

IC 34-18-8

Chapter 8. Commencement of a Medical Malpractice Action

IC 34-18-8-1

Commencement of action; complaint

Sec. 1. Subject to IC 34-18-10 and sections 4 through 6 of this chapter, a patient or the representative of a patient who has a claim under this article for bodily injury or death on account of malpractice may do the following:

- (1) File a complaint in any court of law having requisite jurisdiction.
- (2) By demand, exercise the right to a trial by jury.

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

IC 34-18-8-2

Fees

Sec. 2. The following fees must accompany each proposed complaint filed:

- (1) A filing fee of five dollars (\$5).
- (2) A processing fee of two dollars (\$2) for each additional defendant after the first defendant.

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

IC 34-18-8-3

Demand; reasonable damages

Sec. 3. Except for the declaration called for in section 6(a) of this chapter, a dollar amount or figure may not be included in the demand in a malpractice complaint, but the prayer must be for such damages as are reasonable in the premises.

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

IC 34-18-8-4

Prerequisites to commencement of action; presentation of claim to medical review panel

Sec. 4. Notwithstanding section 1 of this chapter, and except as provided in sections 5 and 6 of this chapter, an action against a health care provider may not be commenced in a court in Indiana before:

- (1) the claimant's proposed complaint has been presented to a medical review panel established under IC 34-18-10 (or IC 27-12-10 before its repeal); and
- (2) an opinion is given by the panel.

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

IC 34-18-8-5

Agreements not to present claims to medical review panels

Sec. 5. Notwithstanding section 4 of this chapter, a claimant may commence an action in court for malpractice without the presentation of the claim to a medical review panel if the claimant and all parties

named as defendants in the action agree that the claim is not to be presented to a medical review panel. The agreement must be in writing and must be signed by each party or an authorized agent of the party. The claimant must attach a copy of the agreement to the complaint filed with the court in which the action is commenced.

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

IC 34-18-8-6

Claims not greater than \$15,000; commencement of action; dismissal without prejudice

Sec. 6. (a) Notwithstanding section 4 of this chapter, a patient may commence an action against a health care provider for malpractice without submitting a proposed complaint to a medical review panel if the patient's pleadings include a declaration that the patient seeks damages from the health care provider in an amount not greater than fifteen thousand dollars (\$15,000). In an action commenced under this subsection (or IC 27-12-8-6(a) before its repeal), the patient is barred from recovering any amount greater than fifteen thousand dollars (\$15,000), except as provided in subsection (b).

(b) A patient who:

- (1) commences an action under subsection (a) (or IC 27-12-8-6(a) before its repeal) in the reasonable belief that damages in an amount not greater than fifteen thousand dollars (\$15,000) are adequate compensation for the bodily injury allegedly caused by the health care provider's malpractice; and
- (2) later learns, during the pendency of the action, that the bodily injury is more serious than previously believed and that fifteen thousand dollars (\$15,000) is insufficient compensation for the bodily injury;

may move that the action be dismissed without prejudice and, upon dismissal of the action, may file a proposed complaint subject to section 4 of this chapter based upon the same allegations of malpractice as were asserted in the action dismissed under this subsection. In a second action commenced in court following the medical review panel's proceeding on the proposed complaint, the patient may recover an amount greater than fifteen thousand dollars (\$15,000). However, a patient may move for dismissal without prejudice and, if dismissal without prejudice is granted, may commence a second action under this subsection only if the patient's motion for dismissal is filed within two (2) years after commencement of the original action under subsection (a) (or IC 27-12-8-6(a) before its repeal).

(c) If a patient:

- (1) commences an action under subsection (a) (or IC 27-12-8-6(a) before its repeal);
- (2) moves under subsection (b) (or IC 27-12-8-6(b) before its repeal) for dismissal of that action;
- (3) files a proposed complaint subject to section 4 of this

chapter based upon the same allegations of malpractice as were asserted in the action dismissed under subsection (b) (or IC 27-12-8-6(b) before its repeal); and

(4) commences a second action in court following the medical review panel proceeding on the proposed complaint; the timeliness of the second action is governed by IC 34-18-7-1(c).

(d) A medical liability insurer of a health care provider against whom an action has been filed under subsection (a) (or IC 27-12-8-6(a) before its repeal) shall provide written notice to the state health commissioner as required under IC 34-18-9-2.

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

IC 34-18-8-7

Commencement of action while claim being considered by medical review panel

Sec. 7. (a) Notwithstanding section 4 of this chapter, beginning July 1, 1999, a claimant may commence an action in court for malpractice at the same time the claimant's proposed complaint is being considered by a medical review panel. In order to comply with this section, the:

- (1) complaint filed in court may not contain any information that would allow a third party to identify the defendant;
- (2) claimant is prohibited from pursuing the action; and
- (3) court is prohibited from taking any action except setting a date for trial, an action under IC 34-18-8-8 (or IC 27-12-8-8 before its repeal), or an action under IC 34-18-11 (or IC 27-12-11 before its repeal);

until section 4 of this chapter has been satisfied.

(b) Upon satisfaction of section 4 of this chapter, the identifying information described in subsection (a)(1) shall be added to the complaint by the court.

As added by P.L.111-1998, SEC.9.

IC 34-18-8-8

Motion to dismiss filed by commissioner

Sec. 8. If action has not been taken in a case before the department of insurance for a period of at least two (2) years, the commissioner, on the:

- (1) motion of a party; or
- (2) commissioner's own initiative;

may file a motion in Marion county circuit court to dismiss the case under Rule 41(E) of the Indiana Rules of Trial Procedure.

As added by P.L.111-1998, SEC.10.