



# GUIDELINES ON THE MANAGEMENT OF MEDICO LEGAL LITIGATION IN MINISTRY OF HEALTH MALAYSIA 2023



Should you have any queries, kindly contact:

Medico Legal Section  
Medical Practice Division  
Ministry of Health  
Level 4, Block E1, Complex E, Precint 1  
Federal Government Administrative Centre  
62590 Putrajaya

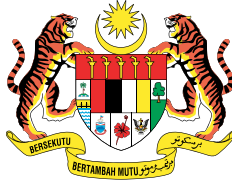
Tel: 03-8883 1484  
Email: [medicolegalkkm@moh.gov.my](mailto:medicolegalkkm@moh.gov.my)

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MEDICO LEGAL SECTION  
MEDICAL PRACTICE DIVISION  
MINISTRY OF HEALTH MALAYSIA



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## FOREWORD

The management of medico legal litigation may differ altogether from the common process of the management of medico legal complaints. The unfamiliar process, combined with the scarcity of legal knowledge among the medical fraternity had inevitably prompted the need for specific guidelines focusing on the management of medico legal litigation. This need was realized during the development of the updated guidelines on the management of medico legal complaints in the Ministry of Health Malaysia (MOH) back in 2017.

Hence, this guidelines were constructed with the intention of serving as a reference for all MOH personnel involved in the management of the medico legal litigation by providing an overall idea of the workflow and the involvement of stakeholders throughout the process, as well as ensuring proper administration of all medico legal litigation cases.

In view of its level of complexity, the establishment of this guidelines has incorporated valuable inputs by knowledgeable legal stake holders from the MOH Legal Advisors Office and the Attorney General's Chambers Malaysia (AGC). Feedbacks and contributions from experienced MOH administrators and healthcare providers handling medico legal litigation in healthcare facilities and State Health Departments were also integrated into the guidelines. Therefore, it is hoped that the guidelines will serve its purpose and be deemed beneficial for all.

## MESSAGE FROM THE DIRECTOR GENERAL OF HEALTH (MEDICAL)



In recent years, medico legal disputes serve as one of the most significant challenges encountered by healthcare practitioners. The MOH upholds its responsibility for all its healthcare providers, not excluding the events of medico legal disputes. Thus, medico legal conflicts in the form of litigation must be managed in accordance with the requirements of the law, which may be foreign to the majority of MOH administrators and healthcare providers.

Hence, the Guidelines on the Management of Medico Legal Litigation in the MOH are expected to efficiently provide guidance via a clear workflow for MOH administrators and healthcare providers managing medico legal litigation cases in accordance with the legal obligations.

Congratulations to the Medico Legal Section of the Medical Practice Division for their effort and accomplishment in producing this guidelines. This publication is envisaged to improve the quality and efficiency of the management of medico legal litigation in the MOH in the future.

**Tan Sri Dato' Seri Dr. Noor Hisham bin Abdullah**  
Director General of Health  
Ministry of Health Malaysia



## **MESSAGE FROM THE DEPUTY DIRECTOR GENERAL OF HEALTH (MEDICAL)**

Medico legal litigation cases are of much concern in Malaysia, where several cases have caught the attention of the public and authorities. The MOH is seeing an upward trend in medico legal litigation cases lately. The recent trend of high payouts amounting to millions of ringgits has imposed a financial burden on the Government. On top of that, the MOH healthcare providers are also required to spend more time to testify during the Court proceeding process, disrupting their clinical duties.

Hence, the introduction of this guidelines is timely to ensure the stakeholders are clear on their roles when receiving summons of medico legal litigation cases. It is also hoped that the MOH healthcare providers are aware of the dos and don'ts of Court appearances and their responsibilities towards the Court.

Last but not least, I would like to express my gratitude to the Medico Legal Section of the Medical Practice Division and other contributors for their effort to publish this guidelines.

**Dato' Dr. Asmayani binti Khalib**  
Deputy Director General of Health (Medical)  
Ministry of Health Malaysia

## MESSAGE FROM THE DIRECTOR OF MEDICAL PRACTICE DIVISION



The introduction of this guidelines will pave the way for better and more systematic management of medico legal litigation in the MOH. The publication of this guideline is timely and appropriate as we now see an upsurge in the number of medico legal litigation cases.

This guidelines aims to improve the present system of managing medico legal litigation and assist all MOH healthcare providers in the management of medico legal litigation at various levels of the health care system. I hope this guidelines will be a useful tool for all MOH healthcare providers as medico legal litigation is difficult to manage, especially for those who are inexperienced.

I would like to take this opportunity to thank everyone who has taken the time and effort to participate and worked very diligently in publishing this guidelines.

**Dr. Mohamed Iqbal bin Hamzah**  
Director of Medical Practice Division  
Ministry of Health Malaysia

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## **PART 1: INTRODUCTION**

### **1.1 Definitions**

- a. Litigation is defined as the act, process or practice of settling a dispute in a Court of law.
- b. A civil lawsuit is a legal and factual dispute between two or more parties claiming remedies, damages or compensation.
- c. Medico legal litigation is referred to the act of resolving an alleged medical negligence case through a civil lawsuit.
- d. A plaintiff is defined as a person who brings legal action against a defendant.
- e. A defendant is defined as a person who is being sued by the plaintiff.

### **1.2 Objectives**

- a. To provide comprehensive guidelines on the management of medico legal litigation against the Ministry of Health (MOH).
- b. To clarify the role of stakeholders involved.

### **1.3 Scope of Application**

- a. The application of this guidelines is limited to litigation cases of alleged negligence while receiving care and treatment provided by the MOH.
- b. Its application extends to medico legal litigation cases involving healthcare personnel performing their official duties for the MOH at the material time.
- c. This guidelines is not applicable to cases involving criminal prosecution or disciplinary inquiries.

## PART 2: ROLE OF STAKEHOLDERS

### 2.1 Healthcare Facility

- a. To inform and submit the summons received to the State Health Department, Medical Practice Division and Attorney General's Chambers (AGC).
- b. To retain and safeguard patient-related documents.
- c. To notify the defendant(s) named in the summons.
- d. To liaise with Federal Counsel from the AGC or State Legal Advisor's Office for meetings and facilitate other relevant requests.
- e. To assist in medico legal litigation related meetings (if necessary).
- f. To coordinate and facilitate the attendance of healthcare personnel involved at relevant meetings and Court proceedings.
- g. To implement the recommendations proposed in the Clinical Evaluation Committee for Litigation Case reports for improvement of services.

### 2.2 State Health Department\*

- a. To form a Clinical Evaluation Committee for Litigation Case upon instructions.
- b. To monitor and track the progress of medico legal litigation cases involving healthcare facilities under its purview.
- c. To form a Post Payment Investigation Committee upon instructions from Ministry of Finance Malaysia (MOF).
- d. To ensure the healthcare facility implement the recommendations proposed in the Clinical Evaluation Committee for Litigation Case reports.
- e. To assist and facilitate healthcare facilities in managing issues related to medico legal litigation.

**\* The term State Health Department in this guideline also refers to Hospital Kuala Lumpur and medical institutes.**

### **2.3 Medical Practice Division**

- a. To advise the AGC or State Legal Advisor's Office regarding technical aspects of medical issues.
- b. To participate in medico legal litigation case related meetings (if necessary).
- c. To appoint medical expert witness.
- d. To recommend the formation of Clinical Evaluation Committee for Litigation Case.
- e. To obtain approval from the Director General Health for case settlement following AGC's proposal.
- f. To coordinate the management of the Post Payment Investigation Committee Report.
- g. To monitor the implementation of recommendations proposed by the Clinical Evaluation Committee for Litigation Case.

### **2.4 MOH Legal Advisor Office**

- a. To offer guidance on the technical aspects of medico legal issues.

### **2.5 Attorney General's Chambers**

- a. To represent the Government of Malaysia, including the MOH in medico legal litigation case.
- b. To handle Court proceedings.
- c. To prepare for the defense and/or settlement of an alleged medical negligence.

## **PART 3: DOCUMENTS RELATED TO MEDICO LEGAL LITIGATION**

### **3.1 Letter of Demand**

- a. A letter of demand is a written communication from one party to another, demanding for a particular action.
- b. It is usually issued by the complainant's or plaintiff's legal representatives demanding:
  - i. Relevant documents
  - ii. Information
  - iii. Compensation
- c. A letter of demand containing an allegation of medical negligence or specifically requesting compensation should be managed as a medico legal complaint following the latest MOH guidelines (Refer Appendix 1).

### **3.2 Summons**

- a. Summons are legal documents containing an order to appear before a Court. It also serves as a notification that a litigation case is being initiated.
- b. Examples of notification of the initiation of a litigation case are:
  - i. Originating summons
  - ii. Writ
  - iii. Third-party notice
  - iv. Notice of application
- c. Any of these documents received should be immediately forwarded to the State Health Department, Medical Practice Division and AGC (Refer Appendix 2 and 3).
- d. The characteristics of a Court-endorsed summons are listed in Appendix 4.
- e. The defendant(s) named in the summons should be notified by the healthcare facility.

- f. Once a summons is received, the management of complaints associated with the plaintiff or patient must be ceased, including the inquiries.
- g. The plaintiff or patient's clinical management should be continued as per usual manner.

### **3.3 Subpoena**

- a. A subpoena is a formal written order endorsed by the Court compelling a person to appear before a Court.
- b. Its purpose is to secure a person's attendance in Court to give evidence.
- c. 3 types of subpoenas:
  - i. Subpoena to testify in Court
  - ii. Subpoena to produce documents
  - iii. Subpoena to testify and to produce documents
- d. Failure to comply with a subpoena may lead to the issuance of an arrest warrant.

### **3.4 Affidavit**

- a. An affidavit is a written statement affirmed before the Commissioner for Oaths, Notary Public or Magistrate.
- b. There are 2 types of affidavits related to medico legal litigation:
  - i. An affidavit accompanying the submission of documents -  
This affidavit must be prepared and signed by the director, officer in charge or representative of the healthcare facility
  - ii. Affidavit in support of an application -  
The preparation of this affidavit will be facilitated by Federal Counsel

### **3.5 Court order**

- a. A court order is a directive issued by the Court or judge.
- b. Compliance with the Court order is mandatory.

### 3.6 Patient-related documents

- a. Patient-related documents are referred to as any available forms of documentation related to the patient either medical record or non-medical record.
- b. Patient-related documents related to medico legal litigation cases should be managed as follows:
  - i. Medical records should be compiled in orderly manner and paginated
  - ii. Other non-medical records should be securely retained in a separate file for easy tracing
  - iii. Original copies should be retained within the healthcare facility
  - iv. Duplicate copies either hardcopy or digitalized versions should be produced upon directives from the stakeholders and/or the Court
  - v. Duplicate copies should be retained in the healthcare facility if original copies are being produced to the stakeholders and/or the Court
  - vi. The release of patient-related documents for official use outside the healthcare facility is subject to authorisation from the Director of the healthcare facility
- c. Once medico legal litigation is commenced, directives from the AGC is required:
  - i. To release any copies of patient-related documents to non-stakeholders such as patients, patient's next-of-kin, plaintiff's lawyers or other non-MOH defendants
  - ii. To allow non-stakeholders to examine the original copies of patient-related documents. To ensure the safety and security of the documents, the parties must be accompanied by either a Federal Counsel or a representative from the healthcare facility

- d. Disposition of the patient-related documents related to medico legal litigation must be deferred until the completion of these processes:
  - i. Court proceedings
  - ii. Disciplinary proceedings
  - iii. Financial disbursement procedures

### **3.7 Case chronology**

- a. A case chronology is a document produced by the healthcare facility which contains the clinical events of the case in chronological order.
- b. A case chronology should be prepared by the medico legal coordinator from the healthcare facility with the assistance from the department involved upon receiving a writ or a third-party notice.
- c. The content of case chronology must be strictly based on the facts documented in the patient's medical records.
- d. Refer to Appendix 5 for the suggested case chronology template.

### **3.8 Medical expert report**

- a. A medical expert report is drafted based on the bundle of documents given by the lawyer.
- b. A medical expert witness may examine the patient or plaintiff for the preparation of the report.
- c. According to the Rules of Court 2012, an expert report must include:
  - i. Details of the expert's qualifications and experience
  - ii. Details of the references the expert witness referred to make the report
  - iii. A statement setting out the issues of the case and the basis upon which the evidence was given
  - iv. The name and qualifications of the person who carried out any tests or experiments that the expert used for the report, as well as whether those tests or experiments were done under the expert's supervision (if applicable)



- v. To summarize the range of opinions and provide reasoning for such opinion
  - vi. A summary of the conclusion reached
  - vii. A statement of belief in the correctness of the expert's opinion
  - viii. A declaration stating that the expert understands and complies with the overriding duty to the Court in providing the expert report
- d. Any guidelines or articles from the journal cited should be attached to the report.
- e. Refer to Appendix 7 for the suggested format of the medical expert report.

## **PART 4: RELATED MEETING AND INVESTIGATION**

### **4.1 Case Management Meeting**

- a. A case management meeting is withheld between Federal Counsel from the AGC or State Legal Advisor's Office and personnel involved in a litigation case to:
  - i. Establish the case facts
  - ii. Prepare for case defense
  - iii. Prepare the witness statement
- b. The meeting can be coordinated by the medico legal coordinator from the healthcare facility involved upon instructions from Federal Counsel.
- c. The medico legal coordinator from the healthcare facility involved should liaise with Federal Counsel regarding:
  - i. Documents required for discussions
  - ii. Date and venue
  - iii. Personnel involved
- d. Discussions during this meeting are protected by the attorney-client privilege and should remain confidential.

### **4.2 Clinical Evaluation Committee for Litigation Case**

- a. Clinical Evaluation Committee for Litigation Case is a committee established by the State Health Department upon instructions from the Medical Practice Division to produce a report regarding the clinical aspect of a medico legal litigation case for the stakeholders at the MOH.
- b. The committee should limit their task to:
  - i. Fact findings
  - ii. Address issues and identify problems in the management of the case
  - iii. Recommend for corrective and preventive measures

- c. The member of the committee consists of:
  - i. A chairperson who is a Senior Clinical Consultant from the related discipline from a different state and does not involved in the patient's or plaintiff's management
  - ii. Clinician(s) from the same or related discipline from a different healthcare facility and does not involve in the patient's or plaintiff's management
  - iii. Representative(s) from Medical Practice Division
  - iv. Representative(s) from State Health Department
  - v. Senior nurse, medical assistant or other allied health personnel from different healthcare facility
  - vi. Other relevant representatives (if deem necessary)
- d. The committee meeting must not be conducted in the presence of:
  - i. Patient
  - ii. Patient's next-of-kin
  - iii. Hospital Visiting Board Panel
  - iv. Health Advisory Panel
  - v. Plaintiff's or patient's legal representatives
- e. Prior to the formation of the committee, the medico legal coordinator at the JKN should:
  - i. Propose the committee members to the State Health Director
  - ii. Propose a suitable date for the inquiry within the stipulated period
  - iii. Issue an appointment letter by the State Health Director to the committee
- f. The secretariat(s) of the meeting will be appointed from healthcare facility involved. To facilitate the committee, the secretariat is required to:
  - i. Prepare copies of the relevant documents
  - ii. Ensure and facilitate the attendance of the personnel involved

- g. The committee report should be:
  - i. handled strictly in accordance with the existing government procedures and laws
  - ii. Submitted by the secretariat to the State Health Director within 14 working days following the committee meeting
  - iii. Reviewed by the State Health Director before being submitted to Medical Practice Division within **30 working days** following the committee meeting
  - iv. Retained as confidential files at:
    - Healthcare facility appointed as the secretariat
    - State Health Department
    - Medical Practice Division
  - v. Refer to Appendix 6 for the suggested format of the committee report
- h. Appropriate preventive and corrective measures should be carried out by the healthcare facility and the State Health Department after the committee meeting. This action should be notified by the State Health Department to Medical Practice Division within **three months** following the committee meeting.

#### 4.3 Clinical assessment of the patient

- a. The Federal Counsel may request the patient or plaintiff to be clinically examined or assessed as part of:
  - i. A clinical examination by a medical expert witness
  - ii. An assessment of the patient's disabilities
- b. The healthcare facility chosen or identified by the Federal Counsel for clinical assessment of the patient or plaintiff should provide full cooperation to accommodate and facilitate the session.

#### 4.4 Post Payment Investigation Committee

- a. The Post Payment Investigation Committee is the committee constituted by the MOF after financial settlements of medico legal complaint or medico legal litigation.
- b. This committee is responsible for identifying factors contributing to the case and recommending remedial measures to prevent a recurrence of similar incidents.
- c. The committee is appointed upon direction from the Medical Practice Division as stipulated in the *Surat Pekeliling Ketua Setiausaha Kementerian Kesihatan Malaysia bil. 12 (1 November 2017)*
- d. The Post Payment Investigation Committee Report must be submitted within 45 working days.

## **PART 5: WITNESS**

### **5.1 Introduction**

- a. A witness is a competent person who testifies in a case or gives evidence under oath in a Court of law.
- b. The purpose of the presence of a witness is to present evidence orally or in documented forms for the Court to make its decisions.
- c. There are 2 types of witnesses:
  - i. Witness of fact
  - ii. Expert witness
- d. Ethical conduct in Court applies upon appearance in Court (Refer to Appendix 8).

### **5.2 Witness of fact**

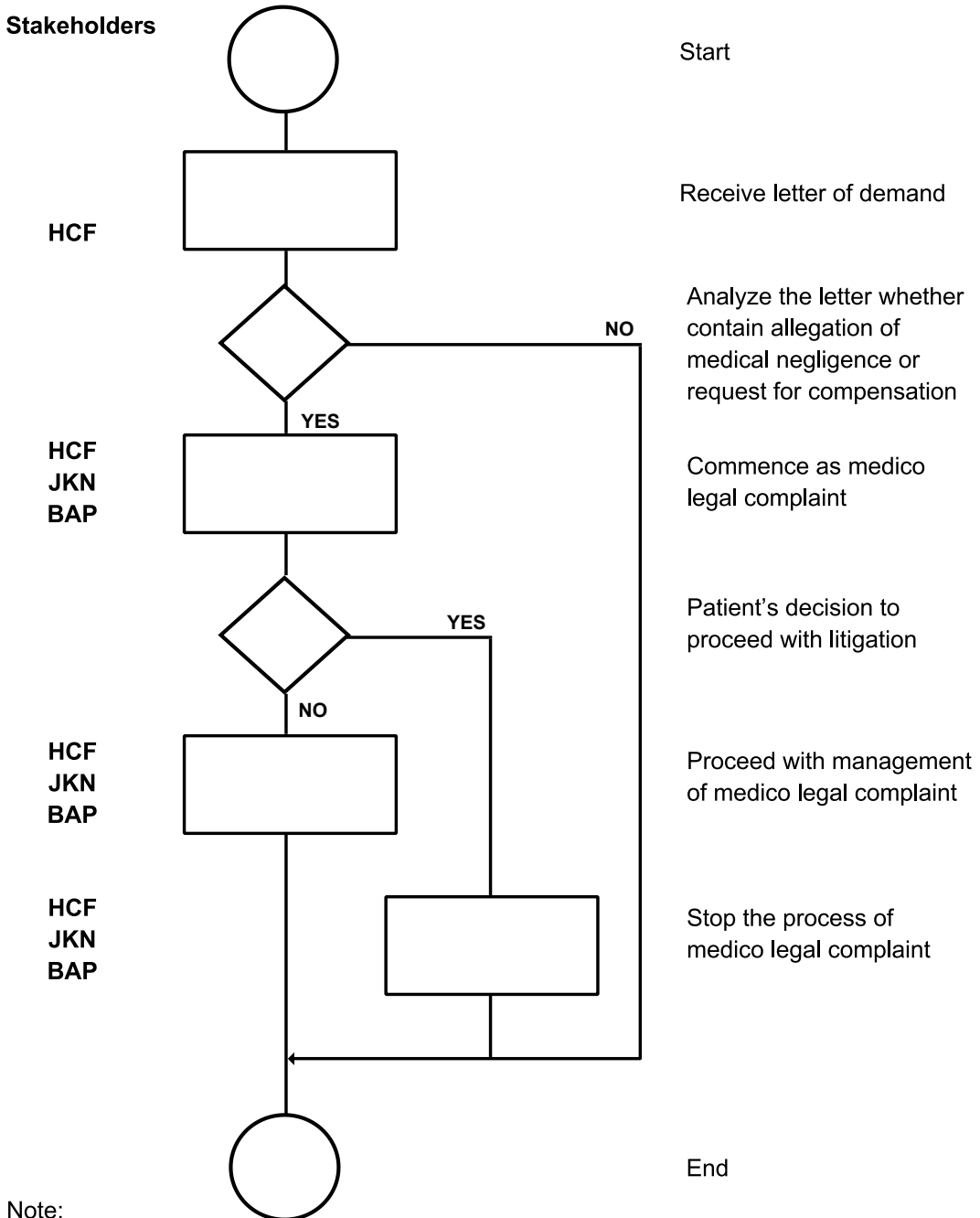
- a. The witness(es) will be selected by the lawyer to testify in Court.
- b. An official notification letter from a lawyer will be issued to the witness.
- c. A witness of fact is expected to cooperate and appear in Court as required.

### **5.3 Medical Expert Witness**

- a. A medical expert witness is a registered medical practitioner who has special experience, training or education to qualify as an expert on the related subject (Malaysian Medical Council Guidelines on Expert Witness).
- b. Once requested by Federal Counsel, a medical expert witness for the Government of Malaysia in a litigation case is nominated by the MOH Head of Clinical Service.

- c. The role of medical expert witness includes:
- i. To assist the Court on the specialty or technical matters within his/her area of expertise
  - ii. To give an opinion in good faith, truthfully and independently without being influenced by any party
  - iii. To produce honest, trustworthy, objective, impartial and accurate expert evidence in a written report
  - iv. If an expert's opinion changes at any point, such changes should be communicated immediately to the adjudicating body and other parties in the proceedings, and all conflicts of interest should be declared
  - v. To accept full responsibility for his/her expert report
  - vi. To testify in Court if needed

## APPENDIX 1 Management of letter of demand

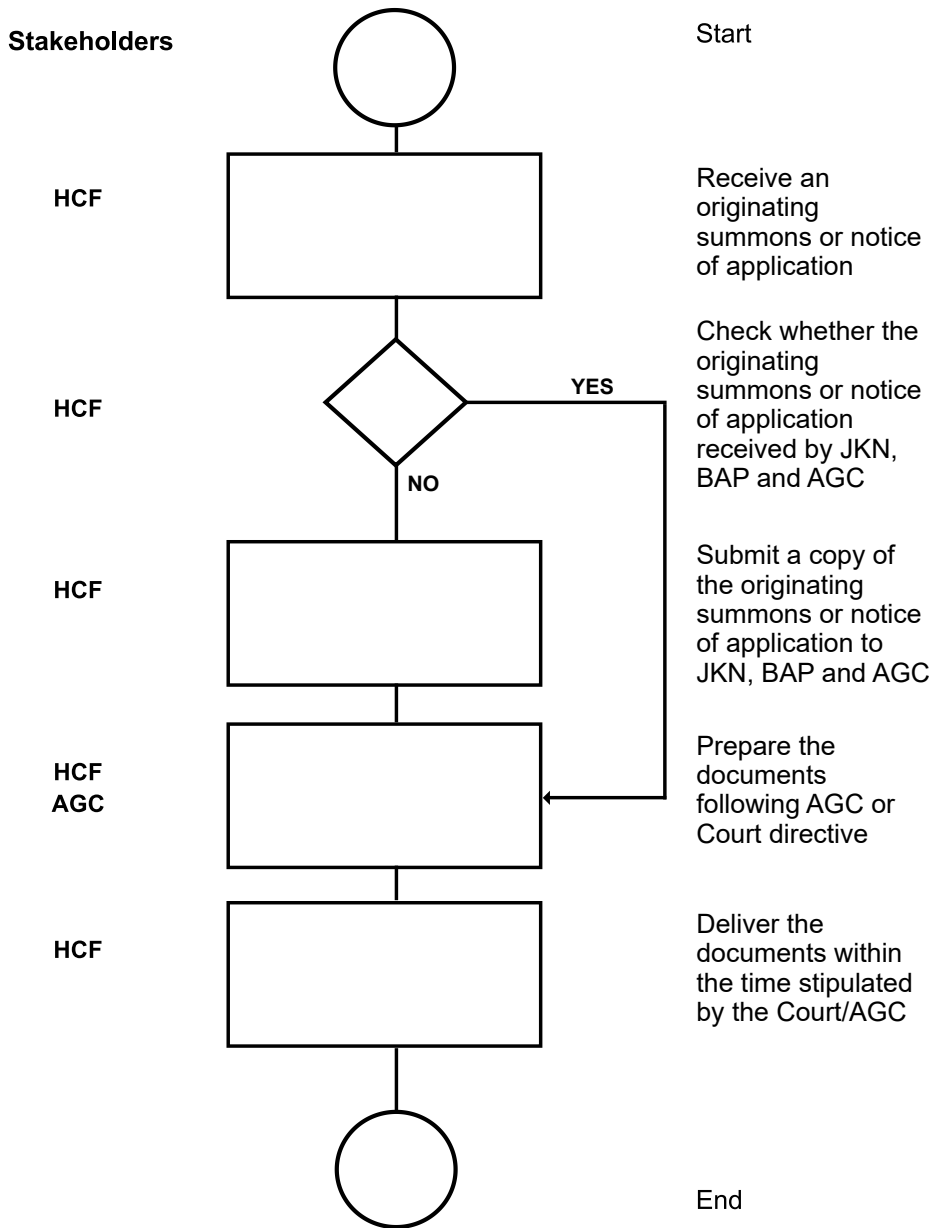


HCF = healthcare facility  
JKN = State Health Department  
BAP = Medical Practice Division



## APPENDIX 2

### Management of Originating Summons and Notice of Application

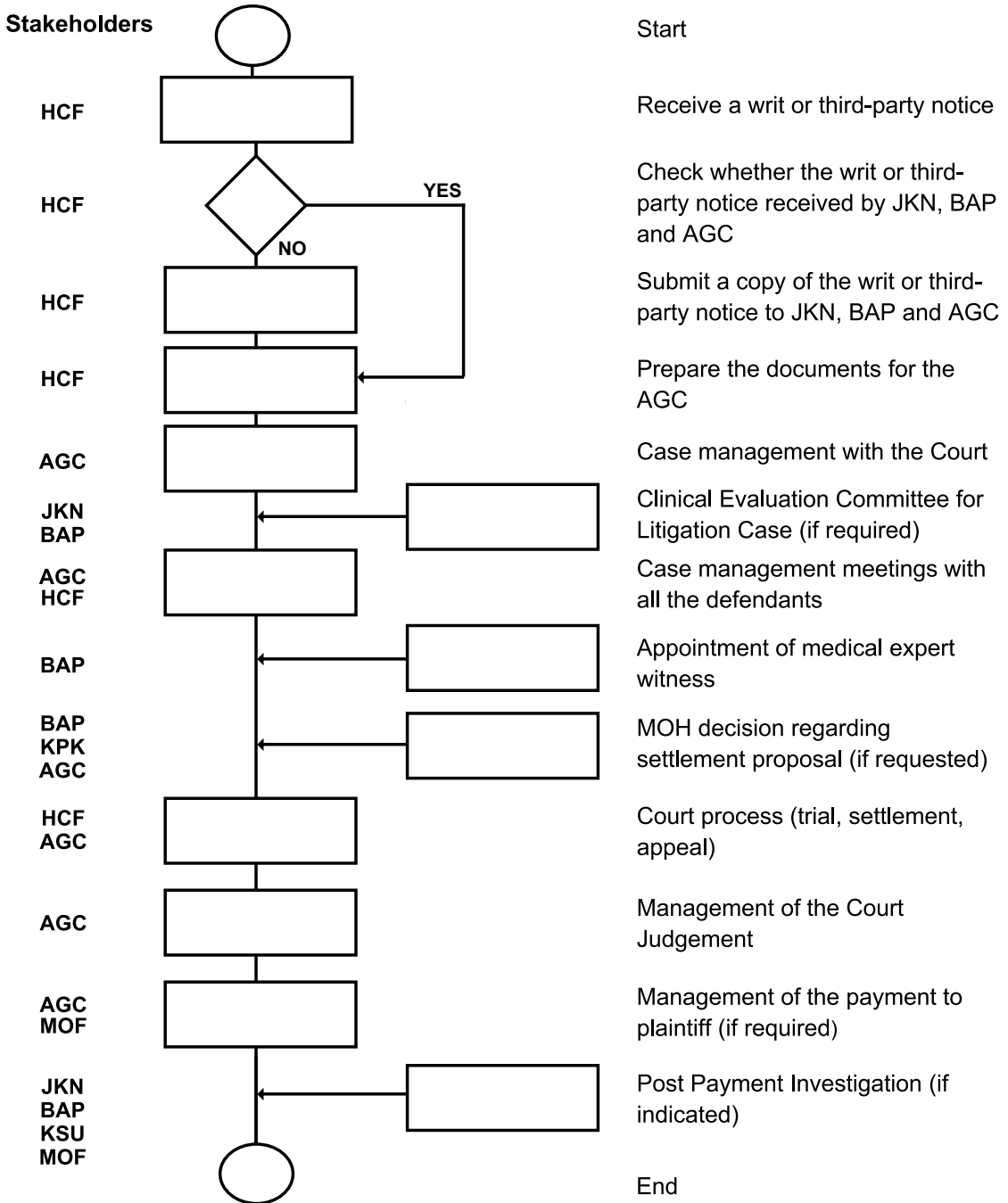


Note:

- HCF = healthcare facility
- JKN = State Health Department
- BAP = Medical Practice Division
- AGC = Attorney General's Chamber

### APPENDIX 3

## Management of a Writ and Third-Party Notice



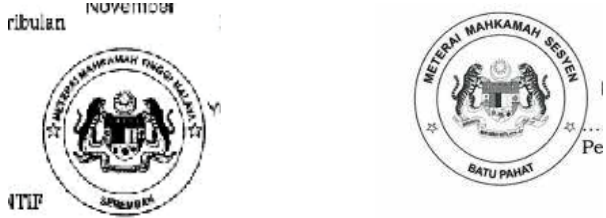
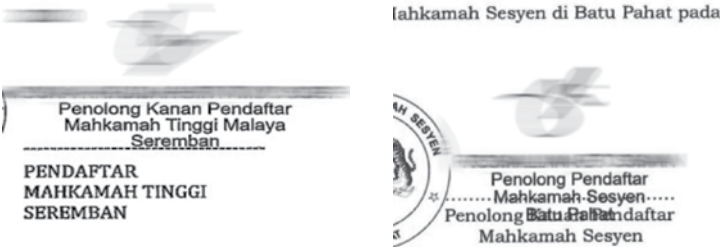

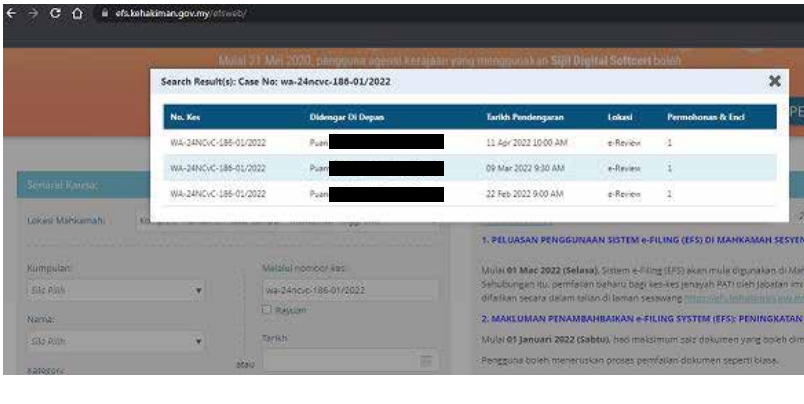
Note :

HCF = healthcare facility  
 JKN = State Health Department  
 BAP = Medical Practice Division  
 AGC = Attorney General's Chamber

KPK = Director-General of Health  
 KSU = Secretary-General of the Ministry of Health Malaysia  
 MOF = Ministry of Finance Malaysia

## APPENDIX 4

### Characteristics of a Court-Endorsed Summons

No.	Features	Example
1.	The court seal	
2.	The signature and name of the Registrar or representative of the Registrar of the Court	
3.	Registration fee (if any)	
4.	The case number can be verified on the website <i>Sistem E-Filing Mahkamah Persekutuan Malaysia</i>	

## APPENDIX 5

### Case Chronology Template

**Case Chronology**

Summons Number:

Court:

Patient's Name:

Identity Card/Passport Number:

Facility (Hospital/Health Clinic/Dental Clinic/etc)		
Time/date	Documented event	Name of the staff involved
...	...	...
...	...	...

Prepared by :

... (signature) ...

Name :

Designation :

Date :

Reviewed by :

... (signature) ...

Name :

Designation :

Date :

## APPENDIX 6

### Clinical Evaluation Committee for Litigation Case Report Template

#### Clinical Evaluation Committee for Litigation Case Report

**HOSPITAL** :

**PATIENT'S NAME** :

**IDENTIFICATION NO.** :

## Clinical Evaluation Committee for Litigation Case Report Template

### Clinical Evaluation Committee for Litigation Case Report

<b>Table of Contents</b>	<b>Page</b>
1. Introduction	
2. Reason for inquiry and mandate	
3. Members of the inquiry panel	
4. Method or procedure	
5. Case summary	
6. Chronology of events	
7. Diagnosis by panel	
8. Facts established	
9. Conclusion	
10. Appendix	
11. Signature of panel	

## Clinical Evaluation Committee for Litigation Case Report Template

### Clinical Evaluation Committee for Litigation Case Report

#### 1. Introduction

Inquiry date :

Time :

Place :

#### 2. Reason for inquiry and mandate

#### 3. Members of the inquiry committee

#### 4. Method and procedure

4.1 Medical record, writ or other relevant documents were used as references.

4.2 Staff involved in the case were interviewed by the panel.

#### 5. Case summary

##### 5.1 Biodata of patient

Name :

Identification no. :

Address :

Occupation :

## Clinical Evaluation Committee for Litigation Case Report Template

### Clinical Evaluation Committee for Litigation Case Report

#### 5.2 Case summary

#### 6. Chronology of events

Date & Time	Events
...	...
...	...
...	...

#### 7. Diagnosis by panel

#### 8. Facts established

Issues	Findings
...	...
...	...
...	...

#### 9. Conclusion

#### 10. Appendix

#### 11. Signature of panel



## APPENDIX 7

### Medical Expert Report Example

#### (Letterhead)

... Court  
Civil Suit No.: ...  
Plaintiff ...  
v.  
Defendant ...

#### MEDICAL EXPERT REPORT

##### 1. Introduction

I have been requested by Federal Counsel from ..... to give my expert written opinion in the field of (discipline) ..., in which the Plaintiff, was managed in Hospital ... from (date).. until ...

##### 2. Qualifications & Experience

###### - Academic Qualifications

I had obtained ... degree from ...University in the year .... I had also obtained a Masters ... postgraduate degree from University ... in the year ....

###### - Working Experience

I obtained my Full Registration Certificate from the Malaysian Medical Council on ....(date)... (MMC number:...) and worked as a ... Medical Officer at ... from ... till .... Subsequently, I worked as a/an ... Specialist at ... till .... (NSR number: ...). I had been appointed as the Head of Department and Senior Consultant ... at ... Hospital since ... until now.

A copy of my curriculum vitae is attached as Appendix A.

## Medical Expert Report Example

### 3. Documents & Literatures

#### - Documents

In preparation of my opinion, I have received copies of the following documents from Federal Counsel :

.... (list of documents)

#### - Literatures

In providing my opinion, I have relied on the following medical Literature/guidelines:

...(list of literature)

A copy of the medical literature is attached as Appendix B.

### 4. Summary of Facts

Based on the patient's medical records and related documents, the summary of facts in this case is as follows:

....(list of chronology case/ clinical events which related to the issues)

## Medical Expert Report Example

### 5. Examinations of the patient/plaintiff (if necessary)

... (list of examinations and findings)

### 6. Issues

I have been requested to address the following issues (which are highlighted by the plaintiff in the writ/third party notice or by Federal Counsel):

...(list of issues), example:

- medical condition/ diagnosis
- patient injuries / complication
- procedures/ operations
- treatment given

### 7. Opinions

...(list of explanation/ opinions related to Issues) example:

- whether the patient/plaintiff is being examined and treated in accordance with the standard of medical practice.
- whether the right diagnosis was made
- prognosis of the patient/plaintiff

## Medical Expert Report Example

### 8. Conclusion

In conclusion, I am of the view that:

... (list of conclusions)

### 9. Declaration

I verily believe that my opinion above is correct. I further understand that in providing my opinion, my overriding duty is to the Court and I verily believe that I have complied with that duty.

... (signature) ...

**Name** :

**Designation** :

**Date** :

## APPENDIX 8

### Ethical Conduct in Court\*

#### A. What should you do before going to Court.

- Ascertain the time, date and place of the hearing.
- If you are required to produce any documents, please have them ready and bring them along on the day of the trial. Plan your trip so that you could reach the Court early.
- Dress decently and appropriately.
- If you are a Malaysian citizen, you are required to bring your National Identity Card (MyKad) or birth certificate.
- If you are a foreign citizen, you are required to bring your international passport or related documents.
- Government officers must bring authority cards and/or relevant documents.
- If you are unable to attend the Court for any reason, please inform the Court promptly in writing. If you are sick, please forward your medical certificate to the Court.

#### B. Witnesses' obligations when testifying in Court.

- Come forward when your name is called upon.
- Produce your identity card through the interpreter for Court reference and record.
- Use simple language in Court. Inform the Court if the assistance of an interpreter is required.
- Take oath in the witness box with a loud and clear voice while lifting your right hand at shoulder level.
- Listen carefully to the questions put by the Attorney and answer only what is asked. Seek clarification for questions that you deem unclear.
- Provide only true and honest answers. You are under oath to speak the truth. If you need to bring any documents while giving evidence, bring the documents to the witness box and obtain the Court's consent if you wish to refer to it.
- If the witness is unable to complete his evidence, another date will be given by the Court to resume the hearing.

### **C. What should you do in the courtroom.**

- Rise and bow when the Judge or Magistrate enters and leaves the courtroom.
- Give your full attention during the proceedings.
- Be silent during the proceedings.
- Bow every time you enter and leave the courtroom during the proceedings.
- No children are allowed in the courtroom unless instructed to do so by the Court.
- No weapons are allowed.
- No audio/visual recordings are allowed.
- Mobile phones, pagers and other electronic devices are to be switched off.

**\* Source: Official Portal Office of the Chief Registrar, Federal Court of Malaysia.**

## APPENDIX 9

### Malaysian Judiciary System (Summarized)

#### Court Hierarchy

#### Jurisdiction related to civil cases

##### A. Supreme Court

1. Federal Court
  - Hear appeals from the Court of Appeal and the High Court.
  - Determine any question arising before another Court as to the effect of any provision under the Federal Constitution.
2. Court of Appeal
  - Determine appeals from the decisions of the High Court.
3. High Court
  - Hear and determine all civil matters in which the claim amount involved exceeds RM1,000,000.00.
  - Hear appeals from the Session and Magistrate Courts.

##### B. Subordinate Court

1. Session Court
  - Hear and determine all civil matters in which the claim amount involved is more than RM100,000.00 but not exceeding RM1,000,000.00.
2. Magistrate Court
  - i. First Class Magistrate Court
    - Hear all civil matters in which the claim amount involved does not exceed RM100,000.00.
  - ii. Second Class Magistrate Court
    - Hear all civil matters in which the claim amount involved does not exceed RM10,000.00.

## **C. Other Courts**

1. Special Court
  - Hear all cases involving the rulers of the states of Malaysia and the Yang di-Pertuan Agong.
2. Syariah Court
  - Jurisdiction over matters of state Islamic law only.
3. Industrial Court of Malaysia
  - Hand down a decision in industrial disputes referred to it by the Minister of Human Resources.
4. Court for Children
  - Hear cases for children which are governed by the Child Act 2001.
5. Native Court
  - Hear all matters of native law and custom in Sabah and Sarawak.



## APPENDIX 10

### Litigation Process (Summarized)

#### A. Discovery stage

- The plaintiff files originating summons to request for the documents or information related to the case.

#### B. Pleading stage

- The plaintiff files a writ of summons and a statement of claims and the defendant files for defense. The plaintiff may reply to the defense if the need arises.

#### C. Pre-trial Case Management stage

- Upon the close of pleadings, the Court will call the parties up either in person or via e-review.
- E-review is an online forum within the e-Court System which enables judicial officers and legal representatives to conduct case management via the exchange of written messages without having to attend Court.
- The Court will inquire into the issues, documents and witnesses of the case.
- The Court will then give direction as to what documents are needed to be filed in court together with the timelines. Both parties must comply with the timelines unless an extension of time is allowed by the Court.
- Parties will subsequently start preparing for trial, for example, by organizing evidence and witnesses.

#### D. Trial stage\*

- The Court will begin with the plaintiff(s) or his witnesses' testimony.
- The defendant's lawyer will cross-examination the plaintiff(s) or his witnesses.
- Re-examination may be done afterward by the plaintiff's lawyer towards the plaintiffs or his witnesses.
- This process will be repeated on the defendant's side.
- Final submission will be done before the Court's judgement.

### **E. Post-trial stage**

- The successful party needs to file a draft judgement of the Court according to Form 75 Rules of Court 2012.
- After extracting the draft judgement, the parties need to file a fair copy of the draft judgement.
- After filing the fair copy of the judgement, the winning party needs to serve it to the losing party for the judgement to be enforced.

### **F. Appeal process**

- An appeal is an action requesting a higher Court to review the decision of the trial after the judgement of a lower Court.
- A notice of appeal against all or part of a trial Court's judgement must be filed in the Court from which the decision is being appealed.
- The duration of filing must be within 14 days (Subordinate Court to High Court) and/or within 30 days (High Court to Court of Appeal).

**\* As an alternative to a Court trial, a litigation case can be settled via arbitration, mediation or out of Court settlement.**

## APPENDIX 11

### Laws, Rules and Circulars Relevant in Medico Legal Litigation

#### A. Acts

1. Civil Law Act 1956 [Act 67]
2. Defamation Act 1957 [Act 286]
3. Evidence Act 1950 [Act 56]
4. Financial Procedure Act 1957 [Act 61]
5. Government Proceedings Act 1956 [Act 359]
6. Limitation Act 1953 [Act 254]
7. Medical Act 1971 [Act 50]
8. National Archives Act 2003 [Act 629]
9. Official Secrets Act 1972 [Act 88]
10. Public Authorities Protection Act 1948 [ Act 198]

#### B. Rules

11. *Arahan Keselamatan under Act 88*
12. Medical Regulations 2017 [P.U.(A) 188/2017]
13. *Perintah Am Bab F (Perubatan) 1974*
14. Rules of Court 2012 [P.U.(A) 205/2012]

#### C. Circulars

15. *Arahan Amalan Hakim Besar Malaya Bilangan 1 Tahun 2020*
16. *Arahan Amalan Ketua Hakim Negara Bilangan 1 Tahun 2021*
17. Guideline of The Malaysia Medical Council (MMC Guideline 002/2006)
18. Malaysian Medical Council Ethical Codes: Expert Witness
19. *Pandangan Perundangan Isu-isu Medico Legal Edisi 2021*
20. *Pekeliling Ketua Pengarah Kesihatan Bil 16/2010*
21. *Pekeliling Ketua Pengarah Kesihatan Bil 17/2010*
22. *Surat Jabatan Perkhidmatan Awam dated 26 July 1994*  
*[JPA(S)223/8/36R4/(11)]*
23. *Pekeliling Ketua Setiausaha Kementerian Kesihatan Malaysia bil. 12*  
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### EDITORS

Dr. Ahmad Fareed bin A Rahman  
Dr. Mohd Halmi bin Mohd Sin  
Dr. Nor Azizah binti Mohamed Yusuff

Dr. Hasnur Syareena binti Hassan  
Dr. Nizam bin Ishak  
Dr. Nadya Izzati binti Soaib

### CONTRIBUTORS

#### **MINISTRY OF HEALTH**

Dr. Surenthiran a/l Panjanathan  
Datin Dr. Syahiran binti Mohamed  
Dr. Mohammad Sobrie bin Rahim  
Dr. Tan Chiou Sheue  
Dr. Mohd Khairul Anwar bin Adan  
Dr. Mohd Hafifi Hafidz bin Abd. Razak  
Dr. Wan Mohd Harith bin Wan Mustapa  
Dr. Siti Khadijah binti Hawari  
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Dr. S. Pamela a/p Sivapathasundram  
Dr. Sharon Chin Lu Yin  
Dr. Shalini a/p Chandrasekeran  
En. Mohamad Amirool Aizat bin Mohamad Sakeri

Dr. Fadzlinda binti Shaharuddin  
Dr. Ilya Amila binti Mohd Ghazali  
Dr. Mohammad Hafiz bin Muhammad  
Dr. Farah Nadzirah binti Zainuddin  
Dr. Izzaz bin Azman  
Dr. Mardhiah binti Mohd Sofian  
Dr. Mohd Syafiq Ismail bin Azman  
Dr. Gayathri Devi a/p Ramanathan  
Dr. Norbaizatul Akhmal binti Zulkefly  
Dr. Zulkefli bin Abdul Rani  
Dr. Noreen Ho Han Ching  
Puan Norusriyati binti Idris

#### **MINISTRY OF HEALTH LEGAL ADVISOR OFFICE**

Tuan Mohd Fadlee bin Mamat

Tuan Mohamad Syafiq bin Mohd Sazali

### **ATTORNEY GENERAL'S CHAMBERS**

Puan Mariam Hasanah binti Othman  
Puan Rahni Kartini binti Abd Rahim

Puan Siti Asmath binti Che Man

### **EXTERNAL REVIEWERS**

Dato' Seri Dr. Mohamed Yusof bin Hj. Abdul Wahab

Dato' Dr. Mohammad Anwar Hau bin Abdullah

Dr. Sabeera Begum bt Kader Ibrahim

Dr. Yusniza binti Mohd Yusof

Dr. Lingeswaran a/l R. Arunasalam

Dr. Sharifah Azizah binti Syed Muhammad Shibli

Dr. Rafidah binti Bolhassan

Dr. Chin Kuen Yei