



Ohio Revised Code

Section 2323.42 Motion and hearing to determine good faith of claim.

Effective: April 11, 2003

Legislation: Senate Bill 281 - 124th General Assembly

(A) Upon the motion of any defendant in a civil action based upon a medical claim, dental claim, optometric claim, or chiropractic claim, the court shall conduct a hearing regarding the existence or nonexistence of a reasonable good faith basis upon which the particular claim is asserted against the moving defendant. The defendant shall file the motion not earlier than the close of discovery in the action and not later than thirty days after the court or jury renders any verdict or award in the action. After the motion is filed, the plaintiff shall have not less than fourteen days to respond to the motion. Upon good cause shown by the plaintiff, the court shall grant an extension of the time for the plaintiff to respond as necessary to obtain evidence demonstrating the existence of a reasonable good faith basis for the claim.

(B) At the request of any party to the good faith motion described in division (A) of this section, the court shall order the motion to be heard at an oral hearing and shall consider all evidence and arguments submitted by the parties. In determining whether a plaintiff has a reasonable good faith basis upon which to assert the claim in question against the moving defendant, the court shall take into consideration, in addition to the facts of the underlying claim, whether the plaintiff did any of the following:

- (1) Obtained a reasonably timely review of the merits of the particular claim by a qualified medical, dental, optometric, or chiropractic expert, as appropriate;
- (2) Reasonably relied upon the results of that review in supporting the assertion of the particular claim;
- (3) Had an opportunity to conduct a pre-suit investigation or was afforded by the defendant full and timely discovery during litigation;
- (4) Reasonably relied upon evidence discovered during the course of litigation in support of the assertion of the claim in question;



(5) Took appropriate and reasonable steps to timely dismiss any defendant on behalf of whom it was alleged or determined that no reasonable good faith basis existed for continued assertion of the claim in question.

(C) If the court determines that there was no reasonable good faith basis upon which the plaintiff asserted the claim in question against the moving defendant or that, at some point during the litigation, the plaintiff lacked a good faith basis for continuing to assert that claim, the court shall award all of the following in favor of the moving defendant:

(1) All court costs incurred by the moving defendant;

(2) Reasonable attorneys' fees incurred by the moving defendant in defense of the claim after the time that the court determines that no reasonable good faith basis existed upon which to assert or continue to assert the claim;

(3) Reasonable attorneys' fees incurred in support of the good faith motion.

(D) Prior to filing a good faith motion as described in division (A) of this section, any defendant that intends to file that type of motion shall serve a "notice of demand for dismissal and intention to file a good faith motion." If, within fourteen days of service of that notice, the plaintiff dismisses the defendant from the action, the defendant after the dismissal shall be precluded from filing a good faith motion as to any attorneys' fees and other costs subsequent to the dismissal.

(E) As used in this section, "medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.