

What is contractual arbitration?

Traditionally, medical malpractice suits have been resolved through litigation, a public process that is time consuming, expensive, and stressful for both sides. The high financial and emotional costs of litigation have given rise to an increase in the popularity of arbitration, an alternative method for resolving disputes that allows the parties to define the process and to put their dispute before knowledgeable, neutral arbitrators.

How does arbitration work?

Each party, represented by qualified counsel, presents its case and offers evidence and expert witnesses to experienced arbitrators who arbitrate the dispute.

What are the advantages and disadvantages of arbitration?

The benefits of arbitration include the following:

- Jury trials may take years to be heard and weeks to complete, while arbitration generally takes place within a year and usually lasts less than a week.
- Jury trials and decisions are open and available to the public, while arbitration is often heard in a private conference room, with the results not generally made public.
- Medical malpractice claims often present complex standard of care and causation issues that require a lay jury to understand and to form an opinion based on competing expert testimony. Arbitration is a more objective process that permits discussion between attorneys and the arbitrators.
- Appeal is possible in a jury trial, but arbitration presents a very limited opportunity for review by the courts.
- Amounts of jury awards are variable, dependent upon venue, and often appear to result from an emotionally inflamed response rather than from impartial analysis. In arbitration, it is unusual for arbitrators to return a verdict that appears to be the product of passion or prejudice.
- Depending on the state, punitive damages may or may not be considered by a jury. These damage awards are absent in arbitration

Here are some of the disadvantages:

- Discovery of facts does not occur unless each party specifically agrees. Information that may help one party defend or prove a fact may not be produced before or at the time of the arbitration.
- For smaller claims, i.e., those less than \$5,000, the cost of arbitration may exceed the claim.
- Compromise awards are more common with arbitration than in court decisions.
- Parties do not have an opportunity for their “day in court.” All decisions are made by arbitrators.
- When deciding the case, rather than following prevailing law, the arbitrators may render a decision based on equity or a sense of fairness and justice.
- If a party is unhappy with the arbitration outcome, successful challenges—an appeal to a court—are rare.

How do the processes compare?

The elements of each method include the following:

In a Trial

The patient obtains a plaintiff's attorney.

The plaintiff's attorney files a lawsuit.

Discovery begins, and experts are hired.

Settlement may be considered.

A trial date is set.

A jury is selected.

A verdict is reached.

An appeal may be initiated.

Trials may last weeks or months.

The process may take years to be resolved.

The plaintiff/patient incurs attorney's fees to be paid from the award if there is a plaintiff's verdict.

The plaintiff/patient may wait a long time to receive the monetary award.

The public has access to the trial verdict.

The judgment is reported to the National Practitioner Data Bank (NPDB).

In Arbitration

Three experienced arbitrators (usually three attorneys or judges) arbitrate the dispute.

There is a limited right to appeal.

The verdict is binding.

Arbitration can be more cost effective.

Arbitration can last one or two days.

Information is heard by professionals, not by lay jury members.

If there is a plaintiff's verdict, the monetary award is paid immediately.

The results are not generally made public.

The judgment is reported to the NPDB.