



Medical Review Panel

by John D. Whitaker

Don Imus had a slogan he used frequently. He would tell people, "I am not happy until you're not happy." Mr. Imus must have had a hand in creating the medical review panel. Since the law creating medical review panels passed in 2005, a person who claims injury by a health care provider must submit the case for review by a medical malpractice review panel before a suit can be filed. The panel was designed to eliminate "frivolous lawsuits." The American Heritage dictionary defines the term frivolous as being "inappropriately silly." Let's assume for a moment that there are so many inappropriately silly lawsuits filed against Wyoming health care providers that we need a special law to protect them. This is, by the way, an inappropriately silly assumption, but setting that aside, the medical review panel was designed to separate inappropriately silly lawsuits from the appropriately serious ones. Unfortunately, as written, the medical review panel law can only be described as inappropriately silly.

The process begins with the injured patient filing a claim with the panel, which the provider must answer. The claimant must then file a report prepared by an expert witness in the same specialty as the defendant provider detailing the medical basis for the claim. The provider must then file a report by an expert to defend the care provided.

The panel conducts a hearing. This process was designed to be an abbreviated process and the hearings were not expected to last longer than a day or so. The panel makes a decision and issues a finding. The results of the panel may be admissible in any subsequent medical malpractice case against the provider if the judge decides to allow its introduction. This decision is up to the judge.

Filing the claim with the panel is mandatory for the claimant, but the physician can waive the process. This means that if the physician decides not to participate he can notify the panel that he has decided not to proceed. The claim process is then concluded and the claimant is free to file a lawsuit.



The injured claimants think this process is inappropriately silly because if the provider waives the panel, the whole process just becomes an extra and expensive step which must be taken by the injured patient before a suit can be filed. Also, it can delay the case for months because the physicians usually wait to waive the panel until the injured person is required to produce the expert reports so that the physician gets a head start on defending the claim.

Most malpractice defense lawyers that I know are advising their clients to waive the panel. They don't like them because the providers are subject to cross examination on the record at the hearing, and a mistake there could present problems for the defense at trial. Also, if the provider were to lose at the hearing, it is possible that the jury would be instructed as to the panels' finding depending upon what the trial judge decides.

The panel is required to conduct a hearing to determine if the claimant has proved by substantial evidence that malpractice occurred and, if so, whether injury resulted from the malpractice. This sounds simple enough, but in practice it could result in the hearing taking a significant amount of time. If, for example, the claim alleges that a physician failed to timely diagnose cancer. The primary defense in these cases is that the failure to diagnose the cancer did not harm the patient. Experts can argue about tumor size, depth or growth rates, but a lot of the science can be disputed. Proof one way or the other could require the testimony of a number of different types of experts including oncologists, pathologists, surgeons, etc. This can cost both sides a significant amount of money to bring these experts to the hearing, and the ultimate decision by the panel will not end the process. After the panel makes its decision the suit is then filed and the parties go through the same process again at trial.

Without significant changes, the present medical review panel process can only be described as being an inappropriately silly way to avoid frivolous lawsuits. My guess is that the only person who would be truly happy with them is Don Imus.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.