

## Pre-Hearing Process

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1

## Before the Rule 5.4 Preliminary Status Conference

- Emergency relief
- Initial case review by arbitrator
- Appointment to 3-member arbitration panel
- Timing of preliminary status conference

2



2

## Before the Rule 5.4 Preliminary Status Conference

- Rule 5.4: Once appointed, an arbitrator will schedule a status conference with the parties as quickly as possible
- Rule 5.4 agenda of preliminary status conference:
  - challenges to arbitrator's jurisdiction
  - discovery and motions
  - the hearing schedule and format
  - witnesses and exhibits
  - the treatment of confidential information and documents
  - the scope and form of the Award
  - any other matters that the arbitrator deems appropriate to consider
- Rule 5.4 Reimbursement Dispute Spreadsheet  
Spreadsheet<https://www.americanhealthlaw.org/getmedia/0e9b1ae2-1aa8-420a-852e-b48d6d065287/Reimbursement-Spreadsheet-Template.xlsx>

3



3

## Before the Rule 5.4 Preliminary Status Conference

- A sample term in Arbitration Agreement:

Any party seeking a monetary Award or to offset all or a portion of a monetary Award shall, not more than thirty days after the Preliminary Status Conference, serve upon opposing counsel an electronic spreadsheet listing the accounts that Party seeks recovery or offset for. If after receiving the spreadsheet, the opposing Party requires additional data fields on the spreadsheet in order to understand the information provided, the Parties shall meet and confer in good faith to discuss the request. Within thirty days of receiving a Party's spreadsheet or such longer time as may be fixed by the Arbitrator for good cause shown, the opposing Party shall serve a responsive electronic spreadsheet with a field or fields providing detailed responses on an account-by-account basis. Either Party may amend its spreadsheets or its responses to the opposing Party's spreadsheets at any time prior to the close of discovery. Thereafter, a Party may not add accounts in dispute unless the Arbitrator allows such addition based on a showing of good cause for the delay.

4



4

## Before the Rule 5.4 Preliminary Status Conference

- Logistical issues related to agenda for preliminary status conference and issuance of initial scheduling order
- Who attends the preliminary status conference
- Non-appearance by a party or party's delayed response
- Continuance(s) of preliminary status conference
- Pro se parties

5



5

## Scheduling Order Terms

- Scheduling evidentiary hearing
- Timing of evidentiary hearing
- Length of evidentiary hearing

The arbitration of each dispute involving less than One Million Dollars (\$1,000,000) in controversy shall be completed in no more than three full days. The arbitration of disputes of One Million Dollars (\$1,000,000) or more shall be conducted within such times as the Arbitrator allows, but it is the intention of the Parties that the hearing be as streamlined as possible to avoid cumulative and tangential evidence, and disruption of the Parties' business".

- Location of evidentiary hearing and virtual vs. in-person. See Rule 5.7: Hearing Location and Format

6



6

## Scheduling Order Terms

- Protective Orders
- Electronic case management system (ECM)
- Examples of ECM Term:

Communications. The parties shall not be required to upload documents and/or communications to AHLA's Electronic Case Management System ("ECM"). Instead, written communications and transmittal of documents between the parties and with the Arbitrator may be transmitted via email or other form of physical delivery, such as overnight delivery service or United State Postal Service-certified mail/return receipt requested, subject to neither party communicating ex parte with the Arbitrator.

Communications and Electronic Case Management System. Motions, pleadings, and all communications between the parties and the Arbitrator must be uploaded to AHLA's Electronic Case Management System ("ECM") case site for this Arbitration pursuant to AHLA Rule 1.2; provided, however, the parties and the Arbitrator may, as a courtesy, contemporaneously transmit these uploaded documents to the applicable recipients via email. Without otherwise modifying the foregoing, hearing exhibits and discovery documents need not be uploaded to ECM.

7



7

## Scheduling Order Terms (cont)

- Example of ECM Term:

Use of ECM. Pursuant to AHLA Rule 1.3, communications between the parties and/or with the Arbitrator, exchange of documents between the parties, and submission of documents to the Arbitrator will be deemed received by the receiving party/Arbitrator on the next business day after notice of such transmittal/upload is sent to the party/Arbitrator at the email address listed for the party/Arbitrator in AHLA's Electronic Case Management System ("ECM"); provided, however, **this does not preclude: (i) the parties or Arbitrator from communicating with one another via email; and (ii) documents being submitted to the Arbitrator and/or exchanged between the parties via email only to the extent, if any, that a document is too long to be uploaded to the ECM case site.**

8



8

## Scheduling Order Terms (cont.)

- Joinder of Other Necessary Parties

- Rule 5.12 (a) states: "If the parties to an existing claim, and any additional party or parties to be joined, so agree, the additional party or parties may be added to a claim."

- Rule 5.12(b) states: A party may move to join an additional party or parties to an existing claim. The moving party must serve the party or parties to be joined in accordance with Rule 2.2. A motion for joinder should be filed as soon as possible. The arbitrator should consider any disruption or potential unfairness that might result from an unnecessary delay in filing.

- Amendment of claims and filing of cross claims and counterclaims

- Interim relief

9



9

## Scheduling Order Terms (cont.)

- Bifurcation:

- types of bifurcation
  - benefits of bifurcation

- Sample bifurcation order:

**Either party may file a motion to bifurcate the issues of: (i) liability and (ii) damages ("Bifurcation Motion"), provided it is not filed before completion of all discovery, and it does not exceed five double-spaced typewritten 8½ x11 pages or use font smaller than 12-point type. An opposition to a Bifurcation Motion ("Bifurcation-Opposition") may be filed by the other party, provided the Bifurcation-Opposition is filed no later than seven days after filing of the Bifurcation Motion and it does not exceed five double-spaced typewritten 8½ x11 pages or use font smaller than 12-point type. The party which filed the Bifurcation Motion may file a reply to the Bifurcation-Opposition ("Bifurcation Reply"), provided the Bifurcation Reply is filed no later than seven days after filing of the Bifurcation-Opposition and it does not exceed three double-spaced typewritten 8½ x 11 pages or use font smaller than 12-point type.**

10



10

## Scheduling Order Terms (cont.)

- Dispositive motions:
- AHLA Rule 5.6 states, in pertinent part, as follows:  
“The arbitrator may allow the filing of, and rulings upon, a dispositive motion only if the arbitrator determines that the moving party has shown that, if the motion is successful, it is likely to dispose of or narrow the issues in the case....”
- Standard for Arbitrator to grant request to file dispositive motion
- Should permission of arbitrator be required as condition to party filing dispositive
- Procedure and timing for filing of dispositive motions

11



11

## Scheduling Order Terms (cont.)

- Sample dispositive motion terms:

Dispositive Motions. **Each party may file a dispositive motion (“Dispositive Motion”) without prior approval of the Arbitrator; provided however, any Dispositive Motion must be submitted by the party (the “Moving Party”) no later than [X Date].** Any opposition to a Dispositive Motion must be filed by the non-Moving Party no later than [Y Date] (“Opposition”). Any reply by the Moving Party to the non-Moving Party’s Opposition must be filed no later than [Z Date].

12



12

## Scheduling Order Terms (cont.)

- Additional sample dispositive motion term:

“Request for Permission to File Dispositive Motion. **Either party may file a motion which asks the Arbitrator for permission to file a dispositive motion (“Dispositive Motion Request”)**, provided the Dispositive Motion Request is filed no later than four calendar months before the scheduled first date of the Hearing. **An opposition to a Dispositive Motion Request (“DMR-Opposition”)** may be filed by the other party, provided the DMR-Opposition is filed no later than 10 days after its receipt of the Dispositive Motion Request. The Arbitrator shall rule upon any Dispositive Motion Request in accordance with AHLA Rule 5.6.

“Dispositive Motions. Subject to Arbitrator granting permission for a party to file a Dispositive Motion, any Dispositive Motion by the party must be filed no later than two calendar months prior to the scheduled first date of the Hearing.”

13



13

## Scheduling Order Terms (cont.)

- Non-Dispositive Motions

- AHLA Rule 5.6 states, in pertinent part, as follows:

“...The arbitrator may allow other motions, including motions in limine, which the arbitrator determines will add to the fair and efficient resolution of the case.”

- Should permission of Arbitrator be required as condition to party filing non-dispositive motion

Sample non-dispositive motion term:

Requests for permission to file a motion shall be submitted to the Arbitrator and not exceed \_\_\_\_\_ pages describing: the motion that the party wishes to submit; (ii) the factual and legal basis for the motion; and (iii) the reasons why the motion needs to be filed and how it will expedite resolution of the case or otherwise benefit the parties. The application must state that the requesting party has conferred in good faith with opposing party about the proposed motion prior to any making the request. The request shall state whether the relief sought by the motion has been agreed to by the parties or will be opposed. If no conference has occurred, the reason why must be stated. An opposing party may submit a responsive letter, not to exceed \_\_\_\_\_ pages within \_\_\_\_\_ days of its receipt of the request. [Optional: Notwithstanding the foregoing, non-dispositive motions may be made informally by email or joint telephone conference.]

14



14

## Scheduling Order Terms (cont.)

- Pre-Arbitration Briefs
- Listing of all hearing dates
- Cancellation policy of Arbitrator
- Due date of Award
- Artificial Intelligence
- Sample AI Term

Any party that intends to permit an AI provider to have access to any information obtained from the other party must first notify the other party and attempt to reach agreement as to how any confidential information will be protected from disclosure. If the parties cannot reach agreement, then they must submit the issue to the Arbitrator, and no information shall be provided to the AI provider without specific permission from the Arbitrator and under appropriate measures and order to protect confidential information.

15



15

## Scheduling Order Terms - Discovery

- Intended to promote “speed and efficiency” and, at all times, a “fair resolution of claim”. Rule 5.5 states:

“...to promote speed and efficiency, the arbitrator in his or her discretion, should permit discovery that is relevant and is necessary for fair and efficient resolution of a claim”.

- In sum, AHLA discovery is:
  - more limited than state or federal courts
  - more relaxed than the Civil Rules of Discovery
  - largely at the discretion of the Arbitrator
  - rarely found or addressed in the parties' Arbitration Agreement

- Necessary to address limits of discovery at preliminary status conference

16



16



## Scheduling Order Terms - Discovery

### Sample Discovery Term:

Exchange of Relevant Documents. **On or before X (date), each party shall provide to the other all relevant documents in its possession or control that are relevant to any dispute between any of the parties which is the subject of this proceeding,** including, without limitation, contracts, correspondence and emails, medical records, and other documents whether by handwriting, typewriting, printing, emails, text messages, photostatting and every other means of recording upon any tangible thing.

### More Detailed Sample Discovery Term:

Requests for Production of Documents. **Each party shall be allowed to serve on the other up to fifteen (15) Requests for Production of Documents, which shall be served and responded to in accordance with the guidelines set forth in the \_\_\_\_\_ (applicable state law).**

Interrogatories. **Each party shall be allowed to serve on the other: (i) one set of Form Interrogatories; and (ii) up to fifteen (15) Special Interrogatories, both of which shall be served and responded to in accordance with the guidelines set forth in the \_\_\_\_\_ (applicable state law).**

Requests for Admission. **Each party shall be allowed to serve on the other up to fifteen (15) Requests for Admission, which shall be served and responded to in accordance with the guidelines set forth in the \_\_\_\_\_ (applicable state law).**

Depositions. **Each party shall be allowed to take two non-expert depositions. No deposition shall exceed X hours. The time limit of X hours shall be calculated by counting the time spent on the record. Notices of taking depositions and objections thereto shall be in accordance with the guidelines set forth in the \_\_\_\_\_ (applicable state law).**

Discovery Cut-Off. **Discovery cut-off for nonexpert discovery shall be X days before the date on calendar for the first Hearing session.**

17



17

## Scheduling Order Terms - Discovery

### ● Additional Sample discovery term:

“

**Discovery. (Under applicable rules)....the arbitrators, at their discretion and upon good cause shown and consistent with the expedited nature of arbitration, may order depositions of, or the propounding of interrogatories to, such persons who may possess information determined by the arbitrators to be necessary to a determination of the matter. The parties propose the following discovery plan.**

(a) The parties will serve no more than \_\_\_\_\_ document requests to each other by \_\_\_\_\_, at \_\_\_\_\_, and will meet and confer regarding the served requests by \_\_\_\_\_; Subject to the meet and confer, the parties will produce the requested documents by \_\_\_\_\_.

### ● Additional Sample Discovery Term:

Requests for production documents should be confined to specific, relevant and material documents which the requesting Party reasonably believes to exist; conversely, generic non-specific requests for ‘any and all documents...’ and requests of similar import will be disfavored.

18



18

## Scheduling Order Terms – Discovery

- Exhibits
- Exchange of exhibits or exhibit lists shortly before commencement of evidentiary hearing. An example of this type of provision can specify:

“Not later than 14 calendar days before commencement of the Hearing, each party shall submit to the other and to the Arbitrator a list of exhibits which it will proffer for admission into evidence (its “Exhibit List”), which shall therein describe the corresponding Bates-stamp numbers for each of its Exhibits. Not later than 14 calendar days before commencement of the Hearing, each party shall submit to the other all schedules, summaries, diagrams, and charts which it intends to use at the Hearing, except to the extent previously provided to the other party and described in the immediately above-referenced Exhibit List. Each party shall bring sufficient copies of its exhibits, schedules, summaries, diagrams and charts to the Hearing for the opposing party, the Arbitrator, and the applicable witness.”

- Order to exclude admission of documents not exchanged or included in list of exhibits before evidentiary hearing and motions in limine
- Exchange of schedules, summaries, and charts before evidentiary hearing

19



19

## Scheduling Order Terms – Discovery

- Fact and expert witness discovery and disclosures
- Expert reports
- Expert testimony
- Number of expert witnesses

20



20

## Scheduling Order Terms - Discovery

- Fact witnesses

- Sample expert and fact witness Scheduling Order terms:

(b) The parties will meet and confer regarding the number of fact and expert depositions by \_\_\_\_\_.

(c) Each party will be limited to \_\_\_\_\_ fact depositions, of no more than 7 hours each. Additional depositions are available only upon a showing of good cause and at the discretion of the Arbitrators.

(d) Expert reports are due by \_\_\_\_\_, and expert rebuttal reports are due by \_\_\_\_\_. A decision will be made at a later time as to whether the expert reports themselves are admissible into evidence.

- Additional sample term:

Initial Exchange of Non-Expert Witness Lists. On or before \_\_\_\_\_, 202\_, each party shall provide the other with a list of all individuals whom it reasonably expects to call as non-expert witnesses at the Hearing, and concurrently provide the Arbitrator with a copy of same. Related thereto, each witness list shall include the full name of each witness and a short summary of anticipated testimony.

Initial Exchange of Expert Witness Lists. On or before \_\_\_\_\_, 202\_, each party shall disclose to the other and to the Arbitrator: (i) the name of any person whose expert opinion it reasonably expects to offer into evidence at the Hearing (hereinafter referred to as an "expert"), (ii) the address of each such expert, (iii) a brief narrative statement of the qualifications of each such expert, and (iv) a brief narrative statement of the general substance of the testimony that each such expert is expected to give.

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21



21

## Scheduling Order Terms - Discovery

- Sample fact and expert witness Scheduling Order terms:

Exchange of Final Non-Expert Witness Lists. On or before \_\_\_\_\_, 2022, each party shall disclose to the other party a final list of all individuals whom it reasonably expects to call as non-expert witnesses at the Hearing, and concurrently provide the Arbitrator with a copy of same. Related thereto, each witness list shall include the full name of each witness and a short summary of anticipated testimony.

Exchange of Final Expert Witness Lists. On or before \_\_\_\_\_, 202\_, each party shall disclose to the other party a final list of all individuals whom it reasonably expects to call to give expert testimony at the Hearing, and which sets forth (i) the name of each expert (hereinafter referred to as an "expert"), (ii) the address of each such expert, (iii) a brief narrative statement of the qualifications of each such expert, and (iv) a brief narrative statement of the general substance of the testimony that each such expert is expected to give.

22



22

## Scheduling Order Terms - Discovery

- Additional Sample fact and expert witness Scheduling Order terms:

“All parties seeking affirmative relief shall designate testifying experts and serve expert reports and the information required by \_\_\_\_\_, on or before \_\_\_\_\_, 202\_.

All parties responding to a claim for affirmative relief shall designate testifying experts and serve expert reports and the information required by \_\_\_\_\_ on or before \_\_\_\_\_, 202\_.

All parties seeking affirmative relief shall designate any rebuttal testifying experts and serve any rebuttal expert reports on or before \_\_\_\_\_, 202\_.”

23



23

## Scheduling Order Terms - Discovery

- Depositions:
  - AHLA Rules do not expressly prohibit, restrict, or limit depositions and number of depositions unlike some other Neutral Service rules
  - Discretion of Arbitrator to permit or deny any particular noticed deposition or depositions in general
  - Recommendations regarding depositions

24



24

## Scheduling Order Terms – Discovery

- Non-Party Third-Party Subpoenas:
- Authority of arbitrators to issue third-party subpoenas
- AHLA Rule 5.8 states: “To the extent authorized by law, an arbitrator may issue subpoenas for the attendance of witnesses and the production of documents.”
- State law respecting issuance of third-party subpoenas for discovery vs. testimony at evidentiary hearing
- AHLA-FAQ: “Rule 5.8 authorizes arbitrators to issue subpoenas “for the attendance of witnesses or the production of documents”. The [AHLA] Dispute Resolution Service interprets this authority as extending only to hearings, not to discovery.”

25



25

## Scheduling Order Terms - Discovery

- Appointment of Value or Appraise under New AHLA Rule 5.10:
- Allows Arbitrator to appoint a valuator or appraiser on the AHLA panel to provide an independent assessment of the value or range of value
- Rule applies when (value of goods, property, or services is in dispute
- Valuator or appraiser subject to examination and cross-examination

26



26

## Conclusory Comments and Suggestions for Arbitrators

- Conclusory comments and recommendations regarding discovery in general: Always keep in mind:
  - Whether and when to admit marginally relevant evidence
  - When is party in possession or control of documents
  - Party should not be compelled to create documents
  - Deadlines for all discovery
  - Spell out time allowed to respond to discovery requests
  - Scheduling Order must contain various cut-off dates
  - Be confident in your rulings and decision making

27



27

## Additional Pre-Hearing Topics

The new 2025 edition of the Rules has added several additional specific pre-hearing topics to Rule 5 (Pre-Hearing Process)

Inspection or Investigation. Rule 5.9

Consolidation. Rule 5.11

Confidentiality. Rule 5.13

28

5/9/2025



28

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### Our Mission

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