

Excerpts from the Patient Injury Act

Chapter 1. Liability for patient injury

Section 1. Patient Injury

This Act applies to injuries that are caused:

- a) in an institution under the specialist health services or the municipal health and care services,
- b) during ambulance transport, or
- c) by medical personnel who provide health care in accordance with public certification or licence, persons who act on behalf of these personnel, persons who are entitled to temporarily practice their vocation as health personnel in Norway without Norwegian certification, licence or specialist approval, or other persons who are specified in regulations.

Such injuries are regarded as patient injuries if they are caused during instruction, examination, diagnosis, treatment, sale of medicines from a pharmacy, nursing, vaccination, sampling, analysis of tests, x-rays, prevention of injuries, medical experiments and donation of organs, blood and tissue.

The King may decide in regulations what shall be regarded as an institution under the municipal health and care services.

Section 2. Compensation for patient injury

The patient and others who have suffered loss because of a patient injury may claim compensation when the injury is due to:

- a) error or omission in the performance of health care, even if no one can be blamed,
- b) technical error or omission in devices, instruments or other equipment that are used in the provision of health care,
- c) contagion or infection when this is not primarily due to the patient's condition or illness,
- d) vaccination, or
- e) conditions that entail liability for the health and care services or the medical personnel pursuant to general indemnity rules.

It shall be taken into consideration whether the claims that the injured party may reasonably file against the activity or the service at the time of the injury have been overturned. Insufficient resources should not entail liability if the distribution of resources has been acceptable and the activity meets a generally acceptable standard.

Even if there are no grounds for liability in compensation pursuant to paragraphs one and two, compensation may be awarded in certain exceptions when there has been a patient injury that is particularly great or particularly unexpected, and it cannot be regarded as an outcome of a risk that the patient must accept. Emphasis shall be given to whether sufficient information has been provided beforehand.

Section 3. Unclarified cause and effect relationships

If the cause of an injury to a patient cannot be ascertained, and the injury is probably due to external effects on a patient under treatment, it shall normally be assumed that the injury is due to an error or omission in the performance of health care.

In the event of compensation as a result of injury after recommended or required vaccinations pursuant to Act no. 55 of 5 August 1994 relating to the prevention of infectious diseases, the right to compensation applies pursuant to Section 2, sub-section 1d unless there responsible party substantiates that one or more other causes are more probable.

Section 4. Other indemnity rules

For the determination of loss, the injured party's involvement, etc., Act no. 26 of 13 June 1969 concerning compensation for damages and the general rules of the law of damages apply. Compensation for non-pecuniary loss pursuant to Section 3-5 of the Compensation Act and losses of less than NOK 5,000 are not compensated pursuant to this Act.

Section 5. Limitation period

Claims pursuant to this Act will be time-barred pursuant to Act no. 18 of 18 May 1979 relating to the limitation period for claims. The limitation period will be interrupted if the claim is filed pursuant to Section 9. Such a filing will not interrupt the deadline for the limitation period of claims for compensation against parties other than the Norwegian System of Compensation for Injuries to Patients.

Chapter 2. The responsible entity

Section 6. Norwegian System of Compensation for Injuries to Patients

The Norwegian System of Compensation for Injuries to Patients is responsible for injuries for which compensation may be claimed pursuant to this Act. The King will organise and specify more detailed regulations concerning the Norwegian System of Compensation for

Injuries to Patients.

Chapter 3. The processing of claims

Section 9. Submission of claims

Claims for compensation for patient injury shall be filed in writing with the Norwegian System of Compensation for Injuries to Patients. In special cases, the Norwegian System of Compensation for Injuries to Patients may allow claims for compensation to be filed orally. If the claim is submitted to medical personnel or a health institution, the claim shall also be filed with the Norwegian System of Compensation for Injuries to Patients.

Section 10. Administrative procedure

The Norwegian System of Compensation for Injuries to Patients will study the case. The decision does not give any exemptions from statutory duty of non-disclosure.

Section 11. Legal assistance

The patient's expenses for legal assistance will be covered if the party who studies the case has made a decision to that effect, or the expenses must be regarded as a loss as a result of the injury. The patient may request an advance decision from the party who studies the case as to which legal expenses will be covered.

The King may issue rules in regulations that include restrictions with regard to the provision in paragraph one, sentence one, including whether public fee schedules shall be employed.

The attorney may not claim or receive any additional fee from the patient for the part of the case where the expenses are covered pursuant to this Section.

Section 12. Deciding the claim for compensation

When the Norwegian System of Compensation for Injuries to Patients has studied the case, it makes a decision as to whether compensation shall be provided and determines the amount of the compensation. The decision shall be explained and information shall be provided to the parties in accordance with the rules of the Norwegian Public Administration Act. The patient shall be informed that the decision may be appealed to the Patient Injury Compensation Board within three weeks.

Section 13. Payment of the compensation

Compensation is paid as soon as possible after the case has been decided. Partial payments shall be made as soon as it is clear that some parts of the claim are not disputed or that it is unobjectionable for other reasons.

With regard to interest liability, the rules of Act no. 100 of 17 December 1976 relating to interest on overdue payments, etc. will apply.

Section 14. The relationship to the Public Administration Act and the Freedom of Information Act

The Public Administration Act and the Freedom of Information Act apply to the activity of the Norwegian System of Compensation for Injuries to Patients. The decision as to whether compensation shall be provided, the decision with regard to the amount of the compensation, the decision with regard to partial payment and the decision with regard to legal assistance are regarded as administrative decisions in an individual case pursuant to Section 11.

Chapter 4. Appeal and trial

Section 15. Appeal, etc.

As mentioned in Section 14, sentence two, an administrative decision in an individual case may be appealed to the Patient Injury Compensation Board by the party that claims compensation pursuant to this Act. The deadline for appeal is three weeks.

Section 18. Trial

The party that claims compensation pursuant to this Act may bring the case before the courts when a final decision has been made in the Patient Injury Compensation Board. Legal action may be filed against the Patient Injury Compensation Board. Other parties may not bring the case before the courts.

Legal action must be filed within six months after the date when information about a final decision in the Patient Injury Compensation Board has reached the party in question. When this deadline has expired without any legal action being filed, the decision will have the same effect as a final and enforceable judgment and may be executed pursuant to the rules for judgments.

Chapter 5. Scope, entry into force and transitional rules

Section 19. The scope of the Act

This Act applies to injuries that are sustained in the realm including Svalbard. The Act also applies to injuries through health services that are sustained abroad pursuant to Section 2-1b, paragraphs four or five of the Norwegian Patients' and Users' Rights Act or pursuant to some other assignment from the Norwegian authorities, and that the public authorities fully or partly pay for, including travel for treatment. The King may decide that the Act shall not apply when health care is provided here in the realm with especially little affiliation with Norway.

Section 21. Transitional rules

The Act applies to injuries that are caused pursuant to the Act's entry into force for public and private health services respectively.

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Older injuries are treated pursuant to this Act, but in such a way that the claim for compensation is decided pursuant to:

- a) rules for a temporary scheme with compensation for injury to patients for somatic hospitals and/or outpatients' clinics,
- b) rules for a temporary scheme with compensation for injury to patients for psychiatric hospitals and/or outpatients' clinics,
- c) rules for a temporary scheme with compensation for injury to patients for municipal health services and/or municipal casualty clinics,
- d) Section 8-2 of Act no. 55 of 5 August 1994 relating to prevention of infectious diseases according to its wording prior to its repeal by this Act, and
- e) general law of damages.