



HOUSE BILL No. 4752

April 27, 1995, Introduced by Reps. Llewellyn, Bush, Hill, Geiger, Hammerstrom, McBryde, Goschka, Bobier, Rhead, Voorhees and Dalman and referred to the Committee on Judiciary and Civil Rights.

A bill to amend Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," as amended, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, by adding chapter 50a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 236 of the Public Acts of 1961, as
2 amended, being sections 600.101 to 600.9947 of the Michigan
3 Compiled Laws, is amended by adding chapter 50a to read as
4 follows:

5 CHAPTER 50A. HEALTH CARE ARBITRATION

6 SEC. 5040. (1) THIS CHAPTER APPLIES TO THE ARBITRATION OF A
7 DISPUTE, CONTROVERSY, OR ISSUE ARISING OUT OF OR RESULTING FROM
8 INJURY TO, OR THE DEATH OF, AN INDIVIDUAL CAUSED BY AN ERROR, AN
9 OMISSION, OR NEGLIGENCE IN THE PERFORMANCE OF PROFESSIONAL

1 SERVICES BY A HEALTH CARE PROVIDER, A HOSPITAL, OR AN AGENT OF A
2 HEALTH CARE PROVIDER OR HOSPITAL, OR BASED ON A CLAIMED PER-
3 FORMANCE OF THOSE SERVICES WITHOUT CONSENT, IN BREACH OF WARRANT-
4 TY, OR IN VIOLATION OF CONTRACT.

5 (2) AS USED IN THIS CHAPTER:

6 (A) "ASSOCIATION" MEANS THE AMERICAN ARBITRATION ASSOCIATION
7 OR OTHER ENTITY ORGANIZED TO ARBITRATE DISPUTES UNDER THIS
8 CHAPTER.

9 (B) "HEALTH CARE PROVIDER" MEANS A PERSON, PARTNERSHIP, OR
10 CORPORATION LAWFULLY ENGAGED IN THE PRACTICE OF MEDICINE, SUR-
11 GERY, DENTISTRY, PODIATRY, OPTOMETRY, CHIROPRACTIC, OR NURSING,
12 OR A PERSON DISPENSING DRUGS OR MEDICINES.

13 (C) "HOSPITAL" MEANS A PERSON, PARTNERSHIP, OR CORPORATION
14 LAWFULLY ENGAGED IN THE OPERATION OF A HOSPITAL, CLINIC, HEALTH
15 MAINTENANCE ORGANIZATION, OR SANITARIUM.

16 SEC. 5041. (1) AN INDIVIDUAL WHO RECEIVES HEALTH CARE FROM
17 A HEALTH CARE PROVIDER MAY, IF OFFERED, EXECUTE AN AGREEMENT TO
18 ARBITRATE A DISPUTE, CONTROVERSY, OR ISSUE ARISING OUT OF HEALTH
19 CARE OR TREATMENT BY A HEALTH CARE PROVIDER WHO IS NOT AN
20 EMPLOYEE OF A HOSPITAL.

21 (2) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
22 SHALL PROVIDE THAT ITS EXECUTION IS NOT A PREREQUISITE TO HEALTH
23 CARE OR TREATMENT. AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUB-
24 SECTION (1) SHALL PROVIDE THAT THE INDIVIDUAL RECEIVING HEALTH
25 CARE TREATMENT OR HIS OR HER LEGAL REPRESENTATIVE MAY REVOKE THE
26 AGREEMENT WITHIN 60 DAYS AFTER EXECUTION BY NOTIFYING THE HEALTH

1 CARE PROVIDER IN WRITING. A HEALTH CARE PROVIDER MAY NOT REVOKE
2 THE AGREEMENT AFTER ITS EXECUTION.

3 (3) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
4 SHALL CONTAIN THE FOLLOWING PROVISION IN 12-POINT BOLDFACED TYPE
5 IMMEDIATELY ABOVE THE SPACE FOR SIGNATURE OF THE PARTIES: "THIS
6 AGREEMENT TO ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR
7 TREATMENT AND MAY BE REVOKED WITHIN 60 DAYS AFTER EXECUTION BY
8 NOTIFICATION IN WRITING".

9 (4) THE FORM OF AN AGREEMENT TO ARBITRATE EXECUTED UNDER
10 SUBSECTION (1) SHALL BE ACCOMPANIED BY AN INFORMATION BROCHURE
11 THAT CLEARLY DETAILS THE AGREEMENT AND REVOCATION PROVISION. THE
12 BROCHURE SHALL BE FURNISHED TO THE PERSON RECEIVING HEALTH CARE
13 AT THE TIME OF EXECUTION. THE PERSON RECEIVING HEALTH CARE SHALL
14 BE FURNISHED WITH EITHER AN ORIGINAL OR DUPLICATE ORIGINAL OF THE
15 AGREEMENT.

16 (5) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
17 THAT COMPLIES WITH THIS SECTION IS PRESUMED VALID. AN AGREEMENT
18 TO ARBITRATE EXECUTED UNDER SUBSECTION (1) EXPIRES 1 YEAR AFTER
19 ITS EXECUTION AND MAY BE RENEWED BY EXECUTION OF A NEW
20 AGREEMENT.

21 SEC. 5042. (1) AN INDIVIDUAL WHO RECEIVES HEALTH CARE IN A
22 HOSPITAL MAY EXECUTE AN AGREEMENT TO ARBITRATE A DISPUTE, CONTRO-
23 VERSY, OR ISSUE ARISING OUT OF HEALTH CARE OR TREATMENT RENDERED
24 BY THE HOSPITAL. AN INDIVIDUAL RECEIVING EMERGENCY HEALTH CARE
25 OR TREATMENT MAY BE OFFERED THE OPTION TO EXECUTE AN AGREEMENT TO
26 ARBITRATE BUT SHALL BE OFFERED THE OPTION AFTER THE EMERGENCY
27 CARE OR TREATMENT IS COMPLETED.

1 (2) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
2 SHALL PROVIDE THAT ITS EXECUTION IS NOT A PREREQUISITE TO HEALTH
3 CARE OR TREATMENT. AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUB-
4 SECTION (1) SHALL PROVIDE THAT THE INDIVIDUAL RECEIVING HEALTH
5 CARE OR TREATMENT OR HIS OR HER LEGAL REPRESENTATIVE, BUT NOT THE
6 HOSPITAL, MAY REVOKE THE AGREEMENT WITHIN 60 DAYS AFTER DISCHARGE
7 FROM THE HOSPITAL BY NOTIFYING THE HOSPITAL IN WRITING.

8 (3) AN AGREEMENT EXECUTED UNDER SUBSECTION (1) SHALL CONTAIN
9 THE FOLLOWING PROVISION IN 12-POINT BOLDFACED TYPE IMMEDIATELY
10 ABOVE THE SPACE FOR SIGNATURE OF THE PARTIES: "THIS AGREEMENT TO
11 ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT AND
12 MAY BE REVOKED WITHIN 60 DAYS AFTER DISCHARGE BY NOTIFICATION IN
13 WRITING".

14 (4) NOTWITHSTANDING THE CONTINUING EXISTENCE OF A HEALTH
15 CARE PROVIDER-PATIENT ARBITRATION AGREEMENT, ALL SURGICAL AND
16 MEDICAL PROCEDURES PERFORMED BY A PARTICIPATING HEALTH CARE PRO-
17 VIDER IN A HOSPITAL SHALL BE COVERED BY THE TERMS AND CONDITIONS
18 APPLICABLE TO THE AGREEMENT BETWEEN THE PATIENT AND THE
19 HOSPITAL. POST-DISCHARGE TREATMENT IN THE HEALTH CARE PROVIDER'S
20 OFFICE SUBSEQUENT TO DISCHARGE FROM THE HOSPITAL WILL BE GOVERNED
21 BY THE TERMS OF ANY EXISTING HEALTH CARE PROVIDER-PATIENT ARBI-
22 TRATION AGREEMENT.

23 (5) EACH ADMISSION TO A HOSPITAL SHALL BE TREATED AS SEPA-
24 RATE AND DISTINCT FOR THE PURPOSES OF AN AGREEMENT TO ARBITRATE
25 EXECUTED UNDER SUBSECTION (1) BUT A PERSON RECEIVING OUTPATIENT
26 CARE MAY EXECUTE AN AGREEMENT WITH THE HOSPITAL THAT PROVIDES FOR

1 CONTINUATION OF THE AGREEMENT FOR A SPECIFIC OR CONTINUING
2 PROGRAM OF HEALTH CARE OR TREATMENT UNDER SECTION 5041.

3 (6) THE FORM OF AN AGREEMENT EXECUTED UNDER SUBSECTION (1)
4 SHALL BE FURNISHED TO THE INDIVIDUAL RECEIVING HEALTH CARE OR
5 TREATMENT AS PROVIDED IN SECTION 5041.

6 (7) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
7 THAT COMPLIES WITH THIS SECTION IS PRESUMED VALID.

8 SEC. 5043. (1) IN A PROCEEDING UNDER THIS CHAPTER:

9 (A) THE PARTIES MAY BE REPRESENTED BY COUNSEL, BE HEARD,
10 PRESENT EVIDENCE MATERIAL TO THE CONTROVERSY, AND CROSS-EXAMINE
11 ANY WITNESS.

12 (B) THE PREVAILING STANDARD OF DUTY, PRACTICE, OR CARE
13 APPLICABLE IN A CIVIL ACTION SHALL BE THE STANDARD APPLIED IN THE
14 ARBITRATION.

15 (C) DAMAGES OR REMEDIAL CARE SHALL BE WITHOUT LIMITATION AS
16 TO NATURE OR AMOUNT, UNLESS OTHERWISE PROVIDED BY LAW.

17 (2) A PARTY MAY APPEAR WITHOUT COUNSEL AND SHALL BE ADVISED
18 OF THAT RIGHT AND THE RIGHT TO RETAIN COUNSEL IN A MANNER CALCU-
19 LATED TO INFORM THE PERSON OF THE NATURE AND COMPLEXITY OF A PRO-
20 CEEDING BY A SIMPLE CONCISE FORM TO BE DISTRIBUTED BY THE ASSOCI-
21 ATION ADMINISTERING THE ARBITRATION.

22 SEC. 5044. (1) THE ASSOCIATION SHALL ADMINISTER A PROCEED-
23 ING WITHOUT CHARGE TO THE CLAIMANT. THE ADMINISTRATIVE EXPENSE
24 SHALL BE \$200.00 PER PARTY PER CASE, OR AS AGREED BY THE PARTIES
25 AND THE ASSOCIATION, OR AS APPROVED BY THE COMMISSIONER OF INSUR-
26 ANCE AS PROVIDED BY LAW. THE ADMINISTRATIVE COSTS ON ACCOUNT OF
27 A CLAIMANT SHALL BE DEFRAID BY THE ARBITRATION ADMINISTRATION

1 FUND ESTABLISHED UNDER THE INSURANCE CODE OF 1956, ACT NO. 218 OF
2 THE PUBLIC ACTS OF 1956, BEING SECTIONS 500.100 TO 500.8302 OF
3 THE MICHIGAN COMPILED LAWS, OR SHALL BE PROVIDED BY THE RESPON-
4 DENT PARTIES.

5 (2) AN ARBITRATION UNDER THIS CHAPTER SHALL BE HEARD BY A
6 PANEL OF 3 ARBITRATORS. ONE SHALL BE AN ATTORNEY WHO SHALL BE
7 THE CHAIRPERSON AND SHALL HAVE JURISDICTION OVER PREHEARING PRO-
8 CEDURES; 1 SHALL BE A PHYSICIAN, PREFERABLY BUT NOT NECESSARILY
9 FROM THE RESPONDENT'S MEDICAL SPECIALTY; AND THE THIRD SHALL BE A
10 PERSON WHO IS NEITHER A LICENSEE OF THE HEALTH PROFESSION
11 INVOLVED, A LAWYER, NOR A REPRESENTATIVE OF A HOSPITAL OR AN
12 INSURANCE COMPANY. IF A CASE INVOLVES A HOSPITAL ONLY, A HOSPI-
13 TAL ADMINISTRATOR MAY BE SUBSTITUTED FOR A PHYSICIAN. IF A CASE
14 INVOLVES A HEALTH CARE PROVIDER OTHER THAN A PHYSICIAN, A
15 LICENSEE OF THE HEALTH PROFESSION INVOLVED SHALL BE SUBSTITUTED
16 FOR THE PHYSICIAN.

17 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), ARBITRA-
18 TOR CANDIDATES SHALL BE SELECTED AS PRESCRIBED BY THE RULES AND
19 PROCEDURES OF THE ASSOCIATION FROM A POOL OF CANDIDATES GENERATED
20 BY THE ASSOCIATION. THE RULES AND PROCEDURES OF THE ASSOCIATION
21 PERTAINING TO SELECTION OF ARBITRATORS UNDER THIS CHAPTER SHALL
22 REQUIRE THAT THE ASSOCIATION SEND SIMULTANEOUSLY TO EACH PARTY AN
23 IDENTICAL LIST OF 5 ARBITRATOR CANDIDATES IN EACH OF THE 3 CATE-
24 GORIES TOGETHER WITH A BRIEF BIOGRAPHICAL STATEMENT ON EACH
25 CANDIDATE. A PARTY MAY STRIKE FROM THE LIST ANY NAME THAT IS
26 UNACCEPTABLE AND SHALL NUMBER THE REMAINING NAMES IN ORDER OF
27 PREFERENCE. WHEN THE LISTS ARE RETURNED TO THE ASSOCIATION, THEY

1 SHALL BE COMPARED AND THE FIRST MUTUALLY AGREEABLE CANDIDATE IN
2 EACH CATEGORY SHALL BE INVITED TO SERVE.

3 (4) IF NO MUTUALLY AGREED UPON ARBITRATOR IS SELECTED FOR A
4 CATEGORY, A SECOND LIST OF THAT CATEGORY SHALL BE SENT AS PRO-
5 VIDED IN SUBSECTION (3).

6 (5) IF A COMPLETE PANEL IS NOT SELECTED BY MUTUAL AGREEMENT
7 OF THE PARTIES AS PROVIDED IN SUBSECTIONS (3) AND (4), THEN UNDER
8 THE APPLICABLE RULES AND PROCEDURES OF THE ASSOCIATION, THE ASSO-
9 CIATION SHALL APPOINT THE REMAINDER OF THE PANEL ON WHOM AGREE-
10 MENT HAS NOT BEEN REACHED BY THE PARTIES. THE APPOINTMENT BY THE
11 ASSOCIATION IS SUBJECT TO CHALLENGE BY A PARTY FOR CAUSE, WHICH
12 CHALLENGE MAY ALLEGE FACTS TO ESTABLISH THAT UNUSUAL COMMUNITY OR
13 PROFESSIONAL PRESSURES WILL UNREASONABLY INFLUENCE THE OBJECTIV-
14 ITY OF THE PANELIST. A REQUEST TO STRIKE AN ARBITRATOR FOR CAUSE
15 SHALL BE DETERMINED BY THE REGIONAL DIRECTOR OR COMPARABLE OFFI-
16 CER OF THE ASSOCIATION OR AS MAY BE PROVIDED BY RULE OF THE COM-
17 MISSIONER OF INSURANCE AS PROVIDED BY LAW.

18 (6) THE PARTIES ARE NOT RESTRICTED TO THE ARBITRATOR CANDI-
19 DATES SUBMITTED FOR CONSIDERATION. IF ALL PARTIES MUTUALLY AGREE
20 UPON A PANELIST WITHIN A DESIGNATED CATEGORY, THE PANELIST SHALL
21 BE INVITED TO SERVE.

22 SEC. 5045. (1) THE ASSOCIATION SHALL MAKE AN INITIAL
23 SCREENING FOR BIAS AS APPROPRIATE AND SHALL REQUIRE A CANDIDATE
24 FOR A PARTICULAR CASE TO COMPLETE A CURRENT PERSONAL DISCLOSURE
25 STATEMENT UNDER OATH. IN ADDITION TO OTHER RELEVANT INFORMATION,
26 THE STATEMENT SHALL DISCLOSE ANY PERSONAL ACQUAINTANCE WITH ANY
27 OF THE PARTIES OR THEIR COUNSEL AND THE NATURE OF THE

1 ACQUAINTANCE. IF THE STATEMENT REVEALS FACTS THAT SUGGEST THE
2 POSSIBILITY OF PARTIALITY, THE ASSOCIATION SHALL COMMUNICATE
3 THOSE FACTS TO THE PARTIES IF THE PANELIST IS PROPOSED BY THE
4 ARBITRATION ASSOCIATION.

5 (2) A PARTY MAY ASK REASONABLE QUESTIONS OF AN ARBITRATOR
6 CANDIDATE IF THE QUESTIONS ARE SUBMITTED WITHIN 10 DAYS AFTER
7 RECEIPT OF THE CANDIDATE'S NAME. THE QUESTIONS SHALL BE SUBMIT-
8 TED THROUGH THE ASSOCIATION, AND THE CANDIDATE SHALL RESPOND TO
9 THE ASSOCIATION PROMPTLY.

10 (3) A PARTY SHALL NOT COMMUNICATE WITH A CANDIDATE DIRECTLY
11 OR INDIRECTLY EXCEPT THROUGH THE ASSOCIATION AT ANY TIME AFTER
12 THE FILING OF THE DEMAND FOR ARBITRATION. A CANDIDATE WHO IS
13 AWARE OF A COMMUNICATION PROHIBITED UNDER THIS SUBSECTION SHALL
14 IMMEDIATELY NOTIFY THE ASSOCIATION.

15 SEC. 5046. (1) A PARTY TO THE ARBITRATION AGREEMENT MAY
16 DEMAND ARBITRATION OF A CLAIM, AND THE PROCEEDING SHALL BE INSTI-
17 TUTED AS PROVIDED BY RULE OF THE ASSOCIATION AND IN COMPLIANCE
18 WITH THIS CHAPTER.

19 (2) A MINOR CHILD IS BOUND BY A WRITTEN AGREEMENT TO ARBI-
20 TRATE DISPUTES, CONTROVERSIES, OR ISSUES UPON THE EXECUTION OF AN
21 AGREEMENT ON THE CHILD'S BEHALF BY A PARENT OR LEGAL GUARDIAN.
22 THE MINOR CHILD SHALL NOT SUBSEQUENTLY DISAFFIRM THE AGREEMENT.

23 (3) IN CASES INVOLVING A COMMON QUESTION OF LAW OR FACT, IF
24 SEPARATE ARBITRATION AGREEMENTS EXIST BETWEEN A PLAINTIFF AND A
25 NUMBER OF DEFENDANTS OR BETWEEN DEFENDANTS, THE DISPUTES, CONTRO-
26 VERSIES, AND ISSUES SHALL BE CONSOLIDATED INTO A SINGLE
27 ARBITRATION PROCEEDING.

1 (4) A PERSON WHO IS NOT A PARTY TO THE ARBITRATION AGREEMENT
2 MAY JOIN IN THE ARBITRATION AT THE REQUEST OF A PARTY WITH ALL
3 THE RIGHTS AND OBLIGATIONS OF THE ORIGINAL PARTIES. EACH PARTY
4 TO AN ARBITRATION UNDER THIS CHAPTER IS BOUND BY THE JOINDER OF A
5 NEW PARTY.

6 SEC. 5047. (1) BEFORE THE INSTITUTION OF A PROCEEDING OR
7 CLAIM BY A PATIENT, AN OFFER OF REPARATION AND ALL COMMUNICATIONS
8 INCIDENTAL TO THE OFFER MADE IN WRITING TO A PATIENT BY A HEALTH
9 CARE PROVIDER OR HOSPITAL ARE PRIVILEGED AND SHALL NOT BE USED BY
10 A PARTY TO ESTABLISH THE LIABILITY OR MEASURE OF DAMAGES ATTRIB-
11 UTABLE TO THE OFFEROR.

12 (2) AN OFFER DESCRIBED IN SUBSECTION (1) SHALL PROVIDE THAT
13 A PATIENT HAS 30 DAYS TO ACCEPT OR REJECT THE OFFER, OR A LESSER
14 PERIOD OF TIME AS NECESSITATED BY THE CONDITION OF THE PATIENT'S
15 HEALTH.

16 (3) AFTER A REJECTION OF AN OFFER DESCRIBED IN SUBSECTION
17 (1) OR THE LAPSE OF THE APPLICABLE TIME DESCRIBED IN SUBSECTION
18 (2), A PARTY MAY DEMAND ARBITRATION, IF AN ARBITRATION AGREEMENT
19 IS IN EFFECT.

20 (4) AN OFFER TO A PATIENT DESCRIBED IN SUBSECTION (1) SHALL
21 INCLUDE A STATEMENT THAT THE PATIENT MAY CONSULT LEGAL COUNSEL
22 BEFORE REJECTING OR ACCEPTING THE OFFER.

23 (5) IF A POTENTIAL CLAIM IS IDENTIFIED BY A HEALTH CARE PRO-
24 VIDER OR HOSPITAL WHERE REPARATIONS, IN ITS JUDGMENT, ARE NOT
25 APPROPRIATE, THE HEALTH CARE PROVIDER OR HOSPITAL MAY, AT ITS
26 OPTION, FILE A DEMAND FOR ARBITRATION WHICH DEMAND SHALL IDENTIFY
27 THE POTENTIAL CLAIM AND DENY LIABILITY.

1 SEC. 5048. (1) AFTER THE APPOINTMENT OF THE PANEL OF
2 ARBITRATORS, THE PARTIES TO THE ARBITRATION MAY TAKE DEPOSITIONS
3 AND OBTAIN DISCOVERY REGARDING THE SUBJECT MATTER OF THE ARBITRA-
4 TION AND, TO THAT END, MAY USE AND EXERCISE THE SAME RIGHTS, REM-
5 EDIES, AND PROCEDURES, AND ARE SUBJECT TO THE SAME DUTIES,
6 LIABILITIES, AND OBLIGATIONS, IN THE ARBITRATION WITH RESPECT TO
7 THE SUBJECT MATTER OF THE ARBITRATION AS IF THE SUBJECT MATTER OF
8 THE ARBITRATION WERE PENDING IN A CIVIL ACTION BEFORE A CIRCUIT
9 COURT OF THIS STATE.

10 (2) THE PANEL SHALL CONCLUDE THE ENTIRE PROCEEDING AS EXPE-
11 DITIOUSLY AS POSSIBLE. DISCOVERY SHALL COMMENCE NOT LATER THAN
12 20 DAYS AFTER THE DATE ALL PARTIES HAVE RECEIVED A COPY OF THE
13 DEMAND FOR ARBITRATION AND SHALL BE COMPLETED WITHIN 6 MONTHS
14 AFTER THAT DATE. A PARTY MAY BE GRANTED AN EXTENSION OF TIME TO
15 COMPLETE DISCOVERY UPON A SHOWING THAT THE EXTENSION IS NOT THE
16 RESULT OF NEGLIGENCE AND THAT THE EXTENSION IS NECESSARY IN ORDER TO
17 AVOID SUBSTANTIAL PREJUDICE TO THE RIGHTS OF THE PARTY.

18 SEC. 5049. (1) A PARTY IS ENTITLED TO DISCLOSURE OF THE
19 NAME OF AN EXPERT WITNESS WHO WILL BE CALLED AT THE ARBITRATION
20 AND MAY DEPOSE THE WITNESS.

21 (2) A PARTY MAY ALSO PROVIDE DISCOVERY OF THAT PARTY'S
22 EXPERT WITNESS BY THE WRITTEN INTERROGATORY PROCEDURE PROVIDED IN
23 THE FEDERAL RULES OF CIVIL PROCEDURE. A PARTY MAY DISCLOSE WITH-
24 OUT REQUEST OR SHALL DISCLOSE, UPON REQUEST, THE NAME OF EACH
25 EXPERT THE PARTY EXPECTS TO CALL AT THE HEARING, THE SUBJECT
26 MATTER ON WHICH THE EXPERT WILL TESTIFY, THE SUBSTANCE OF FACTS

1 AND OPINIONS TO WHICH THE EXPERT WILL TESTIFY, AND A SUMMARY OF
2 THE GROUNDS FOR EACH OPINION.

3 (3) IF A PARTY IS PROVIDED OR REQUESTS THE DISCOVERY PROCE-
4 DURE IN SUBSECTION (2) AND THE PROVISION OR REQUEST OCCURS BEFORE
5 THE DATE ON WHICH AN EXPERT IS NOTICED FOR DEPOSITION OR OTHER
6 DISCOVERY IS COMMENCED UNDER PREVAILING CIVIL PRACTICE IN THIS
7 STATE, ANY FURTHER DISCOVERY OF THE EXPERT BY ANOTHER PARTY BY
8 DEPOSITION OR OTHERWISE OBLIGATES THE OTHER PARTY TO COMPENSATE
9 THE EXPERT FOR HIS OR HER TIME AND EXPENSES IN A REASONABLE
10 AMOUNT AS MAY BE DETERMINED BY THE PANEL.

11 SEC. 5050. (1) A HEARING UNDER THIS CHAPTER SHALL BE INFOR-
12 MAL, AND THE RULES OF EVIDENCE SHALL BE AS PROVIDED UNDER THE
13 RULES OF THE ASSOCIATION EXCEPT THAT THE PANEL SHALL ADHERE TO
14 CIVIL RULES OF EVIDENCE IF THE FAILURE TO DO SO WILL RESULT IN
15 SUBSTANTIAL PREJUDICE TO THE RIGHTS OF A PARTY.

16 (2) TESTIMONY SHALL BE TAKEN UNDER OATH, AND A RECORD OF THE
17 PROCEEDINGS SHALL BE MADE BY A TAPE RECORDING. A PARTY, AT THAT
18 PARTY'S EXPENSE, MAY HAVE TRANSCRIPTIONS OR COPIES OF THE RECORD-
19 ING MADE OR MAY PROVIDE FOR A WRITTEN TRANSCRIPT OF THE
20 PROCEEDINGS. THE COST OF A TRANSCRIPTION THE PANEL ORDERS FOR
21 ITS OWN USE SHALL BE CONSIDERED PART OF THE COST OF THE
22 PROCEEDINGS.

23 (3) EXPERT TESTIMONY IS NOT REQUIRED, BUT IF EXPERT TESTI-
24 MONY IS USED, IT SHALL BE ADMITTED UNDER THE SAME CIRCUMSTANCES
25 AS IN A CIVIL TRIAL AND IS SUBJECT TO CROSS-EXAMINATION.

26 (4) THE PARTY WITH THE BURDEN OF ESTABLISHING A STANDARD OF
27 CARE AND BREACH OF THAT STANDARD OF CARE SHALL ESTABLISH THE

1 STANDARD OF CARE, WHETHER BY THE INTRODUCTION OF EXPERT TESTIMONY
2 OR BY OTHER COMPETENT PROOF OF THE STANDARD OF CARE AND THE
3 BREACH OF THAT STANDARD OF CARE. COMPETENT PROOF MAY INCLUDE,
4 BUT IS NOT LIMITED TO, THE USE OF WORKS AS PROVIDED IN
5 SUBSECTION (5).

6 (5) UPON PRIOR NOTICE TO ALL OTHER PARTIES, AUTHORITATIVE,
7 PUBLISHED WORKS ON THE GENERAL AND SPECIFIC SUBJECTS IN ISSUE MAY
8 BE ADMITTED AND ARGUED FROM.

9 (6) THE PANEL SHALL ACCORD THE WEIGHT AND PROBATIVE WORTH TO
10 EXPERT EVIDENCE IT CONSIDERS APPROPRIATE. THE PANEL MAY CALL A
11 NEUTRAL EXPERT ON ITS OWN MOTION. THE EXPERT WITNESS IS SUBJECT
12 TO CROSS-EXAMINATION BY THE PARTIES. THE COST OF THE EXPERT IS
13 CONSIDERED A COST OF THE PROCEEDING.

14 SEC. 5051. (1) THE PANEL OR ITS CHAIRPERSON IN THE ARBITRA-
15 TION PROCEEDING SHALL, UPON APPLICATION BY A PARTY TO THE PRO-
16 CEEDING, AND MAY, UPON ITS OWN DETERMINATION, ISSUE A SUBPOENA
17 REQUIRING A PERSON TO APPEAR AND BE EXAMINED WITH REFERENCE TO A
18 MATTER WITHIN THE SCOPE OF THE PROCEEDING, AND TO PRODUCE BOOKS,
19 RECORDS, OR PAPERS PERTINENT TO THE PROCEEDING.

20 (2) IN CASE OF DISOBEDIENCE TO THE SUBPOENA, THE CHAIRPERSON
21 OR A MAJORITY OF THE ARBITRATION PANEL IN THE ARBITRATION PRO-
22 CEEDING MAY PETITION THE CIRCUIT COURT OF THE COUNTY IN WHICH THE
23 WITNESS RESIDES OR THE CIRCUIT COURT OF THE COUNTY IN WHICH THE
24 INQUIRY IS BEING HELD TO REQUIRE THE ATTENDANCE AND TESTIMONY OF
25 THE WITNESS AND THE PRODUCTION OF BOOKS, PAPERS, AND DOCUMENTS.

26 (3) A CIRCUIT COURT OF THE STATE, IN CASE OF CONTUMACY OR
27 REFUSAL TO OBEY A SUBPOENA, MAY ISSUE AN ORDER REQUIRING THE

1 PERSON TO APPEAR, TO PRODUCE BOOKS, RECORDS, AND PAPERS, AND TO
2 GIVE EVIDENCE REGARDING THE MATTER IN QUESTION. FAILURE TO OBEY
3 THE ORDER OF THE COURT MAY BE PUNISHED BY THE COURT AS CONTEMPT.

4 SEC. 5052. (1) ON APPLICATION OF A PARTY TO THE ARBITRA-
5 TION, THE PANEL OR ITS CHAIRPERSON MAY ORDER THE DEPOSITION OF A
6 WITNESS TO BE TAKEN FOR USE AS EVIDENCE AND NOT FOR DISCOVERY IF
7 THE WITNESS CANNOT BE COMPELLED TO ATTEND THE HEARING OR IF
8 EXCEPTIONAL CIRCUMSTANCES EXIST MAKING IT DESIRABLE, IN THE
9 INTEREST OF JUSTICE AND WITH DUE REGARD TO THE IMPORTANCE OF
10 PRESENTING THE TESTIMONY OF WITNESSES ORALLY AT THE HEARING, TO
11 ALLOW THE DEPOSITION TO BE TAKEN. THE DEPOSITION SHALL BE TAKEN
12 IN THE MANNER PRESCRIBED BY LAW OR COURT RULE FOR THE TAKING OF
13 DEPOSITIONS IN CIVIL ACTIONS.

14 (2) IN ADDITION TO THE POWER OF DETERMINING THE MERITS OF
15 THE ARBITRATION, THE PANEL MAY ENFORCE THE RIGHTS, REMEDIES, PRO-
16 CEDURES, DUTIES, LIABILITIES, AND OBLIGATIONS OF DISCOVERY BY THE
17 IMPOSITION OF THE SAME TERMS, CONDITIONS, CONSEQUENCES, LIABILI-
18 TIES, SANCTIONS, AND PENALTIES AS MAY BE IMPOSED IN LIKE CIRCUM-
19 STANCES IN A CIVIL ACTION BY A CIRCUIT COURT OF THIS STATE,
20 EXCEPT THE POWER TO ORDER THE ARREST OR IMPRISONMENT OF AN
21 INDIVIDUAL.

22 (3) FOR THE PURPOSE OF ENFORCING THE DUTY TO MAKE DISCOVERY,
23 TO PRODUCE EVIDENCE OR INFORMATION, INCLUDING BOOKS AND RECORDS,
24 AND TO PRODUCE PERSONS TO TESTIFY AT A DEPOSITION OR AT A HEAR-
25 ING, AND TO IMPOSE TERMS, CONDITIONS, CONSEQUENCES, LIABILITIES,
26 SANCTIONS, AND PENALTIES UPON A PARTY FOR VIOLATION OF A DUTY, A
27 PARTY INCLUDES EVERY AFFILIATE OF THE PARTY AS DEFINED IN THIS

1 SECTION. FOR PURPOSES OF THIS SUBSECTION, THE PERSONNEL OF AN
2 AFFILIATE ARE THE OFFICERS, DIRECTORS, MANAGING AGENTS, AGENTS,
3 AND EMPLOYEES OF THAT PARTY TO THE SAME DEGREE AS EACH OF THEM,
4 RESPECTIVELY, BEARS THAT STATUS TO THE AFFILIATE; AND THE FILES,
5 BOOKS, AND RECORDS OF AN AFFILIATE ARE CONSIDERED TO BE IN THE
6 POSSESSION AND CONTROL OF, AND CAPABLE OF PRODUCTION BY, THE
7 PARTY.

8 (4) AS USED IN THIS SECTION, "AFFILIATE OF THE PARTY" MEANS
9 A PARTY OR PERSON FOR WHOSE IMMEDIATE BENEFIT THE ACTION OR PRO-
10 CEEDING IS PROSECUTED OR DEFENDED OR AN OFFICER, DIRECTOR, SUPER-
11 INTENDENT, MEMBER, AGENT, EMPLOYEE, OR MANAGING AGENT OF THAT
12 PARTY OR PERSON.

13 SEC. 5053. (1) EXCEPT FOR THE PARTIES TO THE ARBITRATION
14 AND THEIR AGENTS, OFFICERS, AND EMPLOYEES, ALL WITNESSES APPEAR-
15 ING UNDER SUBPOENA ARE ENTITLED TO RECEIVE FEES AND MILEAGE IN
16 THE SAME AMOUNT AND UNDER THE SAME CIRCUMSTANCES AS PRESCRIBED BY
17 LAW FOR WITNESSES IN CIVIL ACTIONS IN THE CIRCUIT COURT. THE FEE
18 AND MILEAGE OF A WITNESS SUBPOENAED UPON THE APPLICATION OF A
19 PARTY TO THE ARBITRATION SHALL BE PAID BY THAT PARTY. THE FEE
20 AND MILEAGE OF A WITNESS SUBPOENAED SOLELY UPON THE DETERMINATION
21 OF THE ARBITRATOR OR THE MAJORITY OF A PANEL OF ARBITRATORS SHALL
22 BE PAID IN THE MANNER PROVIDED FOR THE PAYMENT OF THE
23 ARBITRATOR'S EXPENSES.

24 (2) THE COST OF EACH ARBITRATOR'S FEES AND EXPENSES,
25 TOGETHER WITH AN ADMINISTRATIVE FEE, MAY BE ASSESSED AGAINST ANY
26 PARTY IN THE AWARD OR MAY BE ASSESSED AMONG PARTIES IN
27 PROPORTIONS AS DETERMINED IN THE ARBITRATION AWARD.

1 SEC. 5054. (1) A MAJORITY OF THE PANEL OF ARBITRATORS MAY
2 GRANT RELIEF CONSIDERED BY THE MAJORITY TO BE EQUITABLE AND JUST,
3 INCLUDING, BUT NOT LIMITED TO, MONEY DAMAGES, PROVISION FOR HOS-
4 PITALIZATION, MEDICAL, OR REHABILITATIVE PROCEDURES, SUPPORT, OR
5 ANY COMBINATION OF THE RELIEF DESCRIBED IN THIS SUBSECTION.

6 (2) THE PANEL MAY ORDER SUBMISSION OF WRITTEN BRIEFS WITHIN
7 30 DAYS AFTER THE CLOSE OF HEARINGS. IN WRITTEN BRIEFS EACH
8 PARTY MAY SUMMARIZE THE EVIDENCE IN TESTIMONY AND MAY PROPOSE A
9 COMPREHENSIVE AWARD OF REMEDIAL OR COMPENSATORY ELEMENTS.

10 (3) THE PANEL SHALL RENDER ITS AWARD AND OPINION WITHIN 30
11 DAYS AFTER THE CLOSE OF THE HEARING OR THE RECEIPT OF BRIEFS, IF
12 ORDERED.

13 (4) THE AWARD IN THE ARBITRATION PROCEEDING SHALL BE IN
14 WRITING AND SHALL BE SIGNED BY THE CHAIRPERSON OR BY THE MAJORITY
15 OF A PANEL OF ARBITRATORS. THE AWARD SHALL INCLUDE A DETERMINA-
16 TION OF EACH QUESTION SUBMITTED TO ARBITRATION BY EACH PARTY, THE
17 RESOLUTION OF WHICH IS NECESSARY TO DETERMINE THE DISPUTE, CON-
18 TROVERSY, OR ISSUE.

19 SEC. 5055. (1) IN ADDITION TO AN AWARD UNDER SECTION 5054,
20 THE PANEL SHALL RENDER A WRITTEN OPINION THAT STATES ITS REASON-
21 ING FOR THE FINDING OF LIABILITY OR NONLIABILITY, AND THE REASON-
22 ING FOR THE AMOUNT AND KIND OF AWARD, IF ANY. A PANEL MEMBER WHO
23 DISAGREES WITH THE MAJORITY MAY WRITE A DISSENTING OPINION.

24 (2) THE PANEL SHALL DETERMINE THE DEGREE TO WHICH EACH
25 RESPONDENT PARTY WAS AT FAULT FOR THE TOTAL DAMAGES ACCRUING TO
26 ANOTHER PARTY TO THE ARBITRATION, CONSIDERING ALL SOURCES OF

1 DAMAGE INVOLVING PARTIES TO THE ARBITRATION, BUT EXCLUDING THE
2 DAMAGES ATTRIBUTABLE TO PERSONS NOT PARTIES TO THE ARBITRATION.

3 (3) THE PANEL SHALL PREPARE A SCHEDULE OF CONTRIBUTIONS
4 ACCORDING TO THE RELATIVE FAULT OF EACH PARTY. THE SCHEDULE IS
5 BINDING AS BETWEEN OR AMONG THOSE PARTIES, BUT THE DETERMINATION
6 DOES NOT AFFECT A CLAIMANT'S RIGHT TO RECOVER JOINTLY AND SEVER-
7 ALLY FROM ALL PARTIES IF THAT RIGHT OTHERWISE EXISTS UNDER LAW.

8 SEC. 5056. (1) IN THE CASE OF AN AWARD UNDER SECTION 5054,
9 AN ELEMENT OF WHICH INCLUDES REMEDIAL SERVICES, CONTRACTS, ANNUI-
10 TIES, OR OTHER NONCASH AWARD, THE PANEL SHALL DETERMINE THE CUR-
11 RENT CASH VALUE OF EACH ELEMENT OF THE AWARD AND SHALL ALSO
12 DETERMINE A TOTAL CURRENT CASH VALUE OF THE ENTIRE AWARD.

13 (2) AN AWARD OF REMEDIAL SURGERY OR CARE SHALL NOT REQUIRE
14 THAT THE PATIENT UNDERGO THE TREATMENT OR CARE BY THE HEALTH CARE
15 PROVIDER WHOSE CONDUCT RESULTED IN THE AWARD.

16 (3) A CLAIMANT IS NOT REQUIRED TO ACCEPT THE BENEFITS OF AN
17 AWARD FOR REMEDIAL SURGERY OR OTHER NONCASH AWARD ELEMENT. A
18 REFUSAL DOES NOT AFFECT THE CLAIMANT'S RIGHT TO RECEIVE ANY OTHER
19 PART OF THE AWARD BUT DOES NOT ENTITLE THE CLAIMANT TO PAYMENT OF
20 THE CURRENT CASH VALUE OF THE PORTION REFUSED EXCEPT AS PROVIDED
21 IN SUBSECTIONS (4) AND (5).

22 (4) IF THE TOTAL DETERMINED CURRENT CASH VALUE OF AN ENTIRE
23 AWARD IS \$50,000.00 OR LESS, A PARTY MAY SATISFY OR REQUEST SAT-
24 ISFACTION OF ALL OR A DESIGNATED PART OF THE AWARD BY PAYMENT IN
25 A LUMP SUM OF THE CURRENT CASH VALUE OF THE TOTAL AWARD OR PART
26 OF THE AWARD SO DESIGNATED.

1 (5) IF THE TOTAL DETERMINED CURRENT CASH VALUE OF AN ENTIRE
2 AWARD IS GREATER THAN \$50,000.00, THE AWARD SHALL PROVIDE THAT AT
3 LEAST 1/3, UNLESS OTHERWISE STIPULATED BY THE PARTIES, OF ITS
4 TOTAL CURRENT CASH VALUE IS PAYABLE IN A CASH LUMP SUM, WHICH
5 PAYMENT MAY REPRESENT THE CURRENT CASH VALUE OF REMEDIAL ELEMENTS
6 OF THE AWARD OR OTHER COMPENSABLE DAMAGES.

7 SEC. 5057. AN APPEAL FROM THE ARBITRATION AWARD UNDER THIS
8 CHAPTER SHALL BE UNDER THE PROCEDURE AND FOR THE GROUNDS PERMIT-
9 TED UNDER THE GENERAL ARBITRATION LAW AND APPLICABLE COURT
10 RULES.

11 SEC. 5058. IN AN ARBITRATION PROCEEDING UNDER THIS CHAPTER,
12 IF A CONFLICT ARISES BETWEEN THIS CHAPTER AND CHAPTER 50, THIS
13 CHAPTER GOVERNS.

14 SEC. 5059. THE ASSOCIATION SHALL TRANSMIT TO THE STATE
15 INSURANCE BUREAU AND THE APPLICABLE LICENSING BOARD OF A RESPON-
16 DENT PARTY A COPY OF THE DEMAND FOR ARBITRATION WITHIN 10 DAYS
17 AFTER ITS FILING. THE PANEL SHALL TRANSMIT A COPY OF ITS DECI-
18 SION TO THE INSURANCE BUREAU AND THE APPLICABLE LICENSING BOARD
19 WITHIN 10 DAYS AFTER TRANSMISSION TO THE PARTIES. THE COPY OF
20 THE DEMAND FOR ARBITRATION OR THE DECISION SHALL BE FILED FOR
21 INFORMATIONAL PURPOSES, AND IS NOT OF ITSELF A GROUND FOR
22 DISCIPLINE.

23 SEC. 5065. WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF THIS
24 SECTION, A JOINT LEGISLATIVE COMMITTEE SHALL BE ESTABLISHED TO
25 REVIEW THE OPERATION AND EXPERIENCE OF ARBITRATION UNDER THIS
26 CHAPTER IN CONJUNCTION WITH THE INSURANCE COMMISSIONER, THE
27 ARBITRATION ADVISORY COMMITTEE ESTABLISHED UNDER THE INSURANCE

1 CODE OF 1956, ACT NO. 218 OF THE PUBLIC ACTS OF 1956, BEING
2 SECTIONS 500.100 TO 500.8302 OF THE MICHIGAN COMPILED LAWS, AND
3 OTHER INTERESTED PERSONS. THE COMMITTEE SHALL REPORT RECOMMENDA-
4 TIONS FOR STATUTORY CHANGES, IF ANY, TO THE ENTIRE LEGISLATURE
5 BEFORE THE END OF THE FOURTH YEAR AFTER THE EFFECTIVE DATE OF
6 THIS SECTION.