

Binding Arbitration (FAQ) Frequently Asked Questions

1) What does “binding arbitration” mean?

- Binding arbitration (BA) is the most commonly used alternative to the traditional court system for resolving disputes between patients and healthcare providers. All parties refer their dispute to a panel of three arbitrators who review the evidence, listen to all parties involved and make a decision. The decision of the arbitration panel is final and may not be reviewed or overturned by a court, except in very limited circumstances. The term “binding” means both parties are bound by the arbitrator’s decision.

2) How does the binding arbitration process work?

- In agreeing to arbitration, the parties agree to give up their constitutional right to have any potential medical malpractice claim resolved in court. Instead, all medical malpractice claims are resolved by a panel of three arbitrators. The process starts with a written notice from one party to the other demanding arbitration. The patient and the physician would each name one person to serve as an arbitrator. These two arbitrators would pick a third arbitrator, who must be an administrative law judge. An arbitrator is like a judge, in that he/she listens to the evidence presented by both sides and makes a binding decision. This panel of three arbitrators would then set up rules about the witnesses and evidence each side could present, and a schedule for the arbitration. If necessary, the arbitrators could issue subpoenas to compel witnesses to appear at the hearing or to obtain documents or other evidence. At the arbitration hearing, each party will be represented by their own attorney. Each party will have the opportunity to present evidence and witnesses, and cross-examine the other party’s witnesses. All three arbitrators would listen to the evidence and participate in the decision. They would apply the same law that a court would apply, but the procedural rules are less burdensome and the hearing is less formal than a trial. Based on the evidence and the law, the arbitrators could award any amount or kind of damages that a court could award.

3) What is the benefit to arbitrating medical malpractice claims for physicians and patients?

- Binding arbitration offers many benefits to both the patient and physician by providing a more flexible, private, cost-effective method to produce quicker resolutions to disputes. Traditional litigation efforts could take years to resolve and at a large cost, and many times expenses exceed the amount in controversy reducing the value of the dispute. The high cost of malpractice lawsuits also contribute to the rising cost of healthcare. As a result, many physicians have been forced to raise their fees, reduce their practices, or leave Florida altogether, threatening patients’ access to medical care. These cost savings to both parties would positively impact the cost and availability of healthcare services in Florida.

4) Do I need an attorney for the binding arbitration process to settle a dispute?

- While attorney representation is not required, you may choose to hire an attorney to assist you through the binding arbitration process.

5) How much does it cost?

- Costs for binding arbitration vary, but tend to be considerably cheaper than the costs for traditional litigation efforts through the court system and allow for quicker resolution to the dispute.

6) How long does the binding arbitration process typically last?

- The average time for binding arbitration from the initial demand is approximately 3-6 months, although the duration may vary. Court litigation can take upwards of a year or more from initial filing to the actual trial, even years for the final resolution of the case.

7) What is the difference between binding arbitration and court litigation (trial)?

- *Binding Arbitration* - Settling of a dispute in a private setting between parties by an impartial third party (arbitrator) chosen by the parties involved, whose decision the parties agree to accept as final, with limited exceptions to make an appeal.
- *Court Litigation (Trial)* – Settling of a dispute in the traditional court system, usually open to the public, by a judge whom is assigned by the court without any input from the parties involved. Contending parties can typically appeal the decision to an appellate court.

8) Will Florida's pre-suit screening process for medical malpractice claims be preserved under Women's Care's Florida's arbitration agreement?

- Before the parties arbitrate a medical malpractice claim, the agreement requires the parties to first follow Florida Statutes, Chapter 766, with regard to the pre-suit screening of medical malpractice claims. This screening process ensures that a medical malpractice claim is fully investigated so that the parties have an opportunity to resolve legitimate claims at an early stage, which saves the parties time and money.

9) What is the most significant difference between Women's Care Florida's arbitration agreement and the arbitration provisions that are available under Florida's statutes that govern medical malpractice claims?

- Florida law, Chapter 766, provides the opportunity through two separate statutes to arbitrate medical malpractice claims where a physician is willing to admit liability. If a medical malpractice claim is not resolved at the end of the pre-suit screening process by settlement or if a physician is unwilling to admit liability to trigger the arbitration statutes under Florida Statutes 766, the dispute will be resolved by the arbitration agreement. Therefore, the most significant difference is that under Women's Care Florida's arbitration agreement, the parties agree to arbitrate the issue of liability.

10) What claims does the arbitration agreement cover?

- The arbitration agreement applies to malpractice claims associated with both past, current and future care and treatment. In addition, the patient agrees that any controversy including, without limitation, claims for medical malpractice, personal injury, loss of consortium, or wrongful death arising out of or in any way relating to the diagnosis, treatment, or care of the patient by the physician, including any partners, agents, or employees of the provider of medical services, shall be submitted to binding arbitration as well.

11) What claimant(s) does the arbitration agreement cover?

- Under the agreement, all claims based upon the same occurrence, incident, or care will be arbitrated in one proceeding. The agreement binds all parties whose claims may arise out of, or relate to treatment or services provided by the physician, including the patient, the patient's estate, any spouse or heirs of the patient, and any children of the patient, whether born or unborn, at the time of the occurrence giving rise to the claim. In the case of any pregnant mother, the term "patient" means both the mother and the mother's expected child or children.

12) I am a minor, can I sign this legal document? If not, who can?

- If you are a minor patient, a parent or guardian would be required to view the binding arbitration video and sign the agreement on your behalf. Once you no longer meet the definition of a minor, you will be required to view the binding arbitration video and sign a new binding arbitration agreement.

13) Must I sign the agreement and view the video in order to become a patient of Women's Care Florida?

- It is the policy of Women's Care Florida that all patients are required to view the binding arbitration video and sign the agreement in order to receive current and future treatment. If a patient is unwilling to sign the agreement, they will not be able to seek care with Women's Care Florida, except under rare temporary circumstances.



Binding Arbitration Agreement – Recent Updates (FAQ) Frequently Asked Questions

- 1) **If I previously signed the binding arbitration agreement and choose not to sign the updated agreement, can I still remain a patient with Women's Care Florida?**
 - It is the policy of Women's Care Florida that all patients must view the updated video and sign the updated agreement. Patients who refuse to sign the updated agreement will not be able to remain a patient at Women's Care Florida. If a patient is unwilling to sign the updated agreement, the patient will not be able to seek continued care with Women's Care Florida, except under rare temporary circumstances.
- 2) **If I am an established patient with Women's Care Florida and I have already signed this agreement, why am I being required to sign the updated agreement?**
 - Revisions to this agreement have been made to ensure it remains in compliance with the requirements of the Federal Arbitration Act and state regulations. Note the answers to question #3 for more details on these changes.
- 3) **What information has been changed from the previous binding arbitration agreement?**
 - The third arbitrator chosen must be an administrative law judge.
 - The arbitrators chosen by the patient and by the physician must be independent and members of the American Health Lawyers Association. This means the chosen arbitrator cannot have a prior relationship with the parties. The reason the arbitrator must be a member of the American Health Lawyers Association is that members of the American Health Lawyers Association are experts in health care and understand the complexities of health law.
 - The cost for arbitration is no longer shared equally. New cost structure indicated below:
 - a) The patient (or patient's representative) is responsible for his/her own attorney, arbitrator and related expenses.
 - b) The physician is responsible for his/her own attorney, arbitrator and related expenses.
 - c) Women's Care Florida is responsible for the arbitration facility fees, court reporter, and other costs associated with the binding arbitration location.
 - d) The patient (or patient's representative) and the physician will share the cost of the third arbitrator.
 - Addition of specific terms for appeal, *"any party may, within 15 days from a decision of an arbitration panel, file a written request for reconsideration. Any such request for reconsideration shall be based upon (i) a claim that the panel failed to properly apply the law or applicable rules of evidence or (ii) that the procedures specified in this Agreement or Fla. Stat. §§ 682.01, et seq. were not followed. A claim that the panel was incorrect as to the facts, or gave undue weight to certain evidence will not be a basis for a request for reconsideration."*
 - Addition of specific terms related to accrual of interest on final award amounts, *"Except as otherwise provided by law, interest shall only accrue after an award by the arbitration panel. Post-decision interest shall be computed in a manner consistent with other civil claims. The provisions of Fla. Stat. § 768.81 regarding comparative fault shall apply."*
- 4) **How do these updates to the binding arbitration agreement benefit me as the patient?**
 - These changes may decrease the patient's arbitrations costs when compared to the previous arbitration structure. These changes will also ensure an independent arbitration panel who are knowledgeable in health law.

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