
THE DUBAI HEALTHCARE CITY ADMINISTRATION

MEDICAL LIABILITY REGULATION

Regulation No. 5 / 2005

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PART 1 PRELIMINARY

1. *Purpose*

- 1.1 These Regulations make provision in relation to the recovery of damages for death or personal injury caused to a patient during treatment in the DHCC and which was caused by the fault of a Healthcare Provider and a Healthcare Organisation and for other purposes.

2. *Short Title*

- 2.1 These Regulations are to be referred to as the Dubai Healthcare City Medical Liability Regulations, as the same may be amended from time to time.

3. *Definitions*

- 3.1 In these Regulations:

- 3.1.1 "chairman" means the chairman of the Dubai Healthcare Administration established by Law No. 9 of 2003 and the relevant subdivision(s) thereof.
- 3.1.2 "court" includes tribunal, and in relation to a claim for damages means any court or tribunal by or before which the claim falls to be determined.
- 3.1.3 "damages" includes any form of monetary compensation but does not include:
- a. any payment authorised or required to be made under a pension scheme, or
 - b. any payment authorised or required to be made under an insurance policy in respect of the death of, injury to or damage suffered by the person insured under the policy.
- 3.1.4 "DHCC" means Dubai Healthcare City established in the Emirate of Dubai pursuant to Law No. 9 of 2003.
- 3.1.5 "enabling regulations" means the Dubai Healthcare City Enabling Regulations 2005.
- 3.1.6 "health care" means any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person.
- 3.1.7 "Healthcare Organisation" has the meaning set out in the enabling regulations.
- 3.1.8 "Healthcare Provider" has the meaning set out in the enabling regulations.
- 3.1.9 "non-economic loss" means any one or more of the following:
- a. pain and suffering;
 - b. loss of amenities of life;
 - c. loss of expectation of life;

d. disfigurement.

3.1.10 "UAE" means the United Arab Emirates.

4. ***Provisions relating to operation of Law***

4.1 These Regulations applies to and shall govern the service of all health care by a Healthcare Provider and a Healthcare Organisation to a patient in the DHCC whether pursuant to an agreement between them or by virtue of a tortious or other relationship between them.

4.2 A provision of these Regulations that gives protection from liability does not limit the protection from liability given by another provision of these Regulations or by another Law.

4.3 These Regulations (except Part 3) does not prevent the parties to a contract from making express provision for their rights, obligations and liabilities except in relation to the exclusion of liability under the contract with respect to any matter to which these Regulations applies and does not limit or otherwise affect the operation of any such express provision.

4.4 Subsection 4.3 extends to any provision of these Regulations even if the provision applies to liability in contract.

5. ***Civil liability excluded from Law***

5.1 The provisions of these Regulations do not apply to or in respect of liability (and awards of damages in those proceedings) in respect of an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct.

5.2 Regulations may exclude a specified class or classes of liability (and awards of damages in those proceedings) from the operation of all or any specified provisions of these Regulations. Any such regulations may make transitional provision with respect to claims for acts or omissions before the commencement of the regulation.

6. ***Law operates to limit vicarious liability***

6.1 Any provision of these Regulations that limits the liability of a person for a tort also operates to limit the vicarious liability of another person for that tort.

7. ***Miscellaneous Provisions***

7.1 These Regulations binds the DHCC.

7.2 The chairman may make regulations, not inconsistent with these Regulations, for or with respect to any matter that by these Regulations is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to these Regulations.

PART 2 MEDICAL NEGLIGENCE

Division 1 - Preliminary

8. *Definitions*

In this Part:

- 8.1 "harm" means harm of any kind, including the following
- a. personal injury or death
 - b. economic loss.
- 8.2 "medical practitioner" means includes a Healthcare Provider.
- 8.3 "negligence" means the failure of a Healthcare Provider and/or a Healthcare Organisation to exercise reasonable care and skill in providing health care to a patient.
- 8.4 "person" when referring to a negligent person includes a Healthcare Provider and a Healthcare Organisation.
- 8.5 "personal injury" includes:
- a. pre-natal injury; and
 - b. impairment of a person's physical or mental condition; and
 - c. disease.
- 8.6 "relatives of a deceased" means the immediate family of a deceased.

9. *Application of Part*

- 9.1 This Part applies to any claim for damages for harm resulting from negligence of a Healthcare Provider and/or Healthcare Organisation, regardless of whether the claim is brought in tort, in contract, under Laws or Regulations for the time being in force in the DHCC or otherwise.
- 9.2 This Part does not apply to liability that is excluded from the operation of this Part by section 5.

Division 2 – Duty of Care

10. *General Principles*

- 10.1 A person is not negligent in failing to take precautions against a risk of harm unless:
- 10.1.1 the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
 - 10.1.2 the risk was not insignificant; and

- 10.1.3 in the circumstances, a reasonable person in the person's position would have taken those precautions.
- 10.2 In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things):
 - 10.2.1 the probability that the harm would occur if care were not taken;
 - 10.2.2 the likely seriousness of the harm;
 - 10.2.3 the burden of taking precautions to avoid the risk of harm;
 - 10.2.4 the social utility of the activity that creates the risk of harm.
- 11. ***Other Principles***
 - 11.1 In proceedings relating to liability for negligence:
 - 11.1.1 the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks of harm for which the person may be responsible, and
 - 11.1.2 the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done, and
 - 11.1.3 the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in respect of the risk and does not of itself constitute an admission of liability in connection with the risk.

Division 3 – Causation

12. *General Principles*

- 12.1 A determination that negligence caused particular harm comprises the following elements:
 - 12.1.1 that the negligence was a necessary condition of the occurrence of the harm (**factual causation**), and
 - 12.1.2 that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (**scope of liability**).
- 12.2 In determining in an exceptional case whether negligence that cannot be established as a necessary condition of the occurrence of harm should be accepted as establishing factual causation, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.
- 12.3 If it is relevant to the determination of factual causation to determine what the person who suffered harm would have done if the negligent person had not been negligent:

- 12.3.1 the matter is to be determined subjectively in the light of all relevant circumstances, subject to 12.3.2, and
- 12.3.2 any statement made by the person after suffering the harm about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.
- 12.4 For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.
- 13. ***Onus of proof***
 - 13.1 In determining liability for negligence, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 4 – Assumption of risk

14. ***Meaning of "Obvious Risk"***

- 14.1 For the purposes of this Division, an **obvious risk** to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
- 14.2 Obvious risks include risks that are patent or a matter of common knowledge.
- 14.3 A risk of something occurring can be an obvious risk even though it has a low probability of occurring.
- 14.4 A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

15. ***Injured persons presumed to be aware of obvious risks***

- 15.1 In determining liability for negligence, a person who suffers harm is presumed to have been aware of the risk of harm if it was an obvious risk, unless the person proves on the balance of probabilities that he or she was not aware of the risk.
- 15.2 For the purposes of this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.

16. ***No liability for materialisation of inherent risk***

- 16.1 A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.
- 16.2 An **inherent risk** is a risk of something occurring that cannot be avoided by the exercise of reasonable care and skill.

16.3 This section does not operate to exclude liability in connection with a duty to warn of a risk.

Division 5 – Professional Opinion

17. *Standard of care*

17.1 A person does not incur a liability in negligence arising from the provision of his medical service if it is established that he acted in a manner that (at the time the service was provided) was widely accepted in the DHCC and in England and Wales by peer professional opinion as competent professional practice.

17.2 However, peer professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.

17.3 The fact that there are differing peer professional opinions widely accepted in the DHCC and in England and Wales concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.

17.4 Peer professional opinion does not have to be universally accepted to be considered widely accepted.

18. *Division does not apply to duty to warn of risk*

18.1 This Division does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of the risk of death or of injury to a person associated with the provision by a professional of a professional service.

Division 6 – Non-delegable duties and vicarious liability

19. *Liability based on non-delegable duty*

19.1 The extent of liability in tort of a person (**the defendant**) for breach of a non-delegable duty to ensure that reasonable care is taken by a person in the carrying out of any work or task delegated or otherwise entrusted to the person by the defendant is to be determined as if the liability were the vicarious liability of the defendant for the negligence of the person in connection with the performance of the work or task.

19.2 This section applies to an action in tort whether or not it is an action in negligence, despite anything to the contrary in section 9.

Division 7 – Contributory negligence

20. *Standard of contributory negligence*

20.1 The principles that are applicable in determining whether a person has been negligent also apply in determining whether the person who suffered harm has been contributorily negligent in failing to take precautions against the risk of that harm.

20.2 For that purpose:

- 20.2.1 the standard of care required of the person who suffered harm is that of a reasonable person in the position of that person, and
- 20.2.2 the matter is to be determined on the basis of what that person knew or ought to have known at the time.

21. ***Contributory negligence can defeat claim***

- 21.1 In determining the extent of a reduction in damages by reason of contributory negligence, a court may determine a reduction of 100% if the court thinks it just and equitable to do so, with the result that the claim for damages is defeated.

22. ***Contributory negligence – claims made by relatives***

- 22.1 In a claim for damages brought by relatives of the deceased the court is entitled to have regard to the contributory negligence of the deceased person.

PART 3 DAMAGES

Division 1 - Preliminary

23. *Definitions*

In this Part:

23.1 "injury" means personal injury and includes the following:

- a. pre-natal injury,
- b. impairment of a person's physical or mental condition,
- c. disease.

23.2 "personal injury damages" means damages that relate to the death of or injury to a person as a result of the actions or omissions of a Healthcare Provider and/or a Healthcare Organisation during the course of their employment and whilst undertaking the tasks as a Healthcare Provider and/or a Healthcare Organisation.

24. *Application of Part*

24.1 This Part applies to and in respect of an award of personal injury damages, except an award that is excluded from the operation of this Part by section 5.

24.2 This Part applies regardless of whether the claim for the damages is brought in tort, in contract, under Laws or Regulations for the time being in force in the DHCC or otherwise.

24.3 A court cannot award damages, or interest on damages, contrary to this Part.

Division 2 – Fixing damages for economic loss

25. *Damages for past or future economic loss – maximum for loss of earnings etc.*

25.1 This Division applies to an award of damages:

- 25.1.1 for past economic loss due to loss of earnings or the deprivation or impairment of earning capacity, or
- 25.1.2 for future economic loss due to the deprivation or impairment of earning capacity, or
- 25.1.3 for the loss of expectation of financial support.

26. *Future economic loss – claimant's prospects and adjustments*

26.1 A court cannot make an award of damages for future economic loss unless the claimant first satisfies the court that the assumptions about future earning capacity or other events on which the award is to be based accord with the claimant's most likely future circumstances but for the injury.

26.2 When a court determines the amount of any such award of damages for future economic loss it is required to adjust the amount of damages for future economic loss that would have been sustained on those assumptions by reference to the percentage possibility that the events might have occurred but for the injury.

26.3 If the court makes an award for future economic loss, it is required to state the assumptions on which the award was based and the relevant percentage by which damages were adjusted.

27. ***Damages for future economic loss – discount rate***

27.1 If an award of damages is to include any component, assessed as a lump sum, for future economic loss of any kind, the present value of that future economic loss is to be determined by adopting a prescribed discount rate of 5%.

28. ***Damages for gratuitous attendant care services***

28.1 In this section:

28.1.1 "Attendant care services" means any of the following:

- a. services of a domestic nature,
- b. service relating to nursing,
- c. services that aim to alleviate the consequences of an injury

28.1.2 "gratuitous attendant care services" means attendant care services:

- a. that have been or are to be provided by another person to a claimant, and
- b. for which the claimant has not paid or is not liable to pay.

28.2 No damages may be awarded to a claimant for gratuitous attendant care services unless the court is satisfied that:

- a. there is (or was) a reasonable need for the services to be provided, and
- b. the need has arisen (or arose) solely because of the injury to which the damages relate, and
- c. the services or the use of the person providing the services would not be (or would not have been) provided to the claimant but for the injury.

29. ***Damages for loss of pension entitlements***

29.1 The maximum amount of damages that may be awarded for economic loss due to the loss of employer pension contributions is the relevant percentage of damages payable (in accordance with this Part) for the deprivation or impairment of the earning capacity on which the entitlement to those contributions is based.

- 29.2 The relevant percentage is the percentage of earnings that is the minimum percentage required by law to be paid as employer pension contributions.

Division 3 – Fixing damages for non-economic loss (general damages)

30. *Determination of damages for non-economic loss*

- 30.1 No damages may be awarded for non-economic loss unless the severity of the non-economic loss is at least 15% of a most extreme case.
- 30.2 The maximum amount of damages that may be awarded for non-economic loss is AED1,000,000, but the maximum amount is to be awarded only in a most extreme case.

31. *Tariffs for damages for non-economic loss*

- 31.1 In determining damages for non-economic loss, a court may refer to earlier decisions of that or other courts for the purpose of establishing the appropriate award in the proceedings.
- 31.2 For that purpose, the parties to the proceedings or their legal representative may bring the court's attention to awards of damages for non-economic loss in those earlier decisions.
- 31.3 This section does not alter the rules for the determination of other damages.

Division 4 – Interest on damages

32. *Interest on damages*

- 32.1 A court cannot order the payment of interest on damages awarded for non-economic loss or gratuitous attendant care services (as defined in section 28).
- 32.2 If a court is satisfied that interest is payable on damages (other than damages for non-economic loss or gratuitous attendant care services), the amount of interest is to be calculated:
- 32.2.1 for the period from when the loss to which the damages relate was first incurred until the date on which the court determines the damages, and
- 32.2.2 in accordance with the principles ordinarily applied by the court for that purpose, subject to subsection 32.3.
- 32.3 The rate of interest to be used in any such calculation is:
- 32.3.1 such interest rate as may be determined by the regulations, or
- 32.3.2 if no such rate is determined by the regulations--the relevant interest rate as at the date of determination of the damages.
- 32.4 For the purposes of subsection 32.3, the **relevant interest rate** is the rate representing the UAE Government 10-year benchmark bond rate as published by the Central Bank of UAE in the Central Bank of UAE Bulletin (however described) and as applying:

- 32.4.1 on the first business day of January of each year (in which case the rate is to apply as the relevant interest rate for the period from 1 March until 31 August of that year), or
 - 32.4.2 on the first business day of July of each year (in which case the rate is to apply as the relevant interest rate for the period from 1 September of that year until the last day of February of the following year).
- 32.5 Nothing in this section affects the payment of interest on a debt under a judgment or order of a court.

Division 5 – Third party contributions

33. *Third party contributions*

- 33.1 This section applies when a person (**the claimant**) is entitled to an award of damages in respect of death or injury against a person (**the defendant**) and also against another person (**the third party**), and the award against the defendant is an award to which this Part applies but the award against the third party is not an award to which this Part applies.
- 33.2 A court determining the amount of the contribution (**the defendant's contribution**) to be recovered by the third party from the defendant must:
- 33.2.1 determine the defendant's contribution as a percentage, being such percentage as the court thinks just and equitable (having regard to the extent of the responsibility of the defendant and the third party, respectively, for the claimant's damages), and
 - 33.2.2 determine the amount of damages to which the claimant is, or would be, entitled in accordance with this Part (as if the award of damages against the third party were not excluded from the operation of this Part), and
 - 33.2.3 fix the amount of the defendant's contribution by applying the percentage determined under paragraph 33.2.1 to the amount of damages determined under paragraph 33.2.2.
- 33.3 The amount of damages that may be recovered by the claimant from the third party is to be reduced by the difference between:
- 33.3.1 the amount of the contribution to which the third party would have been entitled (but for this section) from the defendant, and
 - 33.3.2 the amount of the defendant's contribution calculated under subsection 33.2.
- 33.4 Subsection 33.3 does not limit any greater reduction (applicable under any other law, including any other Part of these Regulations) in the amount of damages that may be recovered by the claimant from the third party.

Division 6 – Exemplary and similar damages

34. *Limitation on exemplary, punitive and aggravated damages*

- 34.1 In an action for the award of personal injury damages where the act or omission that caused the injury or death was negligence, a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages.

Division 7 – Structured settlements

35. *What is a structured settlement*

- 35.1 For the purposes of this Division, a **structured settlement** is an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

36. *Court required to inform parties of proposed award*

- 36.1 The purpose of this section is to enable the court to give the parties to proceedings a reasonable opportunity to negotiate a structured settlement.
- 36.2 A court that decides to make an award of personal injury damages in respect of future loss (not including interest) exceeding AED1,000,000 must first notify all the parties to the proceedings of the terms of the award it proposes to make.
- 36.3 The notification must set out the amount of each component part of the proposed award in accordance with the requirements of the regulations and rules of court.

37. *Court may make consent order for structured settlement*

- 37.1 A court may, on the application of the parties to a claim for personal injury damages, make an order approving of or in the terms of a structured settlement even though the payment of damages is not in the form of a lump sum award of damages.

38. *Obligation of legal practitioners to provide advice*

- 38.1 A legal practitioner should advise, in writing, a plaintiff who proposes to negotiate a settlement of a claim for personal injury damages about the following:
- 38.1.1 the availability of structured settlements,
- 38.1.2 the desirability of the plaintiff obtaining independent financial advice about structured settlements and lump sum settlements of the claim.

39. ***Definitions***

In this Part:

- 39.1 "consequential mental harm" means mental harm that is a consequence of a personal injury of any other kind.
- 39.2 "mental harm" means impairment of a person's mental condition.
- 39.3 "negligence" means failure of a Healthcare Provider and/or a Healthcare Organisation to exercise reasonable care and skill in providing health care to a patient.
- 39.4 "personal injury" includes:
 - a. pre-natal injury, and
 - b. impairment of a person's physical or mental condition, and
 - c. disease.
- 39.5 "pure mental harm" means mental harm other than consequential mental harm.

40. ***Application of Part***

- 40.1 This Part (except section 41) applies to any claim for damages for mental harm resulting from negligence, regardless of whether the claim is brought in tort, in contract, under Laws or Regulations or otherwise.
- 40.2 Section 41 applies to a claim for damages in any civil proceedings.
- 40.3 This Part does not apply to medical liability that is excluded from the operation of this Part by section 5.

41. ***Personal injury arising from mental or nervous shock***

- 41.1 In any action for personal injury, the plaintiff is not prevented from recovering damages merely because the personal injury arose wholly or in part from mental or nervous shock.

42. ***Limitation on recovery for pure mental harm arising from shock***

- 42.1 This section applies to the liability of a person (**the defendant**) for pure mental harm to a person (**the plaintiff**) arising wholly or partly from mental or nervous shock in connection with another person (**the victim**) being killed, injured or put in peril by the act or omission of the defendant.
- 42.2 The plaintiff is not entitled to recover damages for pure mental harm unless:

- 42.2.1 the plaintiff witnessed, at the scene, the victim being killed, injured or put in peril, or
- 42.2.2 the plaintiff is a close member of the family of the victim.
- 42.3 Any damages to be awarded to the plaintiff for pure mental harm are to be reduced in the same proportion as any reduction in the damages that may be recovered from the defendant by or through the victim on the basis of the contributory negligence of the victim.
- 42.4 No damages are to be awarded to the plaintiff for pure mental harm if the recovery of damages from the defendant by or through the victim in respect of the act or omission would be prevented by any provision of these Regulations or any other written or unwritten law.
- 42.5 In this section:
- 42.5.1 "close member of the family" of a victim means:
- a. a parent of the victim or other person with parental responsibility for the victim, or
 - b. the spouse of the victim, or
 - c. a child or stepchild of the victim or any other person for whom the victim has parental responsibility , or
 - d. a brother, sister, half-brother or half-sister, or stepbrother or stepsister of the victim.
- 42.5.2 "spouse" means:
- a. a husband or wife, but where more than one wife would so qualify as a spouse, means only the first wife.
43. ***Pure mental harm – liability only for recognised psychiatric illness***
- 43.1 There is no liability to pay damages for pure mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.
44. ***Mental harm – duty of care***
- 44.1 A person (**the defendant**) does not owe a duty of care to another person (**the plaintiff**) to take care not to cause the plaintiff mental harm unless the defendant ought to have foreseen that a person of normal fortitude might, in the circumstances of the case, suffer a recognised psychiatric illness if reasonable care were not taken.
- 44.2 For the purposes of the application of this section in respect of pure mental harm, the circumstances of the case include the following:
- a. whether or not the mental harm was suffered as the result of a sudden shock,
 - b. whether the plaintiff witnessed, at the scene, a person being killed, injured or put in peril,

- c. the nature of the relationship between the plaintiff and any person killed, injured or put in peril,
- d. whether or not there was a pre-existing relationship between the plaintiff and the defendant.

44.3 For the purposes of the application of this section in respect of consequential mental harm, the circumstances of the case include the personal injury suffered by the plaintiff.

44.4 This section does not require the court to disregard what the defendant knew or ought to have known about the fortitude of the plaintiff.

45. ***Liability for economic loss for consequential mental harm***

45.1 A court cannot make an award of damages for economic loss for consequential mental harm resulting from negligence unless the harm consists of a recognised psychiatric illness.

PART 5 LIABILITY OF PUBLIC AND OTHER AUTHORITIES

46. *Application of Part*

- 46.1 This Part applies to medical liability in tort.
- 46.2 This Part extends to any such liability even if the damages are sought in an action for breach of contract or any other action.
- 46.3 This Part does not apply to medical liability that is excluded from the operation of this Part by section 5.

47. *Definitions*

47.1 In this Part:

- 47.1.1 "exercise" a function includes perform a duty.
- 47.1.2 "function" includes a power, authority or duty.
- 47.1.3 "public or other authority" means:
 - a. DHCC, or
 - b. Government of Dubai, or
 - c. Government of the UAE, or
 - d. a Government department, or
 - e. a local municipality, or
 - f. any public or local authority constituted by or under a Law, or
 - g. any person having public official functions or acting in a public official capacity (whether or not employed as a public official), but only in relation to the exercise of the person's public official functions, or
 - h. a person or body prescribed (or of a class prescribed) by the regulations as an authority to which this Part applies (in respect of all or specified functions), or
 - i. any person or body in respect of the exercise of public or other functions of a class prescribed by the regulations for the purposes of this Part.

48. *Principles concerning resources, responsibilities etc of public or other authorities*

- 48.1 The following principles apply in determining whether a public or other authority has a duty of care or has breached a duty of care in proceedings for medical liability to which this Part applies:

- a. the functions required to be exercised by the authority are limited by the financial and other resources that are reasonably available to the authority for the purpose of exercising those functions,
- b. the general allocation of those resources by the authority is not open to challenge,
- c. the functions required to be exercised by the authority are to be determined by reference to the broad range of its activities (and not merely by reference to the matter to which the proceedings relate),
- d. the authority may rely on evidence of its compliance with the general procedures and applicable standards for the exercise of its functions as evidence of the proper exercise of its functions in the matter to which the proceedings relate.

49. ***Proceedings against public or other authorities based on breach of statutory duty***

- 49.1 This section applies to proceedings for medical liability to which this Part applies to the extent that the liability is based on a breach of a statutory duty by a public or other authority in connection with the exercise of or a failure to exercise a function of the authority.
- 49.2 For the purposes of any such proceedings, an act or omission of the authority does not constitute a breach of statutory duty unless the act or omission was in the circumstances so unreasonable that no authority having the functions of the authority in question could properly consider the act or omission to be a reasonable exercise of its functions.
- 49.3 In the case of a function of a public or other authority to prohibit or regulate an activity, this section applies in addition to section 51.

50. ***Proceedings against public or other authorities for the exercise of special statutory powers***

- 50.1 This section applies to proceedings for medical liability to which this Part applies to the extent that the liability is based on a public or other authority's exercise of, or failure to exercise, a special statutory power conferred on the authority.
- 50.2 A "special statutory power" is a power:
 - a. that is conferred by or under a Law or Regulation for the time being in force in the DHCC, and
 - b. that is of a kind that persons generally are not authorised to exercise without specific statutory authority.
- 50.3 For the purposes of any such proceedings, any act or omission involving an exercise of, or failure to exercise, a special statutory power does not give rise to medical liability unless the act or omission was in the circumstances so unreasonable that no authority having the special statutory power in question could properly consider the act or omission to be a reasonable exercise of, or failure to exercise, its power.

50.4 In the case of a special statutory power of a public or other authority to prohibit or regulate an activity, this section applies in addition to section 51.

51. ***When public or other authority not liable for failure to exercise regulatory functions***

51.1 A public or other authority is not liable in proceedings for liability to which this Part applies to the extent that the liability is based on the failure of the authority to exercise or to consider exercising any function of the authority to prohibit or regulate an activity if the authority could not have been required to exercise the function in proceedings instituted by the plaintiff.

51.2 Without limiting what constitutes a function to regulate an activity for the purposes of this section, a function to issue a licence, permit or other authority in respect of an activity, or to register or otherwise authorise a person in connection with an activity, does not constitute a function to regulate the activity.

52. ***Exercise of function or decision to exercise does not create duty***

52.1 In proceedings to which this Part applies, the fact that a public or other authority exercises or decides to exercise a function does not of itself indicate that the authority is under a duty to exercise the function or that the function should be exercised in particular circumstances or in a particular way.

PART 6 INTOXICATION

53. *Part applies to medical liability for death, injury or property damage*

- 53.1 This Part applies to medical liability of any kind for personal injury damages (as defined in Part 3) or damage to property.
- 53.2 This Part does not apply to medical liability that is excluded from the operation of this Part by section 5.

54. *Definition of "intoxication"*

- 54.1 A reference in this Part to a person being **intoxicated** is a reference to a person being under the influence of alcohol or a drug (whether or not taken for a medicinal purpose and whether or not lawfully taken).

55. *Effect of intoxication on duty and standard of care*

- 55.1 The following principles apply in connection with the effect that a person's intoxication has on the duty and standard of care that the person is owed:
- a. in determining whether a duty of care arises, it is not relevant to consider the possibility or likelihood that a person may be intoxicated or that a person who is intoxicated may be exposed to increased risk because the person's capacity to exercise reasonable care and skill is impaired as a result of being intoxicated,
 - b. a person is not owed a duty of care merely because the person is intoxicated,
 - c. the fact that a person is or may be intoxicated does not of itself increase or otherwise affect the standard of care owed to the person.

56. *No recovery where person intoxicated*

- 56.1 This section applies when it is established that the person whose death, injury or damage is the subject of proceedings for the recovery of damages was at the time of the act or omission that caused the death or injury intoxicated to the extent that the person's capacity to exercise reasonable care and skill was impaired.
- 56.2 A court is not to award damages in respect of liability to which this Part applies unless satisfied that the death or injury (or some other injury) is likely to have occurred even if the person had not been intoxicated.
- 56.3 If the court is satisfied that the death or injury (or some other injury) is likely to have occurred even if the person had not been intoxicated, it is to be presumed that the person was contributorily negligent unless the court is satisfied that the person's intoxication did not contribute in any way to the cause of the death or injury.

- 56.4 When there is a presumption of contributory negligence, the court must assess damages on the basis that the damages to which the person would be entitled in the absence of contributory negligence are to be reduced on account of contributory negligence by 25% or a greater percentage determined by the court to be appropriate in the circumstances of the case.
- 56.5 This section does not apply in a case where the court is satisfied that the intoxication was not self-induced.

PART 7 APOLOGIES

57. *Application of Part*

57.1 This Part applies to medical liability of any kind.

57.2 This Part does not apply to medical liability that is excluded from the operation of this Part by section 5.

58. *Definitions*

In this Part:

58.1 "apology" means an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter whether or not the apology admits or implies an admission of fault in connection with the matter.

59. *Effect of apology on liability*

59.1 An apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person:

- a. does not constitute an express or implied admission of fault or liability by the person in connection with that matter, and
- b. is not relevant to the determination of fault or liability in connection with that matter.

59.2 Evidence of an apology made by or on behalf of a person in connection with any matter alleged to have been caused by the person is not admissible in any civil proceedings as evidence of the fault or liability of the person in connection with that matter.

PART 8 DAMAGES FOR THE BIRTH OF A CHILD

60. ***Application of Part***

- 60.1 This Part applies to any claim for damages in civil proceedings for the birth of a child, regardless of whether that claim is made in tort, in contract, under Laws or Regulations or otherwise.
- 60.2 This Part does not apply to any claim for damages by a child in civil proceedings for personal injury (within the meaning of Part 2) sustained by the child pre-natally or during birth.
- 60.3 This Part does not apply to medical liability that is excluded from the operation of this Part by section 5 but, despite that section, does apply to liability of the kind referred to in section 5.1.

61. ***Limitation of the award of damages for the birth of a child***

- 61.1 In any proceedings involving a claim for the birth of a child to which this Part applies, the court cannot award damages for economic loss for:
 - 61.1.1 the costs associated with rearing or maintaining the child that the claimant has incurred or will incur in the future, or
 - 61.1.2 any loss of earnings by the claimant while the claimant rears or maintains the child.
- 61.2 Subsection 61.1.1 does not preclude the recovery of any additional costs associated with rearing or maintaining a child who suffers from a disability that arise by reason of the disability.

PART 9 LIMITATION OF ACTIONS

62. *Time Limits*

62.1 Subject to sub-section 62.2, an action for damages in respect of death or personal injuries must not be brought after the expiration of 3 years from the date on which the cause of action accrued.

62.2 An action for damages for negligence or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under Laws or Regulations or independently of any contract or any such provision) where the damages claimed by the plaintiff consist of or include damages in respect of death or personal injuries consisting of a disease or disorder contracted by any person may be brought not more than 3 years from, and the cause of action shall be taken to have accrued on, the date on which the person first knows:

62.2.1 that he has suffered those personal injuries; and

62.2.2 that those personal injuries were caused by the act or omission of some person.

PART 10 APPLICATION OF LAWS

63. *Submission to Jurisdiction*

- 63.1 It shall be a condition precedent to a patient receiving health care in the DHCC from a Healthcare Provider and/or a Healthcare Organisation, and upon receiving such health care it shall be deemed, that the patient has submitted to the jurisdiction of these Regulations and the laws for the time being in force in the DHCC and has consented to the application of the Dispute Resolution process set out in paragraph 65.
- 63.2 The provisions of 63.1 shall apply whether or not the patient has consented or submitted by way of agreement in writing to the Laws for the time being in force in the DHCC and the application of the Dispute Resolution Process set out in paragraph 65.

64. *Application*

- 64.1 The rights and liabilities between patients, Healthcare Providers and Healthcare Organisations in relation to health care are to be determined according to the laws for the time being in force in the DHCC.
- 64.2 The court, when applying the laws for the time being in force in DHCC in any dispute between a patient, Healthcare Organisation or Healthcare Provider in relation to the provision of health care may in any proceedings take notice, in the following order of preference, of:
- 64.2.1 So far as there is regulatory content, the medical provisions and practice in the UAE;
- 64.2.2 The law of any jurisdiction other than the DHCC and the UAE expressly chosen by the parties to the proceeding;
- 64.2.3 The laws of a jurisdiction as agreed between all the relevant persons concerned in the matter;
- 64.2.4 The laws of any jurisdiction which appears to the court to be the one most closely related to the facts of and the persons concerned in the matter;
- 64.2.5 The laws of England and Wales.

PART 11 DISPUTES

65. *Disputes*

- 65.1 Any and all claims or disputes arising out of these Regulations or arising out of an agreement (whether in the form of a contract, application, exchange of documents or otherwise) between a Healthcare Provider and/or a Healthcare Organisation on the one part and a patient on the other part insofar as it relates to the provision of health care in the DHCC shall be submitted to any court, arbitral tribunal or dispute resolution panel established or to be established in the DHCC, or failing or pending the establishment of such court, arbitral tribunal or dispute resolution panel to arbitration in Dubai in accordance with the provisions set forth under the Rules of Commercial Conciliation and Arbitration (the "**Rules**") of the Dubai Chamber of Commerce and Industry before a single arbitrator in compliance with the Rules, to be conducted by the Dubai International Arbitration Centre.
- 65.2 Upon the establishment of any court, arbitral tribunal or dispute resolution panel in the DHCC, all such claims or disputes referred to in paragraph 65.1 shall be submitted to such court, arbitral tribunal or dispute resolution panel. For the avoidance of doubt, any proceedings which have commenced in the Dubai International Arbitration Centre prior to the establishment of the said court, arbitral tribunal or dispute resolution panel in the DHCC shall, unless the parties otherwise agree in writing, be transferred from the Dubai International Arbitration Centre to the said court, arbitral tribunal or dispute resolution panel upon its establishment (the "transferee court").
- 65.3 Unless the transferee court orders otherwise, the following shall apply to a proceeding transferred:
- 65.3.1 The transferee court has power to grant in the proceeding any relief, redress or remedy and to make any order that the Dubai International Arbitration Centre would have had power to grant or make if the proceeding had not been transferred;
- 65.3.2 The proceeding is subject to the procedural rules and practices of the transferee court;
- 65.3.3 Unless the transferee court otherwise orders, anything done or omitted to be done in the proceeding under or in accordance with the rules of the arbitration applied to it before the transfer must be taken, so far as possible, to have been done or omitted under the rules that apply in the transferee court;
- 65.3.4 The transferee court must endeavour to ensure that the proceeding is heard and determined no later than it would have been if it had not been transferred;
- 65.3.5 A judgment or award given or order made by the transferee court in the proceeding has effect and may be enforced or appealed against (if permitted by Law) like any other judgment, award or order of that court;
- 65.3.6 If the transferee court orders that costs be paid to a party in respect of the conduct of the proceeding in the Dubai International Arbitration Centre in the period before the transfer, that party shall, unless the transferee court otherwise orders, be entitled to

costs in respect of that period on the Dubai International Arbitration Centre scale of costs;

- 65.3.7 If the transferee court orders that costs be paid to a party in respect of the conduct of the proceeding in the transferee court in the period after the transfer, that party shall, unless the transferee court otherwise orders or the party has otherwise elected, be entitled to costs in respect of that period on the Dubai International Arbitration Centre scale of costs.
- 65.4 Except where the court, the arbitral tribunal, the dispute resolution panel concerned or the Dubai International Arbitration Centre, whichever is the body in which the proceedings commenced, considers it inappropriate, in whole or in part, or where the parties otherwise agree in writing, the fees and expenses of and incidental to the arbitrator, the judge, the court, the arbitral tribunal or the dispute resolution panel concerned or in the Dubai International Arbitration Centre shall, pending the final determination of the claim or dispute, be paid by either or both the Healthcare Provider or the Healthcare Organisation and in any event such costs are not to be paid at the outset by the patient.
- 65.5 The apportionment of such costs between the Healthcare Provider and the Healthcare Organisation shall be determined by the court, the arbitral tribunal, the dispute resolution panel concerned or the Dubai International Arbitration Centre and do not include the legal or other costs of the parties.
- 65.6 Upon the final determination of the claim or dispute, the court, the arbitral tribunal or the dispute resolution panel concerned or in the Dubai International Arbitration Centre, whichever makes the final determination, may make any order concerning the costs of the proceedings, including the costs referred to above, as it deems fit, including any order in relation to the costs referred to herein and the legal or other costs of the parties.
- 65.7 The proceedings in the court, the arbitral tribunal or the dispute resolution panel concerned or in the Dubai International Arbitration Centre shall be conducted in the English language.
66. ***Agreements between Healthcare Providers, Healthcare Organisations and Patients***
- 66.1 Unless the parties otherwise agree in writing, there shall be included in all agreements (whether in the form of a contract, application, exchange of documents or otherwise) between a Healthcare Provider and/or a Healthcare Organisation on the one part and a patient on the other part in relation to the service of health care in the DHCC standard terms and conditions, the substance of which shall be to the effect of Schedule 1.
- 66.2 In the absence of a term or condition inserted in an agreement between a Healthcare Provider and/or a Healthcare Organisation on the one part and a patient on the other part as outlined in 66.1, there is implied in such an agreement provisions the substance of which are to the effect of Schedule 1.
- 66.3 If in relation to any matter or any dispute or difference arising between the terms contained in an agreement between a Healthcare Provider and/or a Healthcare Organisation on the one part and a patient on the other part in relation to the service of health care in the DHCC, or if

there is any inconsistency between such an agreement and the provisions contained in Schedule 1, the provisions contained in Schedule 1 shall prevail.

PART 12 SCHEDULES

SCHEDULE 1

- 1.1 This agreement and any disputes arising out of the provision of health care in the Dubai Healthcare City shall be governed by and construed in accordance with the laws and regulations in force from time to time in the Dubai Healthcare City, including without limitation, the Dubai Healthcare City Clinical Company Licensing Regulations Number 3 of 2005, the Dubai Healthcare City Enabling Regulations Number 4 of 2005 and the Dubai Healthcare City Medical Liability Regulations Number 5 of 2005 and the laws of the Emirate of Dubai, as amended from time to time.
- 1.2 Any and all claims or disputes arising out of the above laws and regulations or this agreement insofar as it relates to the provision health care in the Dubai Healthcare City shall be submitted to any court, arbitral tribunal or dispute resolution panel established or to be established in the Dubai Healthcare City, or failing or pending the establishment of such court, arbitral tribunal or dispute resolution panel to arbitration in Dubai in accordance with the provisions set forth under the Rules of Commercial Conciliation and Arbitration (the "**Rules**") of the Dubai Chamber of Commerce and Industry before a single arbitrator in compliance with the Rules, to be conducted by the Dubai International Arbitration Centre.
- 1.3 Upon the establishment of any court, arbitral tribunal or dispute resolution panel in the Dubai Healthcare City, all such claims or disputes referred to above shall be submitted to such court, arbitral tribunal or dispute resolution panel. For the avoidance of doubt, any proceedings which have commenced in the Dubai International Arbitration Centre prior to the establishment of the said court, arbitral tribunal or dispute resolution panel shall, unless the parties otherwise agree in writing, be transferred from the Dubai International Arbitration Centre to the said court, arbitral tribunal or dispute resolution panel in the Dubai Healthcare City upon its establishment in accordance with the laws and regulations in force from time to time in the Dubai Healthcare City and in the Emirate of Dubai.
- 1.4 Except where the court, the arbitral tribunal or the dispute resolution panel concerned or where the Dubai International Arbitration Centre, whichever is the body which the proceedings commenced, considers it inappropriate, in whole or in part, or where the parties otherwise agree in writing, the fees and expenses of and incidental to the arbitrator, the judge, the court, the arbitral tribunal or the dispute resolution panel concerned or the Dubai International Arbitration Centre shall, pending the final determination of the claim or dispute, be paid by either or both the Healthcare Practitioner or the Healthcare Organisation, and in any event such costs are not to be paid at the outset by the patient.
- 1.5 The apportionment of the costs between the Healthcare Provider and the Healthcare Organisation referred to above shall be determined by the court, the arbitral tribunal, the dispute resolution panel concerned or the Dubai International Arbitration Centre, in which the proceedings commenced and such costs do not include the legal or other costs of the parties.
- 1.6 Upon the final determination of the claim or dispute, the court, the arbitral tribunal or the dispute resolution panel concerned or the Dubai International Arbitration Centre,

whichever makes the final determination, make any order concerning the costs of the proceedings, including the costs referred to above, as it deems fit, including any order in relation to the costs referred to herein and the legal or other costs of the parties.

- 1.7 The proceedings in the court, the arbitral tribunal or the dispute resolution panel concerned or the Dubai International Arbitration Centre shall be conducted in the English language.