

**INFORMATION BOOKLET FOR GENERAL PRACTITIONERS &
MEDICAL CONSULTANTS**

Prepared by Berwick Solicitors.

© Berwick Solicitors, 4 St. Brendan's Road, Woodquay, Galway.
Tel. (091) 567545 Fax. (091) 569232 TEXT: 086 8152932
email: info@berwick.ie www.berwick.ie

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Introduction

Berwick Solicitors

Berwick Solicitors are specialists in litigation and court work with an extensive and varied client base serviced from our offices in Galway.

We act for clients from Galway, Dublin, Mayo and from all over Ireland. We also act for clients from the United Kingdom, the USA and Continental Europe.

Berwick Solicitors are happy to consult with clients from any location in Ireland and from overseas.

Consultations are available normally during office hours Monday to Friday but consultations can be arranged after office hours or on the weekend by appointment.

Our Team

Matthew Molloy, B.A., L.L.B., native of Renmore, Galway city who qualified as a solicitor in 1988. Matthew is a litigation solicitor who specialises in personal injury law and medical negligence law. Matthew has 25 years' experience dealing with personal injury and medical negligence.

James Seymour, B.A., L.L.B., native of Nenagh, County Tipperary who qualified as a solicitor in 2001. James is a litigation solicitor who specialises in commercial and business disputes, debt recovery and medical contract disputes.

James is also a Notary Public and is qualified as a solicitor in England & Wales and in Northern Ireland. James is an associate member of the Chartered Institute of Arbitrators of Ireland and he is the current President of the Galway Solicitors Bar Association.

David Higgins, B.Comm, L.L.B., native of Tuam, Co. Galway, qualified as a solicitor in 2001. David is an experienced litigation solicitor who specialises in Family Law, Employment Law and Commercial Law. David has a diploma in Commercial Law and is an accredited Civil and Commercial Mediator.

David held the position as President of the Galway Solicitors Bar Association for three years and is the current Connaught representative to the Council of the Law Society of Ireland. David sits on the Regulation to Practice Committee, the Family Law Committee and the Mediation and Arbitration Committee in the Law Society.

1. ACTING AS AN EXPERT WITNESS FOR YOUR PATIENT

If your patient has suffered an injury as a result of another parties negligence, you may be requested by your patient's solicitor to prepare a report for the purposes of making a claim for compensation. Initially a claim must be made to a statutory body called the Injuries Board. To facilitate this, your patient will require you to prepare a medical report. The format of the report is up to you but it is recommended that it follows the format as set out by the Injuries Board. The template medical report can be downloaded from the "*Resources for Doctors*" page of the Injuries Board website www.injuriesboard.ie

It is important that you do not delay in completing your medical report as there are strict time limits within which your patient can make a claim. Generally this is two years from an accident or two years from the date your patient became aware of their injury. Should you not complete your report in a timely manner and your patient's claim becomes statute barred, **you may be held liable to compensate your patient.**

2. PREPARING A MEDICAL REPORT FOR YOUR PATIENT'S LEGAL ADVISORS

From our experience before the Courts, the following areas tend to create difficulties for doctors when writing their reports

1. Nature of treatment received for the injuries: this should include results of any X-rays, scans, blood tests or other relevant examinations. It is important to specify all treatments undertaken so as to show that the patient is taking positive steps to deal with their injuries.
2. Details of all relevant pre-accident and post-accident history: Frequently doctors are put in to a difficult position where they are asked to report on the extent to which patient suffered from pre-accident injuries similar to those sustained in the current accident. Doctors need to be careful to disclose all information, irrespective of whether or not they are of an entirely different issue, as they might be obliged to furnish copies of their notes and records at a later date
3. It is very important that you take a detailed and comprehensive note of all injuries and symptoms (no matter how minor) as frequently the issue arises later as to whether the patient developed further symptoms or injuries from the same accident which were not noted in the initial report.
4. Your prognosis (including likely duration of symptoms, additional treatment recommended and likely effects on the patients working capacity). This is one of the main criteria used to value a case.

5. It is important to avoid concluding who might be responsible for the accident. You should avoid commenting on liability or negligence or even asking the patient his/her view on same during the examination
6. It is also important to note that the contents of your medical report may be used in the drafting of court documents and that you may have to give evidence in respect of the contents at some future court hearing.

3. ATTENDING COURT, RECEIVING A WITNESS SUMMONS OR SUBPOENA

In most cases, you will be asked to attend Court on a certain date to give evidence on behalf of your patient. Every effort of course is made to ensure that you are given as much notice as possible of the court date. You will also be advised to whether your actual attendance is required at the courthouse or whether you are to remain on standby.

4. YOUR FEES

You are entitled to your reasonable fees for your attendance in Court (High Court – normally doctors are not required to attend Circuit Court as medical reports are usually accepted without the need to call doctors as expert witnesses).

Payment of these fees is made subsequent to the hearing of the case and not in advance (unlike the payment of medical report fees).

The current rates which have been approved by the Courts are as follows

- Medical Report fee : € 350.00 maximum
- Stand by fee (this is where you are not required to attend Court but are available on short notice) € 200.00 per day
- Attendance fee (this is the fee due where you actually are required to attend the Court) € 400.00 per day; € 200.00 per half day; together with reasonable travel expenses.

Where there is a dispute as to the level of legal costs (including solicitors fees, barristers fees and medical expert fees), the matter can go to a separate hearing before the Taxing Master in Dublin. This is known as a taxation hearing and the matter is referred to as “having gone to taxation”. At this hearing, the legal fees, medical fees and other expert witness fees are examined by the Taxing Master and he/she will then determine whether the fee charged is too high or too low or reasonable. Should there be a difference in the fee you charge and the amount allowed, your patient will have to pay the difference.

5. SUBPOENA

In rare cases you may be served with a witness summons or subpoena. A witness summons (issued from the Circuit Court) or a subpoena (issued from the High Court) is an order compelling you to attend court at the venue and date and time indicated on the face of the summons. You could also be served with a subpoena duces tecum which will state that you must not only attend in court but you must also bring along specified documents.

Circuit Court: Normally you will be required to attend the court on a specific date only.

High Court: Normally (the High Court in Galway) you will be required to attend the court on a specific date and each day thereafter until the case is completed.

NOTE :It is very important that you take the service of a witness summons or subpoena upon you very seriously. **A person who, without just excuse, disobeys or ignores a witness summons or subpoena shall be guilty of contempt of court and runs the risk of imprisonment.**

6. SIGNING AN AFFIDAVIT OR STATUTORY DECLARATION

There are occasions on when you may be asked to swear your name to an affidavit or statutory declaration. This is similar to giving evidence in Court in that you swear that you will tell the truth. It is an offence to swear something is true when it is not. To “swear a document” is to sign your name to it in the presence of a solicitor or a commissioner for oaths. (This is a person appointed by the courts to be available for people who want to swear oaths in front of them).

Your own solicitor or the solicitor who prepared the document for you to swear cannot witness your solicitor. There is a statutory charge of € 10.00 for each signature on the affidavit or statutory declaration and € 2.00 for each document attached to the affidavit or statutory declaration.

PLEASE BE SURE THAT YOU UNDERSTAND THE CONTENT OF WHAT YOU ARE SIGNING.

POWER OF ATTORNEY – Frequently asked questions

What is the power of attorney?

A power of attorney is a legal mechanism that a person, (donor), may set up during their lifetime when they are mentally capable. There are two types of power of attorney in Ireland and they both have different functions.

Power of Attorney

The first type is a standard power of attorney. It allows a donor to choose someone to be their attorney. Their attorney may make decisions and take actions in relation to the donor's affairs if the donor is unwell, unavailable or abroad. The powers may be specifically limited or they may be of a general nature. This type of power of attorney automatically ceases when the donor dies or becomes mentally incapacitated. There may also be a time limit or duration built into the power of attorney.

Enduring Power of Attorney

The second type is called an enduring power of attorney. This is set up by a donor during their lifetime when they are mentally capable but it has no effect until the donor creating it becomes mentally incapacitated. This power allows the attorney to make personal care decisions on behalf of the donor setting it up, but not healthcare decisions. On setting up this type of power of attorney, the powers may be limited or excluded or restricted as desired. This type of power of attorney ceases on the death of the donor.

WARD OF COURT – frequently asked questions

What is a Ward of Court?

A Ward of Court is the term used for a person who due to incapacity is not able to look after their affairs and a Committee is appointed to do so. The incapacity may be mental incapacity or incapacity due to age (minors under 18). A person is made a Ward of Court by making an application to the Office of the Wards of Court.

When is it necessary to make an application to make a person a Ward of Court?

It will be necessary to make an application to have a person made a Ward of Court in two situations. The first situation is where a person is no longer capable to look after their own affairs and his or her dependants due to mental incapacity.

The second situation arises where a person is under the age of 18 and for a variety of reasons may need to be taken into Wardship. The most common reasons for taking a minor into Wardship is if the minor has received a substantial award of damages and the

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minor has a special housing or care need, the money will be paid into court and invested on behalf of the minor until they reach 18.

How do you make an application in relation to a Ward of Court?

An application is made to the High Court and it is referred to as a petition. The person making the application is known as the petitioner. The petition must be accompanied by two medical reports from two independent doctors confirming that the person to be made a Ward of Court is of unsound mind.

The High Court may then choose to carry out an inquiry, this would involve the potential Ward of Court being examined by a doctor sent by the High Court.

Are there any alternatives to an application for a Ward of Court?

Where a person, prior to becoming mentally incapacitated has put in place what is called an Enduring Power of Attorney it will not be necessary to apply to have that person made a Ward of Court. In this instance the person who has been made the Attorney will be entitled to manage the affairs of the party who has become mentally incapacitated.

Wills

You may find yourself consulted by a patient requesting a letter or certificate of capacity. This document states that you, as the patient's attending physician, certifies that the patient has sufficient mental capacity to give their solicitor legal instructions. This generally arises when someone is making or changing their will and their solicitor is concerned that they do not know what they are doing or that they are being influenced by someone else. A greater duty of care is owed to vulnerable and elderly patients and, if there is a suspicion that a patient is being coerced into preparing or altering their will, the certificate of capacity should not be furnished.

Conclusion

At Berwick Solicitors, we provide a specialized service to medical practitioners. We are available to discuss any of the above matters. We normally are available to answer any questions over the telephone that our medical colleagues may have in respect of any matters. We also have out of normal office hour consultation times available for medical practitioners. Please feel free to contact Matthew Molloy, James Seymour or David Higgins for a no obligation complimentary consultation either in person or via telephone.

The information contained in this document is for informative purposes only and should not be construed as an interpretation of the law. Berwick Solicitors will not be responsible for any reliance on the contents of this document and are not responsible for any errors or omissions herein.