



Empowering Patients: Understanding Medical Care Standards in Ireland

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What is medical negligence?

The Health Service Executive (“HSE”) caters to the medical care needs of over one million people a year. In addition, private hospitals and private medical practitioners treat hundreds of thousands of patients yearly.

When you seek medical care in any of these institutions, or even a dentist, doctor or nurse you expect to receive the best possible treatment. Although this is usually the case, mistakes due to medical negligence still unfortunately happen.

Medical or clinical negligence occurs when a person is injured, or their current medical condition deteriorates, because of poor care delivered by a medical professional and when the injuries could have been prevented if the care had been adequate.



What are typical examples of medical negligence claims?

When avoidable errors occur and cause you injury which impact the quality of your life, we believe you should get the help and support that you need. Below we list six of the most common medical negligence claims in detail. Here, you will find out if your healthcare provider or hospital may be liable, and the steps you can take to make claims for medical negligence.

The 6 most common medical negligence claims

1. Medical Misdiagnosis

Misdiagnosis refers to when a medical professional gives an incorrect diagnosis or fails to give a diagnosis at all. This can cause the patient pain and suffering and, in some cases, can be life-threatening.

Commonly misdiagnosed conditions:

- Diabetes
- Meningitis
- Cancer
- Fractures
- Strep A

Commonly misdiagnosed medical conditions tend to manifest symptoms that are difficult to identify or are mistaken for something else. Misdiagnosis for any of these illnesses can be devastating and you may be entitled to compensation.

2. Surgical Negligence

Most operations performed by medical professionals in Ireland are successful. However, when mistakes happen, they can leave you with unnecessary injury. Surgical negligence happens when surgeons or other healthcare providers make avoidable errors during your operation, causing you further injuries or worsening your condition.

Common types of surgical negligence:

- Performing a wrong operation or operating on a wrong body part
- Failing to inform a patient about the risks of a surgical procedure or determine the patient's suitability for the operation
- Injecting too little or too much anaesthetic
- Scarring or disfigurement caused by cosmetic surgery
- Leaving foreign objects in the body
- Infection due to poor hygiene
- Nerve damage or injury to an organ(s)
- Sepsis

3. Prescription and Medication Errors

Every day, medical professionals in Ireland write and dispense hundreds of thousands of prescriptions and, while most of them are correctly processed, mistakes can happen.

Healthcare professionals have a duty of care to ensure that they prescribe the right medication and dosage, and that it does not interfere with the patient's pre-existing health condition. Wrong medication or incorrect dosage can have extreme consequences, including allergic reaction, psychological problems, digestive issues, brain damage and, in some cases, death.

Common prescription or medication errors include:

- Wrong prescription or dispensation
- Medication that a patient is allergic to
- Incorrect dosage amount or time period
- Medications that are wrongly prescribed together

4. Negligent Medical Advice

Healthcare providers are required to advise their patients of the risks of a procedure, letting them know of any available alternatives. This will help the patient make informed decisions as to whether they want to continue with the medical procedure. If a medical professional fails to do this and something goes wrong, you may be able to make a claim for compensation.

5. Pregnancy and Birth Injuries

Thousands of babies are born every year in Ireland. Most of these births are successful and without any issues. However, things can go wrong even for some apparently straightforward natural births.

For instance, a midwife may fail to monitor the condition of mother and baby properly. In any case, pregnancy and birth injuries can be emotionally and physically devastating for mother, baby and loved ones alike. If a doctor, midwife, or gynecologist mishandles the pregnancy and birth process, there could be life-changing consequences.

Examples of pregnancy and birth injuries that occur because of medical negligence

- Misdiagnosed miscarriage
- Stillbirth and neonatal negligence
- Mismanaged complications during pregnancy
- Failed sterilization
- Midwifery and obstetrics negligence
- Fertility/IVF negligence
- Injury to mother after birth, including perinatal tears
- Cerebral palsy
- Failure to diagnose and treat a maternal infection
- Injury to infant during and/or after birth e.g., shoulder dystocia/erb's palsy





6. Anesthesia Administration

Errors made involving anesthesia administration are one of the most serious medical negligence cases. Mistakes made by an anesthesiologists can result in permanent brain damage or death.

Common examples of medical negligence committed by an anesthesiologists

- Failure to consider a patient's medical history
- Insufficient delivery of information regarding risks
- Using faulty equipment
- Administering too much anesthesia to a patient

HOMS Assist Tip



Going home from hospital or being discharged from medical care with a sense that the care which you received fell below the standard that one should expect can be frustrating. We have prepared some guidance on how to manage your discharge from hospital:

- Speak to at least one hospital member about how long it might be before you will be feeling better and can expect to resume usual activities.
- If your physical abilities have changed because of your illness or injury, make sure you understand what you can and can't do when you go home.
- Ask staff questions about what has happened to you, and what changes you can expect in your health and daily activities when you return home.
- If you have any questions after you leave hospital, you may wish to contact your GP or Public Health Nurse (PHN).

Leaving Hospital Check List

Check the hospital team have:		
1	Answered any questions you have before you go home. Write down the answers (see above for ideas).	
2	Helped you complete any forms you need.	
3	Given you prescriptions for your medications and a full list of your medications.	
4	Given you the phone numbers for hospital staff you can contact with questions once you get home.	
5	Given you a follow up appointment with their consultant (usually in 6 weeks' time).	
6	Sent a discharge letter to your GP. This has a summary of your hospital treatment and any follow up services the hospital has referred them to.	
7	Contacted the Public Health Nurse if needed.	
8	Referred you to any HSE Primary Care Services they need (such as Home Help, Speech and Language, Physiotherapy, Occupational Therapy, Counselling, Psychology, Personal Assistance, The Disability Services Manager or Older Person's Services Manager).	
9	Referred you and/or your family member to any relevant not-for-profit services.	

What are the potential outcomes of a medical negligence claim¹?

If you, or your child, have suffered unnecessarily due to receiving substandard medical care you are entitled to make a medical negligence claim for monetary compensation for the pain and suffering you or your child have experienced to date and into the future, and for any out-of-pocket expenses incurred to date and into the future.

If you have lost a member of your family due to medical negligence you may also be entitled to bring a claim for wrongful death.

Bringing a claim in any of these circumstances may help you to move on psychologically, from what can range from an undesired accident to a very traumatic and life altering event, although this cannot be guaranteed.

Equally, a medical negligence claim does not necessarily mean that the medical practitioner involved will be personally held accountable. The Medical Council is a separate forum to seek to have disciplinary measures imposed on members of the medical profession for certain categories of wrongdoing (see page 9 for more information). Negligence does not always amount to misconduct.

What may come as a surprise to you is that it is not mandatory for a healthcare professional to openly disclose what happened to you, or your loved one, although a duty of candour is generally very much encouraged (see page 6 for more information).

Finally, it is by no means guaranteed that even if you settle a case against a doctor or hospital that you will receive a public apology.

Rest assured, however, our experienced team at HOMS Assist will advise you of the appropriate course of action and work with you to obtain the result you deserve.

¹ In contentious business, a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.



Does a medical practitioner have to disclose what happened to you?

Medical professionals have a duty of candour to openly disclose what happened to you during your treatment. However, whilst it is encouraged, it is not mandatory.

When the Patient Safety (Notifiable Patient Safety Incidents) Bill 2019 ("the Bill") was published, we at HOMS Assist considered it a very welcome legislative development in medical negligence. The Bill listed specific patient safety incidents that would be subject to mandatory open disclosure and included a new process to designate other patient safety incidents for which open disclosure would be mandatory.

The Bill requires notification of these serious patient safety incidents externally to the Health Information and Quality Authority, the Chief Inspector of Social Services, and the Mental Health Commission to contribute to national patient safety learning and improvement. This measure would improve standards in the Irish healthcare system. Importantly, mandatory open disclosure and the notification system for these serious patient safety incidents would not only apply to public services, but also to private health care services.

This Bill, however, has not been written into law.

At present, there is no mandatory requirement for a medical professional to be candid with his/her patients. This fosters a lack of openness and, in our experience, often pushes people down the legal route to establish what went wrong.

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HOMS Assist Tip



Where the medical care you have received has fallen below the standard one expects, there is often a lack of trust when going back into the medical environment for the necessary follow up care. We have prepared some tips to help you feel prepared, informed and in control of your medical care and treatment.

Communicating with medical staff effectively:

- If you want to speak to staff, it is a good idea to make an appointment. This usually works better than trying to catch them on the ward when they may be busy.
- Bring someone with you to take notes and for support if you need it.
- Before a meeting, write down any questions you might have. Don't be afraid of asking 'stupid' questions. For ideas of what to ask, see our list of sample questions below.
- Take your time. If you don't fully understand what the staff member is saying, ask them to explain it again.
- Staff should give you all the information and contact details you need for going home – see the checklist overleaf.

Questions to ask about your care

Question	Answer
How long will I be in the hospital?	
What can I expect to happen to me during my time in the hospital?	
How soon should I feel better after leaving the hospital?	
When can I expect to return to work?	
Are there any special instructions for my daily activities?	
Will I need any special equipment at home? Who will help me to arrange this? Is this equipment covered by my insurance or medical card?	
Do I need to have follow-up tests? Who should I follow-up with to get the test results?	
If I need help and care at home after I leave the hospital, who will help me to arrange it?	
Will I need to have other treatment following my time in the hospital? (e.g., physiotherapy, etc.)	
Are there any exercises that I need to do? (If so, ask for written instructions).	
When I leave the hospital, will I be able to go directly home?	
Will there be any follow-up appointments?	
Do I need to schedule any follow-up visits with my doctor?	
Will I be able to walk, climb stairs, go to the bathroom, prepare meals, drive, etc.	
Who can I call if I have any problems after leaving the hospital?	



Questions to ask about your medicines

Question	Answer
What medicines will I need to take at home?	
Get a complete list of all your medicines at discharge, including any changes made while you were in hospital. Take this list with you when you leave the hospital.	
Can I get written instructions about my medicines? Ask any questions before you leave the hospital.	
Are there any foods or drinks that I should avoid while taking my medicines?	
Are there any drugs (including non-prescription drugs) or vitamins that I should not take with my medicines?	
What should I do if I forget to take my medicine on a particular day?	

Additional notes

Making a complaint to the Medical Council

If you or your family member are unhappy with the treatment that you received from your doctor it is open to you to make a complaint to the medical council. The medical council handles complaints that are related to a doctor's fitness to practice medicine.

On receipt of a complaint the medical council can act where it is alleged that a doctor has serious failings in his or her practice. The medical council acts in the public interest and can remove or restrict a doctor's right to practice medicine in Ireland.

The medical council can only act where complaints are of a serious nature and raise concerns over a doctor's fitness to practice. The council will encourage you to make a complaint to the doctor or to the healthcare institution directly before proceeding with the complaints process through the medical council.

The medical council deal with complaints on seven different grounds which are as follows:

1. Professional misconduct
2. Poor Professional Performance (where a failure by a doctor to meet the standards that can reasonably be expected of doctors practicing the kind of medicine practiced by the doctor can be established. This can be in relation to competence, whether knowledge or skill, or, the application of knowledge or skill, or both.)
3. A relevant medical disability (this may include an impairment by the doctor's ability to practice medicine due to an influence of alcohol or drugs)
4. A failure to comply with one or more conditions attached to the doctor's registration
5. A failure to comply with an undertaking given to the medical council or to take any actions specified in a consent given in the context of a previous enquiry
6. Contravention of the Medical Practitioners Act 2007
7. A conviction in the state for an offence triable on indictment or if convicted outside the state for an offence that would be triable on indictment in the Irish courts

How to make a complaint?

You can log onto medicalcouncil.ie where there is an online complaint form which needs to be completed in writing and can be emailed or sent by post to the medical council.

What the Medical Council cannot do:

1. Pay compensation or help you make a claim for compensation
2. Make a doctor apologise to you
3. Look into complaints about anyone who is not a registered doctor (for example nurses, pharmacists, dentists, opticians, social workers, administrative staff, secretary, clinics, or healthcare organisations)
4. Order a doctor to do something for you, such as provide the treatment that you want, write prescriptions, give you access to your requisite change medical records, etc. Access to records can be made by way of Data Subject Access Requests
5. Request a detailed description to what happened to you
6. Arrange medical treatment or council for you
7. Give you legal advice in relation to the complaint

If you or your family members would like further advice on making a complaint to the Medical Council, contact our team at HOMS Assist.





How do I know if the treatment that I experienced amounts to medical negligence?

If you are unhappy with the treatment that you have received from your doctor or healthcare institution, you may wish to contact a solicitor who is an expert in the field of medical negligence to investigate your case.

It can be a daunting task for a victim of medical negligence to consult with a solicitor to review the issues that they have had with their care.

At HOMS Assist, we have over 50 years of expertise in assisting clients with their medical negligence cases and assisting them to bring their case to a successful conclusion. We understand that you or your family member may have been through a very stressful time in relation to the medical treatment that you or your loved one received. We are conscious of taking the stress out of the investigation of the case from you.

The first step in any case is for the solicitor to take up a copy of your medical records from the relevant doctor or healthcare institution. The solicitor will then review your records and instruct an independent expert to carry out a report to consider whether the treatment that you have received is below the standard of care that should normally be applied.

We work closely with a team of doctors in Oxford who on review of your file will, within a period of 21 days, indicate to us whether there are issues arising regarding your care. We can obtain a screening report from the experts in the UK, who from an initial review of the records, can indicate the possible issues before proceeding to complete a full report on the issues in your case.

There are two hurdles in a medical negligence case that must be overcome to succeed with a case:

- **Negligence** – this is where the treatment that you received is below the reasonable standard of care that one would ordinarily expect a patient to receive. If the treatment you receive by a medical professional, hospital or staff is below the ordinary standard of care that should be provided to you, then a breach of duty of care may arise and the medical treatment may be regarded as negligent.
- **Causation** – as a result of this treatment that the client has received, which has led to a delay in recovery or further injury to the client. In simple terms, there is a causal link between the negligent treatment and the client's ability to recover.

On receipt of a positive report from the independent expert, we will meet with you to review the file and guide you on the next steps in the case. If you are happy to proceed, a barrister will be briefed to draft court proceedings on your behalf.

In a medical negligence action, we must have a positive independent expert report before proceedings can be issued. We will not proceed with a case on your behalf unless we were able to obtain a positive report from the medical expert and that we were confident of a successful conclusion of your case.

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HOMS Assist Tip



Prepare for your appointments in advance, write down your questions and write the answers to those questions during the consultation. This is a useful way to ensure that there is no miscommunication or misunderstanding during your visit to the medical practitioner. It is also an invaluable record of the medical treatment received, which is useful evidence where medical staff are not openly disclosing the medical care provided (more detail on a doctor's duty of candour can be found on page 6).

Appointment planner

The boxes with blue labels are for you to record things now for your next appointment. The boxes with grey labels are to write in when you are at the appointment.

Appointment date:	
Appointment time:	
Who is the appointment with?	
Where will the appointment take place?	
How will I get there?	
Have I taken a day's leave from work?	
Cost of appointment	
Cost of travel	

Things that I have noticed since my last appointment:
1
2
3

What was said about me at today's appointment?
1
2
3

Questions I want to ask at this appointment:
1
2
3

Answers to my questions given today:
1
2
3



Changes made today to my treatment or programme:

1

2

3

Things that I have noticed since my last appointment

1

2

3

Follow up

Further appointment given today		
Yes		
No		
Date		
Added to my diary or calendar?		
Added to the next appointment planner?		
Additional notes		

How long do you have to bring a medical negligence claim?

There is legislation that prescribes strict time limits in which legal actions must be commenced. This is the Statute of Limitations Act 1957. In relation to medical negligence, the general rule is that proceedings must be issued within 2 years, less a day, of the date of the negligent act. In some cases, a person will know immediately that there was a negligent act. The Statute of Limitations clock stops when Court proceedings are issued.

However, situations arise where it may be a period afterwards before a person realises there was a negligent act or wrongdoing and, in those circumstances, the “date of knowledge” is then relied upon. The two-year period would only start to run from the date the person found or should have found out they had suffered injury, and that this injury was caused by someone’s negligence.

If a child has suffered medical negligence, the process of making a claim differs from that of an adult. A minor, persons under the age of 18 years of age, may be able to bring a claim forward in the first two years following their 18th birthday.

However, it is advisable to proceed with a claim on behalf of a minor child without delay. To do so, a parent or guardian does so on the child’s behalf. The extension of time also applies to people with intellectual impairment.

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How may I be compensated?

Each claim is considered on its own merits, considering, for example, the individual circumstances of each claimant, age, occupation, severity of injury, impact. Each case is unique and is considered on a case-by-case basis. However, in general, a medical negligence claim is usually broken into two categories of awards – General Damages and Special Damages.

General Damages

This represents the money you could receive for your pain, suffering and loss of amenity, physical and emotional injuries suffered because of the accident.

Special damages

This is the money you will receive in respect of your financial losses and expenses or any out of pocket expenses you have incurred because of the accident. We collect all the information about your financial losses and expenses and put this information into a formal document called a 'schedule of special damages'. Receipts and back up information, such as payslips are important.



Examples include:

- **Travel expenses** – the cost of travelling to and from your treating experts
- **Loss of earnings** – if you worked prior to your injury and you are out of work as a result of your injury, you may be able to recover lost wages in your settlement depending on the facts and loss of earnings in the future.
- **Medical expenses and bills** – the cost of, for example, attending your General Practitioner, consultants, etc.
- **Care and assistance** – medical negligence can have serious and often life changing consequences, and compensation is often necessary to help a person adapt to changes and their capabilities. This can range from the provision of specialist care to the reconfiguration of houses and cars, where occupational therapists and/or quantity surveyors are often instructed to prepare a report in respect of the same.

As you can see, there is a lot to consider before a valuation for your claim can be given. Also, the value of your claim can change over time generally depending on your recovery.

What can you do if a member of your family dies due to medical negligence?

A fatal injury claim can be taken by a dependent of a deceased if it is caused by the wrongful act of another. Medical negligence would be considered a wrongful act in this context. Although no monetary sum can fill the void left when you lose a loved one, it can help with future costs for you and your family.

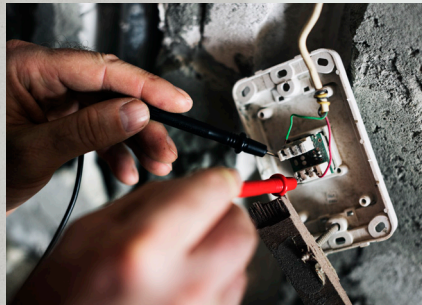
A dependent can be defined as including the deceased's spouse, civil partner, parent, grandparent, stepparent, child, grandchild, brother, sister, half-brother, and half-sister.

A fatal injury claim includes several aspects of claim and HOMS Assist can advise you on these. In general, they are as follows:



Solatium

This is the nominal figure of €35,000 for mental distress to be shared amongst all dependents.



Loss of services

This is relevant if the deceased contributed to repairs in the home or other services.



Loss of dependency

This will be claimed for any dependent who was financially dependent on the deceased at the time of death.



Childcare

This applies if the deceased was looking after the children on a full-time basis.



Funeral and Burial Expenses

Barristers' fees related to representant at a coroner's inquest and solicitor's fees for attendance at a coroner's inquest.



What does an inquest of your loved one involve?

If you are reading this because you have lost a member of your family due to possible medical negligence, it might help to know what you can expect if there is an inquest.

An inquest is an official public enquiry led by a coroner (and in some cases, a jury) into the circumstances of a sudden, unexplained, or violent death.

The coroner or jury can make findings as to:

- The identity of the deceased person
- How the death occurred
- When the death occurred
- Where the death occurred
- The circumstances surrounding the death

The family of the deceased person is entitled to attend the inquest. As a family member you do not need to have legal representation. However, if you are contemplating a medical negligence claim due to the possible wrongful death of your loved one, a member of the team of solicitors at HOMS Assist can attend the inquest with you or on your behalf.

If an inquest is due to take place, the coroner will give family members of the deceased person notice of the date and location. The coroner will also notify any witnesses who are required to attend and anybody else who the coroner considers should be notified.

If you, as a family member, want to take legal action because of possible medical negligence, we recommend that you instruct a solicitor. It is important to ensure that the coroner is aware of all relevant witnesses.

It is important to understand that an inquest will not apportion any civil or criminal liability. When the inquest has been completed a verdict is given in relation to the identity of the deceased, and how, when and where the death occurred. Common verdicts in possible medical negligence claims range from natural causes to medical misadventure to a narrative redirect.

After the inquest is completed, the coroner will issue a certificate so that the death can be properly registered.



If you, as a family member, want to take legal action because of possible medical negligence, we recommend that you instruct a solicitor. It is important to ensure that the coroner is aware of all relevant witnesses.

What are the costs involved in a medical negligence claim?

We are conscious that our clients who have been victims of medical negligence are concerned about the potential legal cost that can be incurred in going ahead with this type of legal action.

We only proceed with a case on behalf of a client where we are confident that based on the expert reports we obtain, the case should be successful. With our experience of over 50 years in litigation in Ireland, we have a body of experts that we use to ensure that we achieve the best possible outcome for our clients.





1. The initial investigation & process and first consultation

Before instructing a solicitor in relation to a medical negligence action, you should clarify, in advance, any potential costs that will be incurred in relation to carrying out the initial investigation, review of the medical records and briefing the medical expert to provide a report.

Your Solicitor must formally notify you in writing of the estimated costs that you are likely to incur in advance of charging you any fees.

We, at HOMS Assist, do not charge a fee to clients of HOMS Assist for the initial investigation up to obtaining the initial expert report. We confirm this to our clients in writing before we proceed on their behalf.

If the initial report confirms that there is no negligence and, therefore, proceedings cannot be issued. A second opinion may be obtained from another independent expert. At this stage, we would discuss with the client the potential cost for carrying out the additional work.

2. Costs of reports

When obtaining an independent expert report for other purposes of medical negligence action, the cost of such a report can be in the region of €1,000.00 to €3,000.00. It is the policy of this office to take each case on its own merits and the firm may fund part of the report on agreement with the client.

In advance of formally instructing the independent expert, we obtain an estimate of the fees from such an expert and agree with the client on a case-by-case basis how this amount is to be paid. We may make a monetary contribution to the cost of reports, in certain circumstances.

3. The costs of running a case on receipt of a positive expert report

On receipt of a positive report from an independent expert, we reach out to the client through formal written communication that sets out the way fees are to be charged. In normal terms, we do not charge any fees until the successful conclusion of the client's case.

4. If I win my case, do the defendants pay all my legal costs?

Most legal fees incurred are discharged by the defendants on the successful conclusion of the case; however, not all these costs are recoverable.

From the outset of your case and throughout the duration of the case, we update you with an estimate of the legal fees that may be deducted from your settlement or court award. These legal fees arise in the circumstances where there are extensive investigations at the start of a case. These fees and outlay arise in circumstances generally from the following scenarios:

- The extensive work carried out on research and work carried out at the initial stages of a case, which are not recovered from the other side.
- There may be consultations with experts and counsel to discuss the strategy and the next steps of your case, which would not be recoverable.
- There may be unsuccessful settlement negotiations during your case, which are not recoverable

5. Does no win no fee mean that I do not have to pay legal fees if my case is unsuccessful?

If your solicitor engages with you on a no win no fee basis, you should obtain this from your solicitor in writing. If your case was unsuccessful, the law in Ireland states that the successful party has their legal fees discharged. Therefore, if a case is unsuccessful, you would be liable for the defendant's costs.

Therefore, the term no win no fee only applies between the solicitor and their own client's relationship. It does not apply to the defendant's cost that could arise in the event a case is unsuccessful.

We at HOMS Assist have over 50 years' experience in providing legal representation to victims of medical negligence and their families and supporting them through what can be a difficult and emotional time.

Our experienced legal team represents victims of medical negligence and malpractice nationwide service with dedicated offices in Dublin, Limerick and Cork. We have won many landmark medical negligence cases and are known throughout Ireland for courageously challenging the medical establishment.

It can be difficult to get seemingly straightforward information from the medical profession when something has gone wrong. We help you to break down the wall of silence and establish what really happened. Victims of medical negligence deserve justice.

We are relentless in our pursuit of redress on your behalf. We understand that monetary compensation is not the only goal of victims, and we proactively seek apologies, admissions of blame and, where possible, assurances through system change that no other family will have to endure the same suffering as a result of medical negligence. We combine our legal expertise with a genuine human touch, to ensure the best possible outcome for you.



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If you or your loved one has suffered from substandard medical care, get in touch with us.

Please contact our team to discuss your personal circumstances confidentially. We are here to provide expert advice when you need it most.

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