

**DISTRICT OF COLUMBIA**  
**OFFICIAL CODE**

**TITLE 16.**  
**PARTICULAR ACTIONS, PROCEEDINGS**  
**AND MATTERS.**

**CHAPTER 28.**  
**MEDICAL MALPRACTICE.**

**2001 Edition**

**DISTRICT OF COLUMBIA OFFICIAL CODE**  
**CHAPTER 28. MEDICAL MALPRACTICE.**

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# CHAPTER 28. MEDICAL MALPRACTICE.

## SUBCHAPTER I. GENERALLY.

### § 16-2801. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Court" means the Superior Court of the District of Columbia.

(2) "Healthcare provider" means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long-term care facility, behavior health residential treatment facility, health clinic, birth center, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

Law 16-263, the "Medical Malpractice Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-334, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-619 and transmitted to both Houses of Congress for its review. D.C. Law 16-263 became effective on March 14, 2007.

### § 16-2802. NOTICE OF INTENTION TO FILE SUIT.

(a) Any person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action. Notice may be given by service on an intended defendant at his or her last known address registered with the appropriate licensing authority. Upon a showing of a good faith effort to give the required notice, the court may excuse the failure to give notice within the time prescribed.

(b) The notice required in subsection (a) of this section shall include sufficient information to put the defendant on notice of the legal basis for the claim and the type and extent of the loss sustained, including information regarding the injuries suffered. Nothing herein shall preclude the person giving notice from adding additional theories of liability based upon information obtained in court-conducted discovery or adding injuries or loss which become known at a later time.

(c) A legal action alleging medical malpractice shall not be commenced in the court unless the requirements of this section have been satisfied.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

#### *HISTORICAL AND STATUTORY NOTES*

##### *Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

### § 16-2803. EXTENSION OF STATUTE OF LIMITATIONS.

If the notice required under § 16-2802 is served within 90 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the date of the

service of the notice.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**§ 16-2804. UNKNOWN DEFENDANT OR UNLICENSED DEFENDANT.**

(a) Section 16-2802 shall not apply to:

- (1) Any intended defendant whose name is unknown or who was not licensed at the time of the alleged occurrence or is unlicensed at the time notice is given;
- (2) Any claim that is unknown to the person at the time of filing his or her notice; or
- (3) Any intended defendant who is identified in the notice by a misnomer.

(b) Nothing indicated herein shall prevent the court from waiving the requirements of § 16-2802 upon a showing of good faith effort to comply or if the interests of justice dictate.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**SUBCHAPTER II. MEDIATION.**

**§ 16-2821. REQUIREMENT FOR MEDIATION.**

After an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The mediation schedule shall be included in the scheduling conference order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**§ 16-2822. MEDIATOR COSTS.**

Unless otherwise agreed by the parties, the costs of mediation, if any, shall be equally shared by the parties.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807; Mar. 25, 2009, D.C. Law 17-353, §§ 158(b), 257, 56 DCR 1117.)

*HISTORICAL AND STATUTORY NOTES*

*Effect of Amendments*

D.C. Law 17-353 validated a previously made technical correction in the section designation.

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

For Law 17-353, see notes following § 16-571.01.

**§ 16-2823. MEDIATORS.**

(a) The court shall assign the parties to court-provided mediation and provide a roster of medical

malpractice mediators from which the parties may hire an eligible medical malpractice mediator. In the alternative, all parties can agree to hire another individual outside the roster. To be eligible for inclusion in the roster of medical malpractice mediators, an individual shall be a judge or lawyer with at least 10 years of significant experience in medical malpractice litigation.

(b) If the parties cannot agree on the selection of a mediator, the court shall appoint one.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**§ 16-2824. ATTENDANCE AT MEDIATION SESSION.**

(a) For the purposes of this section, the term "a representative with settlement authority" means an individual with control of the financial settlement resources for the case and the authority to pledge those resources to settle the case on behalf of a party.

(b) All parties shall personally attend mediation sessions.

(c) If a party is not an individual, a representative with settlement authority for the party shall attend the mediation session.

(d) In cases involving an insurance company, a representative of the company with settlement authority shall attend the mediation session.

(e) Attorneys representing each party with primary responsibility for the case shall attend the mediation session.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**§ 16-2825. MEDIATION STATEMENTS.**

(a) Each party shall submit a confidential mediation statement to the mediator no later than 10 days prior to the initial mediation session. The parties shall not send copies of the mediation statement to the clerk, the assigned judge, or the other parties.

(b) Unless not already stated in the complaint and answer, the mediation statement shall:

(1) Include a brief summary of facts;

(2) Identify the issues of law and fact in dispute and summarize the party's position on those issues;

(3) Discuss whether there are issues of law or fact the early resolution of which could facilitate early settlement or narrow the scope of the dispute;

(4) Identify the attorney who will represent the party at the mediation session and the person with settlement authority who will attend the mediation session;

(5) Include any documents or materials relevant to the case which may assist the mediator and advance the purposes of the mediation session; and

(6) Present any other matters that may assist the mediator and facilitate the mediation.

(c) Mediation statements are intended solely to facilitate the mediation and shall not be filed with the court.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**§ 16-2826. MEDIATOR'S REPORT.**

A mediator's report shall be filed with the court no later than 10 days after the mediation has terminated, informing the court regarding:

(1) Attendance;

(2) Whether a settlement was reached; or

(3) If a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**§ 16-2827. CONFIDENTIALITY.**

(a) The mediation session shall be confidential. All proceedings at the mediation, including any statement made by any party, attorney, or other participant, shall be privileged and shall not be construed as an admission against interest. Any statement at such proceedings shall not be used in court in connection with the case or any other litigation. A party shall not be bound by anything said or done at the mediation unless a settlement is reached.

(b) A mediator shall not be compelled to provide evidence of a mediation communication in any subsequent trial.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.

**SUBCHAPTER III. EVIDENCE.**

**§ 16-2841. INADMISSIBILITY OF BENEVOLENT GESTURES.**

For the purpose of any civil action or administrative proceeding alleging medical malpractice against a healthcare provider, an expression of sympathy or regret made in writing, orally, or by conduct made by or on behalf of the healthcare provider to a victim of the alleged medical malpractice, any member of the victim's family, or any individual who claims damages by or through that victim, is inadmissible as an admission of liability. Nothing herein shall preclude the court from permitting the introduction of an admission of liability into evidence.

(Mar. 14, 2007, D.C. Law 16-263, § 302, 54 DCR 807.)

*HISTORICAL AND STATUTORY NOTES*

*Legislative History of Laws*

For Law 16-263, see notes following § 16-2801.