - (A) conducting such meetings as may be necessary to determine the facts; and
  - (B) advising other panel members of the applicable rules of law, which must be stated in the panel's opinion.
- (8) A screening panel must:
  - (A) review all materials submitted by the parties;
  - (B) decide the facts;

- (C) from the decided facts determine whether there was a departure from the standard of practice required of the health care provider or professional licensee; and
  - (D) if it determines that there was a departure from the standard of practice, whether the departure caused the plaintiff's claimed damages.
- (9) A screening panel's findings must be based on reasonable probability but need not be based on scientific certainty.
- (10) A screening panel must prepare a written opinion that includes its findings. Any materials considered by the panel that were not provided by the parties must be itemized in the panel's report. The opinion must be supported by corroborating references to published literature and other relevant documents and must:
- (A) state the standard of practice of the health care provider specialty or profession involved under the facts of the claim;
  - (B) state whether there was a departure from the standard of practice of the health care provider specialty or profession involved or state the reasons why the panel is unable to determine whether there was a departure; and
  - (C) if the panel finds there was a departure, state:
    - (i) the facts that support the finding;
    - (ii) whether the departure caused the plaintiff's claimed damages or state the reasons why the panel is unable to determine whether the departure caused the damages; and
    - (iii) if the panel finds the departure caused the damages, state the facts that support the finding.