

# Clinical Indemnity Scheme

## *Presentation to the CIS Obstetrics Forum*

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# Clinical Indemnity Scheme

## **PREPARING FOR INQUESTS**

# CIS Assistance

- Clinical Indemnity for medical malpractice cases involving public hospitals, clinics, healthcare facilities
- Assistance and legal representation at Coroners' Inquests
- Currently manage > 250 Inquest files
- Representation in all 47 Coroners' Districts

# Witnesses

- Coroner is only person who can call witnesses
- Witnesses can be compelled to attend by summons
- Failure to comply with a summons is an offence
- Witnesses are liable for contempt of coroner's court as in civil courts

# Statements

- Statements to the Coroner are not privileged
- Matter of public record after inquest
- Family may be legally represented
- Legal proceedings may have already commenced

# Preparing Statements

- Address it to Coroner
- Deceased's name and address
- First person
- State position/status at that time e.g. registrar
- Set out involvement in patient's treatment chronologically, objectively, factually & accurately

# Preparing Statements cntd..

- Rely on and refer to clinical notes
- Do not comment on actions of others
- Do not include matters of hearsay or opinion
- Sign and date
- It is courteous to express sympathy with family either in statement or orally at inquest

# Role of Clinical Staff at Inquest

- To assist Coroner/Jury
- To verify written statement under oath
- To explain any medical terminology used, if requested
- To answer any questions put by Coroner, jury, family or legal representatives



# Procedure at Inquest

- Inquisitorial –
  - a) Who
  - b) When
  - c) Where
  - d) How
- Civil or criminal liability cannot be considered or investigated
- No censure or exoneration

# Procedure at Inquest cntd..

- Coroners have free rein provided the procedures are fair
- Interested parties may ask questions
- Legal teams may (cross) examine
- Give evidence - calm, truthful and to the point
- Explain medical terminology if required

# Post Inquest

- Potential for publicity
- Depositions become matter of public record
- Matter concludes *or*
- Civil case begins/resumes

# Clinical Indemnity Scheme

**PREPARING FOR COURT**

# Preparing for Court

- **Clinical Negligence Cases**
- **Notified by:-**
  - **Letter of claim**
  - **Personal Injuries Summons**
  - **Indemnifiers/solicitors/hospital**

# Purpose of Statement/Report

- 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

# Purpose of Statement/Report cntd

- 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.

# Statement/Report

- Privileged –Prepared in Contemplation of Litigation
- Name, address, status at relevant time
- Qualifications and when obtained
- Detailed, chronological account of your involvement
- Refer to entries in the clinical records
- Explain any omissions, inaccuracies etc in the records



# Statement/Report cntd...

- Refer to protocols, guidelines (if any) relied upon in treatment
- Address specifically the allegations being made by plaintiff
- Sign and date statement
- Keep a copy
- Keep in contact

# Pre-trial

- Additional report
- Meeting/Conference call
- Consultation with legal team
- Pre-trial consultation with full defence team – if case is proceeding to hearing
- Ask questions NB \*

# Case Outcomes

- Case gets discontinued
- Case gets settled
  - Mediation
  - Settlement Meeting
  - Formal offer/Tender
- Case goes to hearing – Judge decides

# Giving Evidence

- Plaintiff's evidence and experts first
- Read transcripts, if available
- Direct examination & cross examination
- Address the Judge
- Listen carefully to questions
- Speak clearly, use short sentences
- Take time to answer and stay calm
- Ask if not clear on any question

# Giving Evidence cntd...

- Stay within own expertise
- Refrain from commenting on treatment given by others
- Use models to assist in explaining treatment, if relevant/helpful

# Verdicts

- Usually given some time after case finishes
- Judge finds plaintiff has proved some or all of case or not
- Award of Damages, if applicable
- Appeal
- Case closed

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***Thank you!***