

IC 34-18-11

Chapter 11. Preliminary Determination of Affirmative Defense or Issue of Law or Fact; Discovery

IC 34-18-11-1

Discovery; preliminary rulings

Sec. 1. (a) A court having jurisdiction over the subject matter and the parties to a proposed complaint filed with the commissioner under this article may, upon the filing of a copy of the proposed complaint and a written motion under this chapter, do one (1) or both of the following:

- (1) preliminarily determine an affirmative defense or issue of law or fact that may be preliminarily determined under the Indiana Rules of Procedure; or
- (2) compel discovery in accordance with the Indiana Rules of Procedure.

(b) The court has no jurisdiction to rule preliminarily upon any affirmative defense or issue of law or fact reserved for written opinion by the medical review panel under IC 34-18-10-22(b)(1), IC 34-18-10-22(b)(2), and IC 34-18-10-22(b)(4).

(c) The court has jurisdiction to entertain a motion filed under this chapter only during that time after a proposed complaint is filed with the commissioner under this article but before the medical review panel gives the panel's written opinion under IC 34-18-10-22.

(d) The failure of any party to move for a preliminary determination or to compel discovery under this chapter before the medical review panel gives the panel's written opinion under IC 34-18-10-22 does not constitute the waiver of any affirmative defense or issue of law or fact.

As added by P.L.1-1998, SEC.13.

IC 34-18-11-2

Invoking jurisdiction of the court; issuance of summons

Sec. 2. (a) A party to a proceeding commenced under this article, the commissioner, or the chairman of a medical review panel, if any, may invoke the jurisdiction of the court by paying the statutory filing fee to the clerk and filing a copy of the proposed complaint and motion with the clerk.

(b) The filing of a copy of the proposed complaint and motion with the clerk confers jurisdiction upon the court over the subject matter and the parties to the proceeding for the limited purposes stated in this chapter, including the taxation and assessment of costs or the allowance of expenses, including reasonable attorney's fees, or both.

(c) The moving party or the moving party's attorney shall cause as many summonses as are necessary to be issued by the clerk and served on the commissioner, each nonmoving party to the proceedings, and the chairman of the medical review panel, if any, unless the commissioner or the chairman is the moving party, together with a copy of the proposed complaint and a copy of the

motion under Rules 4 through 4.17 of the Indiana Rules of Trial Procedure.

As added by P.L.1-1998, SEC.13.

IC 34-18-11-3

Time for reply to motion; rulings

Sec. 3. (a) Each nonmoving party to the proceeding, including the commissioner and the chairman of the medical review panel, if any, shall have a period of twenty (20) days after service, or a period of twenty-three (23) days after service if service is by mail, to appear and file and serve a written response to the motion, unless the court, for cause shown, orders the period enlarged.

(b) The court shall enter a ruling on the motion:

- (1) within thirty (30) days after the motion is heard; or
- (2) if no hearing is requested, granted or ordered, within thirty
- (30) days after the date on which the last written response to the motion is filed.

(c) The court shall order the clerk to serve a copy of the court's ruling on the motion by ordinary mail on the commissioner, each party to the proceeding, and the chairman of the medical review panel, if any.

As added by P.L.1-1998, SEC.13.

IC 34-18-11-4

Stay of proceedings

Sec. 4. Upon the filing of a copy of the proposed complaint and motion with the clerk of the court, all further proceedings before the medical review panel shall be stayed automatically until the court has entered a ruling on the motion.

As added by P.L.1-1998, SEC.13.

IC 34-18-11-5

Enforcement

Sec. 5. The court may enforce its ruling on any motion filed under this chapter in accordance with the Indiana Rules of Procedure, subject to the right of appeal.

As added by P.L.1-1998, SEC.13.