



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



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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 requests 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.