



HOUSE BILL No. 5958

November 29, 1994 Introduced by Rep Llewellyn and referred to the Committee on Judiciary

A bill to amend Act No 236 of the Public Acts of 1961, entitled as amended

Revised judicature act of 1961, as amended, being sections 600 101 to 600 9947 of the Michigan Compiled Laws, by adding chapter 50a

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Act No 236 of the Public Acts of 1961 as
2 amended, being sections 600 101 to 600 9947 of the Michigan
3 Compiled Laws is amended by adding chapter 50a to read as
4 follows

5 CHAPTER 50A HEALTH CARE ARBITRATION

6 SEC 5040 (1) THIS CHAPTER APPLIES TO THE ARBITRATION OF A
7 DISPUTE, CONTROVERSY OR ISSUE ARISING OUT OF OR RESULTING FROM
8 INJURY TO OR THE DEATH OF A PERSON CAUSED BY AN ERROR,
9 OMISSION OR NEGLIGENCE IN THE PERFORMANCE OF PROFESSIONAL

1 SERVICES BY A HEALTH CARE PROVIDER HOSPITAL OR AN AGENT OF A
2 HEALTH CARE PROVIDER OR HOSPITAL OR BASED ON A CLAIMED PER-
3 FORMANCE OF SUCH SERVICES WITHOUT CONSENT, IN BREACH OF WARRANTY
4 OR IN VIOLATION OF CONTRACT

5 (2) AS USED IN THIS CHAPTER

6 (A) 'ASSOCIATION MEANS THE AMERICAN ARBITRATION ASSOCIATION
7 OR OTHER ENTITY ORGANIZED TO ARBITRATE DISPUTES PURSUANT TO THIS
8 CHAPTER

9 (B) "HEALTH CARE PROVIDER" MEANS A PERSON PARTNERSHIP OR
10 CORPORATION LAWFULLY ENGAGED IN THE PRACTICE OF MEDICINE SUR-
11 GERY, DENTISTRY, PODIATRY, OPTOMETRY, CHIROPRACTIC, NURSING, OR A
12 PERSON DISPENSING DRUGS OR MEDICINES

13 (C) HOSPITAL' MEANS A PERSON PARTNERSHIP, OR CORPORATION
14 LAWFULLY ENGAGED IN THE OPERATION OF A HOSPITAL CLINIC, HEALTH
15 MAINTENANCE ORGANIZATION OR A SANITARIUM

16 SEC 5041 (1) A PERSON WHO RECEIVES HEALTH CARE FROM A
17 HEALTH CARE PROVIDER MAY, IF OFFERED EXECUTE AN AGREEMENT TO
18 ARBITRATE A DISPUTE CONTROVERSY OR ISSUE ARISING OUT OF HEALTH
19 CARE OR TREATMENT BY A HEALTH CARE PROVIDER WHO IS NOT AN
20 EMPLOYEE OF A HOSPITAL

21 (2) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
22 SHALL PROVIDE THAT ITS EXECUTION IS NOT A PREREQUISITE TO HEALTH
23 CARE OR TREATMENT

24 (3) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
25 SHALL PROVIDE THAT THE PERSON RECEIVING HEALTH CARE TREATMENT OR
26 HIS OR HER LEGAL REPRESENTATIVE MAY REVOKE THE AGREEMENT WITHIN
27 60 DAYS AFTER EXECUTION BY NOTIFYING THE HEALTH CARE PROVIDER IN

1 WRITING A HEALTH CARE PROVIDER MAY NOT REVOKE THE AGREEMENT
2 AFTER ITS EXECUTION

3 (4) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
4 EXPIRES 1 YEAR AFTER ITS EXECUTION AND MAY BE RENEWED BY EXECU-
5 TION OF A NEW AGREEMENT

6 (5) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
7 SHALL CONTAIN THE FOLLOWING PROVISION IN 12-POINT BOLDFACE TYPE
8 IMMEDIATELY ABOVE THE SPACE FOR SIGNATURE OF THE PARTIES THIS
9 AGREEMENT TO ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR
10 TREATMENT AND MAY BE REVOKED WITHIN 60 DAYS AFTER EXECUTION BY
11 NOTIFICATION IN WRITING'

12 (6) THE FORM OF AN AGREEMENT TO ARBITRATE EXECUTED UNDER
13 SUBSECTION (1) SHALL BE ACCOMPANIED BY AN INFORMATION BROCHURE
14 THAT CLEARLY DETAILS THE AGREEMENT AND REVOCATION PROVISION THE
15 BROCHURE SHALL BE FURNISHED TO THE PERSON RECEIVING HEALTH CARE
16 AT THE TIME OF EXECUTION THE PERSON RECEIVING HEALTH CARE SHALL
17 BE FURNISHED WITH EITHER AN ORIGINAL OR DUPLICATE ORIGINAL OF THE
18 AGREEMENT

19 (7) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
20 THAT COMPLIES WITH THIS SECTION IS PRESUMED VALID

21 SEC 5042 (1) A PERSON WHO RECEIVES HEALTH CARE IN A HOS-
22 PITAL MAY EXECUTE AN AGREEMENT TO ARBITRATE A DISPUTE CONTROVER-
23 SY, OR ISSUE ARISING OUT OF HEALTH CARE OR TREATMENT RENDERED BY
24 THE HOSPITAL A PERSON RECEIVING EMERGENCY HEALTH CARE OR TREAT-
25 MENT MAY BE OFFERED THE OPTION TO EXECUTE AN AGREEMENT TO ARBI-
26 TRATE BUT SHALL BE OFFERED THE OPTION AFTER THE EMERGENCY CARE OR
27 TREATMENT IS COMPLETED

1 (2) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
2 SHALL PROVIDE THAT ITS EXECUTION IS NOT A PREREQUISITE TO HEALTH
3 CARE OR TREATMENT

4 (3) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
5 SHALL PROVIDE THAT THE PERSON RECEIVING HEALTH CARE OR TREATMENT
6 OR HIS OR HER LEGAL REPRESENTATIVE BUT NOT THE HOSPITAL, MAY
7 REVOKE THE AGREEMENT WITHIN 60 DAYS AFTER DISCHARGE FROM THE HOS-
8 PITAL BY NOTIFYING THE HOSPITAL IN WRITING

9 (4) AN AGREEMENT EXECUTED UNDER SUBSECTION (1) SHALL CONTAIN
10 THE FOLLOWING PROVISION IN 12-POINT BOLDFACE TYPE IMMEDIATELY
11 ABOVE THE SPACE FOR SIGNATURE OF THE PARTIES THIS AGREEMENT TO
12 ARBITRATE IS NOT A PREREQUISITE TO HEALTH CARE OR TREATMENT AND
13 MAY BE REVOKED WITHIN 60 DAYS AFTER DISCHARGE BY NOTIFICATION IN
14 WRITING '

15 (5) NOTWITHSTANDING THE CONTINUING EXISTENCE OF A HEALTH
16 CARE PROVIDER-PATIENT ARBITRATION AGREEMENT ALL SURGICAL AND
17 MEDICAL PROCEDURES PERFORMED BY A PARTICIPATING HEALTH CARE PRO-
18 VIDER IN A HOSPITAL SHALL BE COVERED BY THE TERMS AND CONDITIONS
19 APPLICABLE TO THE AGREEMENT BETWEEN THE PATIENT AND THE
20 HOSPITAL POST-DISCHARGE TREATMENT IN THE HEALTH CARE PROVIDER S
21 OFFICE SUBSEQUENT TO DISCHARGE FROM THE HOSPITAL WILL BE GOVERNED
22 BY THE TERMS OF ANY EXISTING HEALTH CARE PROVIDER-PATIENT ARBI-
23 TRATION AGREEMENT

24 (6) EACH ADMISSION TO A HOSPITAL SHALL BE TREATED AS SEPA-
25 RATE AND DISTINCT FOR THE PURPOSES OF AN AGREEMENT TO ARBITRATE
26 EXECUTED UNDER SUBSECTION (1) BUT A PERSON RECEIVING OUTPATIENT
27 CARE MAY EXECUTE AN AGREEMENT WITH THE HOSPITAL THAT PROVIDES FOR

1 CONTINUATION OF THE AGREEMENT FOR A SPECIFIC OR CONTINUING
2 PROGRAM OF HEALTH CARE OR TREATMENT UNDER SECTION 5041

3 (7) THE FORM OF AN AGREEMENT EXECUTED UNDER SUBSECTION (1)
4 SHALL BE FURNISHED TO THE PERSON RECEIVING HEALTH CARE OR TREAT-
5 MENT AS PROVIDED IN SECTION 5041(6)

6 (8) AN AGREEMENT TO ARBITRATE EXECUTED UNDER SUBSECTION (1)
7 THAT COMPLIES WITH THIS SECTION IS PRESUMED VALID

8 SEC 5043 (1) IN A PROCEEDING PURSUANT TO THIS CHAPTER

9 (A) THE PARTIES MAY BE REPRESENTED BY COUNSEL, BE HEARD,
10 PRESENT EVIDENCE MATERIAL TO THE CONTROVERSY, AND CROSS-EXAMINE
11 ANY WITNESS

12 (B) THE PREVAILING STANDARD OF DUTY PRACTICE OR CARE
13 APPLICABLE IN A CIVIL ACTION SHALL BE THE STANDARD APPLIED IN THE
14 ARBITRATION

15 (C) DAMAGES OR REMEDIAL CARE SHALL BE WITHOUT LIMITATION AS
16 TO NATURE OR AMOUNT UNLESS OTHERWISE PROVIDED BY LAW

17 (2) A PARTY MAY APPEAR WITHOUT COUNSEL AND SHALL BE ADVISED
18 OF THAT RIGHT AND THE RIGHT TO RETAIN COUNSEL IN A MANNER CALCU-
19 LATED TO INFORM THE PERSON OF THE NATURE AND COMPLEXITY OF A PRO-
20 CEEDING BY A SIMPLE CONCISE FORM TO BE DISTRIBUTED BY THE ASSOCI-
21 ATION ADMINISTERING THE ARBITRATION

22 SEC 5044 (1) THE ASSOCIATION SHALL ADMINISTER A PROCEED-
23 ING WITHOUT CHARGE TO THE CLAIMANT THE ADMINISTRATIVE EXPENSE
24 SHALL BE \$200 00 PER PARTY PER CASE, OR AS MAY BE AGREED BY THE
25 PARTIES AND THE ASSOCIATION, OR AS MAY BE APPROVED BY THE COMMIS-
26 SIONER OF INSURANCE PURSUANT TO LAW THE ADMINISTRATIVE COSTS ON
27 ACCOUNT OF A CLAIMANT SHALL BE DEFRAYED BY THE ARBITRATION

1 ADMINISTRATION FUND ESTABLISHED UNDER THE INSURANCE CODE OF 1956
2 ACT NO 218 OF THE PUBLIC ACTS OF 1956 BEING SECTIONS 500 100 TO
3 500 8302 OF THE MICHIGAN COMPILED LAWS OR SHALL BE PROVIDED BY
4 THE RESPONDENT PARTIES

5 (2) AN ARBITRATION UNDER THIS CHAPTER SHALL BE HEARD BY A
6 PANEL OF 3 ARBITRATORS ONE SHALL BE AN ATTORNEY WHO SHALL BE
7 THE CHAIRPERSON AND SHALL HAVE JURISDICTION OVER PREHEARING PRO-
8 CEDURES 1 SHALL BE A PHYSICIAN, PREFERABLY BUT NOT NECESSARILY
9 FROM THE RESPONDENT S MEDICAL SPECIALTY, AND THE THIRD SHALL BE A
10 PERSON WHO IS NEITHER A LICENSEE OF THE HEALTH PROFESSION
11 INVOLVED, A LAWYER, NOR A REPRESENTATIVE OF A HOSPITAL OR AN
12 INSURANCE COMPANY IF A CASE INVOLVES A HOSPITAL ONLY, A HOSPI-
13 TAL ADMINISTRATOR MAY BE SUBSTITUTED FOR A PHYSICIAN IF A CASE
14 INVOLVES A HEALTH CARE PROVIDER OTHER THAN A PHYSICIAN, A
15 LICENSEE OF THE HEALTH PROFESSION INVOLVED SHALL BE SUBSTITUTED
16 FOR A PHYSICIAN

17 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6), ARBITRA-
18 TOR CANDIDATES SHALL BE SELECTED PURSUANT TO THE RULES AND PROCE-
19 DURES OF THE ASSOCIATION FROM A POOL OF CANDIDATES GENERATED BY
20 THE ASSOCIATION THE RULES AND PROCEDURES OF THE ASSOCIATION
21 PERTAINING TO SELECTION OF ARBITRATORS UNDER THIS CHAPTER SHALL
22 REQUIRE THAT THE ASSOCIATION SEND SIMULTANEOUSLY TO EACH PARTY AN
23 IDENTICAL LIST OF 5 ARBITRATOR CANDIDATES IN EACH OF THE 3 CATE-
24 GORIES TOGETHER WITH A BRIEF BIOGRAPHICAL STATEMENT ON EACH
25 CANDIDATE A PARTY MAY STRIKE FROM THE LIST ANY NAME THAT IS
26 UNACCEPTABLE AND SHALL NUMBER THE REMAINING NAMES IN ORDER OF
27 PREFERENCE WHEN THE LISTS ARE RETURNED TO THE ASSOCIATION, THEY

1 SHALL BE COMPARED AND THE FIRST MUTUALLY AGREEABLE CANDIDATE IN
2 EACH CATEGORY SHALL BE INVITED TO SERVE

3 (4) IF NO MUTUALLY AGREED UPON ARBITRATOR IS SELECTED FOR A
4 CATEGORY A SECOND LIST OF THAT CATEGORY SHALL BE SENT PURSUANT
5 TO SUBSECTION (3)

6 (5) IF A COMPLETE PANEL IS NOT SELECTED BY MUTUAL AGREEMENT
7 OF THE PARTIES PURSUANT TO SUBSECTIONS (3) AND (4), THEN UNDER
8 THE APPLICABLE RULES AND PROCEDURES OF THE ASSOCIATION, THE ASSO-
9 CIATION SHALL APPOINT THE REMAINDER OF THE PANEL ON WHOM AGREE-
10 MENT HAS NOT BEEN REACHED BY THE PARTIES THE APPOINTMENT BY THE
11 ASSOCIATION IS SUBJECT TO CHALLENGE BY A PARTY FOR CAUSE WHICH
12 CHALLENGE MAY ALLEGE FACTS TO ESTABLISH THAT UNUSUAL COMMUNITY OR
13 PROFESSIONAL PRESSURES WILL UNREASONABLY INFLUENCE THE OBJECTIV-
14 ITY OF THE PANELIST A REQUEST TO STRIKE AN ARBITRATOR FOR CAUSE
15 SHALL BE DETERMINED BY THE REGIONAL DIRECTOR OR COMPARABLE OFFI-
16 CER OF THE ASSOCIATION OR AS MAY BE PROVIDED BY RULE OF THE COM-
17 MISSIONER OF INSURANCE PURSUANT TO LAW

18 (6) THE PARTIES ARE NOT RESTRICTED TO THE ARBITRATOR CANDI-
19 DATES SUBMITTED FOR CONSIDERATION IF ALL PARTIES MUTUALLY AGREE
20 UPON A PANELIST WITHIN A DESIGNATED CATEGORY THE PANELIST SHALL
21 BE INVITED TO SERVE

22 SEC 5045 (1) THE ASSOCIATION SHALL MAKE AN INITIAL
23 SCREENING FOR BIAS AS MAY BE APPROPRIATE AND SHALL REQUIRE A CAN-
24 DIDATE FOR A PARTICULAR CASE TO COMPLETE A CURRENT PERSONAL DIS-
25 CLOSURE STATEMENT UNDER OATH IN ADDITION TO OTHER RELEVANT
26 INFORMATION THE STATEMENT SHALL DISCLOSE ANY PERSONAL
27 ACQUAINTANCE WITH ANY OF THE PARTIES OR THEIR COUNSEL AND THE

1 NATURE OF THE ACQUAINTANCE IF THE STATEMENT REVEALS FACTS THAT
2 SUGGEST THE POSSIBILITY OF PARTIALITY THE ASSOCIATION SHALL COM-
3 MUNICATE THOSE FACTS TO THE PARTIES IF THE PANELIST IS PROPOSED
4 BY THE ARBITRATION ASSOCIATION

5 (2) A PARTY MAY PROPOUND REASONABLE QUESTIONS TO AN ARBITRA-
6 TOR CANDIDATE IF THE QUESTIONS ARE PROPOUNDED WITHIN 10 DAYS OF
7 THE RECEIPT OF THE CANDIDATE S NAME THE QUESTIONS SHALL BE PRO-
8 POUNDED THROUGH THE ASSOCIATION AND THE CANDIDATE SHALL RESPOND
9 TO THE ASSOCIATION PROMPTLY

10 (3) A PARTY SHALL NOT COMMUNICATE WITH A CANDIDATE DIRECTLY
11 OR INDIRECTLY EXCEPT THROUGH THE ASSOCIATION AT ANY TIME AFTER
12 THE FILING OF THE DEMAND FOR ARBITRATION A CANDIDATE WHO IS
13 AWARE OF A COMMUNICATION PROHIBITED UNDER THIS SUBSECTION SHALL
14 IMMEDIATELY NOTIFY THE ASSOCIATION

15 SEC 5046 (1) A PARTY TO THE ARBITRATION AGREEMENT MAY
16 DEMAND ARBITRATION OF A CLAIM AND THE PROCEEDING SHALL BE INSTI-
17 TUTED AS PROVIDED BY RULE OF THE ASSOCIATION AND UPON COMPLIANCE
18 WITH SECTION 5044

19 (2) A MINOR CHILD SHALL BE BOUND BY A WRITTEN AGREEMENT TO
20 ARBITRATE DISPUTES CONTROVERSIES OR ISSUES UPON THE EXECUTION
21 OF AN AGREEMENT ON HIS BEHALF BY A PARENT OR LEGAL GUARDIAN THE
22 MINOR CHILD MAY NOT SUBSEQUENTLY DISAFFIRM THE AGREEMENT

23 (3) IN CASES INVOLVING A COMMON QUESTION OF LAW OR FACT, IF
24 SEPARATE ARBITRATION AGREEMENTS EXIST BETWEEN A PLAINTIFF AND A
25 NUMBER OF DEFENDANTS OR BETWEEN DEFENDANTS THE DISPUTES, CONTRO-
26 VERSIES AND ISSUES SHALL BE CONSOLIDATED INTO A SINGLE
27 ARBITRATION PROCEEDING

1 (4) A PERSON WHO IS NOT A PARTY TO THE ARBITRATION AGREEMENT
2 MAY JOIN IN THE ARBITRATION AT THE REQUEST OF A PARTY WITH ALL
3 THE RIGHTS AND OBLIGATIONS OF THE ORIGINAL PARTIES EACH PARTY
4 TO AN ARBITRATION UNDER THIS CHAPTER IS BOUND BY THE JOINDER OF A
5 NEW PARTY

6 SEC 5047 (1) BEFORE THE INSTITUTION OF A PROCEEDING OR
7 CLAIM BY A PATIENT, AN OFFER OF REPARATION AND ALL COMMUNICATIONS
8 INCIDENTAL TO THE OFFER MADE IN WRITING TO A PATIENT BY A HEALTH
9 CARE PROVIDER OR HOSPITAL IS PRIVILEGED AND MAY NOT BE USED BY A
10 PARTY TO ESTABLISH THE LIABILITY OR MEASURE OF DAMAGES ATTRIBUT-
11 ABLE TO THE OFFEROR

12 (2) AN OFFER DESCRIBED IN SUBSECTION (1) SHALL PROVIDE THAT
13 A PATIENT HAS 30 DAYS TO ACCEPT OR REJECT THE OFFER OR A LESSER
14 PERIOD OF TIME AS MAY BE NECESSITATED BY THE CONDITION OF HEALTH
15 OF THE PATIENT

16 (3) AFTER A REJECTION OF AN OFFER DESCRIBED IN SUBSECTION
17 (1) OR THE LAPSE OF THE APPLICABLE TIME DESCRIBED IN SUBSECTION
18 (2), A PARTY MAY DEMAND ARBITRATION, IF AN ARBITRATION AGREEMENT
19 IS IN EFFECT

20 (4) AN OFFER TO A PATIENT DESCRIBED IN SUBSECTION (1) SHALL
21 INCLUDE A STATEMENT THAT THE PATIENT MAY CONSULT LEGAL COUNSEL
22 BEFORE REJECTING OR ACCEPTING THE OFFER

23 (5) IF A POTENTIAL CLAIM IS IDENTIFIED BY A HEALTH CARE PRO-
24 VIDER OR HOSPITAL WHERE REPARATIONS IN ITS JUDGMENT, ARE NOT
25 APPROPRIATE, THE HEALTH CARE PROVIDER OR HOSPITAL MAY AT ITS
26 OPTION, FILE A DEMAND FOR ARBITRATION WHICH DEMAND SHALL IDENTIFY
27 THE POTENTIAL CLAIM AND DENY LIABILITY

1 SEC 5048 (1) AFTER THE APPOINTMENT OF THE PANEL OF
2 ARBITRATORS THE PARTIES TO THE ARBITRATION MAY TAKE DEPOSITIONS
3 AND OBTAIN DISCOVERY REGARDING THE SUBJECT MATTER OF THE ARBITRA-
4 TION AND TO THAT END, USE AND EXERCISE THE SAME RIGHTS REME-
5 DIES, AND PROCEDURES AND BE SUBJECT TO THE SAME DUTIES LIABILI-
6 TIES, AND OBLIGATIONS IN THE ARBITRATION WITH RESPECT TO THE
7 SUBJECT MATTER OF THE ARBITRATION AS IF THE SUBJECT MATTER OF
8 THE ARBITRATION WAS PENDING IN A CIVIL ACTION BEFORE A CIRCUIT
9 COURT OF THIS STATE

10 (2) THE PANEL SHALL CONCLUDE THE ENTIRE PROCEEDING AS EXPE-
11 DITIOUSLY AS POSSIBLE

12 (3) DISCOVERY SHALL COMMENCE NOT LATER THAN 20 DAYS AFTER
13 THE DATE ALL PARTIES HAVE RECEIVED A COPY OF THE DEMAND FOR ARBI-
14 TRATION AND SHALL BE COMPLETED WITHIN 6 MONTHS AFTER THAT DATE

15 (4) A PARTY MAY BE GRANTED AN EXTENSION OF TIME TO COMPLETE
16 DISCOVERY UPON A SHOWING THAT THE EXTENSION IS NOT THE RESULT OF
17 NEGLECT AND THAT THE EXTENSION IS NECESSARY IN ORDER TO AVOID
18 SUBSTANTIAL PREJUDICE TO THE RIGHTS OF THE PARTY

19 SEC 5049 (1) A PARTY IS ENTITLED TO DISCLOSURE OF THE
20 NAME OF AN EXPERT WITNESS WHO WILL BE CALLED AT THE ARBITRATION
21 AND MAY DEPOSE THE WITNESS

22 (2) A PARTY MAY ALSO PROVIDE DISCOVERY OF THAT PARTY S
23 EXPERT WITNESS BY THE WRITTEN INTERROGATORY PROCEDURE PROVIDED IN
24 THE FEDERAL RULES OF CIVIL PROCEDURE A PARTY MAY DISCLOSE WITH-
25 OUT REQUEST OR SHALL DISCLOSE UPON REQUEST THE NAME OF EACH
26 EXPERT THE PARTY EXPECTS TO CALL AT THE HEARING THE SUBJECT
27 MATTER ON WHICH THE EXPERT WILL TESTIFY THE SUBSTANCE OF FACTS

1 AND OPINIONS TO WHICH THE EXPERT WILL TESTIFY AND A SUMMARY OF
2 THE GROUNDS FOR EACH OPINION

3 (3) IF A PARTY IS PROVIDED OR REQUESTS THE DISCOVERY PROCE-
4 DURE IN SUBSECTION (2) AND THE PROVISION OR REQUEST OCCURS BEFORE
5 THE DATE ON WHICH AN EXPERT IS NOTICED FOR DEPOSITION OR OTHER
6 DISCOVERY IS COMMENCED UNDER PREVAILING CIVIL PRACTICE IN THIS
7 STATE ANY FURTHER DISCOVERY OF THE EXPERT BY ANOTHER PARTY BY
8 DEPOSITION OR OTHERWISE OBLIGATES THE OTHER PARTY TO COMPENSATE
9 THE EXPERT FOR HIS OR HER TIME AND EXPENSES IN A REASONABLE
10 AMOUNT AS MAY BE DETERMINED BY THE PANEL

11 SEC 5050 (1) A HEARING UNDER THIS CHAPTER SHALL BE INFOR-
12 MAL AND THE RULES OF EVIDENCE SHALL BE AS PROVIDED UNDER THE
13 RULES OF THE ASSOCIATION EXCEPT THAT THE PANEL SHALL ADHERE TO
14 CIVIL RULES OF EVIDENCE IF THE FAILURE TO DO SO WILL RESULT IN
15 SUBSTANTIAL PREJUDICE TO THE RIGHTS OF A PARTY

16 (2) TESTIMONY SHALL BE TAKEN UNDER OATH AND A RECORD OF THE
17 PROCEEDINGS SHALL BE MADE BY A TAPE RECORDING A PARTY AT THAT
18 PARTY S EXPENSE MAY HAVE TRANSCRIPTIONS OR COPIES OF THE RECORD-
19 ING MADE OR MAY PROVIDE FOR A WRITTEN TRANSCRIPT OF THE
20 PROCEEDINGS THE COST OF A TRANSCRIPTION ORDERED BY THE PANEL
21 FOR ITS OWN USE SHALL BE CONSIDERED PART OF THE COST OF THE
22 PROCEEDINGS

23 (3) EXPERT TESTIMONY IS NOT REQUIRED BUT IF EXPERT TESTI-
24 MONY IS USED IT SHALL BE ADMITTED UNDER THE SAME CIRCUMSTANCES
25 AS IN A CIVIL TRIAL AND BE SUBJECT TO CROSS-EXAMINATION

26 (4) THE PARTY WITH THE BURDEN OF ESTABLISHING A STANDARD OF
27 CARE AND BREACH OF THAT STANDARD OF CARE SHALL ESTABLISH THE

1 STANDARD OF CARE WHETHER BY THE INTRODUCTION OF EXPERT TESTIMONY
2 OR BY OTHER COMPETENT PROOF OF THE STANDARD OF CARE AND THE
3 BREACH OF THAT STANDARD OF CARE COMPETENT PROOF MAY INCLUDE,
4 BUT IS NOT LIMITED TO, THE USE OF WORKS AS PROVIDED IN
5 SUBSECTION (5)

6 (5) AUTHORITATIVE, PUBLISHED WORKS ON THE GENERAL AND SPE-
7 CIFIC SUBJECTS IN ISSUE MAY BE ADMITTED AND ARGUED FROM UPON
8 PRIOR NOTICE TO ALL OTHER PARTIES

9 (6) THE PANEL SHALL ACCORD SUCH WEIGHT AND PROBATIVE WORTH
10 TO EXPERT EVIDENCE AS IT CONSIDERS APPROPRIATE THE PANEL MAY
11 CALL A NEUTRAL EXPERT ON ITS OWN MOTION THE EXPERT WITNESS IS
12 SUBJECT TO CROSS-EXAMINATION BY THE PARTIES THE COST OF THE
13 EXPERT IS CONSIDERED A COST OF THE PROCEEDING

14 SEC 5051 (1) THE PANEL OR ITS CHAIRPERSON IN THE ARBITRA-
15 TION PROCEEDING SHALL, UPON APPLICATION BY A PARTY TO THE PRO-
16 CEEDING, AND MAY UPON ITS OWN DETERMINATION ISSUE A SUBPOENA
17 REQUIRING A PERSON TO APPEAR AND BE EXAMINED WITH REFERENCE TO A
18 MATTER WITHIN THE SCOPE OF THE PROCEEDING AND TO PRODUCE BOOKS
19 RECORDS, OR PAPERS PERTINENT TO THE PROCEEDING

20 (2) IN CASE OF DISOBEDIENCE TO THE SUBPOENA THE CHAIRPERSON
21 OR A MAJORITY OF THE ARBITRATION PANEL IN THE ARBITRATION PRO-
22 CEEDING MAY PETITION THE CIRCUIT COURT OF THE COUNTY IN WHICH THE
23 WITNESS RESIDES OR THE CIRCUIT COURT OF THE COUNTY IN WHICH THE
24 INQUIRY IS BEING HELD TO REQUIRE THE ATTENDANCE AND TESTIMONY OF
25 THE WITNESS AND THE PRODUCTION OF BOOKS PAPERS AND DOCUMENTS

26 (3) A CIRCUIT COURT OF THE STATE IN CASE OF CONTUMACY OR
27 REFUSAL TO OBEY A SUBPOENA MAY ISSUE AN ORDER REQUIRING THE

1 PERSON TO APPEAR AND TO PRODUCE BOOKS, RECORDS AND PAPERS AND
2 GIVE EVIDENCE REGARDING THE MATTER IN QUESTION FAILURE TO OBEY
3 THE ORDER OF THE COURT MAY BE PUNISHED BY THE COURT AS CONTEMPT

4 SEC 5052 (1) ON APPLICATION OF A PARTY TO THE ARBITRA-
5 TION, THE PANEL OR ITS CHAIRPERSON MAY ORDER THE DEPOSITION OF A
6 WITNESS TO BE TAKEN FOR USE AS EVIDENCE AND NOT FOR DISCOVERY IF
7 THE WITNESS CANNOT BE COMPELLED TO ATTEND THE HEARING OR IF
8 EXCEPTIONAL CIRCUMSTANCES EXIST MAKING IT DESIRABLE, IN THE
9 INTEREST OF JUSTICE AND WITH DUE REGARD TO THE IMPORTANCE OF
10 PRESENTING THE TESTIMONY OF WITNESSES ORALLY AT THE HEARING, TO
11 ALLOW THE DEPOSITION TO BE TAKEN THE DEPOSITION SHALL BE TAKEN
12 IN THE MANNER PRESCRIBED BY LAW OR COURT RULE FOR THE TAKING OF
13 DEPOSITIONS IN CIVIL ACTIONS

14 (2) IN ADDITION TO THE POWER OF DETERMINING THE MERITS OF
15 THE ARBITRATION THE PANEL MAY ENFORCE THE RIGHTS, REMEDIES, PRO-
16 CEDURES, DUTIES, LIABILITIES, AND OBLIGATIONS OF DISCOVERY BY THE
17 IMPOSITION OF THE SAME TERMS, CONDITIONS, CONSEQUENCES, LIABILI-
18 TIES SANCTIONS, AND PENALTIES AS MAY BE IMPOSED IN LIKE CIRCUM-
19 STANCES IN A CIVIL ACTION BY A CIRCUIT COURT OF THIS STATE
20 EXCEPT THE POWER TO ORDER THE ARREST OR IMPRISONMENT OF A
21 PERSON

22 (3) FOR THE PURPOSE OF ENFORCING THE DUTY TO MAKE DISCOVERY
23 TO PRODUCE EVIDENCE OR INFORMATION, INCLUDING BOOKS AND RECORDS,
24 AND TO PRODUCE PERSONS TO TESTIFY AT A DEPOSITION OR AT A HEAR-
25 ING, AND TO IMPOSE TERMS, CONDITIONS CONSEQUENCES LIABILITIES,
26 SANCTIONS AND PENALTIES UPON A PARTY FOR VIOLATION OF A DUTY, A
27 PARTY INCLUDES EVERY AFFILIATE OF THE PARTY AS DEFINED IN THIS

1 SECTION FOR PURPOSES OF THIS SUBSECTION THE PERSONNEL OF AN
2 AFFILIATE ARE THE OFFICERS DIRECTORS MANAGING AGENTS AGENTS
3 AND EMPLOYEES OF THAT PARTY TO THE SAME DEGREE AS EACH OF THEM,
4 RESPECTIVELY, BEARS THAT STATUS TO THE AFFILIATE AND THE FILES,
5 BOOKS, AND RECORDS OF AN AFFILIATE ARE CONSIDERED TO BE IN THE
6 POSSESSION AND CONTROL OF, AND CAPABLE OF PRODUCTION BY, THE
7 PARTY

8 (4) AS USED IN THIS SECTION AFFILIATE OF THE PARTY TO THE
9 ARBITRATION MEANS A PARTY OR PERSON FOR WHOSE IMMEDIATE BENEFIT
10 THE ACTION OR PROCEEDING IS PROSECUTED OR DEFENDED OR AN OFFICER,
11 DIRECTOR, SUPERINTENDENT MEMBER, AGENT, EMPLOYEE OR MANAGING
12 AGENT OF THAT PARTY OR PERSON

13 SEC 5053 (1) EXCEPT FOR THE PARTIES TO THE ARBITRATION
14 AND THEIR AGENTS, OFFICERS AND EMPLOYEES ALL WITNESSES APPEAR-
15 ING PURSUANT TO SUBPOENA ARE ENTITLED TO RECEIVE FEES AND MILEAGE
16 IN THE SAME AMOUNT AND UNDER THE SAME CIRCUMSTANCES AS PRESCRIBED
17 BY LAW FOR WITNESSES IN CIVIL ACTIONS IN THE CIRCUIT COURT THE
18 FEE AND MILEAGE OF A WITNESS SUBPOENAED UPON THE APPLICATION OF A
19 PARTY TO THE ARBITRATION SHALL BE PAID BY THAT PARTY THE FEE
20 AND MILEAGE OF A WITNESS SUBPOENAED SOLELY UPON THE DETERMINATION
21 OF THE ARBITRATOR OR THE MAJORITY OF A PANEL OF ARBITRATORS SHALL
22 BE PAID IN THE MANNER PROVIDED FOR THE PAYMENT OF THE
23 ARBITRATOR S EXPENSES

24 (2) THE COST OF EACH ARBITRATOR S FEES AND EXPENSES,
25 TOGETHER WITH AN ADMINISTRATIVE FEE, MAY BE ASSESSED AGAINST ANY
26 PARTY IN THE AWARD OR MAY BE ASSESSED AMONG PARTIES IN
27 PROPORTIONS AS MAY BE DETERMINED IN THE ARBITRATION AWARD

1 SEC 5054 (1) A MAJORITY OF THE PANEL OF ARBITRATORS MAY
2 GRANT ANY RELIEF CONSIDERED BY THE MAJORITY TO BE EQUITABLE AND
3 JUST, INCLUDING, BUT NOT LIMITED TO, MONEY DAMAGES, PROVISION FOR
4 HOSPITALIZATION, MEDICAL, OR REHABILITATIVE PROCEDURES, SUPPORT,
5 OR ANY COMBINATION OF THE RELIEF DESCRIBED IN THIS SUBSECTION

6 (2) THE PANEL MAY ORDER SUBMISSION OF WRITTEN BRIEFS WITHIN
7 30 DAYS AFTER THE CLOSE OF HEARINGS IN WRITTEN BRIEFS EACH
8 PARTY MAY SUMMARIZE THE EVIDENCE IN TESTIMONY AND MAY PROPOSE A
9 COMPREHENSIVE AWARD OF REMEDIAL OR COMPENSATORY ELEMENTS

10 (3) THE PANEL SHALL RENDER ITS AWARD AND OPINION WITHIN 30
11 DAYS AFTER THE CLOSE OF THE HEARING OR THE RECEIPT OF BRIEFS IF
12 ORDERED

13 (4) THE AWARD IN THE ARBITRATION PROCEEDING SHALL BE IN
14 WRITING AND SHALL BE SIGNED BY THE CHAIRPERSON OR BY THE MAJORITY
15 OF A PANEL OF ARBITRATORS THE AWARD SHALL INCLUDE A DETERMINA-
16 TION OF EACH QUESTION SUBMITTED TO ARBITRATION BY EACH PARTY THE
17 RESOLUTION OF WHICH IS NECESSARY TO DETERMINE THE DISPUTE, CON-
18 TROVERSY OR ISSUE

19 SEC 5055 (1) IN ADDITION TO THE AWARD UNDER SECTION 5054
20 THE PANEL SHALL RENDER A WRITTEN OPINION THAT STATES ITS REASON-
21 ING FOR THE FINDING OF LIABILITY OR NONLIABILITY AND THE REASON-
22 ING FOR THE AMOUNT AND KIND OF AWARD IF ANY A PANEL MEMBER WHO
23 DISAGREES WITH THE MAJORITY MAY WRITE A DISSENTING OPINION

24 (2) THE PANEL SHALL DETERMINE THE DEGREE TO WHICH EACH
25 RESPONDENT PARTY WAS AT FAULT FOR THE TOTAL DAMAGES ACCRUING TO
26 ANOTHER PARTY TO THE ARBITRATION, CONSIDERING ALL SOURCES OF

1 DAMAGE INVOLVING PARTIES TO THE ARBITRATION BUT EXCLUDING THE
2 DAMAGES ATTRIBUTABLE TO PERSONS NOT PARTIES TO THE ARBITRATION

3 (3) THE PANEL SHALL PREPARE A SCHEDULE OF CONTRIBUTIONS
4 ACCORDING TO THE RELATIVE FAULT OF EACH PARTY THE SCHEDULE IS
5 BINDING AS BETWEEN OR AMONG THOSE PARTIES, BUT THE DETERMINATION
6 DOES NOT AFFECT A CLAIMANT S RIGHT TO RECOVER JOINTLY AND SEVER-
7 ALLY FROM ALL PARTIES IF THAT RIGHT OTHERWISE EXISTS UNDER LAW

8 SEC 5056 (1) IN THE CASE OF AN AWARD UNDER SECTION 5054
9 AN ELEMENT OF WHICH INCLUDES REMEDIAL SERVICES, CONTRACTS, ANNUI-
10 TIES OR OTHER NONCASH AWARD, THE PANEL SHALL DETERMINE THE CUR-
11 RENT CASH VALUE OF EACH ELEMENT OF THE AWARD AND SHALL ALSO
12 DETERMINE A TOTAL CURRENT CASH VALUE OF THE ENTIRE AWARD

13 (2) AN AWARD OF REMEDIAL SURGERY OR CARE SHALL NOT REQUIRE
14 THAT THE PATIENT UNDERGO THE TREATMENT OR CARE BY THE HEALTH CARE
15 PROVIDER WHOSE CONDUCT RESULTED IN THE AWARD

16 (3) A CLAIMANT NEED NOT ACCEPT THE BENEFITS OF AN AWARD FOR
17 REMEDIAL SURGERY OR OTHER NONCASH AWARD ELEMENT AND THE REFUSAL
18 DOES NOT AFFECT THE CLAIMANT S RIGHT TO RECEIVE ANY OTHER PART OF
19 THE AWARD NOR SHALL THE REFUSAL ENTITLE THE CLAIMANT TO PAYMENT
20 OF THE CURRENT CASH VALUE OF THE PORTION REFUSED EXCEPT AS PRO-
21 VIDED IN SUBSECTIONS (4) AND (5)

22 (4) WHERE THE TOTAL DETERMINED CURRENT CASH VALUE OF THE
23 ENTIRE AWARD IS \$50,000 00 OR LESS, A PARTY MAY SATISFY OR
24 REQUEST SATISFACTION OF ALL OR A DESIGNATED PART OF THE AWARD BY
25 PAYMENT IN A LUMP SUM OF THE CURRENT CASH VALUE OF THE TOTAL
26 AWARD OR PART OF THE AWARD SO DESIGNATED

1 (5) IF THE TOTAL DETERMINED CURRENT CASH VALUE OF THE ENTIRE
2 AWARD IS GREATER THAN \$50 000 00 THE AWARD SHALL PROVIDE THAT AT
3 LEAST 1/3, UNLESS OTHERWISE STIPULATED BY THE PARTIES, OF ITS
4 TOTAL CURRENT CASH VALUE IS PAYABLE IN A CASH LUMP SUM, WHICH
5 PAYMENT MAY REPRESENT THE CURRENT CASH VALUE OF REMEDIAL ELEMENTS
6 OF THE AWARD OR OTHER COMPENSABLE DAMAGES

7 SEC 5057 AN APPEAL FROM THE ARBITRATION AWARD UNDER THIS
8 CHAPTER SHALL BE UNDER THE PROCEDURE AND FOR THE GROUNDS PERMIT-
9 TED UNDER THE GENERAL ARBITRATION LAW AND APPLICABLE COURT
10 RULES

11 SEC 5058 IN AN ARBITRATION PROCEEDING UNDER THIS CHAPTER,
12 IF A CONFLICT ARISES BETWEEN THIS CHAPTER AND CHAPTER 50, THIS
13 CHAPTER GOVERNS

14 SEC 5059 THE ASSOCIATION SHALL TRANSMIT TO THE STATE
15 INSURANCE BUREAU AND THE APPLICABLE LICENSING BOARD OF A RESPON-
16 DENT PARTY A COPY OF THE DEMAND FOR ARBITRATION WITHIN 10 DAYS OF
17 FILING THE PANEL SHALL TRANSMIT A COPY OF ITS DECISION TO THE
18 INSURANCE BUREAU AND THE APPLICABLE LICENSING BOARD WITHIN 10
19 DAYS OF TRANSMISSION TO THE PARTIES THE COPY OF THE DEMAND FOR
20 ARBITRATION OR THE DECISION SHALL BE FILED FOR INFORMATIONAL PUR-
21 POSES AND IS NOT OF ITSELF A GROUND FOR DISCIPLINE

22 SEC 5065 WITHIN 3 YEARS AFTER THE EFFECTIVE DATE OF THE
23 AMENDATORY ACT THAT ADDED THIS CHAPTER, A JOINT LEGISLATIVE COM-
24 MITTEE SHALL BE ESTABLISHED TO REVIEW THE OPERATION AND
25 EXPERIENCE OF ARBITRATION UNDER THIS CHAPTER IN CONJUNCTION WITH
26 THE INSURANCE COMMISSIONER, THE ARBITRATION ADVISORY COMMITTEE
27 ESTABLISHED UNDER THE INSURANCE CODE OF 1956 ACT NO 218 OF THE

1 PUBLIC ACTS OF 1956 BEING SECTIONS 500 100 TO 500 8302 OF THE
2 MICHIGAN COMPILED LAWS AND OTHER INTERESTED PERSONS THE COM-
3 MITTEE SHALL REPORT RECOMMENDATIONS FOR STATUTORY CHANGES, IF
4 ANY, TO THE ENTIRE LEGISLATURE BEFORE THE END OF THE FOURTH YEAR
5 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
6 CHAPTER