

**40-3409. Service upon board of governors required in action filed in state for injury or death arising out of act or omission of health care provider; time for filing; effect of failure to make service; notification of board of governors required in action filed outside of state; copy of petition involving certain health care providers forwarded to state board of healing arts; defense of action; costs; submission of certain information to board of healing arts.** (a) (1) In any action filed in this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider covered by the fund or any inactive health care provider covered by the fund, the plaintiff shall serve a copy of the petition upon the board of governors by registered mail within 10 days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the health care provider or the provider's insurer or the inactive health care provider or the provider's insurer be liable for such amount that, if such service had been made, would have been paid by the fund; (2) in any action filed outside of this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider or any inactive health care provider covered by the fund, the inactive health care provider, the self-insurer or the insurer of a health care provider or an inactive health care provider shall notify the board of governors, as soon as it is reasonably practicable, that such summons or petition has been filed. If the petition names as a defendant in the action a health care provider who is licensed, registered or certified by the state board of healing arts, the board of governors shall forward a copy of the petition to the state board of healing arts.

(b) Such action shall be defended by the insurer or the self-insurer, but if the board of governors believes it to be in the best interests of the fund, the board of governors may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund. The board of governors is authorized to employ independent counsel in any such action against an inactive health care provider covered by the fund.

(c) The attorneys of record and the board of governors shall submit to the state board of healing arts expert witness reports which have been made available to the opposing parties in the case and, upon the request of the state board of healing arts, any depositions, interrogatories, admissions or other relevant information concerning the case which has been made available to the opposing parties in the case shall also be submitted. The board of governors shall not be required to furnish information not in the possession of the board of governors. Any report or other information made available to the state board of healing arts in accordance with this subsection shall be subject to K.S.A. 65-2898a and amendments thereto. Reasonable expenses incurred in reproducing such reports or other information shall be paid by the state board of healing arts.

**History:** L. 1976, ch. 231, § 9; L. 1983, ch. 213, § 3; L. 1985, ch. 167, § 1; L. 1994, ch. 155, § 6; Jan. 1, 1995.