

## ABOUT BINDING ARBITRATION

We are requesting that our patients agree to binding arbitration as a means to settle any disputes that may arise with Marianas Eye Institute (MEI). All references in this document to "Marianas Eye Institute" includes its staff, employees, independent staff doctors, and consultants.

Arbitration is generally explained as an alternative to a lawsuit leading to court proceedings which might arise out of a dispute or claim between parties. When parties enter into an arbitration agreement, the parties give up their rights to go to court and agree to resolve any claims or disputes by binding arbitration, instead of in court before a judge and/or jury. The grounds for vacating a decision resulting from arbitration is very limited. Binding arbitration is a somewhat less formal and technical than a court proceeding and may result in resolution of a claim or dispute more quickly than going to court.

MEI is requesting that our patients agree to binding arbitration for several reasons, including the rise in malpractice actions, the lack of medical malpractice insurance available in the CNMI, insurance premiums in the event that medical malpractice insurance does become available in the CNMI, court costs, and large jury awards in medical malpractice cases. MEI also believes that the arbitration is fair and more likely to be cost-effective for both parties.

In arbitration, the parties choose a neutral arbiter or panel of arbiters to decide the claim or dispute. Similar to the court process, the parties have an opportunity to conduct discovery, use fact witnesses and expert witnesses, file an arbitration brief, and decide whether not to be represented by an attorney during arbitration. The arbiter(s) will hold a hearing on the claim or dispute wherein each party has an opportunity to present their version of the facts and to present witnesses and evidence in support of their claim or in defense of a claim. The decision of the arbiter(s) is a final legal judgment and cannot be appealed. However, there are limited grounds to vacate an arbiter(s)'s award, including where an award is procured by corruption, fraud, or undue means; where there was corruption by an arbiter(s); where the arbiter exceeded their powers; or where a party's rights were substantially prejudiced by an arbiter(s)'s refusal to postpone a hearing for sufficient cause or failure to hear evidence material to the claim or dispute. For more detail on the procedure for binding arbitration with MEI, please see the enclosed *MEI Binding Arbitration Process* packet enclosed.

If you wish NOT to agree to BINDING ARBITRATION and do not wish to sign the enclosed MUTUAL BINDING ARBITRATION AGREEMENT, we will gladly refer you to another eye clinic in the CNMI or Guam.

If your needs today are an eye emergency, and you wish NOT to agree to BINDING ARBITRATION, we will gladly see you today and refer you to another eye clinic after today's visit for your future care. A doctor or staff member will interview you to determine if your case is an emergency.

**THIS DOCUMENT IS THE OPINION AND PRODUCT OF MEI. IT IS NOT LEGAL ADVICE. YOU ARE ENCOURAGED TO HAVE ALL MATERIALS REVIEWED BY YOUR ATTORNEY.**

## MUTUAL BINDING ARBITRATION AGREEMENT

- 1. Agreement to Arbitrate.** I agree that any claim or dispute, past, present, or future which may arise out of or in connection with the treatment and/or care rendered by Marianas Eye Institute (MEI), including staff, employees, independent staff doctors, and consultants of Marianas Eye Institute, who have agreed to arbitration as set forth herein, shall be determined by BINDING ARBITRATION, and not by a lawsuit or court process, except as provided in the MEI Binding Arbitration Process. I furthermore agree that claims and disputes as referenced in this Agreement includes alleged violation of any duty arising out of or related to care provided by Marianas Eye Institute at any location within the Commonwealth of the Northern Mariana Islands, including any claim for medical malpractice (that is, a claim that medical services were unnecessary or unauthorized or were improperly, negligently, or incompetently rendered). I agree that the result or judgement of the binding arbitration shall be LEGALLY BINDING, the same as a court judgement.
- 2. All Claims Shall be Arbitrated.** I agree that this Agreement shall bind all parties whose claims may arise out of or related to treatment or service provided by Marianas Eye Institute, including any spouse or heirs of the patient and any children, whether born or unborn, at the time of the occurrence giving rise to any claim. In the case of any pregnant mother, the term "patient" herein shall mean the mother and the mother's expected child or children.
- 3. Limited Access to Eye Doctors.** I understand that the CNMI has limited access to eye doctors. There may be times when there is no eye surgeon or optometrist available at Marianas Eye Institute or in the CNMI. This may result in interruption of care and poor outcomes. I agree that this is a reality of care in the CNMI.
- 4. Patient Responsibility.** I agree that the outcome of my care depends in part upon my keeping appointments, following treatment plans, and obtaining recommended diagnostic tests. If I miss an appointment, fail to follow a treatment plan, or fail to obtain a recommended diagnostic test, this may result in or contribute to a poor outcome in MEI's treatment of me.
- 5. Consideration.** I agree that except as set forth in the MEI Binding Arbitration Process, the decision of the panel of arbitrators shall be final and binding upon all parties. The parties' mutual promise to arbitrate differences, rather than litigate them before courts or other tribunals, provides adequate consideration for each other.
- 6. Enforceability of Agreement.** I agree that if I sign this Agreement, arbitration under this Agreement may be compelled and enforced according to this Agreement, the Federal Arbitration Act, the MEI Binding Arbitration Process, and CNMI case law.
- 7. Waiver of Right to Jury Trial.** I voluntarily and knowingly agree to **GIVE UP MY CONSTITUTIONAL RIGHT TO A JURY TRIAL** and accept the use of binding arbitration.
- 8. Procedure for Arbitration.** I agree that the procedures for arbitration are contained in the *MEI Binding Arbitration Process*, which I have had the opportunity to review. The process is started by a party serving a written demand for arbitration upon the other party within the applicable statute of limitations period.
- 9. Selection of Expert Witness.** I agree that if the claim or dispute to be arbitrated requires a medical expert witness, any medical expert witness used by either party must be a physician who practices in ophthalmology or optometry and who follows the code of ethics for his or her medical specialty society, specifically, the most recent code of ethics or advisory opinions of the American Academy of Ophthalmology for providing expert testimony.
- 10. Breach of Arbitration Agreement.** I agree that if after signing this agreement, I still seek a jury trial, or seek to challenge the validity of the terms of this agreement, I will reimburse Marianas Eye Institute for any attorney's fees and costs it incurs as a result of enforcing this agreement.
- 11. Opportunity to Seek Legal Counsel.** I agree that I have had the opportunity to seek legal counsel concerning this Agreement.
- 12. Right to Revoke within Thirty Days.** I understand that I have the right to revoke this Agreement in writing within thirty (30) calendar days of signing it. I understand that in order to validly revoke this Agreement, I must timely do so in writing and must serve a copy upon the other party. The thirty (30) calendar days shall be computed from the date the Agreement has been signed and executed by both parties unless the Agreement was signed in contemplation of the patient being hospitalized, in which case the agreement may be rescinded by written notice to the physician within thirty (30) calendar days after release or discharge from the hospital or other health care institution.

- 13. Entire Agreement.** This Agreement contains all of the promises, agreements, conditions, terms, understandings, warranties, and representations of the parties with respect to the transactions contemplated herein, and there are no other promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among them other than as set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to its subject matter.
- 14. Modification and Waiver.** No modification or waiver of any of the terms of this Agreement, including this provision, shall be valid unless in writing and signed by both parties. The failure of either party to insist upon performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent breach of this Agreement.
- 15. Severability.** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- 16. Governing Law.** This Agreement and all amendments, modifications, authorizations, or supplements to this Agreement and the rights, duties, obligations, and liabilities of the Parties under such document will be determined in accordance with the applicable provisions of the laws of the CNMI, without reference to its doctrines or principles of conflicts of laws.
- 17. Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which counterparts when taken together shall constitute but one and the same instrument. I furthermore agree that a copy of this agreement is valid in place of the original.
- 18. Retroactive Effect.** I intend this agreement to cover services rendered before the date it is Effective as of the date of first medical services. \_\_\_\_\_  
 Initials of Patient or Patient Representative's Initials

I agree that I have had time and opportunity to carefully read and consider this Agreement. I agree that I did NOT sign this form UNDER DURESS (meaning I was NOT somehow PRESSURED or FORCED to sign this form). I further agree that I am **NOT IMMEDIATELY IN NEED OF EMERGENCY CARE AND/OR UNDER IMMEDIATE STRESS.**

**THIS IS A LEGALLY BINDING AGREEMENT. I AGREE THAT BY SIGNING I AM ACCEPTING THE OFFER TO ARBITRATE AND THAT I HAVE READ AND I UNDERSTAND ALL OF THE ABOVE.**

\_\_\_\_\_  
 Patient's Name (printed)

\_\_\_\_\_  
 Patient's Date of Birth

\_\_\_\_\_  
 Patient or Patient Representative's Name (Signature)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 (If Representative, Print Name and Relationship to Patient)

------(For office use. Do not write below this line)-----

\_\_\_\_\_  
 MEI Representative's Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Print or Stamp Name of MEI Representative