



LEGALLY PRIVILEGED PEER REVIEW MEETINGS **(IN CLAIMS FOR ALLEGED CLINICAL NEGLIGENCE)**

1. Whenever a legal claim has been lodged for alleged clinical negligence by a medical practitioner, professional nurse or other healthcare professional (as opposed to non-clinical claims and claims lodged against the conduct of other employees), a legally privileged peer review meeting should be held as soon as practically possible.
2. The primary purpose of a legally privileged peer review meeting is the same as any meeting between attorney and own client. Benefits of such a meeting, especially when conducted at an early stage, would extend to (a) the Defendant Attorney, (b) the potential Payer Of Compensation, (c) the Implicated Healthcare Professional/s, (d) his or her Peers; (e) other Healthcare Professionals, and (f) future Patients.
3. In the Public Sector such meetings should be called by the Defendant Attorney appointed by the MEC for Health. In the Private Sector such meetings should be called by the Defendant Attorney appointed by the Protection Society or Indemnity Insurer.
4. Such meetings should be attended by (a) the Defendant Attorney, (b) the Implicated Healthcare Professional/s, and (c) a Peer (Expert) of equivalent or higher standing, to be appointed by the Defendant Attorney.

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Directors : Claassen, Judge CJ - Neels (National Chairperson); Athmaram, Adv Reshma (- KZN Branch Chairperson); Becker, Prof Jan (Gauteng Branch Chairperson); Claassen, Dr Brand; Duffon, Adv Ian (Coalition Task team Convenor); Edeling, Dr Hanneljie (Administration- and Communications); Edeling, Dr Herman (Clinical Negligence and Mediation; Faculty Course Leader); Enslin, Dr Hans (RAF); Fredericks, Dr Gavin (National Treasurer); Jordaan, Mr Johan (FS Chairperson); Khan, Adv Jenine (Membership); Lamey, Adv Albert; Lerm, Dr Henry (National Deputy Chairperson - Legal; EC Chairperson); Munyaka, Dr Sharon; Ncongwane SC, Adv Thami (Transformation); Pienaar, Dr Hennie; Reynolds, Mr Trevor (National Deputy Chairperson - Health Sciences); Saayman, Prof Gert; Satyapal, Prof Kapil; Singh, Ms Irana; Sutherland, Ms Romany (WC Chairperson); Tiry, Adv Ayesha; Van Den Bout, Dr & Adv Anton; Wasserman, Dr Marlene.



5. The Defendant Attorney should bring to the meeting copies of the letter of demand and/or the summons and particulars of claim, as well as any records furnished by the Plaintiff.
6. The Implicated Healthcare Professional should bring to the meeting copies of his or her own clinical records, as well as any other relevant records to which he or she has access.
7. At the meeting the Defendant Attorney should explain the contents of the letter of demand and/or the summons and particulars of claim; the Implicated Healthcare Professional should explain the clinical circumstances in which the alleged incident occurred, as well as his or her reasoning and clinical judgment at the time; and the Peer should provide provisional opinions on the reasonableness or otherwise of the clinical decisions and actions or inaction.
8. These aspects should be discussed freely by all in the safety of the legally privileged meeting, and questions should be answered frankly, factually and rationally.
9. Any further documents that may be relevant to the matter, but which are not available at the time of the meeting, should be identified, so that the Defendant Attorney can request copies of the documents before they are lost.
10. Individuals who made relevant observations should be identified, so that the Defendant Attorney can consult with them at an early stage to secure their witness statements while events are relatively fresh in their minds.
11. Any scientific literature that may be relevant to the matter should be identified by the Peer and Implicated Healthcare Professional, and copies should be provided to the Defendant Attorney.



12. The minutes of such legally privileged meetings should be kept and retained by the Defendant Attorney. Such minutes will be protected by legal privilege as they would form a legitimate and necessary part of discussions between attorney and client in preparation of the defence of the case.

13. Benefits of such legally privileged peer review meetings would be, inter alia : -

13.1. An effective mechanism for the Defendant Attorney and MEC, Protection Society or Indemnity Insurer, to

13.1.1. establish relevant facts at an early stage;

13.1.2. identify, obtain and preserve relevant records; and

13.1.3. develop an early informed view on the defensibility or otherwise of the matter.

13.2. An effective stress relief mechanism for the Implicated Healthcare Professional/s, whether innocent or guilty of negligence, by

13.2.1. providing the opportunity to discuss the case and the allegations freely;

13.2.2. providing the benefit of early objective medical opinion and legal opinion in promoting understanding and constructive introspection;

13.2.3. relief of the stress of uncertainty in unmeritorious cases;



13.2.4. providing an early opportunity to accept accountability, to explain, to apologise and to consider corrective action, in cases of probable negligence.

13.3. .An effective educational tool, via an anonymized summary of key facts and learning outcomes; to be provided to relevant healthcare societies for use in seminars, conferences and CPD programs; as well as to universities for undergraduate and specialist training programs; in order to

13.3.1. equip healthcare professionals with relevant knowledge and understanding with which to promote patient safety and avoid harm to patients;

13.3.2. promote understanding of the difference between complications arising from non-negligent clinical errors (not compensable) and complications arising from negligent practice (compensable); and

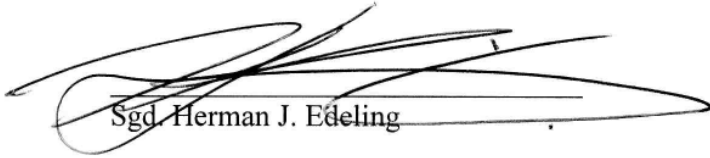
13.3.3. promote understanding of ineffective and wasteful “defensive medicine” practices as opposed to ethical and effective “defensive medicine” practices.

13.4. A strong motivational tool in encouraging healthcare practitioners to avoid negligent harm to patients.

14. In order to achieve these powerful outcomes, it is essential for all participating in such peer review meetings to know that they have the freedom to report facts and express opinions openly and truthfully. The Defendant Attorney should assure all participants that what they say will remain confidential, and will not be used in any court of law.



15. Anonymized summaries of key facts and learning outcomes should be provided to professional bodies that engage in continuing professional development programs, such as SAMLA, SAMA, medical specialist societies, other professional healthcare societies, the College of Medicine and healthcare faculties at universities.
16. These professional bodies should use the facts, expert opinions and legal opinions in such summaries in their continuing professional development programs. In presenting such programs they should invite lawyers and experts who are experienced in medico-legal practice to present the educational material and answer questions.


Sgd. Herman J. Edeling

3 May 2019