

1 AN ACT relating to medical review panels.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 216C IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *This chapter provides for the establishment of medical review panels to review*
6 *proposed malpractice complaints against health care providers covered by this chapter.*

7 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
8 READ AS FOLLOWS:

9 *As used in this chapter unless the context otherwise requires:*

10 *(1) "Cabinet" means the Cabinet for Health and Family Services;*

11 *(2) "Dependent claim" means any claim against an entity or person that owns,*
12 *controls, or manages any part of the operations of a health care provider, and*
13 *which arises out of or relates in any way, in whole or in part, to a claim of*
14 *malpractice or a malpractice-related claim;*

15 *(3) "Health care" means an act or treatment performed or furnished or that should*
16 *have been performed or furnished by a health care provider for, to, or on behalf*
17 *of a patient;*

18 *(4) "Health care provider" means any health facility as defined in KRS 216B.015, or*
19 *a provider, including natural persons, of health care or health services, including*
20 *but not limited to those licensed, certified, registered under, or subject to KRS*
21 *194A.700 to 194A.729 or KRS Chapter 310, 311, 311A, 311B, 312, 313, 314,*
22 *314A, 315, 319, 319A, 320, 327, 333, 334A, or 335 and the current and former*
23 *officers, directors, administrators, agents, or employees of any such persons or*
24 *entities acting within the course and scope of their office, employment, or agency;*

25 *(5) "Malpractice" means a tort based on or arising out of health care or professional*
26 *services that were provided, or that should have been provided, by a health care*
27 *provider to a patient;*

1 (6) "Malpractice-related claim" means a claim for a tort or a violation of a statute,
 2 administrative regulation, right, or rule based on or arising out of health care or
 3 professional services that were provided, or that should have been provided, by a
 4 health care provider to a patient;

5 (7) "Patient" means an individual who receives or should have received health care
 6 from a health care provider under a contract, express or implied, and includes a
 7 person having a claim of any kind, whether derivative or otherwise, related to
 8 alleged malpractice on the part of a health care provider. Derivative claims
 9 include the claim of a spouse, parent, guardian, trustee, child, relative, heir,
 10 beneficiary, estate of the patient, representative of the patient's estate, attorney, or
 11 any other representative of the patient, including claims for loss of services,
 12 wrongful death, loss of consortium, expenses, and other similar claims; and

13 (8) "Tort" means a legal wrong, breach of duty, or negligent or unlawful act or
 14 omission proximately causing injury or damage to another.

15 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
 16 READ AS FOLLOWS:

17 (1) All malpractice and malpractice-related claims against a health care provider,
 18 other than claims validly agreed for submission to a binding arbitration
 19 procedure shall be reviewed by a medical review panel. Such an action may not
 20 be commenced in a court in Kentucky before:

21 (a) The claimant's proposed complaint has been presented to a medical review
 22 panel established under this chapter; and

23 (b) An opinion is given by the panel. If the panel has not given its opinion
 24 within nine (9) months after the filing of the proposed complaint, the
 25 plaintiff may commence the action in court.

26 (2) Any action involving a dependent claim accruing after the effective date of this
 27 Act shall be immediately and automatically stayed until:

1 (a) The claimant's proposed complaint against the health care provider has
 2 been presented to a medical review panel established under this chapter and
 3 an opinion is given by the panel; or

4 (b) Nine (9) months after the filing of the proposed complaint if the panel has
 5 not given its opinion.

6 (3) Nothing in this chapter shall apply to a cause of action filed before the effective
 7 date of this Act.

8 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
 9 READ AS FOLLOWS:

10 (1) A claimant may commence an action in court for malpractice or for a
 11 malpractice-related claim against a health care provider without the presentation
 12 of the claim to a medical review panel if the claimant and all parties named as
 13 defendants in the action agree that the claim is not to be presented to a medical
 14 review panel. The agreement shall be in writing and shall be signed by each party
 15 or an authorized agent of the party.

16 (2) The claimant shall attach a copy of the agreement to the complaint filed with the
 17 court in which the action is commenced.

18 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) The filing of a proposed complaint tolls the applicable statute of limitations. The
 21 statute of limitations is tolled until ninety (90) days after the claimant has
 22 received the opinion of the medical review panel.

23 (2) A proposed complaint is considered filed when:

24 (a) A copy of the proposed complaint and the filing fees set forth in subsection
 25 (3) of this section are delivered or mailed by registered or certified mail to
 26 the cabinet; or

27 (b) An electronic copy of the proposed complaint and the filing fees set forth in

1 subsection (3) of this section are transmitted to the cabinet if the cabinet
2 establishes an electronic filing system.

3 (3) Each proposed complaint shall be accompanied by a filing fee, as established by
4 the cabinet.

5 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
6 READ AS FOLLOWS:

7 Within ten (10) days after receiving a proposed complaint and the filing fee, the cabinet
8 shall serve a copy of the proposed complaint by registered or certified mail on each
9 health care provider that has been named as a defendant in the proposed complaint.
10 The proposed complaint shall be served on a person authorized to receive summons
11 under the Kentucky Rules of Civil Procedure. Service shall be deemed complete for
12 purposes of this chapter upon receipt by the cabinet of the return mail receipt showing
13 delivery on the defendant.

14 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
15 READ AS FOLLOWS:

16 (1) A medical review panel shall consist of one (1) attorney and three (3) health care
17 providers eligible to serve under Section 9 of this Act.

18 (2) The attorney member of the medical review panel shall act as chairperson of the
19 panel and in an advisory capacity, but shall not vote.

20 (3) The chairperson of the medical review panel shall expedite the selection of the
21 other panel members, convene the panel, and expedite the panel's review of the
22 proposed complaint. The chairperson may establish a reasonable schedule for
23 submission of evidence to the medical review panel, but shall allow reasonable
24 time for the parties to make full and adequate presentation of related facts and
25 authorities in accordance with this chapter.

26 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
27 READ AS FOLLOWS:

1 *The chairperson of a medical review panel shall be selected in the following manner:*

2 *(1) Within ten (10) days after service of the complaint on all defendants as described*
3 *in Section 6 of this Act, the cabinet shall notify the parties to select a panel*
4 *chairperson by agreement. If no agreement on a panel chairperson can be*
5 *reached within twenty (20) days of service upon all parties, any party may request*
6 *the cabinet to select a list of potential chairpersons;*

7 *(2) Upon receipt of a twenty-five dollar (\$25) medical review panel chairperson*
8 *selection fee from the party making the request, the cabinet shall draw at random*
9 *a list of five (5) names of attorneys who:*

10 *(a) Are licensed to practice law in the Commonwealth of Kentucky;*

11 *(b) Applied to serve as the chairperson of a panel and are on the list of*
12 *attorneys maintained by the cabinet pursuant to subsection (8) of this*
13 *section; and*

14 *(c) Practice in the Supreme Court district in which the case would be filed or, if*
15 *five (5) attorneys cannot be drawn from that Supreme Court district, from*
16 *an adjacent Supreme Court district;*

17 *(3) The cabinet shall notify the parties, and the parties shall then strike names*
18 *alternately, with the plaintiff striking first until one (1) name remains. If there is*
19 *more than one (1) plaintiff or more than one (1) defendant, the plaintiffs shall*
20 *make their strikes collectively and the defendants shall make their strikes*
21 *collectively. The remaining attorney shall be the chairperson of the panel;*

22 *(4) After the striking, the party making the last strike shall notify the chairperson*
23 *and all other parties of the name of the chairperson;*

24 *(5) If a party does not strike a name within five (5) days after receiving notice from*
25 *the cabinet:*

26 *(a) The opposing party shall, in writing, request the cabinet to strike for the*
27 *nonresponsive party; and*

1 **(b) The cabinet shall draw at random a name to strike and shall strike that**
 2 **name;**

3 **(6) When one (1) name remains, the cabinet shall within five (5) days notify the**
 4 **chairperson and all other parties of the name of the chairperson;**

5 **(7) Within fifteen (15) days after being notified of being selected as chairperson, the**
 6 **chairperson shall:**

7 **(a) Send a written acknowledgment of appointment to the cabinet; or**

8 **(b) Show good cause for relief from serving as provided in Section 13 of this**
 9 **Act; and**

10 **(8) The cabinet shall maintain a list of attorneys who have applied to serve as**
 11 **chairperson of a medical review panel, as described in Section 7 of this Act. This**
 12 **list shall be used to select a chairperson if the parties do not agree on a**
 13 **chairperson.**

14 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 216C IS CREATED TO
 15 READ AS FOLLOWS:

16 **Those health care providers who are natural persons, whether in the teaching**
 17 **profession or otherwise, who hold a valid, active license to practice in his or her**
 18 **profession shall be eligible for selection as a member of the medical review panel.**

19 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 20 TO READ AS FOLLOWS:

21 **(1) Within five (5) days after acknowledging appointment of the selection of a panel**
 22 **chairperson, the panel chairperson shall provide the parties with two (2) lists of**
 23 **panelists who are eligible for panel membership under Section 9 of this Act. Each**
 24 **list shall contain three (3) names of prospective panelists eligible to serve. The**
 25 **lists shall, to the extent reasonably possible, include only prospective panelists**
 26 **from the professions and within the specialty fields, if any, of one (1) or more of**
 27 **the defendants, and shall, to the extent reasonably possible, include only**

1 prospective panelists who are licensed in the Commonwealth of Kentucky. The
 2 parties to the proposed complaint shall be permitted to propose to the panel
 3 chairperson the health care provider professions and related specialty fields from
 4 which the lists of panelists will be drawn.

5 (2) The plaintiff shall strike a name from each list, and the defendant shall strike a
 6 name from each list. If there is more than one (1) plaintiff or more than one (1)
 7 defendant, the plaintiffs shall make their strikes collectively and the defendants
 8 shall make their strikes collectively. The remaining names on each list shall serve
 9 as panel members. The two (2) selected panelists shall then select a third panel
 10 member who meets the criteria set forth in Section 9 of this Act and is from the
 11 profession and specialty field, if any, of one (1) or more of the defendants.

12 (3) If a party fails to make a strike within the time provided, the chairperson shall
 13 make the strike and notify all parties. Within fifteen (15) days after their
 14 selection, the panel members shall select the third member and notify the
 15 chairperson and the parties. If the panel members fail to make a selection, the
 16 chairperson shall make the selection and notify all parties.

17 (4) If there are multiple plaintiffs or defendants, only one (1) panel member shall be
 18 selected by the plaintiffs, collectively, and one (1) by the defendants, collectively.

19 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 20 TO READ AS FOLLOWS:

21 (1) Within ten (10) days after the selection of a panel member, written challenge may
 22 be made to the chairperson. Upon challenge, the chairperson shall determine if
 23 there is sufficient cause to dismiss the panel member for conflict or potential bias.
 24 If the challenged or dismissed panel member was selected through the striking
 25 process, the chairperson shall provide a new striking panel. The party whose
 26 appointment was challenged shall strike last, and the remaining member shall
 27 serve.

1 (2) If the challenged or dismissed panel member was selected by the other two (2)
 2 panel members or by the chairperson, the panel members or the chairperson who
 3 selected the challenged panel member shall make a new selection.

4 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 5 TO READ AS FOLLOWS:

6 When a medical review panel is formed, the chairperson shall, within five (5) days,
 7 notify the cabinet and the parties by registered or certified mail of the following:

8 (1) The names and addresses of the panel members; and

9 (2) The date on which the last member was selected.

10 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 11 TO READ AS FOLLOWS:

12 (1) A member of a medical review panel who is selected shall serve unless:

13 (a) The panel member is dismissed pursuant to a successful challenge as
 14 provided in Section 11 of this Act or removed pursuant to Section 15 of this
 15 Act;

16 (b) The parties by agreement excuse the panelist; or

17 (c) The panelist is excused as provided in this section for good cause shown.

18 (2) To show good cause for relief from serving, the attorney selected as chairperson
 19 of a medical review panel shall serve an affidavit upon the cabinet. The affidavit
 20 shall set out the facts showing that service would constitute an unreasonable
 21 burden or undue hardship. The cabinet may excuse the attorney from serving.
 22 The attorney shall notify all parties, who shall then select a new chairperson
 23 using the procedure set forth in Section 8 of this Act.

24 (3) To show good cause for relief from serving, a panel member who is not the
 25 chairperson of a medical review panel shall serve an affidavit upon the panel
 26 chairperson. The affidavit shall set out the facts showing that service would
 27 constitute an unreasonable burden or undue hardship. The chairperson may

1 excuse the member from serving and notify all parties. The excused panel
2 member shall be replaced using the procedure set forth in Section 11 of this Act
3 for dismissed panel members.

4 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
5 TO READ AS FOLLOWS:

6 A party, attorney, or panelist who fails to act as required by this chapter without good
7 cause shown is subject to appropriate sanctions upon application to a Circuit Court
8 that has jurisdiction over the subject matter.

9 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
10 TO READ AS FOLLOWS:

11 The secretary of the cabinet may remove the chairperson of the panel if the
12 chairperson is not fulfilling the duties imposed upon the chairperson by this chapter. If
13 the chairperson is removed, a new chairperson shall be selected in the manner set forth
14 in Section 8 of this Act.

15 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
16 TO READ AS FOLLOWS:

17 The chairperson may remove a member of the panel if the chairperson determines that
18 the member is not fulfilling the duties imposed upon the panel members by this
19 chapter. If a member is removed under this section, a new member shall be selected in
20 the manner provided in Section 11 of this Act for dismissed panel members.

21 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
22 TO READ AS FOLLOWS:

23 (1) The evidence to be considered by the medical review panel shall be submitted by
24 the respective parties in written or electronic form.

25 (2) The evidence may consist of nonprivileged medical records, X-rays, lab tests,
26 excerpts of treatises, depositions of witnesses including parties, and affidavits.

27 (3) Depositions of parties and witnesses may be taken with the approval of the

1 chairperson after the formation of the panel but before the evidence is submitted
2 to the panel. The approval of the chairperson shall not be unreasonably withheld.

3 (4) Upon request of any party, or upon request of any panel member, the chairperson
4 shall issue administrative subpoenas and subpoenas duces tecum in aid of the
5 taking of depositions and the production of documentary evidence for inspection
6 or copying, or both.

7 (5) The chairperson shall ensure that before the panel gives its opinion, each panel
8 member has the opportunity to review every item of evidence submitted by the
9 parties.

10 (6) The plaintiff's evidence shall be submitted to the medical review panel within
11 sixty (60) days after the chairperson has notified the parties of the formation of
12 the medical review panel as set forth in Section 12 of this Act.

13 (7) The defendants' evidence shall be submitted to the medical review panel within
14 forty-five (45) days after the receipt of the plaintiff's submission of evidence.

15 (8) If no submission is made by one (1) or more of the parties, the medical review
16 panel shall review the evidence submitted by the other parties and shall proceed
17 with rendering its opinion on the evidence submitted.

18 (9) The chairperson may extend the deadlines set forth in this section in the event of
19 extenuating circumstances, if requested by one (1) or more of the parties.

20 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
21 TO READ AS FOLLOWS:

22 (1) A party, a party's agent, a party's attorney, or a party's insurance carrier shall
23 not communicate with any member of the panel, except as authorized by law,
24 before the giving of the panel's opinion.

25 (2) (a) The panel has the right and duty to request all necessary and relevant
26 information.

27 (b) The panel may consult with medical authorities.

1 (c) The panel may examine reports of other health care providers necessary to
2 fully inform the panel regarding the issue to be decided.

3 (d) All parties shall have full access to any material submitted to the panel.

4 (e) The panel may conduct a hearing to question counsel or ask the parties to
5 answer specific questions.

6 (3) The chairperson of the panel shall advise the panel relative to any legal question
7 involved in the review proceeding and shall prepare the opinion of the panel.

8 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
9 TO READ AS FOLLOWS:

10 (1) The panel has the sole duty to express the panel's opinion as to whether or not
11 the evidence supports the conclusion that a defendant or defendants acted or
12 failed to act within the appropriate standards of care as charged in the complaint
13 and whether any such failure was a substantial factor in providing a negative
14 outcome for that patient.

15 (2) After reviewing all evidence, the panel shall, within thirty (30) days of receipt of
16 the defendants' evidence submitted under Section 17 of this Act, give as to each
17 defendant one (1) of the following opinions, which shall be in writing and signed
18 by the panelists:

19 (a) The evidence supports the conclusion that the specifically identified
20 defendant failed to comply with the appropriate standard of care as charged
21 in the complaint and the conduct was a substantial factor in producing a
22 negative outcome for the patient;

23 (b) The evidence supports the conclusion that the specifically identified
24 defendant failed to comply with the appropriate standard of care as charged
25 in the complaint, but the conduct was not a substantial factor in producing
26 a negative outcome for the patient; or

27 (c) The evidence does not support the conclusion that the specifically identified

1 defendant failed to meet the applicable standard of care as charged in the
2 complaint.

3 (3) In order to give the opinion of the panel in accordance with subsection (2) of this
4 section, two (2) or more of the members of the panel shall agree on the
5 conclusion.

6 (4) After the panel gives its opinion as to each defendant, the panel is dissolved and
7 shall take no further action.

8 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
9 TO READ AS FOLLOWS:

10 If the panel has not given its opinion within nine (9) months after the filing of the
11 proposed complaint, the plaintiff may commence the action in court. The panel shall
12 submit a report to the parties, stating the reasons for the delay, and may continue its
13 work to reach an opinion.

14 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
15 TO READ AS FOLLOWS:

16 (1) Upon motion, the trial court shall admit the panel's opinion into evidence as an
17 expert opinion, subject to cross-examination, upon a written finding that the
18 evidence would assist the trier of fact and otherwise comply with the Kentucky
19 Rules of Evidence.

20 (2) The opinion is not conclusive, and either party may call any member of the
21 medical review panel as a witness. If called as a witness, the panel member shall
22 appear and testify, but shall be entitled to reasonable compensation by the party
23 calling the witness.

24 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
25 TO READ AS FOLLOWS:

26 A panelist shall have absolute immunity for civil liability for all communications,
27 findings, opinions, and conclusions made in the course and scope of duties prescribed

1 by this chapter.

2 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
3 TO READ AS FOLLOWS:

4 (1) Each member of the medical review panel other than the chairperson is entitled
5 to be paid as follows:

6 (a) Up to three hundred fifty dollars (\$350) for all work performed as a member
7 of the panel exclusive of time involved if called as a witness to testify in
8 court; and

9 (b) Reasonable travel expenses.

10 (2) The chairperson of the panel is entitled to be paid as follows:

11 (a) At the rate of two hundred fifty dollars (\$250) per diem, not to exceed two
12 thousand dollars (\$2,000) per case; and

13 (b) Reasonable travel expenses.

14 (3) The chairperson shall keep an accurate record of the time and expenses of all the
15 members of the panel. The record shall be submitted to the parties for payment
16 with the panel's report.

17 (4) Fees of the panel, including travel expenses and other expenses of the review,
18 shall be paid by the party or parties in whose favor the opinion is written.

19 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
20 TO READ AS FOLLOWS:

21 The chairperson shall submit a copy of the panel's report by registered or certified mail
22 within five (5) days after the panel gives its opinion to:

23 (1) The cabinet; and

24 (2) All parties and the attorneys for the parties.

25 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
26 TO READ AS FOLLOWS:

27 (1) A court having jurisdiction over the subject matter and the parties to a proposed

1 complaint filed with the cabinet under this chapter may, upon the filing of a
 2 petition as set forth in Section 26 of this Act:

3 (a) Entertain motions to compel or limit discovery previously authorized by the
 4 chairperson of the medical review panel;

5 (b) Entertain motions to enforce or quash subpoenas issued by the chairperson
 6 of the medical review panel; and

7 (c) Entertain motions for sanctions pursuant to Section 14 of this Act.

8 (2) The court has jurisdiction to entertain a motion filed under this chapter only
 9 during that time after a proposed complaint is filed with the cabinet under this
 10 chapter but before the medical review panel gives the panel's written opinion.

11 (3) The failure of any party to move to compel or limit discovery under this chapter
 12 does not constitute the waiver of any affirmative defense or issue of law or fact.

13 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
 14 TO READ AS FOLLOWS:

15 (1) A party to a proceeding commenced under this chapter, the cabinet, or the
 16 chairperson of a medical review panel, if any, may invoke the jurisdiction of the
 17 court by paying the statutory filing fee to the clerk and filing a petition with a
 18 copy of the proposed complaint and motion with the clerk.

19 (2) The filing of a copy of the proposed complaint and motion with the clerk confers
 20 jurisdiction upon the court over the subject matter of the proceeding for the
 21 limited purposes stated in this chapter, including the assessment of costs or the
 22 allowance of expenses, including reasonable attorney's fees, or both.

23 (3) The moving party or the moving party's attorney shall cause as many summonses
 24 as are necessary to be issued by the clerk and served, together with a copy of the
 25 proposed complaint and a copy of the motion, and in accordance with the
 26 Kentucky Rules of Civil Procedure upon:

27 (a) The cabinet;

1 **(b) Each nonmoving party to the proceedings; and**

2 **(c) The chairperson of the medical review panel, if any, unless the cabinet or**
3 **the chairperson is the moving party.**

4 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
5 TO READ AS FOLLOWS:

6 **(1) Each nonmoving party to the proceeding, including the cabinet and the**
7 **chairperson of the medical review panel, if any, shall have a period of twenty (20)**
8 **days after service, or a period of twenty-three (23) days after service if service is**
9 **by mail, to appear and file and serve a written response to the motion, unless the**
10 **court, for cause shown, orders the period enlarged.**

11 **(2) The court shall order the clerk to serve a copy of the court's ruling on the motion**
12 **by ordinary mail on the cabinet, each party to the proceeding, and the**
13 **chairperson of the medical review panel, if any.**

14 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
15 TO READ AS FOLLOWS:

16 **Upon the filing of a copy of the proposed complaint and motion with the clerk of the**
17 **court, all further proceedings before the medical review panel shall be stayed**
18 **automatically until the court has entered a ruling on the motion.**

19 ➔SECTION 29. A NEW SECTION OF KRS CHAPTER 216C IS CREATED
20 TO READ AS FOLLOWS:

21 **The court may enforce its ruling on any motion filed under this chapter in accordance**
22 **with the Kentucky Rules of Civil Procedure, subject to any right of appeal otherwise**
23 **allowed by Kentucky law.**