

Medical Negligence From a Defence Perspective

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1. Notification of the Claim

- Client contact after request for records?
- Panel notification
- Letter of claim

2. Establishing Context

- Obtain client held medical records
- Review
 - Dates
 - Personnel involved
 - Establish areas of specialty involved

3. Investigations

- Statements / Interviews
- Sourcing personnel
- Establish primary memory vs “from the records”

4. Experts

- Sourcing experts
- Proper provision of records / chart
- Proper instructions
- Clear time-frame agreed where possible.
- Difficulties with experts.
- **Cognisant of one expert rule – solutions?**

5. Experts and Problems in Reports

- Asked to advise on A, advises on B
- Refers to source materials – question as to what should be provided?
- Does not treat of the allegations made specifically
- Additional comments
- For personality management in advance usually

6. Statute of Limitations

- Very special information needed
- Particulars likely to be refused
- Difficult area

7. Third Party Issues

- Alternative causes for injuries or condition
- Difficulty with medical third party issues (evidence issues)
- Need for experts on breach / causation
- Application to Court

8. Early “Discovery”

- Good firms don't raise issue
- Less experienced firms raise issue
- Courts generally not with the argument that “pleadings not closed” in medical cases
- Highly helpful when it comes to third party considerations.

9. Early Particulars

- Often the breach issue is pleaded
- Aim is mainly information on care pathway / post-incident care / post-incident treatment / pre existing conditions / statute of limitations / specials

8. Early file objective

- Key medical records relevant to breach event obtained (records relating to post condition helpful)
- Those involved identified. Prejudices identified.
- Areas of specialty marked. Experts instructed.
- Notice for particulars sent with particular regard to post-incident care, specials and if relevant, the statute of limitations.
- Third party issues identified as far as possible.
- Examine FOI requests made?

9. Pleading / Denials

- Expert reports
- Investigations incomplete
- Timing of reports and defences

9. Investigations on Quantum

- Split trials still the exception
- Appointments needed

10. Interlocutory Decisions

- Various motions
- Preliminary issues a bad idea
- Case management increasing

11. Facing Trial

- SI 391 of 1998 completed – reports exchanged
- Harrington undertaking
- Fresh reports / commentaries
- Witnesses / video link