

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. 837

Adding Civil Rule 72.1  
concerning expert advisory  
panels in medical malpractice  
cases

IT IS ORDERED:

A new Civil Rule 72.1 is added to provide:

Civil Rule 72.1: Expert Advisory Panels in Health Care  
Provider Malpractice Actions

(a) Identification of Action. Either party in a health care malpractice action subject to AS 09.55.536 may request that the court appoint an expert advisory panel to evaluate the claim. The request should identify the speciality of the health care provider named as defendant. Either party may recommend that the court appoint specific professions or specialities to the expert advisory panel.

(b) Appointment of Panel.

(1) After the case is at issue and a party has requested the appointment of an expert advisory panel (or the court has raised the issue), the court shall nominate a three person panel and notify the parties of the names, professions and specialties of the persons so nominated. The court may initially nominate alternate panel members if it believes nominees may be disqualified. Within 10 days after service of this notice, either party may move to disqualify a nominee, citing the reasons for the motion. The other party may submit an opposition within 5 days after service of the motion for disqualification. No reply may be filed.

(2) The nominated panel members must inform the court within 10 days of the notice of appointment of any financial relationship with a party or party's attorney, of any other reason which would cause the nominee to be biased in the case or present an appearance of bias, and of any other reason why the nominee cannot serve on the panel. The court shall disqualify a nominee if the nominee is biased for or against a party or if a conflict of interest raises a substantial appearance of bias.

(3) If additional nominees are required, the parties must be given the opportunity to recommend nominees' professions or specialties and move to disqualify as provided above.

(c) Submission of Medical Records.

(1) Within 30 days after service of the court's initial panel nominations, the plaintiff and each health care provider defendant shall serve on other parties one legible copy of all discoverable medical records in such party's possession, custody, or control. Original exhibits which are impractical or impossible to copy must be made available to all parties for review. Medical reports of consultants retained by a party for the advancement or defense of the case and medical literature must also be served on other parties if such literature or reports is to be submitted to the panel.

(2) Each party shall file with the Clerk and serve on each other party a list of all medical records, medical reports and medical literature which the party will transmit or make available to the panel.

(3) Medical records include medical records of hospitals, physicians, or other health care providers, addressing an issue of health relevant to the plaintiffs' complaint, whether generated before or subsequent to the event giving rise to the claim and whether generated by the health care provider named in the complaint or by other health care providers. Medical records also include autopsy reports and exhibits such as x-rays and slides.

(4) Upon agreement of the parties or order of the court, and after a reasonable time for inspection, each party shall submit to each member of the panel one legible copy of such party's medical records, medical reports and medical literature, and notify the panel members of the availability and location of original exhibits for which submission to the panel is impractical or impossible. If the plaintiff serves the defendant with medical reports of consultants, the defendant has 30 days to serve medical reports of its consultants on the plaintiff. Thereafter, the reports may be submitted to the panel. Any additional reports may be submitted only with leave of the court.

(5) A party may file and serve on each member of the panel a notice advising the panel of further relevant medical records of which the noticing party does not have possession, custody or control.

(6) In the event a party fails or is unable to submit relevant medical records to the panel, and the panel is unable to obtain access to such records by reason thereof, any party or the panel may apply to the court for leave to obtain such records by court order. The court may delay further proceedings until the panel is provided with the additional medical records.

(d) Preliminary Findings of Fact and Conclusions of Law. A party may move the court to resolve issues of fact or law prior to submission of the case to the panel,

or to furnish instructions of fact or law to the panel. Submission of the case to the panel will be deferred pending determination of the motion by the court.

(e) Instructions to Panel. The court shall provide the panel with a written order which states:

(1) the questions listed in AS 09.55.536, clarified or changed as the court deems appropriate to the case.

(2) that the panel is to prepare and submit to the court a list of all persons interviewed, a list of treatises or medical literature used by the panel in its deliberations, and a list of exhibits it examined (such as x-rays, slides, and other items which are not reproducible on paper).

(3) the general nature of the allegations made against each health care provider and of the answer to those allegations. Alternately, the court may submit a copy of the complaint and the answer and advise the panel that they are to address only the medical issues.

(4) that the panel or the Alaska State Medical Association is to retain copies of medical records submitted to them until further notice from the court. The court may make special provision for the safekeeping or retention by the Clerk of Court of x-rays or other original exhibits.

(5) that the panel must maintain a recording of any testimony or oral statements of witnesses and shall keep copies of all written statements the panel may receive or take, whether from witnesses, consultants, or other sources.

(6) that the panel is to review the case of each health care provider individually and render an individual, separate opinion with regard to the allegations against each health care provider.

(7) the name and location of the court personnel who might assist the panel, and that the panel may communicate with the court concerning any questions it may have, or make any requests for assistance.

(8) any matters of fact or law on which the court has ruled, and that the panel is to review the matter in light of the court's finding and instructions on the law.

(9) that in the event parties are named as defendants who are not health care providers, the panel's consideration is to be directed to the health care providers only.

(10) that the panel is not to communicate with the parties or their attorneys, except to arrange to obtain or review an original exhibit in the possession of one of the parties, or to arrange an examination of the plaintiff, or to arrange an interview with the plaintiff or

health care provider, or to arrange the scheduling of the testimony of a panel member at a deposition or at trial.

(f) Interviews by the Panel.


(1) If an attorney desires to be present at an interview of his or her client by the panel, the attorney must give reasonable notice of an intent to do so to the other parties so they may also appear at the interview. If the attorney for the person being interviewed does not appear, no other attorney or party may appear. An attorney appearing before the panel may not question his or her client or any other persons appearing before the panel, nor may an attorney or party cross-examine witnesses or ask questions of the panel. A person being interviewed by the panel may not be accompanied by any representative other than the person's attorney.


(2) Any party may request the panel to interview any person or party.


(g) Discovery. Except by leave of court, no discovery may be conducted until the report of the Panel has been filed or until 80 days have elapsed from the date the case is at issue, whichever is first to occur, unless discovery is further stayed for good cause by order of the court.

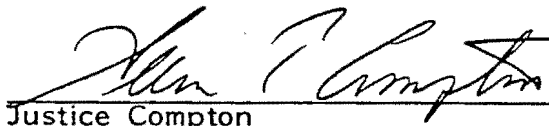
DATED: April 30, 1987

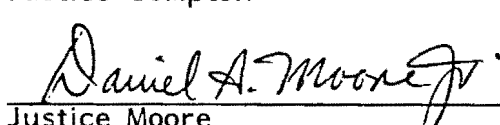
EFFECTIVE DATE: August 1, 1987

  
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Chief Justice Rabinowitz

  
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Justice Burke

  
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Justice Matthews

  
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Justice Compton

  
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Justice Moore