



State of Utah
Department of Commerce
Division of Occupational and Professional Licensing

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General Information for Prelitigation Panel Members

Prelitigation panel hearings are held at the Heber M. Wells Building, Division of Occupational and Professional Licensing, 160 East 300 South, Salt Lake City, UT. The Division will post the room assignment on bulletin boards located on the first and fourth floor.

You may park in any of the parking lots surrounding the building or at any of the meters. (Please bring change.) You will be responsible for the parking expense on the day of the hearing. However, you will be reimbursed \$60.00 for your participation in the panel and mileage at the rate of 48.5 cents per mile. An additional \$5.00 will be included in your reimbursement for the parking expense.

The following short primer is provided to prepare panel members to hear Prelitigation screening matters and as a reference during panel deliberations. It is the task of a Prelitigation screening panel to determine whether the petitioner's claim has merit or are non-meritorious.

To arrive at this decision, you must determine:

1. the applicable standard of care;
2. whether the respondent health care provider breached that standard of care in his/her treatment of the patient;
3. whether the breach was a "proximate cause" of the harm complained of; and
4. the amount of damages, if applicable.

A1. Standard of Care

Generally speaking, the "standard of care" means the degree of learning, care, skill and treatment ordinarily possessed and exercised, under similar circumstances, by other qualified health care providers in the same field of practice as the respondent. The standard of care along the Wasatch Front is the same as that practiced in other large metropolitan areas around the country. Whether the standard of care is the same in more rural communities depends upon the particulars of the situation at issue, e.g. the availability of a specialist for referral or a particular piece of diagnostic equipment.

A2. Breach

After the panel has determined the appropriate standard of care, it must decide whether the respondent health care provider met that standard of care or "breached" the standard of care. The medical specialist(s) on the panel should help the other panel members understand what the standard of care requires in the circumstances of a particular claim.

A3. Proximate Cause

An important issue in many cases is whether or not the injuries complained of resulted or were “proximately caused” by a breach of the standard of care. Simply defined, the “proximate cause” of an injury is that cause which in an unbroken “chain of events” led to the harm. It is the cause, without which, an injury would not have occurred.

Care which is sub-standard does not always cause harm. For example, although a diagnosis of cancer may not have been made in a case, it may not be medical malpractice if at the time the patient was seeing the care provider, and it was already so advanced that a timely diagnosis would not have changed the outcome. Similarly, it may not be medical malpractice if the petitioner’s injury is an unavoidable or natural consequence of the patient’s condition or the treatment received.

B. Concurrent Causes and Patient Negligence

There may be more than one “proximate cause” of the same injury. If the panel determines that the negligence of two or more respondents proximately caused the injury of the petitioner, then these respondents must share liability for the resulting injury, in proportion to their individual negligence.

A patient has an affirmative duty to exercise reasonable care for his/her own health and safety. The failure to exercise reasonable care is negligence. A patient’s failures to seek treatment, to follow a physician’s reasonable instructions and to give an accurate medical history are examples of conduct that may be negligence in some circumstances. If it is determined that the patient’s negligence is equal to or greater than the negligence of the health care provider from whom recovery of damages is sought, the patient’s claim for medical malpractice is barred in a court of law. The respondent must establish that the patient was negligent and that such negligence was a proximate cause of the patient’s injury.

C. Res Ipsa Loquitur

The literal meaning of the phrase “res ipsa loquitur” is “the thing speaks for itself.” It is a doctrine which may arise in certain situations to ease the petitioner’s ability to establish a particular claim of medical malpractice. To make the doctrine applicable in a case, the petitioner must establish that: (1) the event or treatment in question is commonly known and does not usually occur in the absence of negligence; (2) the instrumentalities which could have caused the injury were within the exclusive control of the respondent(s) at the time in question; and (3) the patient did not participate in causing the injury.

D. Expert Testimony

In a Prelitigation hearing, the proffer of a supporting expert opinion is not required to establish a meritorious claim. However, supporting expert opinions may be proffered by the parties in verbal or written form in an effort to convince the panel members of the merit or lack of merit of the medical malpractice claim. The role of the medical specialist(s) on the panel includes helping the other panel members understand what the standard of care requires in the circumstances of the particular claim. The medical panel members can also help evaluate whether the claimed damage resulted from a breach of the standard of care or if it was the natural consequence of the patient's condition or the treatment received. It is important to remember, however, that it is the general standard of care which is relevant in reviewing respondent's care and the personal preference of the medical specialist on the panel is irrelevant and should not be a factor in the panel's decision.

E. Informed Consent

"Informed consent" means that the care provided by a health care provider is authorized by the patient after the patient has been fully informed of all material risks associated with a particular plan of treatment. Utah law presumes that all care provided to a patient is authorized by the patient. Therefore, a petitioner in a certain case may raise a separate claim against the respondent(s) for failure to obtain the patient's informed consent. This is a claim based on certain statutory provisions and is distinct from an allegation of medical malpractice. When this claim is raised, the panel chair will explain the elements of proof required by law to establish a valid claim for failure to obtain informed consent and the defenses which can be raised by the respondent health care provider.

F. Confidentiality of Prelitigation Proceedings

Panel members must remember at all times that the Prelitigation proceedings are confidential and closed to the public. Therefore, panel members must not discuss the proceedings with any third parties or disclose any information obtained during a hearing.