

NY CLS CPLR § 3045

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New York

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Civil Practice Law And Rules (Arts. 1 — 100) >
Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3045. Arbitration of damages in medical, dental or podiatric malpractice actions.

(a) At any time after service of a bill of particulars but no later than sixty days after filing of the notice of dental, medical or podiatric malpractice action pursuant to rule thirty-four hundred six of this chapter, any defendant in such an action may demand that the plaintiff elect whether to consent to the arbitration of damages upon a concession of liability in accordance with the provisions of this section.

(b) Within twenty days after receipt of such a demand, the plaintiff shall elect whether to arbitrate damages in such an action pursuant to such a concession of liability by the defendant or defendants in the action. If the defendant or defendants serve a concession of liability upon the plaintiff within twenty days after receipt of such an election, the issue of damages, including the proximate cause thereof, shall be subject to arbitration in accordance with the provisions of article seventy-five-A of this chapter. A concession of liability, made pursuant to this section, shall not be binding on the defendant for any other purpose.

History

Add, L 1986, ch 266, § 3; amd, L 1987, ch 507, § 2, eff July 30, 1987.

Annotations

Notes

Editor's Notes

Laws 1986, ch 266, § 1, provides:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares that reforms have been enacted to restrain increases in medical and dental malpractice premiums and related costs and to prevent medical and dental malpractice. These reforms include those enacted by chapter two hundred ninety-four of the laws of nineteen hundred eighty-five and further reforms enacted by chapters of the laws of nineteen hundred eighty-six applicable to all actions for personal injury. The legislature finds, for example, that the former standard for appellate adjustment of damages in personal injury actions — i.e., whether the award is so excessive or inadequate as to shock the conscience of the court — provided for insufficient review of awards and that the new standard, enacted by a chapter of the laws of nineteen hundred eighty-six, will invite more careful appellate scrutiny.

The complete effect of some of these reforms cannot be fully measured for some time, however, due to the considerable delay currently between the malpractice event and its final determination.

In the meantime, the legislature finds and declares that upward pressures on already high malpractice premiums continue to threaten the public health by discouraging physicians and dentists from initiating or continuing their practice in New York and by contributing to the rising cost of health care as premium costs are passed along to health care consumers.

The legislature finds and declares, therefore, that additional steps must be taken in the public interest to reduce the cost of malpractice insurance, such as providing the superintendent of insurance with the authority to establish rates for medical malpractice insurance and gradually requiring the issuance of only claims-made policies which will significantly reduce physician and

health care system costs in the short-run and substantially enhance the reliability and predictability of malpractice insurance rate regulation in the future.

The legislature further finds that reducing lost earnings awards to reflect the effect of income taxation will reduce the costs of the dental and medical malpractice system.

The legislature further finds that the arbitration of malpractice claims should expedite the resolution of malpractice claims and reduce costs associated with their adjudication. Accordingly, the legislature finds that statutorily authorizing health maintenance organizations to offer the alternative of arbitration to their subscribers and requiring health care professionals and entities to participate in such arbitrations will provide a significant opportunity to assess the efficacy of arbitration in the malpractice context.

The legislature further finds that establishing a mechanism for the arbitration of damages when liability is not contested and streamlining the medical malpractice panels will result in the more timely resolution of claims.

The legislature further finds that requiring certificates of merit in medical and dental malpractice actions, together with similar reforms enacted previously, will improve the quality of medical malpractice adjudications and deter the commencement of frivolous cases.

Further, the legislature finds and declares that physicians responsible for acts of professional misconduct should be subject to effective discipline and that improvements in the disciplinary process will contribute to the protection of the public health and the reduction of the incidence of malpractice.

Laws 1987, ch 507, § 4, eff July 30, 1987, provides:

§ 4. This act shall take effect immediately and shall apply to any acts, omissions or failures occurring on or after such date.

Research References & Practice Aids

§ 3045. Arbitration of damages in medical, dental or podiatric malpractice actions.

Cross References:

This section referred to in § 7556, CLS Ins § 5602.

Jurisprudences:

6A NY Jur 2d Article 78 and Related Proceedings § 323. .

76 NY Jur 2d Malpractice §§ 276, 296, 298, 301.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3045, Arbitration of Damages in Medical, Dental or Podiatric Malpractice Actions.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 31.01. Arbitration in general.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3045:1.

LexisNexis Forms FORM 75-CPLR 3045:1.—Demand That Plaintiff Elect Whether to Consent to Arbitration of Damages Where Liability Is Not Contested in a Medical, Dental or Podiatric Malpractice Action.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq .(remedies and pleadings).

Hierarchy Notes:

NY CLS CPLR, Art. 30

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