



The Clinical Indemnity Scheme

The “Life - Cycle” of a Clinical Claim



What is a Clinical Claim

- A civil action against a hospital &/or clinical person
- Usually taken by the patient but can also be by family members or relatives
- Taken because alleged personal injury incurred during course of care and treatment
- A civil action is an action in Tort (civil wrong)
- Negligence (medical/clinical) is Tort



How does a claim begin?

- An incident occurs*
- Patient suffers an adverse event/injury
- Clinical Incident Report Form (CIRF) completed
- Clinical Risk Manager / Claims Co-ordinator informed
- Incident input onto StarsWeb system
- Clinical Indemnity Scheme/State Claims Agency informed

***Clinical Incident**

An event arising as consequence of provision of, or failure to provide, clinical care that results in injury, disease, disability, death or prolonged hospital stay for the patient.



How will you know there's a claim?

- Aware of the incident as it occurs & you have reported it
- Informed by your consultant
- Contacted by the Clinical Risk Manager/Claims Co-ordinator
- Contacted directly by the Clinical Indemnity Scheme
- Personally receive a letter of claim from the patient's solicitor *

* This is now uncommon, as Enterprise Liability introduced



Clinical Incident Reporting

- Reporting of adverse clinical incident very important
- Culture of incident reporting much improved over the last 10 years
- Clinical Risk Management of central importance in reducing hospital related injury and fatalities
- Earlier reporting of adverse incidents vital to early involvement of the Clinical Indemnity Scheme
- Option of an early claims investigation, if needed
- Information and memory of the events still fresh



Remember!

*The reporting of an adverse clinical incident
or the fact that a patient has suffered an
injury/poor outcome does not presume
fault, sub-optimal care or negligence*



What do you do?

- If a claim is made, do not be alarmed
- Notify your Claims Co-ordinator
- Review your involvement with reference to the Medical Records
- Prepare a statement/report for Clinical Indemnity Scheme
(“Privileged - Prepared in Contemplation of Litigation at the request of CIS”)
- Stay in contact with the CIS and notify any changes in your contact details



Statement format

- Name
- Address
- Qualifications and when obtained
- Employment status at the time
- Previous relevant experience
- Set out in chronological order your involvement in the patient's treatment
- Any other comments (you feel are relevant)
- Signature and date



Importance of statements

- Provide first hand information of the incident complained of
- Clarify your involvement in the case
- Assist in interpreting the clinical records
- Used to brief relevant clinical expert(s)
- Shared with defence legal team
- Assist in assessing liability
- Based on the factual information of the statements and expert evidence, the Enterprise will swear a Verifying Affidavit (validate the facts) in respect of the Defence.



Claims investigations

- The medical records are reviewed
- Statements are sought
- Relevant expert(s) opinion commissioned
- Solicitors appointed to deal with the legal proceedings
- Additional statements or further explanations may be required
- Meeting/Conference call, as required
- Consultations with solicitors and/or counsel, as required
- Pre-trial consultation with full defence team – if case is proceeding to hearing



Expert Evidence

- Appropriate medical experts
- Nature of the discipline or injury dictates the expert required
- A claim can involve a number of experts from different disciplines
- Asked for medical opinion on the standard of care provided
- Usually experts within the jurisdiction are chosen
- Experts outside the jurisdiction may also be involved
- Misconception that Irish experts will not criticise suboptimal care
- Can be lengthy delays before all expert evidence is received



Case conclusion

- Settlement of the legal action
(if case cannot be defended)
- Lodgement/Tender into Court to satisfy the Plaintiff's claim
(used where reasonable settlement negotiations have failed)
- The Plaintiff discontinues the legal action
(unable to prove there had been a negligent act)
- Court Hearing
(defendable case or Judge to decide on amount of compensation)



Why settle?

- No records/missing records (in part of full)
- Poor records
 - Absent/inadequate entries (sparse note taking)
 - Unclear clinical plan
 - Illegible handwriting or abbreviations
 - Inability to identify signatures
- Negligence
- Consideration of the probable judicial attitude to Plaintiff's injuries



Medical records as a legal document

- Used to reconstruct the continuation of care
- Should give a factual picture of past events
- Considered to be an accurate reflection of care provided to the patient at the time
- Only evidence available years later
- Scrutinised by both the plaintiff and defence lawyers and medical experts



Civil Liability & Courts Act 2004

- Major impact on the conduct of medical negligence claims
- Reduced the time allowed for a Plaintiff to bring an action from 3 years to 2 years
- Detailed 'Letter before Action' must be sent by the Plaintiff setting out the allegations at the beginning of a claim
- A Personal Injuries Summons must be served (full details of the Plaintiff's claim & allegations) supported by expert medical evidence
- Stricter time limits for all parties
- Severe penalties for misleading statements



Civil Liability & Courts Act 2004

Misleading Evidence

Section 25:

- Person who gives or dishonestly causes to be given misleading evidence is guilty of an offence

Section 29:

- Person guilty of an offence to be liable to a fine not exceeding €100,000 or imprisonment for a term not exceeding 10 years, or both



Contact details

- Clinical Indemnity Scheme
(01) 664 0900
- Emergency Medico-Legal Helpline
(01) 664 0909
- Website: www.stateclaims.ie



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