

Summary of the Danish Act on the Right to Complain and Receive Compensation within the Health Service

(Consolidated Act of 28 august 2017, No. 1022, as last amended by the Act of 25 April 2018, No. 314)

Patient compensation Scope of application

Section 19: Compensation is given to patients or survivors of patients in accordance with the provisions of this Chapter when suffering injuries in Denmark in connection with examinations, treatment, etc., carried out in:

- 1) a hospital or on its behalf;
- 2) by health professionals and other personnel as part of prehospital care pursuant to the Danish Health Act;
- 3) a university school of dentistry; or
- 4) by the Danish Health Authority in connection with cases in accordance with the Danish Health Act, Chapter 21, provisions issued pursuant thereto or provisions issued pursuant to Chapter 5 (d) of the Danish Hospital Act, as upheld by the Danish Health Act, Section 277, Clause 12.

Clause 2: Irrespective of Clause 1, compensation is given to patients or survivors of patients in accordance with the provisions of this Chapter when suffering injuries in Denmark in connection with examinations, treatment, etc., carried out by health professionals, cf. the Danish Health Act, Section 6.

Clause 3: Individuals who take part in health research, including clinical trials with drugs, that is not part of the diagnosis or treatment of the individual's disease or illness, are considered equal to patients. This also applies to patients from whom tissue and other biological material is taken.

Clause 4: This Chapter also applies to patients who receive free treatment or support for treatment in foreign hospitals, clinics, etc., in accordance with the Danish Health Act.

Compensation for injuries

Section 20: Compensation is paid if the injury was most probably caused in one of the following situations:

- 1) When it can be assumed that an experienced specialist in the relevant field of expertise and under the given circumstances would have acted differently during the examination, treatment, etc., and the injury would have been avoided.
- 2) When the injury was caused by a fault or failure of technical equipment, tools or other equipment used in connection with or during an examination, treatment, etc.
- 3) When a subsequent assessment finds that the injury could have been avoided if a different available treatment technique or method had been used, which from a medical perspective, would have treated the patient's disease or illness just as effectively; or

4) When a patient contracts an infection or other complications of a more complex nature than what a patient is generally expected to tolerate due to an examination, including diagnostic interventions or treatment. The severity of the injury shall partly be considered, as well as the patient's illness or disease and state of health, the rarity of the injury and other possibilities for taking into account the risk of injury.

Section 21: Injuries resulting from an incorrect diagnosis of the patient's disease or illness are only compensated in the said cases in Section 20, Clause 1 (1) and (2).

Clause 2: Accidents not covered by Section 20, Clause 1 (2), are only compensated if the injured party is undergoing treatment, etc., at a hospital and the accident occurs on the hospital's premises in such a way that it can only be assumed that the hospital has incurred liability in accordance with general statutory compensation rules.

Clause 3: Compensation in accordance with this Chapter is not paid for injuries caused by the characteristics of pharmaceutical drugs used during examinations, treatment, etc.

Section 22: Compensation is paid to the subjects and donors that fall under Section 19, Clause 3, for any injury potentially caused by the trial or extraction of tissue, etc., unless it is most probable that the injury was caused by something else.

Clause 2: The rule in Clause 1 does not apply to injuries under Section 21, Clause 3.

Clause 3: Compensation is paid to blood donors that fall under Section 19, Clause 3, who suffer an injury through an accident in connection with transportation to an agreed or requested extraction of blood in a blood bank or mobile blood bank, unless the donor contributed to the injury through gross negligence or with intent. However, compensation is not paid in accordance with the first sentence if the blood donor is entitled to compensation for the injury under other legislation.

Compensation sum

Section 24: Compensation and damages are determined in accordance with the provisions of the Danish Liability for Damages Act, cf. however Section 24 a.

Clause 2: Compensation, etc., in accordance with Clause 1 is paid after DKK 7,300 (2017 level) has been deducted from the main sum of compensation or damages.

Clause 3: Clause 2 and provisions determined in accordance with Clause 2 do not apply to injuries under Section 22, Clause 1 or Clause 3, cf. Section 19, Clause 3.

Clause 6: The amounts determined in Clause 2 are adjusted on 1 January each year by 2.0 per cent with the adjustment rate for the applicable financial year added, cf. the Danish Rate Adjustment Percentage Act.

Case processing

Section 33: The Patient Compensation Association receives, discloses and decides all compensation cases in accordance with this Chapter.

Patient Compensation Appeals Board

Section 58 b: The decisions passed in accordance with Sections 33 and 55 can be appealed before the Patient Compensation Appeals Board, which will pass the final administrative decision. The Appeals Board can reaffirm, repeal or change the decision.

Clause 2: Complaints to the Patient Compensation Appeals Board must be submitted within one month after the complainant is informed of the decision. The complaint has a suspensive effect.

Clause 3: The Patient Compensation Appeals Board can ignore breach of the complaint deadline if there is special reason to do so.

Section 58 d: Decisions passed by the Patient Compensation Appeals Board can be brought before a court of law, which can reaffirm, revoke or change a decision.

Clause 2: The decision must be brought to a court of law within six months after the decision has been announced.

Statute of limitation

Section 59: Compensation claims under Chapter 3 must be reported to the Patient Compensation Association within three years after the person entitled to compensation has been notified or should have been notified of the injury.

Clause 2: However, the statute of limitation for compensation claims will be effectuated within 10 years after the date on which the injury was sustained.

Section 60 b: Should a binding decision be passed regarding recognition of an injury that falls under Chapter 3 or 4, or measurement of compensation for such an injury, a limitation deadline of three years from the decision date will be applied to claim compensation for the injury.

Clause 2: However, if the person entitled to compensation was unaware of the compensation claim, the limitation deadline under Clause 1 will apply from the date on which the person was notified or should have been notified of the claim.

Clause 3: The statute of limitation is effectuated within 10 years after the said decision in Clause 1, but within 30 years after the date on which the injury was sustained or the pharmaceutical drug was dispensed to the injured party.