

Pre-Trial Procedures in Medical Professional Liability Actions

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Settlement Conference; Mediation

Rule 1042.21. Medical Professional Liability Actions. Motion for Settlement Conference or Mediation

(a) Prior to the exchange of expert reports in a medical professional liability action, a health care provider may file a motion with the court requesting a settlement conference or court ordered mediation.

(1) If the motion is filed without the consent of all other parties, the moving party shall certify that it believes there is a realistic possibility of settlement.

(2) If the motion requests court ordered mediation, the moving party shall describe in the motion the mediation which is sought and shall pay for the mediation.

(b) The court shall consider any objection to the motion before entering an order.

NOTE: See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c), for the definitions of “health care provider” and “medical professional liability action”.

Expert Reports

Rule 1042.26. Medical Professional Liability Actions. Expert Reports

(a) The rules of this chapter, Rules 1042.26 through 1042.38, govern a medical professional liability action in which a medical professional liability claim is asserted against a health care provider.

NOTE: See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c), for the definitions of “health care provider”, “medical professional liability action” and “medical professional liability claim”.

The rules of this chapter create additional requirements for the pre-trial production of expert reports for cases within the scope of these rules.

(b) The rules of this chapter are applicable only in those jurisdictions where the court has not established case management deadlines by court order or otherwise.

NOTE: These rules do not apply if the court has set different times for the production of expert reports, whether those times are established before or after a party has initiated a proceeding under this chapter by the filing of a request for expert reports.

**Rule 1042.27. Requests for Production of Expert Reports.
Responses. General Provisions**

(a)(1) A party may request the production of expert reports as provided by Rules 1042.28(a), 1042.29(a) and 1042.30(a).

(2) The request shall specify the party to whom it is directed and the party making the request.

(b)(1) A party served with a request shall respond as provided by Rules 1042.28(b), 1042.29 (a)(2) or (a)(3) or 1042.30(b) as may be appropriate.

(2) An expert report produced pursuant to these rules shall encompass all issues in the liability phase of the case, including issues of professional negligence and causation of harm, for which a party to whom a request has been directed will offer expert testimony at trial in support of claims made against the requesting party or in support of defenses raised to the requesting party's claims. The report shall reflect the best information available to the party producing the report at the time it is produced.

(3) The report shall be signed by the expert and shall comply with the requirements of Rule 4003.5.

NOTE: Rule 4003.5 governs the discovery of expert testimony and trial preparation material.

(c) While a request for the production of an expert report may be filed with the court, an expert report produced pursuant to these rules is discovery material that shall not be filed except as provided by Rule 4002.1.

NOTE: Rule 4002.1 governs filing discovery material.

Rule 1042.28. Defendant's Request to Plaintiff for Production of Expert Reports. Response

(a)(1) A defendant against whom a claim of professional negligence has been made may serve on a plaintiff making that claim a Defendant's Request to Plaintiff for Production of Expert Reports. The request shall be substantially in the form prescribed by Rule 1042.36.

(2) The Defendant's Request may be served not earlier than ninety days after the defendant filed its original answer to the plaintiff's complaint.

NOTE: An additional defendant may serve a Defendant's Request to Plaintiff for Production of Expert Reports on a plaintiff pursuant to subdivision (a)(1) if the plaintiff is actively pursuing a claim against the additional defendant.

(b) A plaintiff to whom a request has been made under subdivision (a) shall, within one hundred eighty days after service of the request, furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that plaintiff to support the claims of professional negligence made by that plaintiff against the requesting party.

Rule 1042.29. Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports. Response

(a)(1) Within the times set forth in subdivisions (a)(2) and (a)(3), a plaintiff who has furnished a defendant or additional defendant expert reports summarizing the expert testimony that will be offered by the plaintiff to support his or her claims of professional liability made against that defendant or additional defendant, may serve on that defendant or additional defendant a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports. The request shall be substantially in the form prescribed by Rule 1042.37.

(2) A plaintiff who has furnished an expert report to the defendant or additional defendant in response to a request pursuant to Rule 1042.28 may thereafter serve a request on that defendant or additional defendant. Within sixty days after service of the request, the party to whom the request has been directed shall furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party to support the defenses to the requesting party's claims.

(3) A plaintiff who has furnished an expert report to the defendant or additional defendant without a request may serve a request on that defendant or additional defendant after ninety days following the filing of the certificate of merit as to the party to whom the request is directed. Within one hundred twenty days after service of the request, the party to whom the request has been directed shall furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party to support the defenses to the requesting party's claims.

(b) If the defendant or additional defendant to whom a Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports has been directed has raised claims against other parties pursuant to Rule 2251 et seq., the expert reports shall also summarize the expert testimony that will be offered by that party in support of the claims against other parties.

NOTE: Rule 2251 et seq. governs the joinder of additional defendants.

Rule 1042.30. Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant for Production of Expert Reports. Response

(a)(1) A defendant or additional defendant who has furnished expert reports summarizing the expert testimony offered by that party in support of claims against other parties pursuant to Rule 1042.29(b) may serve a Defendant's or Additional Defendant's Request to Another Defendant or Additional Defendant for Production of Expert Reports. The request shall be substantially in the form prescribed by Rule 1042.38.

(2) The request may not be made earlier than ninety days after a certificate of merit was served on the party to whom the request is directed.

(b) A party to whom a request for production of expert reports has been directed pursuant to subdivision (a) shall within sixty days after service of the request furnish to the requesting party expert reports summarizing the expert testimony that will be offered by that party supporting the defenses to the claims by the requesting party and any claims raised against the requesting party and any other parties joined pursuant to Rule 2251 et seq.

NOTE: Rule 2251 et seq. governs the joinder of additional defendants.

Rule 1042.31. Failure to Produce Report. Sanctions. Summary Judgment

(a) A party who has not received an expert report required to be produced under these rules may upon motion obtain a court order compelling the production of the report. In ruling on the motion, the court shall consider the complexity of the case, the diligence of the parties in making and responding to discovery requests, and other relevant factors. A party who has proceeded with reasonable diligence shall be given a reasonable time in which to complete necessary discovery and to produce an expert report.

NOTE: A party cannot justify the non-production of an expert report required by these rules simply by stating that discovery has not been completed or that the party failing to provide the report has not yet identified the experts whom he or she intends to call at trial. However, a party who has acted diligently should not be required to produce expert reports if discovery of significant information has not been completed because of difficulty obtaining discovery from other parties or third persons or because of the complexity of the case.

(b) A court may impose sanctions for non-compliance with an order entered pursuant to subdivision (a) including, where appropriate, an order barring a party from introducing expert testimony.

(c) A court shall promptly consider a motion for summary judgment which is based solely on a court order entered pursuant to subdivision (b), barring a party from introducing expert testimony.

Rule 1042.32. Additional and Supplemental Reports

Until a deadline set by the court for the production of expert reports has passed or unless the court has precluded such production, a party may serve additional and supplemental expert reports without leave of court. These reports may introduce new theories of liability or causation or new defenses, and may be prepared by other experts.

Rule 1042.36. Defendant's Request to Plaintiff. Form

The Defendant's Request to Plaintiff for Production of Expert Reports required by Rule 1042.28(a)(1) shall be substantially in the following form:

(CAPTION)

**DEFENDANT'S REQUEST TO PLAINTIFF
FOR PRODUCTION OF EXPERT REPORTS**

TO: _____
Name of Plaintiff

FROM: _____
Name of Defendant

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b), you are requested within one hundred eighty (180) days of service of this request to furnish to me, the defendant named above, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against me. You are required to serve copies of all expert reports on all other parties.

Dated: _____

Attorney for Defendant

Rule 1042.37. Plaintiff's Request to Defendant or Additional Defendant

The Plaintiff's Request to Defendant or Additional Defendant for Production of Expert Reports required by Rule 1042.29(a)(1) shall be substantially in the following form:

(CAPTION)

**Plaintiff's Request to Defendant or Additional Defendant
for Production of Expert Reports**

TO: _____
Name of Defendant / Additional Defendant

FROM: _____
Name of Plaintiff

1. I, the plaintiff named above, have furnished you, the defendant named above, expert reports summarizing the expert testimony that I will offer to support the claims of professional negligence or product liability that I have made against you.

2(A). Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(2), you are requested within sixty (60) days of service of this request to furnish to me expert reports summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that I have made against you.

2(B). Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(3), you are requested within one hundred twenty (120) days of service of this request to furnish to me expert reports summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that I have made against you.

3. If you have made claims against other parties pursuant to Pennsylvania Rule of Civil Procedure 2251 *et seq.* governing the joinder of additional defendants, your expert reports are required also to summarize the expert testimony that you will offer in support of these claims against those other parties.

4. You are required to serve copies of all expert reports on all other parties.

Date: _____

Attorney for _____, Plaintiff

NOTE: Delete Paragraph 2(A) or 2(B),
whichever is not applicable.

**Rule 1042.38. Defendant's or Additional Defendant's Request to
Another Defendant or Additional Defendant. Form**

The Defendant's or Additional Defendant's Request to Another Defendant or
Additional Defendant for Production of Expert Reports required by Rule 1042.30(a)(1)
shall be substantially in the following form:

(CAPTION)

**Defendant's or Additional Defendant's Request
to Another Defendant or Additional Defendant
for Production of Expert Reports**

TO: _____
Name of Another Defendant / Additional Defendant

FROM: _____
Name of Defendant / Additional Defendant

I, the defendant / additional defendant named above, have furnished to you expert reports summarizing the expert testimony that I will offer to support the claims that I have made against you pursuant to Pennsylvania Rule of Civil Procedure 2251 *et seq.* governing joinder of additional parties.

Pursuant to Pa.R.C.P. 1042.30(b), you are requested within sixty (60) days to furnish me expert reports summarizing the expert testimony that you will offer to support your defenses to my claims against you and to support any claims you have raised against me pursuant to Pa.R.C.P. 2251 *et seq.*

If you have raised claims against other parties pursuant to Pa.R.C.P. 2251 *et seq.*, your expert reports are required also to summarize the expert testimony that you will offer in support of your claims against these other parties.

You are required to serve copies of all expert reports on all other parties.

Date: _____

Attorney for _____
Defendant / Additional Defendant

Scheduling Order

Rule 1042.41. Medical Professional Liability Actions.

Scheduling Order

(a) After one year from the date the first answer was filed in a medical professional liability action, any party to the action may file a motion requesting the court to issue a scheduling order. Upon presentation of the motion, the court shall within thirty days issue a scheduling order or schedule a case management conference.

(b) The scheduling order shall include schedules for the completion of discovery and the production of expert reports.

(c) This rule shall not apply where the court by court order or otherwise has established schedules for completion of discovery and production of expert reports

Pre-Trial Conference

Rule 1042.51. Medical Professional Liability Actions. Motion for Pre-Trial Conference. Mediation. Report of Cases not Tried

(a)(1) Any party to a medical professional liability action may file a motion requesting the court to schedule a pre-trial conference. The motion may be filed

(i) after the parties have produced expert reports as to liability pursuant to a request under Rule 1042.26 et seq. or a scheduling order under Rule 1042.41 or

(ii) whenever the motion includes a statement that all parties have exchanged expert reports as to liability.

(2) The pre-trial conference shall be scheduled within sixty days of the filing of the motion and shall be governed by the procedure of Rule 212.3.

(b) At the pretrial conference, the court shall

(1) set a date for another pre-trial conference or for trial or furnish the parties with a tentative trial date, and

(2) inquire of the parties whether they are willing to participate in mediation.

(c) On the first day of February and the first day of September of each year, the court administrator of each court of common pleas shall file with the Administrative Office of Pennsylvania Courts a list of all medical professional liability cases that have not been tried within nine months of a pre-trial conference scheduled pursuant to this rule.

(d) This rule shall not apply where a court has set a trial date.

Conforming Amendments

Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material

- (a) ***
- (1) ***
- (2) ***
- (3) ***

NOTE: For additional provisions governing the production of expert reports in medical professional liability actions, see Rule 1042.26 et seq. Nothing in Rule 1042.26 et seq. precludes the entry of a court order under this rule.

- (b) ***
- (c) ***

Rule 4009.1. Production of Documents and Things. General Provisions

NOTE: ***

For additional provisions governing the production of expert reports in medical professional liability actions, see Rule 1042.26 et seq.