

## FAQ – Frequently Asked Questions

You feel that you have been incorrectly treated by your doctor and you now wish to approach the Norddeutsche Schlichtungsstelle [Arbitration Board for North Germany].

The following questions and answers will help you.

### 1. For which matters are arbitration proceedings suitable?

Arbitration proceedings examine accusations of incorrect medical treatment and associated compensation claims, out of court. As well as accusations of incorrect treatment, the Norddeutsche Schlichtungsstelle also investigates complaints about lack of information.

### 2. Is the Norddeutsche Schlichtungsstelle appropriate for my concern?

The arbitration board is responsible if the medical treatment or nursing care for which a doctor was responsible was provided in the federal states Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg-Vorpommern, Lower Saxony, Saarland, Saxony-Anhalt, Schleswig-Holstein or Thüringen.

You can also get in touch with us if some of your treatment was in the above-mentioned federal states and some of it was in other federal states. We will then find a solution for you so that you do not have to make separate applications to different arbitration boards.

### 3. What costs will you incur as a patient?

Arbitration proceedings are free for you as a patient.

If you instruct a lawyer, you are responsible for the costs of the lawyer.

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The fee for the expert witness is paid by the insurer of the doctor and/or owner of the hospital.

#### 4. How long do arbitration proceedings last?

You should expect proceedings to last for around 15 months. However, they can last for a considerably longer or shorter time.

Duration depends on the complexity of the facts and circumstances, when the parties to the proceedings reach an agreement and on how long it takes to draw up the expert report. We have very little control over these factors.

Proceedings will inevitably take longer if claims against several doctors or hospitals need to be investigated and/or several expert reports need to be obtained.

#### 5. Which matters are arbitration proceedings not suitable for?

Arbitration proceedings are not suitable if you

- Have a complaint about a medical bill
- Have a complaint about dental/orthodontic treatment (please contact the dentists' association in your federal state)
- Do not agree with the expert's report in social court proceedings
- Have problems with your health insurance fund
- Want to take criminal proceedings or
- Want to complain about a doctor because you feel that you have not been treated with humanity.

#### 6. When are arbitration proceedings no longer possible?

Arbitration proceedings are no longer possible

- If civil action is already being brought regarding the same matter
- If a civil court has already made a final decision about the matter
- If a settlement regarding the matter has already been reached
- If an investigation or criminal proceedings are being conducted concerning the same matter. You can request arbitration proceedings after conclusion of the above proceedings;
- If the alleged error in treatment was made more than 10 years before the time the request was made, regardless of the time at which you or your legal representative became aware of it
- If one of the parties to the proceedings does not agree with the

arbitration proceedings or has withdrawn their agreement.

## 7. Who is entitled to make a request to the arbitration board?

All parties to the proceedings (patient, doctor providing treatment, insurance company of the doctor providing treatment) can make the request.

## 8. Who is involved in the arbitration proceedings?

The parties to the proceedings can be:

- You as a patient, if you think that there has been an error in treatment, or an heir
- The doctor against whom the complaint is being made or the company (for example, medical centre, hospital or nursing facility) for which the doctor worked
- The liability insurer of the doctor or of the company for which the doctor worked

If several doctors / hospitals are involved, proceedings can also be taken with individual doctors / hospitals.

All parties to the proceedings can also appoint a representative in the arbitration proceedings, for example, you, as a patient, can be represented by a legal representative or lawyer.

Authorisation must be presented for representation by a lawyer or other, freely chosen representative.

You must pay the costs for the lawyer.

## 9. Can an heir request arbitration proceedings?

Yes. If there are several heirs, an individual heir can also make a request, independently of the other heirs. We normally require proof in the form of a certificate of inheritance or a will. If you have renounced the inheritance, you can no longer request arbitration proceedings.

## 10. If I am an heir, do I need a certificate of inheritance?

A certificate of inheritance is not always essential for arbitration

proceedings. However, it can be useful for speeding up and conducting the proceedings. The insurance company/doctor/insurance can request presentation of a certificate of inheritance. See also question 7 (link).

## 11. Do the other parties have to agree to the proceedings?

Yes, because participation in arbitration proceedings is voluntary for all parties.

The arbitration board cannot take action if a party to the proceedings withdraws or refuses to give their agreement. Agreement may be withdrawn at any time.

You can then bring proceedings before court, i.e. bring an action before the civil court.

If you have statutory health insurance, you can also obtain an expert's report from the Medizinische Dienst der Krankenkassen (MDK), through your statutory health insurance fund.

## 12. Who obtains the necessary consents from the other parties to the proceedings?

We will ask for any outstanding declarations of consent from the other parties to the proceedings as soon as you have sent us the complete request.

You will be informed as soon as all procedural requirements have been met.

## 13. How do I make a request?

A written description of the facts and circumstances (who treated me, where I was treated, which illness I had) and your address are enough to begin with.

All of the required forms will then be sent to you.

The process will be even quicker if

- You complete the application online,
- Print it out (it is not possible to save it on your computer) and
- Send it by post to the Schlichtungsstelle, Hans-Böckler-Allee 3,

30173 Hanover.

#### 14. How do arbitration proceedings work?

You, as the patient, complete the questionnaire and authorisation to release medical records and describe the course of treatment where you suspect that the error was made, giving dates as accurately as possible.

We request agreement to the arbitration proceedings from the doctor or hospital owner concerned and from the liability insurer of the doctor or hospital owner.

We begin with fact-finding measures and obtain all medical records, including those from doctors who provided treatment before and afterwards.

We formulate a request for an expert's report, with the questions to be clarified, for an external expert, if we have been instructed to do so.

We send the list of questions to all parties to the proceedings and name the designated expert.

The parties to the proceedings have the opportunity to make proposals for changes and additions to the list of questions and the expert.

We instruct the expert 4 weeks after sending the draft. We plan in around three months for drawing up of the expert's report. However, this period can be considerably shorter or longer. We have limited control over this.

We send the expert's report to the parties to the proceedings and give them the opportunity to state their view on it within 4 weeks.

We explain why claims are considered to be reasonable or unfounded, from a medical or legal point of view, in the final decision of the arbitration board.

The parties to the proceedings can raise objections to this decision within one month, if new facts have arisen.

The time limit for stating a view or raising objections can be extended by telephone or in writing.

#### 15. Who decides on my case?

Each case is decided on by at least one doctor and a lawyer from the

arbitration board and is supervised by an expert.

16. Who obtains the necessary documents relating to treatment?

We request medical records from the doctors and/or hospitals concerned.

To enable us to do this, we need you to give the full names of the doctors who treated you before and after, in particular your general practitioner.

We also need signed authorisation to release medical records from you. You can exempt individual doctors from the authorisation to release medical records.

Doctors and/or hospitals are not allowed to send us medical records without authorisation to release medical records.

17. Can my health insurer / accident insurer see these documents?

No. Only the parties to the proceedings can look at the documents.

18. Is it possible to judge what the outcome will be when the request is made?

No. No estimations can be made after the description of facts and circumstances has been received. The issue of liability can only be assessed after all medical records have been checked from a medical and legal point of view.

19. What is the difference between arbitration proceedings and civil court proceedings?

There are some clear distinctions between these two proceedings:

- While participation in court proceedings is compulsory, arbitration proceedings are voluntary for the parties.
- The arbitration board itself carries out all of the inspections necessary for clarifying the facts and circumstances, in order to avoid putting patients, as medical laypeople, at a disadvantage.

The court, on the other hand, only takes into consideration the facts and circumstances presented.

- Unlike a court judgement, the decision of the arbitration board is non-binding. The parties to the proceedings have the option of bringing ordinary legal action after conclusion of the proceedings. They can therefore lodge a complaint with the civil court.

The doctor concerned can decide whether to take the risk of a complaint.

20. Are the proceedings conducted verbally or in writing?

Arbitration proceedings are essentially conducted in writing.

There is no option of questioning witnesses or patients. The court has this right.

However, the Commission can verbally discuss the facts and circumstances with the parties concerned. (§ 8 (4) Rules of Procedure)

21. Will I automatically be informed of the next stage in the proceedings?

We will keep you informed of the next stage in the proceedings.

22. Will I be informed about what the other parties to the proceedings have presented?

Yes. Documents from the other parties to the proceedings will be sent to you. You can then put forward your point of view.

23. Will I be given advice on medical or legal issues?

We clarify medical and legal issues that arise and decide whether and to which extent we consider claims for compensation to be justified. The decision will be based on detailed medical and legal reasons.

This decision is based on up-to-date medical documentation. Evidence cannot be heard. We cannot examine verbal discussions between you, as a patient, and your doctor.

No individual advice will be given over and above our decision, e.g.

which step should be taken next. For legal matters, this is the responsibility of a lawyer, according to the law. You must pay the costs for legal advice and representation.

For medical matters, you should seek advice from a doctor that you trust.

24. Can I have any influence on the questions posed to the expert and can I refuse an expert?

Yes. The questions that will be asked of the expert will be sent to you in advance and you can make suggestions for changes or additions to the questions.

You can also comment on the proposed expert.

25. Can I object to the expert's report?

Yes. After we receive the expert's report, it will first be sent to the parties to the proceedings. All parties to the proceedings have the chance to make a statement within 4 weeks.

The time limit for making a statement can be extended by telephone or in writing.

26. Is it possible for the arbitration board to disagree with the findings of the expert's report?

Yes. Each expert's report received is inspected by at least one medical member and one lawyer from our arbitration board. This can result in deviation from the findings of the expert's report on medical and/or legal grounds. Detailed justification of any deviation will be provided.

27. Is the final decision of the arbitration board binding?

No, our decision is not binding for the parties to the proceedings.

However, it can be used before a court by all parties to the proceedings.

28. I do not agree with the decision of the board of arbitration.  
What options do I have now?

The arbitration proceedings are concluded when we make our decision about the claims made.

You can only raise objections to our decision within one month, if new facts have come to light that were not known when the decision was made and that were therefore not in the documentation.

New facts are, for example, reports of subsequent operations and other treatments. Facts do not constitute legal opinion.

The time limit for raising objections can be extended by telephone or in writing.

You still have the option of recourse to legal action after conclusion of the proceedings.

29. What options do I have following conclusion of the arbitration proceedings?

Our decision is not binding for the parties to the proceedings.

The parties to the proceedings can reach a settlement, regardless of our decision.

Recourse to legal channels is also possible, i.e. bringing proceedings before the civil court.

30. When do claims resulting from incorrect treatment become time-barred?

The limitation period of 3 years starts at the end of the year in which you found out about the possible incorrect treatment and found out who is liable to pay compensation.

Here is an example to help you understand:

You find out in May 2011 that revision surgery is required because of a mistake in the first operation in February 2008. The three-year limitation period therefore begins on 01/01/2012. Claims become time-barred on 01/01/2015.

### 31. What influence do arbitration proceedings have on when claims made become time-barred?

Your claims cannot become time-barred during arbitration proceedings if they have not already become time-barred.

The limitation period is essentially restricted from the time the arbitration board receives the full request. The full application documents include the completed and signed application form and authorisation to release medical records (for sample forms see webpage, 'Make request for arbitration'); the application cannot be made to the parties concerned without these documents. Restriction means that the limitation period that is already in progress stops.

Arbitration proceedings are terminated by the definitive decision or by notification that arbitration proceedings are not being conducted.

According to the law (§ 204 Civil Code), the remaining limitation period will continue to run after a further six months have passed.

If there is a risk that your claim will become time-barred within a short time, you should definitely seek legal advice.

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