

# PATIENT-PHYSICIAN ARBITRATION AGREEMENT

**ARTICLE 1:** It is understood that any dispute as to medical malpractice, that is as to whether any medical services rendered under this contractual agreement were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered, will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contractual agreement, by entering into it, are giving up their constitutional right to have such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.

**ARTICLE 2:** I understand and agree that this Arbitration Agreement binds me and anyone else who may have a claim arising out of or related to all treatment or services provided by the physician, including any spouse or heirs of the patient and any children, whether born or unborn at the time of the occurrence giving rise to any claim. This includes, but is not limited to, all claims for monetary damages exceeding the jurisdictional limit of the small claims court, including, without limitation, suits for loss of consortium, wrongful death, emotional distress or punitive damages. I further understand and agree that if I sign this Agreement on behalf of some other person for whom I have responsibility, then, in addition to myself, such person(s) will also be bound by this Agreement, along with anyone else who may have a claim arising out of the treatment or services rendered to that person. I also understand and agree that this Agreement relates to claims against the physician and any consenting substitute physician, as well as the physician's partners, associates, association, corporation or partnership, and the employees, agents, and estates of any of them. I also hereby consent to the intervention or joinder in the arbitration proceeding of all parties relevant to a full and complete resolution of any dispute arbitrated under this Agreement, as set forth in the Medical Arbitration Rules of the California Medical Association and the California Hospital Association.

**ARTICLE 3:** I agree that the arbitrators have the same immunity from civil liability as that of a judicial officer when acting in the capacity of arbitrator under this Agreement. This immunity shall supplement, not supplant, any other applicable statutory or common law.

**ARTICLE 4:** I UNDERSTAND THAT I DO NOT HAVE TO SIGN THIS AGREEMENT TO RECEIVE THE PHYSICIAN'S SERVICES, AND THAT IF I DO SIGN THIS AGREEMENT AND CHANGE MY MIND WITHIN 30 DAYS OF TODAY, THEN I MAY CANCEL THIS AGREEMENT BY GIVING WRITTEN NOTICE TO THE UNDERSIGNED PHYSICIAN WITHIN 30 DAYS OF THE DATE OF MY SIGNATURE BELOW STATING THAT I WANT TO WITHDRAW FROM THIS ARBITRATION AGREEMENT.

**ARTICLE 5:** On behalf of myself and all others bound by this Agreement as set forth in Article 2, agreement is hereby given to be bound by the Medical Arbitration Rules of the California Medical Association and the California Hospital Association, as they may be amended from time to time, which Rules are hereby incorporated into this Agreement. A copy of these Rules is included in the pamphlet in which this Agreement is found. Additional copies of the Rules are available from the California Medical Association, 1201 J Street, Suite #200 Attention: Publication Department, Sacramento, CA 95814 or at [www.cmanet.org](http://www.cmanet.org). I understand that disputes covered by this Agreement will be covered by California law applicable to actions against health care providers, including the Medical Injury Compensation Reform Act of 1975 (including any amendments thereto).

**ARTICLE 6: OPTIONAL: RETROACTIVE EFFECT** If I intend this Agreement to cover services rendered before the date this Agreement is signed (for example, emergency treatment), I have indicated the earlier date I intend this Agreement to be effective from as confirmed by my initials immediately below.

Earlier effective date: \_\_\_\_\_ Patient's Initials: \_\_\_\_\_

**ARTICLE 7:** I have read and understand all of the information in this pamphlet, including the Introduction to the Patient-Physician Arbitration Agreement, this Agreement, and the Rules. I understand that in the case of any pregnant woman, the term "patient" as used herein means both the mother and the mother's expected child or children.

If any provision of this Arbitration Agreement is held invalid or unenforceable, the remaining provisions shall remain in full force and shall not be affected by the invalidity of any other provision.

**NOTICE:** BY SIGNING THIS CONTRACTUAL AGREEMENT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS AGREEMENT.

\_\_\_\_\_  
 (Patient, Parent, Guardian or Legally Authorized Representative of Patient) Dated: \_\_\_\_\_

If signed by other than patient, indicate relationship: \_\_\_\_\_

**PHYSICIAN'S AGREEMENT TO ARBITRATE**

I agree to be bound by the terms set forth in this Agreement and in the Rules specified in Article 5 above.

\_\_\_\_\_  
 (Physician or Duly-Authorized Representative) Dated: \_\_\_\_\_

.....  
 Title—e.g., Partner, President, etc.

.....  
 Print name of Physician, Medical Group, Partnership or Association

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(Physician or Duly-Authorized Representative)

Dated: \_\_\_\_\_

.....  
Title—e.g., Partner, President, etc.

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Print name of Physician, Medical Group, Partnership or Association

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Introduction to the  
**PATIENT-PHYSICIAN ARBITRATION AGREEMENT**

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*What is the Patient-Physician Arbitration Agreement?*

The Patient-Physician Arbitration Agreement is an agreement between you and your doctor to resolve disputes without going to court. You should read this booklet carefully before deciding whether or not to sign the Agreement, which is found at the end of this booklet.

*What claims are covered?*

All present or future claims of any kind between you, your family, and your doctor for which you might sue your doctor are covered, except for claims for limited amounts of money which may be resolved in small claims court.

*What is arbitration?*

Arbitration is an alternative way of resolving disputes. Instead of taking your disagreement through the long and expensive process of court litigation, you and your doctor agree in advance to submit any disputes to a panel of arbitrators. After a hearing, which is usually less formal than a court proceeding, the arbitrators make the decision. Although the procedures are different, generally the same laws and same measure of damages applied in court proceedings apply in arbitration.

*Who is bound by the Agreement?*

If you choose to sign the Arbitration Agreement found at the end of this booklet, you will be agreeing to bind yourself and anyone who could bring suit in connection with treatment or services provided to you by your doctor. If you sign on behalf of a family member or some other person for whom you have responsibility, you will bind that person as well as anyone who could sue in connection with treatment or services provided to that person by the doctor with whom the patient enters into the Agreement. Likewise, the doctor, or anyone suing on behalf of the doctor, is bound by the Agreement. If the doctor is temporarily absent from practice and refers you to a substitute physician who has agreed in advance to be bound by the terms of the Agreement, then any disputes between you and the substitute physician, or vice versa, will also be subject to arbitration. Any other person with an interest in the dispute will be permitted to participate in the arbitration proceeding so that the entire matter may be arbitrated at one time.

*May I be represented by an attorney of my choice?*

Yes. Any party to arbitration may be represented by an attorney of his or her choice, at his or her own expense. The arbitrators will hear the facts and decide the case whether or not the parties are represented by lawyers.

*What does arbitration cost?*

The arbitrators' fees are shared equally by the parties. While the total amount of the arbitrators' fees and the other costs of having a claim(s) adjudicated will depend upon the complexity and length of the case as well as other factors, generally speaking, arbitration can be less expensive for the parties than litigating in court.

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# **MEDICAL ARBITRATION RULES OF THE CALIFORNIA MEDICAL ASSOCIATION AND THE CALIFORNIA HOSPITAL ASSOCIATION**

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All parties understand that they will resolve any claim according to these rules and **not by lawsuit**.

## **1. General**

Except as expressly provided in the Patient-Physician Arbitration Agreement and these Rules, the arbitration shall be governed by the California Code of Civil Procedure provisions relating to arbitration, and the California laws applicable to actions against health care providers, including but not limited to the Medical Injury Compensation Reform Act of 1975 (including any amendments thereto).

## **2. Arbitration on Behalf of Minor, Unborn Child, or Incompetent Person**

- a. A person who is under 18 years of age, unmarried, and dependent on his/her parents or guardians for support is not legally able to sign this Arbitration Agreement. Instead, a parent, guardian or other person legally responsible for the minor may decide whether or not to sign the Agreement on behalf of the minor. If the person responsible decides to sign the Agreement on behalf of the minor, the Agreement will be binding on the child for all treatment received before the child becomes of age.
- b. If the patient is pregnant and knows of her pregnancy at the time of signing, her signature binds her unborn child to the Arbitration Agreement with respect to any claims by that child arising out of services rendered prior to, during, or following delivery.
- c. Women who become pregnant after the Arbitration Agreement has been signed shall have 30 days from the date they discover they are pregnant to rescind the Arbitration Agreement on behalf of the unborn child only. Cancellation shall become effective only by notifying the other party to the Agreement in writing within those 30 days that

the Agreement shall not apply to the unborn child. Otherwise, unborn children shall be subject to the Arbitration Agreement.

- d. The signature of the person responsible **for a patient who is incompetent** will bind the patient to the Arbitration Agreement for all treatment rendered while the patient remains incompetent and unless and until the patient resumes competency and rescinds the Arbitration Agreement by written notification to the other party within 30 days of resuming competency.

## **3. Procedure for Initiating Arbitration**

Unless barred by the statute of limitations, any party bound by the Arbitration Agreement may initiate an arbitration at any time by serving, as in a California civil action, all parties with notice of the nature of the claim and a demand for arbitration. **A claim shall be waived and forever barred if on the date the demand for arbitration is received, the claim, if asserted in a civil action, would be barred by the applicable California statute of limitations.**

## **4. Arbitrators**

Within 30 days after initial service of the demand for arbitration, claimant, and respondent each must designate an arbitrator and give written notice of this designation to the other. Within 30 days after these notices have been received, the two arbitrators so selected shall select a neutral arbitrator and give notice of the selection to the claimant and respondent. The parties agree that the arbitrators have the immunity from civil liability of a judicial officer when acting in the capacity of arbitrator under this Agreement. This immunity shall supplement, not supplant, any other applicable statutory or common law.

### **13. Scope of Award**

The arbitrators shall have the power to grant any relief they deem equitable and just, subject to the limitations set forth in Section 1 of these Rules. In assessing relief, the arbitrators shall ascertain the degree to which each party to the arbitration was at fault for the total damages accruing to any other party to the arbitration as a result of the factual situation upon which the arbitration was based. The arbitrators' award shall be based on such responsibility, not counting the damages attributable to persons not parties to the arbitration. For purposes of contribution among the parties to the arbitration, the arbitrators shall prepare a schedule of contributions according to their assessment of the relative fault of all parties to the arbitration which shall be binding as between those parties. Under no circumstances shall a party be entitled to a duplicate recovery or double payment from any source for the same damages. All parties understand and agree to recognize any arbitration award given pursuant to these rules to be final and binding subject only to confirmation, correction, or vacation under Code of Civil Procedure Sections 1285 et seq.

### **14. Notices**

All notices or other papers required to be served or convenient in the conduct of the arbitration proceedings following the initial service of the demand shall be served personally or by registered or certified mail, and, if mailed, shall be deemed to have been received 5 days after the date of the postmark.

### **15. Amendment of These Rules**

These Rules may be reasonably amended by the California Hospital Association and the California Medical Association as circumstances warrant provided such amendments are generally applicable to all participants statewide.