

ARBITRATION AGREEMENT FOR CLAIMS ARISING OUT OF OR RELATED TO MEDICAL CARE AND TREATMENT

Background for the Patient: It is the perception of many that medical malpractice lawsuits have resulted in ever-escalating medical malpractice insurance rates. Several states are experiencing this trend. Medical malpractice insurance has become so expensive that some physicians can no longer afford medical malpractice insurance.

As a consequence, some physicians are abandoning their current patient base, relocating to different areas in the country where insurance rates are lower. Other physicians and medical services providers such as hospitals have discontinued offering certain essential services, including necessary but higher risk medical services, because of the potential liabilities involved. In the face of this problem, other physicians have decided to abandon carrying any medical malpractice insurance whatsoever. This is not good for the patient or the physician.

Therefore, in an effort to help maintain our medical malpractice insurance rates at reasonable levels, so that we can continue to stay in business, continue to carry insurance, continue to treat our established patient base, and continue to provide quality essential services to our patients, we ask you to agree to mutual binding arbitration and to the following limitations on monetary recovery in the event of a dispute arising out of your healthcare.

AGREEMENT TO ARBITRATE CLAIMS REGARDING FUTURE CARE & TREATMENT: The patient and Medical Care Provider agree to submit to binding arbitration any controversy, including without limitation, claims for medical malpractice, personal injury, battery, breach of express or implied contract, loss of consortium, wrongful death or any payment disputes, arising out of or in any way relating to the past or future diagnosis, treatment, or care of the patient by the undersigned provider of medical services and all affiliated physicians, partners, agents, co-employees or employees of the undersigned provider of medical services, and any related medical group, association, professional association, corporation, partnership, partners, limited liability company, which has provided diagnosis, treatment or care in conjunction with the medical provider (for the remainder of this Agreement, these parties shall be referred to collectively as the "Medical Care Provider").

By entering into this Binding Arbitration Agreement, the patient, and/or his or her spouse, children (whether born or unborn), parents, heirs, assigns, successors, representatives, executors, beneficiaries, guardians, agents, or anyone suing or initiating any legal or equitable action arising out of the medical care provided to the patient (for the remainder of this Agreement, these parties shall be referred to collectively as the "Patient"), and the Medical Care Provider agree that any lawsuit, action in equity, cause of action, dispute, claim, complaint, malpractice claim, malpractice allegation, or negligence allegation of any kind, which in any way whatsoever relates to the diagnosis, treatment, provision of medical services, failure to provide medical services, negligent provision of medical services, obtaining of informed consent, care, aftercare, or monitoring of the Patient by the Medical Care Provider, shall and will be submitted to binding arbitration.

It is the express intention of the parties to this Binding Arbitration Agreement that any and all possible lawsuits, actions in equity, causes of action, disputes, claims, complaints, malpractice claims, malpractice allegations, or negligence allegations of any kind, shall be submitted to, and resolved through binding arbitration. This includes, but is not limited to, suits or actions claiming wrongful death, loss of consortium, emotional distress, economic damages, non-economic damages such as pain and suffering, loss of capacity for the enjoyment of life, mental anguish, disfigurement, aggravation of a pre-existing condition, and punitive damages. Binding arbitration will serve as the exclusive remedy.

The Medical Care Provider and any affiliated medical service provider that chooses to join in this Agreement agree to be equally bound as you are to the remedy of binding arbitration in the event of a dispute. Such disputes can be brought by the Medical Care Provider against you, including such matters as terms of payment, services rendered, and other potential areas of dispute. These matters shall be resolved exclusively by binding arbitration. The Patient acknowledges that the medical care that has been and will be provided by the Medical Care Provider represents good and adequate consideration for this Agreement, and the patient intends to be legally bound by this Agreement.

Patient/Parent/Caretaker Initials: _____

AGREEMENT TO ARBITRATE CLAIMS REGARDING PAST CARE & TREATMENT: The Patient further agrees that any controversy, including without limitation, claims for medical malpractice, personal injury, battery, loss of consortium, or wrongful death, arising out of or in any way relating to the past diagnosis, treatment, or care of the Patient by the Medical Care Provider, shall be submitted to binding arbitration. Similarly, the Medical Care Provider agrees that any claim against the Patient shall be submitted to binding arbitration. All issues regarding the validity, enforceability and scope of this Agreement or any part thereof shall also be subject to arbitration. Notwithstanding any other provision of this Agreement, if either party should challenge the validity of this Agreement in court on the grounds that it is invalid or unenforceable, then the prevailing party shall be entitled to attorneys' fees and costs determined to be reasonable by the court.

Patient/Parent/Caretaker Initials: _____

WAIVER OF RIGHT TO JURY TRIAL: Both parties to this Agreement, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury. They are instead accepting the use of binding arbitration to resolve any dispute. By entering into this Agreement, all parties to the Agreement acknowledge and understand that they are giving up the right to have any such dispute, as further described above, decided by a judge or jury through the court system. Instead, all parties acknowledge and understand that any and all disputes as further described above will be referred to binding arbitration. Resort to the legal system by action at law or in equity will only be permissible to the extent necessary to enforce any decisions reached through arbitration. Both parties to this Agreement also agree that any dispute concerning any provisions of this Agreement will be decided through arbitration.

Patient/Parent/Caretaker Initials: _____

ALL CLAIMS MUST BE ARBITRATED: All claims based upon the same occurrence, incident, or care shall be arbitrated in one proceeding. It is the intention of the parties that this Agreement bind all parties, including the Patient, whose claims may arise out of or relate to treatment or services provided by the Medical Care Provider at the time of the occurrence giving rise to the claim. In the case of any pregnant mother, the term "patient" herein shall mean both the mother and the mother's expected child or children. By signing this Agreement, the parties consent to the participation in this arbitration of any person or entity that would otherwise be a proper additional party in a court action if they have been involved in any way in the care of the Patient. This may include claims of the Patient against another physician, nurse or medical professional, or a hospital or other facility. Additionally, this Agreement is intended to resolve all claims for vicarious liability of the Medical Care Provider.

Patient/Parent/Caretaker Initials: _____

SPECIFIC PROVISIONS LIMITING THE PATIENT'S MONETARY RECOVERY AND TIME TO MAKE A CLAIM

Limitation on All Non-Economic Damages: The Medical Care Provider and Patient hereby agree that in any dispute submitted to binding arbitration pursuant to the arbitration proceedings described above, that the maximum total amount of all non-economic damages awarded to the Patient in the event that liability is found shall under no circumstances exceed a total of \$250,000. This limitation applies on a *per case* basis, regardless of the number of claimants seeking compensation. This limitation of \$250,000 limit per case also applies regardless of the number of physicians, professional associations, employees or entities named as defendants. By entering into this Agreement, the Patient agrees to waive any rights to a higher damages award for non-economic damages that may be provided by Law. This limitation of \$250,000 limit per case also applies regardless of whether another healthcare provider, such as a physician, a hospital or other facility or employees of such a physician, hospital or facility are named as defendants, in the binding arbitration or in any other proceeding. Non-economic damages refer to damages for pain and suffering, disfigurement, embarrassment and anything else not representing loss of past or future earnings or past or future medical or other out-of-pocket costs. The arbitrators may, in their discretion, award non-economic damages in excess of \$250,000 in cases where extreme hardship is demonstrated. This agreement does not limit the right of the patient to seek compensation for economic damages.

Patient/Parent/Caretaker Initials: _____

Limitation on Amount of Punitive Damages: The parties to this Arbitration Agreement agree that in the event that punitive damages are awarded to the Patient, said damages may not exceed three times the amount of the compensatory award to the Patient.

Patient/Parent/Caretaker Initials: _____

Payment Over Time: Additionally, the parties agree that in the event that liability is found, payments for economic and non-economic damage awards in excess of \$10,000 shall be paid out through equal, periodic annual payments over the course of 5 years or 10 years without being reduced to present value. It shall be left to the arbitrators whether the payments shall be made over 5 years or whether they shall be made over 10 years.

Patient/Parent/Caretaker Initials: _____

Collateral Source Payments: The Medical Care Provider and Patient hereby agree that in any dispute submitted to arbitration pursuant to the arbitration proceedings described above, the arbitrators may consider other collateral sources of compensation such as workers compensation, life insurance awards, disability payments, charitable and governmental benefits, and other monies paid to the injured patient or any other party when fashioning damage awards for either non-economic or economic damages. The Medical Care Provider shall be entitled to an off-set for any monies received by the Patient for claims against any other health care provider, if such claims arise out of or relate in any way to the claims of the Patient against the Medical Care Provider. Both parties agree to the full and complete disclosure of such collateral sources of compensation. Failure to disclose such additional sources shall be considered grounds for dismissal of any claim.

Patient/Parent/Caretaker Initials: _____

Statute of Limitations: The statute of limitations set forth in the state statutes of the state in which an arbitration request is made shall apply. The arbitrators shall determine any question concerning the application of this paragraph.

Patient/Parent/Caretaker Initials: _____

MISCELLANEOUS ITEMS

A) Severability: In the event that any term or provision of this Binding Arbitration Agreement is determined by a court of competent jurisdiction, to be illegal, invalid, or otherwise unenforceable, the remainder of this agreement shall be construed to be in full force and effect, and all other provisions will still apply. The parties agree in general that any provisions so challenged will be brought to the arbitrators to decide upon, and not to a judge or jury.

Patient/Parent/Caretaker Initials: _____

B) Entire Agreement / Merger Clause: This Agreement represents the entire Agreement made between the Medical Care Provider and Patient and supersedes any other prior agreements that may have existed between Patient and Medical Care Provider. Except as expressly set forth herein, there are no other representations, promises, understandings, or agreements of any kind between the parties. By initialing this paragraph at the space provided below, the individual signing this Agreement acknowledges that he or she has not relied in any way, upon any oral or written statements made to them, apart from what is contained within this Agreement. All parties acknowledge and understand that this Agreement cannot be changed, altered, or modified in any way except by an instrument in writing, signed all parties.

Patient/Parent/Caretaker Initials: _____

C) Pronouns and Headings: In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and the use of any gender shall be held to include every gender. All headings, titles, subtitles, or captions used herein are understood to have been inserted for convenience of reference only, and are to be ignored in any construction of the provisions hereof.

Patient/Parent/Caretaker Initials: _____

D) Governing Law and Payment and Selection of Arbitrators: This Agreement, its substantive provisions, the scope of the Agreement, the authority granted to the arbitrators and the limitations contained in this Agreement, are to be governed by, and interpreted pursuant to, the Federal Arbitration Act (FAA), any conflicting state law notwithstanding. To the extent not inconsistent with the FAA, it shall also be governed by the provisions of the Uniform Arbitration Act as adopted in the principal state where the physician practices. The parties also agree that any dispute between them shall be determined by a panel of three arbitrators. Each party shall select one arbitrator from lists of qualified personnel provided by the National Arbitration Forum, the American Health Lawyers Association, and the National Insurance Arbitration Promotion Association, Inc. The two arbitrators selected by the parties shall then select a third arbitrator from the same lists. The panel of three arbitrators shall resolve any and all disputes between the parties as specified herein and pursuant to the National Arbitration Forum Code of Procedure. The parties further agree that in the conduct of the arbitration proceeding the general rules of evidence in the state in which the arbitration is held shall govern. The Medical Care Provider shall pay the full costs of the arbitration, however the Medical Care Provider shall not be responsible for paying any fees or costs charged to the Patient by their attorney.

Discovery: In the arbitration proceeding, reasonable discovery will be permitted by both sides.

Written Decision: The parties agree that the arbitrators are to render a written decision with reasons stated for the decision. Furthermore, the arbitrators are to generally follow the rules of evidence of the state in which the arbitration is held, so long as those rules are not inconsistent with the provisions of this Agreement.

Patient/Parent/Caretaker Initials: _____

E) Right of Counsel: The Patient acknowledges and understands that this Agreement is a legal document, and that he or she has the right to consult with an attorney of his or her choice prior to signing this Agreement if he or she so desires. Your Medical Care Provider encourages you to consult with an attorney of your choice prior to signing this Arbitration Agreement or during the 15 day rescission period as described in Section I of this Agreement. You may elect not to do so.

Patient/Parent/Caretaker Initials: _____

F) Authority to Sign: By initialing this section, the Patient warrants and represents that he or she does in fact have the authority to sign and execute this document on his/her own behalf (if signed by the patient), or on behalf of the patient (if signed by a person or persons other than the patient.)

Patient/Parent/Caretaker Initials: _____

G) No Undue Influence: The individual signing this Agreement hereby acknowledges that he or she has not been pressured, induced, coerced, or intimidated in any way into signing this Agreement, and has signed this Agreement of his or her own free will and accord. The individual signing this Agreement further acknowledges that he or she has not signed this Agreement under duress. Further, the parties to this Agreement have been given every opportunity to ask questions and receive answers concerning the specifics and intent of this Agreement.

Patient/Parent/Caretaker Initials: _____

H) Frivolous Legal Actions: The Patient agrees that under no circumstances will a frivolous action or claim be brought against the Medical Care Provider, and the Medical Care Provider similarly agrees to not bring any frivolous action or claim against the Patient. In the event that the Arbitrators rule that any action or claim brought against either party is in the nature of a frivolous action or claim, the prevailing party shall be entitled to economic and non-economic damages, including loss of wages or other compensation, damage to reputation, attorneys' fees and punitive damages.

Patient/Parent/Caretaker Initials: _____

I) Patient's Right to Rescind Agreement:

I, _____ (Please Print First and Last Name), the patient, parent, guardian or authorized representative of patient, understand that while I am signing this agreement after or prior to becoming a patient of the Medical Care Provider and/or receiving medical services, I may change my mind, cancel and rescind this agreement within 15 days of today by giving written notice to the undersigned Medical Care Provider which shall be done by returning a copy of this Agreement to the undersigned provider of medical services with the word "CANCELLED" written conspicuously across the first page, signed by me under that word.

Patient/Parent/Caretaker Initials: _____

NOTICE: BY SIGNING THIS CONTRACT, YOU ARE AGREEING TO HAVE ANY ISSUE OF ALLEGED MEDICAL NEGLIGENCE OR BREACH OF CONTRACT BETWEEN YOU AND YOUR MEDICAL CARE PROVIDER DECIDED BY A BINDING ARBITRATION PROCESS IN WHICH BOTH PARTIES ARE GIVING UP THEIR RIGHT TO A TRIAL BY JURY, OR TRIAL BY A JUDGE.

Name of patient(s), if signed by someone other than the patient(s): _____

Date: _____
SIGNATURE of Patient, Parent, Guardian, or Authorized Representative of Patient

If signed by other than patient, please indicate nature of relationship: "I am the patient's: _____"

MEDICAL CARE PROVIDER'S CONSENT TO ARBITRATION: In consideration of the execution of this Binding Arbitration Agreement, the undersigned, as the legal representative of the Medical Care Provider, hereby agree to be bound by all the terms set forth above in the body of this Agreement.

Date: _____
SIGNATURE of MEDICAL CARE PROVIDER – Insert Name of Medical Care Provider

BY: _____ AS ITS: _____

BY SIGNING THIS AGREEMENT YOU AND YOUR MEDICAL CARE PROVIDERS ARE WAIVING YOUR RIGHTS TO A JURY TRIAL AND YOU ARE AGREEING TO ARBITRATE ALL CLAIMS ARISING OUT OF OR RELATED TO MEDICAL CARE AND TREATMENT