



ISSUES IN MEDICAL LAW AND ETHICS

Edited by
Pufri Nemie Jahn Kassim
Abu Haniffa Mohamed Abdullah

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Medical Law and Ethics Unit
Law Centre
Ahmad Ibrahim Kulliyah of Laws

الجامعة الإسلامية العالمية
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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Editorial Committee

Editors : *Dr Puteri Nemie bt. Jahn Kassim*
Mr Abu Haniffa Mohamed Abdullah

Technical Editing : *Dr Naemah Amin*
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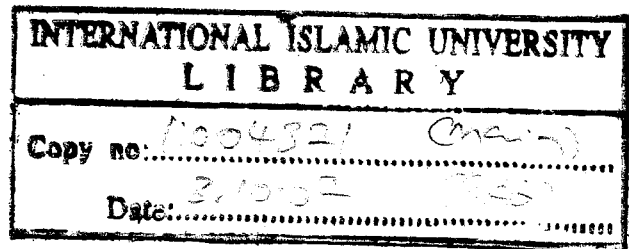
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ADOPTING A NO-FAULT COMPENSATION SCHEME FOR MEDICAL INJURIES IN MALAYSIA: A MYTH OR REALITY?

Puteri Nemie Jahn Kassim

Introduction

The deficiencies of the tort system in handling medical negligence claims have been apparent for a number of years. The inaccessibility of the litigation system and particular difficulties of proving medical negligence deter many potential litigants from pursuing their claims. Alternatives to the fault-based system have been proposed and also implemented in some countries such as New Zealand, Sweden, Denmark and Finland.¹ These countries have adopted no-fault compensation schemes to compensate victims of medical injuries. By implementing a no-fault compensation scheme, fault becomes irrelevant, as a social insurance plan provides compensation for all personal injuries arising out of accidents, including medical mishaps, whatever may have been their cause. Thus, a no-fault scheme would compensate a person suffering from a medical mishap without the need for him to prove negligence. There would no longer be a right of action in court but a tribunal would decide if the party could recover.

No-Fault compensation schemes

New Zealand No-Fault compensation scheme

In 1974, the fault-based system in New Zealand was abandoned and replaced by a no-fault compensation scheme through the operation of the relevant parts of the Accident Compensation Act 1972.² New Zealand was the first country to adopt a comprehensive no-fault compensation scheme for personal injury by accident for its 3.8 million people.³ The scheme covered work and road traffic accidents, those occurring at home or during sporting activity and also, the results of medical mishaps and malpractices. With regards to victims of medical accidents, the scheme was implemented with the hope of solving issues involving "inadequate compensation for victims, the high cost and duration of litigation, and the rising premiums for physicians."⁴ A corporate body known as the Accident Compensation Commission was set up to administer the scheme. The Commission consists of three members; either the chairman or one member must be a barrister or solicitor with at least seven years' experience in practice.⁵ The functions of the Commission include calculating and paying an amount of compensation, including lost wages and medical expenses which are set forth in a schedule