



IRISH MEDICAL
ORGANISATION
Ceardchumann Dochtúirí na hÉireann

**IMO Opening Statement to the Oireachtas Committee on Health and Children
on the Rising Cost of Professional Indemnity Insurance**

22nd January 2015

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The IMO would like to thank the Chairman and the Committee for the invitation to present our views today on how to tackle the rising cost of professional medical indemnity insurance.

The increasing cost of medical claims to both medical indemnifiers and the State Claims Agency is of growing concern to all.

MPS has seen their average claims costs per member increase dramatically in Ireland compared with other countries with costs almost doubling between 2012 and 2014. Medical practitioners in certain specialties and in private practice are finding it increasingly unaffordable to purchase indemnity cover.

Similarly the State Claims Agency has seen the claims cost increase substantially from €81million in 2010 to €121.2 million in 2013.

While there has been an increase in both the quantity and size of settlements in recent years, an inefficient and lengthy legal process has been blamed for the rise in claims costs. Recommendations to make the litigation process more efficient and less costly are to be welcome however the IMO is of the view that in order to reduce the cost of claims litigation should be a last resort after all other avenues have been explored.

Litigation is not good for the patient, the doctor or the State.

Patients have often experienced significant trauma or injury as a result of an adverse event. For many patients lengthy and expensive court proceedings are often the only recourse available to them in order to receive an explanation and compensation for what happened and to ensure appropriate long-term care and support. Further, this process can subject the patient to a considerable amount of emotional stress and serve to aggravate the patient's condition.

Doctors are often the second victims of an adverse event. The majority of doctors undergo a significant amount of emotional stress as a result of litigation and fitness to practice procedures that accompany litigation. Fear of damage to their reputation and loss of livelihood can impact on a doctor's psychological and physical health resulting in anxiety, depression and exacerbation of existing health problems.

In addition to the growing cost of claims experienced by the State Claims Agency, the consequences of an adversarial litigious system is that doctors will often practice defensively ordering more diagnostics or treatment than necessary or doctors may avoid treating certain high-risk patients. For some it may lead to early retirement or they may discourage others from entering the profession.

The majority of healthcare professionals aim to provide the best care for their patients. Rarely harm is due to wilful misconduct, most often harm is due to systems failure or unintentional human error. Alternatives to legal proceedings as follows should be explored.

Open Disclosure

Court proceedings can often be avoided if there is full and open disclosure including an apology following an adverse event.

Fear of litigation is a major barrier to apologising and communicating with patients following an adverse event and health care staff are often the second victims of such events. We have been awaiting the publication of the Health Information Bill since 2006, which was intended to provide protection to a health professional from admitting liability when apologising. This would be a major

step towards promoting open disclosure and changing the culture of adversarial litigation following an adverse event. Rather than focusing on apportioning blame, Open Disclosure Policies should support patients and doctors and focus more on learning from adverse events in order to reduce harm and improve patient safety.

No Faults Claims System

The Government could consider the introduction of a no faults claim system for certain cases. While the UK rejected a No Faults Claims systems for fear it would increase the number of claims, other countries such as New Zealand and the Scandinavian countries have had no-fault systems in place since the 1980s. Under no faults claims systems it is no longer necessary to prove clinical negligence but patients do have to prove that the treatment or medical process caused them harm. There is generally some guidance on compensation payments and in some countries the system is limited to certain types of injury. Since introducing a no fault claims system in 2004, court proceedings for clinical negligence in France have been reduced to a third.

Alternative Dispute Resolution Mechanisms

There is a need to promote alternative dispute resolution mechanisms to the courts such as mediation, arbitration or Collaborative Practice. Collaborative Practice requires the patient and their family, healthcare professionals, solicitors and insurers to commit to an open and transparent resolution of their dispute without going to court.

Tort Reform

In the event that clinical negligence cases end up in the courts, a number of organisations and groups have recommended changes to Tort Law and the litigation process in order to speed up the process and reduce the cost of litigation.

The Working Group on Medical Negligence Litigation and Periodic Payment Orders chaired by Mr Justice John Quirke and subsequently by Ms Justice Mary Irvine has made recommendations to the Government on Periodic Payment Orders, pre-action protocols and case management rules.

Periodic payment orders for catastrophic injury aim to ensure that compensation more accurately reflects the needs of the injured party and to avoid unwarranted windfalls. Pending legislation the courts in agreement with the injured party have begun awarding interim payments.

The introduction of pre-action protocols and case management rules in order to ensure openness and transparency early on in proceedings in an effort to reach an early settlement out of court or to speed up the process in arriving at a court decision, although pre-action protocols can lead to a front-loading of costs.

The Law Reform Commission recommended that tighter limitation periods for commencing legal proceedings could reduce the cost of insurance.

In addition to these measures MPS have recommended that the tort of clinical negligence is more clearly defined, limits are placed on damages awarded, a certificate of merit introduced to ensure only meritorious cases are brought forward and a cap is placed on lawyers' fees for smaller value cases.

Health Service Funding

Healthcare services in Ireland have been subject to unprecedented budget cuts over the last six years with no measurement of the impact of these cuts on patient safety. Between 2008 and 2014

Health Service funding has been reduced by 27% or €4bn¹ and staffing levels have been reduced by 11% or 12,812 WTEs since peak levels in 2007² and the number of acute hospital beds in the system has decreased by 1,631 or 13%. In the meantime demand on the hospital system has risen with ED, Inpatient, outpatient and day case activity increasing steadily. Under-resourcing and under-staffing play are regularly cited as contributing to major adverse events. A study from Germany found a tipping point (estimated at 92.5% bed occupancy), whereby clinical staff become more prone to error due to rationing of resources and elevated stress levels.³ The impact of political financial decisions on patient safety must be recognised and financing and staffing levels must be restored to stabilise the hospital system.

Automatic Entitlement to Health and Social Services for People with Disabilities

People with disabilities should have automatic entitlement to health care and social supports including access to community therapy services afforded by a Medical card, so that patients and their carers are not required to sue to ensure appropriate long-term care and support.

¹ HSE National Performance Assurance Report March 2014

² HSE, Annual Report and Financial Statements 2013

³ Kuntz L. Mennicken, and Scholtes, Stress on the ward: Evidence of safety tipping points in Hospitals, Management Science, May 2014