



The Not-So-Fine Points on Kaiser Arbitration

By Vanessa Raven, Esq.

So, you're dealing with a Kaiser Permanente case and find yourself stuck in arbitration. Welcome to the club! Kaiser's unique arbitration system can be a bit of a labyrinth, but don't worry – we've got you covered. Unlike traditional court litigation, this system is supposed to streamline dispute resolution, but it comes with its own set of challenges, potential biases, and complexities.

Go read Dan Hodes and Jacob Brender's articles on the Fine Points of Kaiser Arbitrations if you wanted directed strategic advice. This article is more of a general guide into the Kaiser arbitration process.

UNDERSTANDING THE KAISER ARBITRATION SYSTEM

At the core of the Kaiser arbitration system is the arbitration agreement signed by patients upon enrolling in Kaiser Permanente. This agreement mandates that any disputes, including medical malpractice claims, be settled through arbitration

rather than court proceedings. Arbitration is a form of alternative dispute resolution where a neutral third party, known as an arbitrator, makes binding decisions on the case. Here's a detailed breakdown of the Kaiser arbitration system and its key features:

The Arbitration Agreement: When patients sign up for Kaiser Permanente, they agree to arbitrate disputes rather than pursue litigation in court. This agreement is legally binding and is a condition of enrollment. Understanding this agreement is crucial because it dictates how and where disputes will be resolved. While this agreement can seem daunting, it is a standard part of the enrollment process for Kaiser members.

Role of the Office of the Independent Administrator (OIA): The OIA oversees the arbitration process to ensure that it is fair and impartial. However, it's important to note that Kaiser Permanente completely funds the OIA, which

can raise questions about true independence. The OIA's role includes managing the appointment of arbitrators, setting deadlines, and enforcing the rules of arbitration. Their objective is to facilitate a smooth arbitration process and ensure that all parties adhere to the established guidelines. But the fact that Kaiser funds the OIA can lead to concerns about potential biases.

Potential Disadvantages and Biases: The arbitration process, while streamlined, has been criticized for potential biases and disadvantages to claimants. For instance, arbitrators might have prior engagements with Kaiser, leading to perceived or actual conflicts of interest. Since Kaiser is a common player in these arbitrations, arbitrators may feel incentivized to rule in Kaiser's favor to avoid being stricken from future cases. This system potentially creates a dynamic where arbitrators, conscious of future appointments, might lean towards decisions that favor Kaiser.

Detailed Steps in the Kaiser Arbitration Process

Navigating the Kaiser arbitration system involves several key steps, each of which plays a crucial role in the outcome of the case. Here's a detailed examination of each step in the process:

Filing a Demand for Arbitration: The arbitration process begins when a claimant files a Demand for Arbitration. This document initiates the arbitration proceedings and sets forth the details of the claim, including the nature of the dispute, the parties involved, and the specific relief sought. The Demand for Arbitration must include a clear statement of the facts, a description of the alleged malpractice, and the damages or compensation being sought. It should also provide the legal basis for the claim, demonstrating why the arbitrator should rule in the claimant's favor. Once the Demand is filed, it must be served on Kaiser Permanente and submitted to the OIA. The OIA will then review the demand to ensure it meets the necessary requirements and formally initiate the arbitration process ([OIA Rule 13](#)).

Selecting an Arbitrator: After the Demand for Arbitration is filed, the OIA will provide a list of potential arbitrators. The parties involved in the dispute will have the opportunity to review the list, strike any arbitrators they do not agree with, and rank the remaining candidates.

THE RANK AND STRIKE PROCESS:

Receiving the List: Once the OIA acknowledges the Demand for Arbitration, they will generate a list of 12 potential arbitrators from their pool. These arbitrators are selected based on their availability, expertise, and neutrality.

Striking Arbitrators: Each party has the right to strike up to four arbitrators from the list without providing a reason. Striking an arbitrator means that the individual will not be considered for appointment. This allows both parties to eliminate any arbitrators they feel may be biased or unsuitable for their case.

STRATEGIES FOR STRIKING:

Ranking Arbitrators: After striking arbitrators, each party will rank the remaining candidates in order of preference. The OIA uses these rankings to appoint the arbitrator who will oversee the case.

STRATEGIES FOR RANKING:

Prioritizing Expertise: Rank arbitrators who have a strong background in medical malpractice and are known for their fair and impartial decisions higher on the list.

Balancing Preferences: Aim for a balanced approach by considering both the expertise and neutrality of the arbitrators. Avoid overly favoring one aspect at the expense of the other.

Communicating with the OIA: It may be helpful to discuss the rankings with the OIA if there are any specific concerns or preferences that need to be addressed.

OIA Appointment: The OIA will review the rankings and appoint the arbitrator based on the combined preferences of both parties. The arbitrator who receives the highest overall ranking and is not struck by either party will be selected.

Challenges to Arbitrator Appointment: If either party believes there is a significant issue with the appointed arbitrator, they may raise concerns with the OIA. Valid grounds for challenging the appointment include conflicts of interest, lack of impartiality, or new information that suggests the arbitrator may not be suitable.

Preliminary Hearing: The preliminary hearing is a crucial stage in the arbitration process where the arbitrator sets the timeline for the arbitration and addresses any initial procedural issues. The preliminary hearing establishes the schedule for the discovery process, sets deadlines for the submission of evidence, and addresses any preliminary motions or disputes between the parties. Both parties should be prepared to discuss the arbitration schedule, present any immediate concerns, and outline their case strategies. Effective preparation for the preliminary hearing can help set a positive tone for the rest of the arbitration process.

Discovery: Discovery is the phase where both parties exchange information and evidence relevant to the case. This stage is essential for building a strong case and involves several key activities:

Types of Discovery: Discovery can include the exchange of documents, depositions of witnesses, and interrogatories (written questions that must be

answered under oath). It is important for both sides to gather all relevant information and evidence during this phase ([OIA Rule 27](#)).

Strategies for Discovery: Effective discovery involves not only obtaining evidence but also managing deadlines and ensuring that all necessary information is disclosed. Parties should be strategic in their discovery requests and responses to avoid delays and ensure that all relevant information is considered.

Motions: During the arbitration process, parties may file various motions to address procedural or substantive issues. These motions can significantly impact the arbitration outcome and include:

Common Motions: Motions to compel discovery, motions for summary judgment, and motions to exclude certain evidence. These motions are used to address issues such as non-compliance with discovery requests, legal arguments that could resolve the case without a full hearing, or the admissibility of evidence ([OIA Rule 28](#)).

Filing Motions: Parties should carefully draft and support their motions with legal arguments and evidence. The arbitrator will review these motions and make decisions that can influence the course of the arbitration.

Final Hearing: The final hearing is the stage where both parties present their cases to the arbitrator. This is similar to a trial but typically less formal and more streamlined. The final hearing includes opening statements, presentation of evidence, witness testimony, and closing arguments. Each side will have the opportunity to present their case and challenge the opposing party's arguments. It is important to be well-organized and prepared for the final hearing. This involves presenting clear and compelling evidence, effectively questioning witnesses, and making persuasive arguments.

Post-Hearing Procedures: After the final hearing, the arbitrator will deliberate and issue a written decision. This decision is binding and final, with very limited grounds for appeal. The arbitrator will issue an award that includes their findings of fact, conclusions of law, and the final decision on the claim. While the decision is generally final, there are limited circumstances under which it can be challenged or appealed. Parties should be aware of these possibilities and seek legal advice if

they believe there are grounds for challenging the award ([OIA Rule 44](#)).

SEEKING PRIORITY OR PREFERENCE IN ARBITRATION

In some cases, claimants may seek priority or preference in the arbitration process due to extenuating circumstances such as severe health conditions or financial hardship. Seeking priority can expedite the arbitration process and lead to a quicker resolution. Here are some considerations and steps for seeking priority:

Eligibility for Priority: Not all cases qualify for priority handling. Claimants must demonstrate that their situation warrants expedited proceedings. This could include severe medical conditions that require urgent resolution, significant financial distress, or other compelling reasons ([OIA Rule 24](#)).

Filing a Request for Priority: To seek priority, claimants must file a formal request with the OIA, outlining the reasons for their request and providing supporting documentation. This may include medical records, financial statements, or other relevant evidence.

OIA Review and Decision: The OIA will review the request and determine whether the case qualifies for priority handling. If granted, the OIA will adjust the arbitration schedule accordingly, setting expedited deadlines and prioritizing the case in the arbitrator's docket.

TIPS FOR NAVIGATING THE KAISER ARBITRATION SYSTEM

Successfully navigating the Kaiser arbitration system requires careful planning and execution. Here are some expert tips and strategies to improve your chances of success:

Understand the Rules and Procedures: Thorough knowledge of the arbitration rules and procedures is essential for a successful outcome. Familiarize yourself with the OIA's rules, the arbitration agreement, and the arbitration process. Carefully review the OIA rules and procedures to understand the requirements for filing claims, conducting discovery, and preparing for hearings.

Prepare Thoroughly: Preparation is key to a successful arbitration outcome. This includes gathering evidence, preparing witnesses, and developing a clear case strategy. Collect all relevant medical records, expert opinions, and other documentation that supports your claim. Work with expert witnesses to ensure they can clearly explain

complex medical issues and support your case.

Communicate Effectively: Effective communication with the arbitrator and opposing party is crucial for a smooth arbitration process. Engage in respectful and professional communication to resolve issues and move the process forward. Keep detailed records of all communications, filings, and meetings to ensure that all aspects of the case are documented.

Leverage Expert Witnesses: Expert witnesses play a critical role in medical malpractice cases. Choose experts who can credibly and effectively support your claims. Ensure that your expert witnesses have relevant experience and credentials. Their testimony should be clear, objective, and focused on the medical issues at hand. Prepare your experts for cross-examination to address potential challenges from the opposing party.

Stay Organized and Manage Deadlines: The arbitration process is often fast-paced and requires strict adherence to deadlines. Develop a detailed schedule for all stages of the arbitration, including discovery, motions, and hearings. Keep track of all deadlines and ensure that all documents and responses are submitted on time.

CONCLUSION

Navigating the Kaiser arbitration system involves a detailed understanding of its rules and procedures, strategic preparation, and effective case management. By following the steps outlined in this guide and employing best practices for arbitration, claimants and legal professionals can navigate the system more effectively and work towards a favorable resolution of their disputes. The Kaiser arbitration process is designed to be efficient and fair, but success requires diligence,

preparation, and strategic thinking. Whether you are a patient seeking redress or an attorney representing a client, a thorough understanding of the arbitration system and careful attention to each stage of the process are essential for achieving a positive outcome. By leveraging the tips and strategies provided in this guide, you can confidently navigate the Kaiser arbitration system and advocate effectively for your rights and interests.



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