

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

CHAPTER 10
MEDICAL MALPRACTICE – MANDATORY ARBITRATION

SOURCE: This Chapter was repealed and reenacted by P.L. 21-43 (9/18/91). Section 1 repealed the former law, which had been declared unconstitutional in *Awa v. GMH*, 726F.2d 594 (1984). Section 2 of P.L. 21-43 enacted this Chapter.

- § 10100. Title.
- § 10101. Definitions.
- § 10102. Mandatory Arbitration.
- § 10103. Initiation of Arbitration.
- § 10104. Response to Demand.
- § 10105. Applicability of Statute of Limitations.
- § 10106. Standard of Care.
- § 10107. Administration of Arbitration.
- § 10108. Selection of Arbitrators
- § 10109. Challenge for Bias.
- § 10110. Rules of Arbitration.
- § 10111. Multiple Petitioners and Multiple Respondents.
- § 10112. Offer of Reparation.
- § 10113. Appointment of Guardian Ad Litem.
- § 10114. Stay of Proceedings When Suit is Filed.
- § 10115. Failure to Arbitrate under this Chapter.
- § 10116. Service of Documents upon Arbitrators; Ex Parte Contract.
- § 10117. Witnesses before Arbitrators.
- § 10118. Evidence and Testimony.
- § 10119. Identification of Expert Witnesses.
- § 10120. Identification of Witnesses and Documents.
- § 10121. Additional Discovery.
- § 10122. Time and Place of Arbitration Hearing.
- § 10123. Arbitration Briefs.
- § 10124. Representation by Counsel.
- § 10125. Attendance at Hearings.
- § 10126. Oaths
- § 10127. Arbitration in the Absence of a Party.
- § 10128. Adjournments.
- § 10129. Waiver of Statutory Rights.
- § 10130. Fees and Costs of Arbitration.
- § 10131. Damages.
- § 10132. Timely Award.

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

- § 10133. Award of Arbitrators.
- § 10134. Delivery of Award to Parties.
- § 10135. Confirmation of Award.
- § 10136. Vacation of Arbitration Award.
- § 10137. Modification of Award.
- § 10138. Notice of Motion to Vacate or Modify.
- § 10139. Notice of Appeal and Request for Trial de Novo.
- § 10140. Procedures at Trial de Novo
- § 10141. Scheduling of the Trial de Novo.
- § 10142. The Prevailing Party in the Trial de Novo; Costs.
- § 10143. Sanction for Failing to Prevail in the Trial de Novo.
- § 10144. Applicability to Government of Guam and its Agencies.
- § 10145. Prospective Effect of Chapter.
- § 10146. This Chapter to Prevail.
- § 10147. Severability Clause.

§ 10100. Title.

This Chapter may be cited as the *Medical Malpractice Mandatory Arbitration Act*.

§ 10101. Definitions.

As used in this chapter:

(a) *Association* means the American Arbitration Association or other entity organized to arbitrate disputes pursuant to this Chapter.

(b) *Health professional* means any person licensed or certified to practice the healing arts within the territory of Guam.

(c) *Health care institution* means any health care facility, health maintenance organization or independent practice association operated primarily to provide medical services.

(d) *Malpractice* means any tort or breach of contract based on health care or professional services rendered or which should have been rendered by a health professional or a health care institution to a patient.

(e) *Petitioner* means the patient, his relatives, his heirs-at-law or personal representative pursuing a claim in arbitration, or any third party or other party pursuing a claim in arbitration, against a health professional or health care provider.

(f) *Respondent* means the health professional or health care provider

defending a claim in arbitration filed by a petitioner.

§ 10102. Mandatory Arbitration.

Any claim that accrues or is being pursued in the territory of Guam, whether in tort, contract, or otherwise, shall be submitted to mandatory arbitration pursuant to the terms of this Chapter if it is a controversy between the patient, his relatives, his heirs-at-law or personal representative or any third party or other party, and the health professional or health care institution, or their employees or agents, and is based on malpractice, tort, contract, strict liability, or any other alleged violation of a legal duty incident to the acts of the health professional or health care institution, or incident to services rendered or to be rendered by the health professional or health care institution.

§ 10103. Initiation of Arbitration.

Arbitration is initiated by a petitioner or petitioners serving a written demand for arbitration upon a respondent or respondents in the same manner provided by law for the service of summons in the Superior Court of Guam; except that the petitioner or his agent may serve the demand without the necessity of it being served by a Marshal of the Superior Court of Guam. The demand for arbitration shall not be filed in the Superior Court of Guam, and arbitration shall not be filed in the Superior Court of Guam, unless the petitioner or petitioners require the appointment of a Guardian Ad Litem, as provided for in § 10113 of this Chapter. The demand for arbitration shall be filed with the Association. The demand for arbitration shall state the name and address of the petitioner or petitioners, identify the respondent or respondents, and shall outline the factual basis of the claim and the alleged acts of negligence or wrongdoing of the respondent or respondents.

§ 10104. Response to Demand.

Within twenty (20) days after service of a demand for arbitration, the respondent or respondents shall file a response to the demand for arbitration and serve it upon the petitioner or petitioners, or their attorney. The response shall identify any defenses then known to the respondent or respondents. If a respondent fails to file a response, then the petitioner or petitioners may proceed in default to appoint an arbitration panel pursuant to § 10108 of this Chapter.

§ 10105. Applicability of Statute of Limitations.

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

A claim shall be waived and forever barred as against a respondent if on the date the demand is served the applicable statute of limitations would bar the claim.

§ 10106. Standard of Care.

The prevailing standard of duty, practice, or care by a reasonable physician in the same field practicing medicine in the community at the time of the alleged malpractice shall be the standard applied in the arbitration.

§ 10107. Administration of Arbitration.

The Association shall administer a proceeding filed under this Chapter. The administrative expense shall be as agreed to by the parties and the Association, or as may be provided by the Association. The administrative costs shall be equally shared by the parties subject to an award of costs by the panel as provided in § 10130 herein.

§ 10108. Selection of Arbitrators.

An arbitration under this Chapter shall be heard by a panel of three (3) arbitrators. The chairperson shall be decided by the three (3) panel members and shall have jurisdiction over pre-hearing procedures. The three (3) panel members shall include an attorney, a physician, preferably but not necessarily from the respondent's medical specialty, and the third shall be a person who is neither a doctor, lawyer, or representative of a health care institution or insurance company. A minimum of two (2) of the three (3) panel members shall be residents of Guam.

(a) Except as otherwise provided in subsection (d), arbitrator candidates shall be selected pursuant to the rules and procedures of the Association from a pool of candidates generated by the Association. The rules and procedures of the Association pertaining to a selection of arbitrators under this chapter shall require that the Association send simultaneously to each party an identical list of five (5) arbitrator candidates in each of the three (3) categories together with a brief biographical statement on each candidate. A party may strike from the list any name which is unacceptable and shall number the remaining names in order of preference. When the lists are returned to the Association they shall be compared and the first mutually agreeable candidate in each category shall be invited to serve.

(b) Where no mutually agreed upon arbitrator is selected for any

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

category, a second list of that category shall be sent pursuant to subsection (a).

(c) If a complete panel is not selected by mutual agreement of the parties pursuant to subsections (a) and (b) then under the applicable rules and procedures of the Association, the Association shall appoint the remainder of the panel on whom agreement has not been reached by the parties. The appointment by the Association shall be subject to challenge by any party for cause which challenge may allege facts to establish that unusual community or professional pressures will unreasonably influence the objectivity of the panelists. A request to strike an arbitrator for cause shall be determined by the regional director or comparable officer of the Association.

(d) The parties shall not be restricted to the arbitrator candidates submitted for consideration. If all parties mutually agree upon a panelist within a designated category, the panelist shall be invited to serve.

§ 10109. Challenge for Bias.

The Association shall make an initial screening for bias as may be appropriate and shall require a candidate for a particular case to complete a current personal disclosure statement under oath. In addition to other relevant information this statement shall disclose any personal acquaintance with any of the parties or their counsel and the nature of such acquaintance. If this statement reveals facts which suggest the possibility of partiality, the Association shall communicate those facts to the parties if the panelist is proposed by the arbitration association.

(a) Any party may propound reasonable questions to an arbitrator candidate if such questions are propounded within ten (10) days of the receipt of the candidate's name. Such questions shall be propounded through the Association and the candidate shall respond to the Association promptly.

(b) A party shall not communicate with a candidate directly or indirectly except through the Association at any time after the filing of the demand for arbitration. Any candidate who is aware of such communication shall immediately notify the Association.

§ 10110. Rules of Arbitration.

The arbitration proceeding shall be subject to rules promulgated by the Association in conformance with this chapter.

§ 10111. Multiple Petitioners and Multiple Respondents.

In cases involving a common question of law or fact, when there are multiple petitioners and/or multiple respondents, the disputes, controversies, and issues shall be consolidated into a single arbitration proceeding.

(a) A person who is not a party to the arbitration may join in the arbitration at the request of any party with all the rights and obligations of the original parties. Each party to an arbitration under this chapter is deemed to be bound by the joinder of a new party.

§ 10112. Offer of Reparation.

Prior to the institution of a proceeding or claim by a patient, any offer of reparations and all communications incidental thereto made in writing to a patient by a health professional or health care institution are privileged and may not be used by any party to establish the liability or measure of damages attributable to the offeror.

(a) Such an offer shall provide that a patient has thirty (30) days to accept or reject the offer, or such lesser period of time as may be necessitated by the condition or health of the patient.

(b) After any rejection or the lapse of the applicable time, any party may demand arbitration.

(c) Any such offer to a patient shall include a statement that the patient may consult legal counsel before rejecting or accepting the offer.

(d) In a case where a potential claim is identified by a health professional or health care institution where reparations, in its judgment, are not appropriate, the professional or institution may, at its option, file a demand for arbitration which demand shall identify the potential claim and deny liability.

§ 10113. Appointment of Guardian Ad Litem.

(a) When a minor, or an insane or incompetent person is a petitioner, he must appear either by general guardian or a Guardian Ad Litem appointed by the Superior Court of Guam. A Guardian Ad Litem may be appointed in a claim for arbitration under this chapter when it is deemed by a judge of the Superior Court of Guam expedient to represent the minor, insane, or incompetent person in the arbitration proceeding, notwithstanding he may have a general guardian and may have appeared by him. The general guardian or Guardian Ad Litem so appearing for an infant, insane or

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

incompetent person in any arbitration proceeding shall have the power to compromise the same and to agree to any settlement or decision of the arbitrators to be entered therein against his ward, subject to the approval of a majority of the arbitrators.

(b) A Guardian Ad Litem appointed by the Superior Court of Guam to pursue a claim for arbitration shall be appointed pursuant to §373 of the Guam Code of Civil Procedure. Any petition to appoint a Guardian Ad Litem to pursue a claim for arbitration shall have a copy of the demand for arbitration attached thereto.

§ 10114. Stay of Proceedings When Suit Is Filed.

If any suit or proceeding is brought in the courts of Guam upon any issue referable to arbitration under this chapter, the court in which said suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under this chapter, shall upon application of one of the parties, stay all proceedings in the action until such arbitration has been had in accordance with the terms of this chapter.

§ 10115. Failure to Arbitrate Under This Chapter.

The party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under this chapter, may petition the Superior Court of Guam, for an order directing that such arbitration proceed in the manner provided for in this chapter. Five (5) days notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for the service of summons in the Superior Court of Guam. The court shall hear the parties, and the court shall then make an order directing the parties to proceed to arbitration in accordance with the terms of this chapter.

§ 10116. Service of Documents upon Arbitrators; Ex Parte Contract.

Once the arbitration panel has been selected, each of the arbitrators shall be provided with a copy of the demand for arbitration and any responses thereto by the Association. Each of the arbitrators shall also be provided by the Association with the parties' notices to each other identifying experts, witnesses, documents and arbitration briefs as authorized in this chapter. Any motions or requests for additional discovery shall also be served upon each of the arbitrators through the Association.

§ 10117. Witnesses Before Arbitrators.

The panel or its chairperson in the arbitration proceeding shall, upon

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

application by a party to the proceeding, and may upon its own determination, issue a subpoena requiring a person to appear and be examined with reference to a matter within the scope of the proceeding, and to produce books, records, or papers pertinent to the proceeding. In case of disobedience to the subpoena, the chairperson or a majority of the arbitration panel in the arbitration proceeding may petition the Superior Court of Guam to require the attendance and testimony of the witness and the production of books, papers, and documents. The Superior Court of Guam, in case of contumacy or refusal to obey a subpoena, may issue an order requiring that person to appear and to produce books, records, and papers and give evidence touching the matter in question. Failure to obey the order of the Court may be punished by the Court as contempt. The fees for the attendance of any person to attend before the arbitration panel as a witness shall be the same as the fees for witnesses subpoenaed before the Superior Court of Guam. The Superior Court of Guam shall order a witness to pay the cost of the aggrieved party, to include attorney's fees, if it is determined that the witness wrongfully failed to appear before the arbitration panel.

§ 10118. Evidence and Testimony.

A hearing shall be informal and the arbitrators shall be the sole judge of the relevancy and materiality of the evidence offered.

(a) The arbitrators may receive and consider evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrators shall be filed at the hearing.

(b) Testimony shall be taken under oath and a record of the proceedings shall be made by a tape recording. Any party, at the party's expense, may have transcriptions or copies of the recording made or may provide for a written transcript of the proceedings. The costs of any transcription ordered by the panel for its own use shall be deemed part of the costs of the proceedings.

(c) Expert testimony shall not be required but where expert testimony is used, it shall be admitted under the same circumstances as in a civil trial and be subject to cross-examination.

(d) The party with the burden of establishing a standard of care and breach thereof shall establish such standards whether by the introduction of expert testimony, or by other competent proof of the standard and the breach thereof, which may include the use of published works as provided

in subsection (e).

(e) Authoritative, published works on the general and specific subjects in issue may be admitted and argued from, upon prior notice to all other parties.

(f) The panel shall accord such weight and probative worth to expert evidence as it deems appropriate. The panel may call a neutral expert on its own motion, which expert witness shall be subject to cross-examination by the parties. The costs of the expert will be deemed a cost of the proceeding.

§ 10119. Identification of Expert Witnesses.

Within thirty (30) days after the arbitrators have been selected, any petitioner pursuing a claim against a respondent shall identify the expert witnesses that the petitioner will call at the arbitration hearing. When identifying such experts, the petitioner shall provide the name of the expert, the address of the expert, and shall state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is to testify and a summary of the grounds for each opinion. Within thirty (30) days after the petitioner has identified his experts, the respondent shall identify the expert witnesses that the respondent will call to testify at the arbitration hearing. The respondent shall provide the name of the expert witness, the address of the expert witness, and state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

§ 10120. Identification of Witnesses and Documents.

Within thirty (30) days after the respondent has identified respondent's expert witnesses, the parties shall exchange a list of witnesses that they expect to call to testify at the arbitration hearing along with a summary of each witnesses' proposed testimony. The parties shall also provide each other with copies of all documents and material that they intend to introduce as evidence at the arbitration hearing.

§ 10121. Additional Discovery.

Additional discovery, not otherwise provided for in this chapter, such as depositions, interrogatories and requests to produce, shall not be permitted unless:

- (a) The parties stipulate to allow additional discovery; or,

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

(b) A majority of the arbitrators at the pre-arbitration conference provided for in § 10122 of this chapter authorize additional discovery for good cause shown upon the application of a party to the arbitration proceeding. The arbitrators shall liberally authorize additional discovery if it is necessary in order for a petitioner or respondent to more adequately present or defend a claim.

§ 10122. Time and Place of Arbitration Hearing.

Within thirty (30) days after the parties have exchanged their lists of witnesses and provided each other with the documents that the parties intend to introduce as evidence at the arbitration hearing, the arbitrators shall meet at a place designated by the chairperson and conduct a pre-arbitration conference for the purpose of deciding upon a date and place for the arbitration hearing, and for the purpose of deciding whether additional discovery should be permitted pursuant to § 10121 of this chapter. The arbitrators, or a majority of them, shall agree upon a date and place for the arbitration hearing. The arbitration hearing shall be conducted within ninety (90) days after the pre-arbitration conference between the arbitrators and the parties unless agreed otherwise by the parties. Oral notice to the parties at the pre-arbitration conference of the date, time and location of the arbitration hearing shall be deemed sufficient.

§ 10123. Arbitration Briefs.

Any arbitration brief to be filed by a petitioner must be filed at least ten (10) working days before the arbitration hearing. Any arbitration brief to be filed by a respondent must be filed at least five (5) working days before the arbitration hearing. A petitioner may file a reply brief, which shall respond only to matters discussed in the respondent's arbitration brief, no later than two (2) working days before the arbitration hearing.

(a) The panel may order submission of post-hearing briefs within ten (10) calendar days after the closing of hearings. In written briefs, each party may summarize the evidence in testimony and may propose a comprehensive award of remedial or compensatory elements.

§ 10124. Representation by Counsel.

Any party may be represented in hearings before the arbitration panel by counsel.

A party may appear without counsel, and shall be advised of such right and the right to retain counsel in a manner calculated to inform the person

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

of the nature and complexity of a proceeding by a simple concise form to be distributed by the Association administering the arbitration.

§ 10125. Attendance at Hearings.

Parties to the arbitration and their counsel are entitled to attend all hearings. Non-party witnesses may be excluded by either party upon request.

§ 10126. Oaths.

The arbitrators shall require all witnesses at the arbitration hearing to testify under oath.

§ 10127. Arbitration in the Absence of a Party.

The arbitration may proceed in the absence of any party who, after due notice, fails to be present. An award shall not be made solely on the default of a party. The arbitrators shall require the attending party to submit evidence.

§ 10128. Adjournments.

Hearings may be adjourned by a majority of the arbitrators only for good cause, and an appropriate fee will be charged if the arbitrators determine that a party has wrongfully caused an adjournment to take place.

§ 10129. Waiver of Statutory Rights.

Any party who proceeds with arbitration after knowledge that any provision of this chapter has not been complied with and fails to state his objections thereto in writing shall be deemed to have waived his right to object.

§ 10130. Fees and Costs of Arbitration.

Except for the parties to the arbitration and their agents, officers, and employees, all witnesses appearing pursuant to subpoena are entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in the Superior Court of Guam. The fee and mileage of a witness subpoenaed upon the application of a party to the arbitration shall be paid by that party. The fee and mileage of a witness subpoenaed solely upon the determination of the arbitrator or the majority of a panel of arbitrators shall be paid in the manner provided for the payment of the arbitrators' expenses.

(a) The costs of each arbitrator's fees and expenses, together with any

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

administrative fee may be assessed against any party in the award or may be assessed among parties in such proportions as may be determined in the arbitration award. Each party shall bear its own attorney's fees in the arbitration proceeding.

§ 10131. Damages.

Damages shall be monetary only and shall be without limitation as to nature or amount unless otherwise provided by law.

§ 10132. Timely Award.

The award of the arbitrators shall be rendered promptly by the arbitrators and, unless otherwise agreed by the parties, not later than twenty (20) business days from the date of the close of the hearing. However, if the arbitrators fail to render an award within twenty (20) business days from the date of the close of the hearing, the arbitrators' award shall not be vacated on this ground unless it can be proven that a party has been seriously prejudiced due to the fact that the arbitrators have not rendered an award within twenty (20) business days.

§ 10133. Award of Arbitrators.

A majority of the panel of arbitrators may grant monetary damages only deemed equitable and just.

(a) The award in the arbitration proceeding shall be in writing and shall be signed by the arbitrators or a majority of the panel of arbitrators. An award cannot be rendered unless it is signed by a majority of the arbitrators. The award shall include a determination of all the questions submitted to arbitration by each party, the resolution of which is necessary to determine the dispute, controversy, or issue.

(b) The panel shall determine the degree to which each respondent party, if more than one, was at fault for the total damages accruing to any other party to the arbitration, considering all sources of damage involving parties to the arbitration, but excluding the damages attributable to persons not parties to the arbitration.

(c) The panel shall prepare a schedule of contributions according to the relative fault of each party which schedule shall be binding on those parties, but such determination shall not affect a claimant's right to recover jointly and severally from all parties where such right otherwise exists in the law.

§ 10134. Delivery of Award to Parties.

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the arbitrators addressed to such party at its last known address or to the party's attorney, or personal service of the award on the party or the party's attorney.

§ 10135. Confirmation of Award.

At any time within one (1) year after an award is made, any party to the arbitration may apply to the Superior Court of Guam for an order confirming the award and thereupon the court must grant such an order unless the award is vacated, modified, corrected, or appealed as prescribed in §§ 10136, 10137 and 10139 of this Chapter. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of Guam, service shall be made upon the adverse party as prescribed by law for the service of a civil action in the Superior Court of Guam. If the adverse party shall be a non-resident, then the notice of the application shall be served in like manner as other process of the Superior Court of Guam served upon non-residents.

§ 10136. Vacation of Arbitration Award.

In any of the following cases, the Superior Court of Guam may make an order vacating the award upon the application of any party to the arbitration:

- (a) Where the award was procured by corruption, fraud or undue means;
- (b) Where there was corruption in any of the arbitrators;
- (c) Where the arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; or
- (d) Where the rights of such party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefore or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this chapter. Where an award is vacated, the court shall direct a re-hearing by the arbitrators, or if the court deems it appropriate, shall direct the parties to select new arbitrators for another arbitration proceeding.

§ 10137. Modification of Award.

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

In any of the following cases, the Superior Court of Guam may make an order modifying or correcting the award upon the application of any party to the arbitration:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not effecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter or form not effecting the merits of the controversy. The court may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

§ 10138. Notice of Motion to Vacate or Modify.

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within thirty (30) days after the award is served upon the party seeking to vacate, modify or correct the award.

§ 10139. Notice of Appeal and Request for Trial De Novo.

(a) Within thirty (30) days after the award is served upon the parties, any party may file with the clerk of the Superior Court of Guam and serve on the other parties and the Association a written Notice of Appeal and Request for Trial De Novo of the action.

(b) After the filing and service of the written Notice of Appeal and Request for Trial De Novo, the case shall be set for trial pursuant to applicable court rules.

(c) If the action is triable by right to a jury, and a jury was not originally demanded but is demanded within ten (10) days of service of the Notice of Appeal and Request for Trial De Novo by a party having the right of trial by jury, the trial de novo shall include a jury, and a jury trial fee shall be paid as provided by law.

§ 10140. Procedures at Trial De Novo.

(a) The clerk shall seal any arbitration award if a trial de novo is requested. The jury will not be informed of the arbitration proceeding, the award, or about any other aspect of the arbitration proceedings. The sealed arbitration award shall not be opened until after the verdict is received and

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

filed in a jury trial, or until after the judge has rendered a decision in a court trial.

(b) All discovery permitted during the course of the arbitration proceedings shall be admissible in the trial de novo subject to all applicable rules of civil procedure and evidence. The court in the trial de novo shall insure that any reference to the arbitration proceeding is omitted from any discovery taken therein and sought to be introduced at the trial de novo.

(c) No statements or testimony made in the course of the arbitration hearing shall be admissible in evidence for any purpose in the trial de novo.

§ 10141. Scheduling of the Trial De Novo.

Every case transferred to the court shall maintain the approximate position on the civil trial docket as if the case had not been so transferred, unless at the discretion of the court, the docket position is modified.

§ 10142. The Prevailing Party in the Trial De Novo; Costs.

(a) The Prevailing Party in a trial de novo is the party who has (1) appealed and improved upon the arbitration award by forty percent (40%) or more, or (2) has not appealed and the opposing party has appealed and failed to improve upon the arbitration award by forty percent (40%) or more. For the purpose of this rule, improve or improved means to increase the award for a plaintiff or to decrease the award for the defendant.

(b) The Prevailing Party under these rules, as defined above, is deemed the prevailing party under any statute or rule of court, and as such is entitled to costs of trial and all other remedies as provided by law.

§ 10143. Sanction for Failing to Prevail in the Trial De Novo.

(a) After the verdict is received and filed, or the court's decision rendered in a trial de novo, the trial court shall impose sanctions, as set forth below, against the non-prevailing party whose appeal resulted in the trial de novo.

(b) The sanctions to be imposed by the court are as follows:

- (1) Reasonable costs and fees (other than attorneys' fees) actually incurred by the party but not otherwise taxable under the law;
- (2) Costs of jurors;
- (3) Reasonable attorneys' fees actually incurred by the prevailing party.

10 GCA HEALTH AND SAFETY
CH. 10 MEDICAL MALPRACTICE – MANDATORY ARBITRATION

(c) Sanctions imposed against a plaintiff will be deducted from any award rendered. Sanctions imposed against a defendant will be added to any award rendered.

§ 10144. Applicability to Government of Guam and Its Agencies.

Claims against the government of Guam and its agencies are governed by the Government Claims Act. Thus, this chapter does not apply to claims against the Guam Memorial Hospital Authority or other health care institutions established by the government of Guam.

§ 10145. Prospective Effect of Chapter.

This chapter shall not apply to any claim that accrues before the date that the chapter becomes law.

§ 10146. This Chapter to Prevail.

The provisions of Title 5, Chapter 32, Guam Code Annotated, entitled, Deceptive Trade Practices - Consumer Protection Act, shall not be applicable to this chapter and to the extent any of the provisions of this chapter are inconsistent or conflict with the provisions of the Deceptive Trade Practices - Consumer Protection Act or any other provision of law, the terms of this chapter shall prevail and control.

§ 10147. Severability Clause.

If any section or sentence of this chapter is deemed unconstitutional, then that section or sentence shall be severed from the chapter and the remainder of the chapter shall remain and be of full force and effect.
