



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive



National Ambulance Service (NAS)

Workforce Support Guideline

Garda Statements and Court Issues

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1.0 POLICY

- 1.1 It is the policy of the National Ambulance Service (“NAS”) to provide Managers, Supervisors and Staff with clear and unambiguous operational guidelines.

2.0 PURPOSE

- 2.1 To ensure that all NAS staff are aware of their role and responsibilities when called as a witness to any civil or criminal proceedings involving the HSE.
- 2.2 To ensure that staff impart patient information to third parties only under subpoena and/or court order and in accordance with applicable law (including data protection and freedom of information legislation).
- 2.3 To ensure that staff give factual information when giving Garda Statements.
- 2.4 To ensure that staff are aware of available assistance in relation to making Garda or Garda Ombudsman statements and court appearances.
- 2.5 To enhance communication processes between An Garda Siochana, the Garda Ombudsman and NAS staff with a view to meeting our responsibilities and securing adequate protection (see Appendix II).
- 2.6 Staff members may be requested to provide a statement for various reasons including, involvement in or witnessing a Road Traffic Collision or Offence, Criminal Assault, Witness to any criminal offence, removal of a deceased person, Garda Ombudsman Investigation, etc.

3.0 SCOPE

- 3.1 This Guideline applies to all Managers, Supervisor and Staff in the NAS in connection with the performance of their duties.
- 3.2 This Guideline does not apply to any matters unconnected with duties on behalf of the NAS.

4.0 LEGISLATION/OTHER RELATED POLICIES

- A. Procedure - NASOF001 - Vehicle Collision Procedure
- B. Freedom of Information Act 2014
- C. Data Protection Act 1988 and 2003
- D. Coroners Act 1961 and 2001
- E. Garda Siochana Act, 2015
- F. HSE Communications Policy

5.0 GLOSSARY OF TERMS AND DEFINITIONS

- 5.1 Subpoena -.A Court Order requiring attendance at a hearing as a witness. A subpoena ad testificandum commands a witness to attend and give evidence. A subpoena duces tecum commands a witness to attend and give evidence and to bring with him and to produce certain documents specified in the subpoena.
- 5.2 Plaintiff - The person who brings a legal action; a plaintiff includes any person seeking relief against any other person by any form of civil proceedings
- 5.3 Defendant - The person against whom an action, information or other civil proceeding is brought; also a person charged with an offence
- 5.4 Inquest/Court Summons -The summons issued out of a trial court, or inquest requiring the person to whom the summons is directed to (a) attend before the court and give evidence and (b) produce to that court any document or thing specified in the summons.
- 5.5 Civil Law - The body of law dealing with the resolution of disputes between individuals; it provides a remedy, usually a financial one, to the aggrieved party against the wrongdoer by way of compensation rather than as punishment.
- 5.6 Criminal Law - The body of law which defines the variety of actions (or omissions) which are forbidden by the State and which provides punishment as a sanction.
- 5.7 Contemporaneous Notes - Notes made at the time of an incident.

6.0 ROLES AND RESPONSIBILITIES

- 6.1 Each Senior Manager will ensure that each Manager, Supervisor and Staff member is aware of and understands this Guideline.
- 6.2 It is the responsibility of each Manager, Supervisor and Staff member to adhere to this Guideline.
- 6.3 It is the responsibility of the relevant Manager to implement and support this Guideline and to supervise the operation of this Guideline.
- 6.4 It is the responsibility of the Workforce Support Manager to provide to, or secure guidance for Managers whose staff have been contacted by either the Gardai or a Solicitor and to respond to correspondence from Solicitors who are seeking disclosure of patient information or for staff attendance at Court.

- 6.5 It is the responsibility of all Managers, Supervisors and Staff to manage the retrieval, review and/or release of patient care information in line with the principles of patient autonomy, data protection and consented disclosure. For example, under the Data Protection Acts 1988 and 2003 patient information enjoys enhanced protection and generally cannot be processed (including used, shared or disclosed) without the explicit consent of the patient or the application of a clear legal obligation (e.g. a court order).
- 6.6 Processing is permitted where urgently required to prevent injury or other damage to the health of a person or serious loss or damage to their property.

7.0 GUIDELINE

7.1 Criminal Cases/Inquests

- 7.1.1 Staff are often required to make statements to Gardai or are issued with a Court Summons. Staff should inform their Supervisor immediately.
- 7.1.2 If asked to make a written statement, only factual information should be provided giving a succinct and precise account of what was encountered while on scene.
- 7.1.3 Where possible, staff should make a copy of their statement. If at a later stage a staff member becomes unhappy with any aspect of their statement, the Supervisor must be informed immediately.
- 7.1.4 If a staff member is issued with a Court Summons, they must wear appropriate operational uniform.
- 7.1.5 Staff will be representing their profession when in court, therefore it is important that any engagement with any legal team is limited to whomever issued the subpoena.
- 7.1.6 It is appropriate to ascertain when the staff member will be called to give evidence and who will be examining them. There should be no discussion about what evidence they propose to give.
- 7.1.7 There should be no engagement with news reporters or other members of the public. Staff will be expected to give evidence as an independent and impartial witness to the Court.

- 7.1.8 It is important to note that if the staff member witness has commenced his/her evidence and there is a break (i.e. lunch) and the staff member witness is under cross-examination then that witness may not discuss the case with anyone, even his/her own legal adviser, until such time as the Judge has confirmed that the staff member witness evidence has concluded.
- 7.1.9 Once evidence has been given and permission granted to leave, the Court Appearances Form (see Appendix III) must be completed by the Court Clerk or designated other Court Official and returned to the relevant Business Support Officer via the immediate Line Supervisor/Line Manager.

7.2 Civil Cases

- 7.2.1 Solicitors frequently send in letters on behalf of their clients seeking copies of Patient Care Report Forms and Ambulance Control sequence of event reports. All Patients have a legal right to obtain copies of any medical/non medical record held by the National Ambulance Service specifically relating to themselves. For example the Data Protection Acts 1988 and 2003 entitle a patient to access their medical records within forty days. There are very limited grounds for refusing a data subject access request but such requests should generally be referred to Business Support Officer. However health professionals may refuse a patient access to "health data" (personal data relating to physical or mental health) where it is likely to cause serious harm to the physical or mental health of the patient and may instead consult with the patient's doctor. Similar access rights exist under the Freedom of Information Act 2014.
- 7.2.2 Subject to disclosures required by law (or otherwise necessary for the purpose of preventing, detecting or investigating offences), before any disclosure of patient data held by the NAS is made to a third party inquiring on behalf of a patient, the NAS should satisfy itself that the inquiring party has obtained the explicit consent of the patient to the disclosure of their personal data to that party. If there is no patient consent, the NAS should not disclose the relevant patient's personal data to the inquiring party. For example any request from Solicitors for patient records must be accompanied by an original Form of Authority dated and signed by the patient

- 7.2.3 If a staff member is contacted by a Solicitor in relation to an ambulance call, they must not engage in any communication and inform them to contact the relevant Operations Resource Manager who may liaise with the Business Support Officer. Patient and staff confidentiality must be upheld at all times.
- 7.2.4 Staff are legally obliged to attend court as a witness to a civil case on receipt of a Subpoena. It is preferable that written confirmation be obtained from the Solicitor issuing the subpoena to the effect that he/she will be responsible for discharging the employee's reasonable witness expenses. Where possible, a breakdown of these expenses should be furnished to the Solicitor before the court date.
- 7.2.5 It is appropriate to ascertain when the staff member will be called to give evidence and who will be examining them. There should be no discussion about what evidence they propose to give.
- 7.2.6 There should be no engagement with news reporters or other members of the public. Staff will be expected to give evidence as an independent and impartial witness to the Judge only.
- 7.2.7 It is important to note that if the staff member witness has commenced his/her evidence and there is a break (i.e. lunch) and the staff member witness has not concluded his/her evidence, that person is deemed to be still under oath and may not discuss the case with anyone, even his/her own legal adviser, until such time as the Judge has confirmed that the staff member witness evidence has concluded.
- 7.2.8 Appropriate operational uniform must be worn at all times.
- 7.2.9 Once evidence has been given and permission granted to leave, the Court Appearances Form (see Appendix III) must be completed by the Court Clerk or designated other Court Official and returned to the relevant Business Support Officer via the immediate Line Supervisor/Line Manager.

7.3 Staff Responsibilities

- 7.3.1 If a staff member receives an Inquest/Court Summons relating to duties carried out during their employment, they must notify their Supervisor without delay and discuss release arrangements.
- 7.3.2 The staff member is responsible for any Contemporaneous Notes referred to in a court/inquest case.
- 7.3.3 Annual leave must be used for cases not relating to work.

7.3.4 All claims for time, mileage and subsistence relating to appearances directly connected to employment must be submitted on the appropriate pay and/or expenses sheets with a copy of the summons.

7.3.5 All claims for mileage and subsistence relating to appearances not connected to employment duties must not be submitted to the HSE.

7.4 Available assistance

7.4.1 Legal advice provided by the HSE's Solicitors may be availed of when requested to attend court in a capacity relating to your employment.

7.4.2 Legal advice provided by the HSE's Solicitors may be availed of when requested to assist with access requests also, e.g. from Solicitors under FOI/DP legislation

7.4.3 Where necessary, the relevant Line Manager should be contacted in the first instance.

7.4.4 Legal services of the Clinical Indemnity Scheme ("CIS") may be availed of by staff members requested to attend a Coroner's Court, depending on the complexity of the case in hand.

7.4.5 Where necessary, the relevant Line Manager should be contacted in the first instance.

7.4.6 The CIS also provides guidance and/or advice to relevant staff as well as meeting the costs of any litigious awards.

7.4.7 Further advice and guidance is available via your immediate Supervisor/Manager.

8.0 IMPLEMENTATION PLAN

8.1 This Guideline will be circulated electronically to all Managers, all Supervisors and Staff

8.2 This Guideline will be available in electronic format in each Ambulance Station and Ambulance Control for ease of retrieval and reference

8.3 Each Operational Support and Resilience Manager will ensure that the Manager/Supervisor responsible for updating Policies and Procedures will return the Confirmation Form to NAS Headquarters to confirm document circulation to all staff

9.0 REVISION AND AUDIT

- 9.1 This Guideline will remain under review and may be subject to change to facilitate any changes/developments in service requirements.
- 9.2 Each Line Manager will monitor compliance with this Guideline on a case by case basis and any deviation will be reported to the relevant Senior Manager for remedial action
- 9.3 Any deviation will be followed up on as soon as practically possible so as to ensure the necessary remedial action is taken.
- 9.4 The Workforce Support Manager will review the effectiveness of this Procedure and propose amendments where deemed necessary.

10.0 REFERENCES

- PHECC Best Practice Guidelines on Patient Report Forms
Clinical Indemnity Scheme

11.0 APPENDICES

Appendix I - Guideline Acknowledgement Form

Appendix II - Role and function of Garda Ombudsman (GSOC)

Appendix III - Court Appearances Form

FUNCTION AND POWERS OF THE GARDA OMBUDSMAN

The Garda Síochána Ombudsman Commission is an independent statutory body. It was established under the Garda Síochána Act 2005 which involved very significant legislative changes for policing in Ireland.

The Ombudsman Commission, under the Act, is required and empowered to:

- Directly and independently investigate complaints against members of the Garda Síochána
- Investigate any matter, even where no complaint has been made, where it appears that a Garda may have committed an offence or behaved in a way that would justify disciplinary proceedings
- Investigate any practice, policy or procedure of the Garda Síochána with a view to reducing the incidence of related complaints

The powers of the Garda Ombudsman's investigators in relation to investigating a complaint against a member of An Garda Síochána are similar to the powers of An Garda Síochána, i.e.:

- The entry and search of any place (other than a Garda Station) pursuant to a warrant issued in accordance with law and the seizure of things authorised by the warrant
- The arrest, with or without a warrant, of a person
- The bringing of a charge against a person
- The issue of a summons to a person
- The search of a person and the taking of his or her photograph, fingerprints and palm prints
- The detention and questioning of a person
- The taking of bodily samples or other things from a person for the purpose of forensic testing

Inquest/Court Appearance Form

This form must be brought to inquests and court appearances attended by all NAS staff. This form must be completed and stamped by a Court Clerk with an official court stamp. If notified of inquest/court appearance by written summons, please attach copy to this form.

Name: _____

Station: _____

Date notified of inquest/court appearance: _____

Notifying Officer/Garda: _____ (If notified by telephone)

Inquest/Court Appearance Date: _____

Court Name: _____

Time Attended From: _____ To: _____

Signature: _____

Court Stamp Here

Court Official Signature: _____