SAHPRA
SOUTH AFRICAN
HEALTH PRODUCTS
REGULATORY AUTHORITY

# LIABILITY INSURANCE FOR CLINICAL TRIALS

This document has been prepared to serve as a guideline to clarify the requirements of insurance for those who conduct interventional clinical trials involving human participants and intend on making a submission for approval of a clinical trial by South African Health Products Regulatory Authority (SAHPRA). SAHPRA reserves the right to request any additional information and may make amendments in keeping with the knowledge which is current at the time.

Guidelines and application forms are available from the Office of the Chief Executive Officer and SAHPRA website.

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## 1 INTRODUCTION

In terms of the responsibilities of the sponsor/applicant as described in the current Good Clinical Practice (GCP) Guidelines, all sponsors/applicants and investigators of clinical trials must have adequate comprehensive insurance to cover for any liability claim during the conduct of a clinical trial with exception for claims that arise from malpractice and/or negligence This guidance document of the South African Health Products Regulatory Authority (SAHPRA) seeks to clarify the requirements for such insurance for purposes of making a submission for approval of a clinical trial by SAHPRA.

## 2 BACKGROUND

Liability insurance in clinical trials refers to the insurance or indemnity covering the liability of the sponsor/applicant and/or the investigator in respect of claims made against them by the participants with respect to injury attributable to their participation in a clinical trial.

The current GCP guidelines provide broad guidance regarding injuries (including death) for which insurance would be required. These requirements were developed taking into consideration the current Association of the British Pharmaceutical Industry's (ABPI) clinical trial compensation guidelines.

There is an international consensus that research participants who suffer injury as a result of their participation should be provided medical treatment at no cost to themselves or their families. Such financial or other assistance should compensate them equitably for any medical treatment for resultant impairment, disability or handicap. In the case of death as a result of their participation, their dependants are entitled to compensation (WHO 2002 and ABPI 2014).

## 3 DESCRIPTION OF CLINICAL TRIALS THAT REQUIRE AN INSURANCE CERTIFICATE

Insurance is required for the conduct of interventional clinical trials involving human participants.

### 3.1 Responsibility for the provision of insurance in an application for the conduct of a clinical trial

Evidence of comprehensive no fault insurance for serious injury and harm and/or death should be provided by the sponsor and/or applicant.

Sponsor/applicant should take responsibility of ensuring that participants are fully compensated.

### 3.2 Indemnification of trial sites and investigators by sponsor/applicant

The sponsor/applicant must provide indemnification for all investigators and trial sites involved in their clinical studies on compliance with the protocol requirements. In cases where the investigators/site staff were negligent and/or did not comply with the protocol requirements personal malpractice insurance would apply.

## 4 COVERED RISK AND PROCEDURES

Notwithstanding the absence of legal commitment, the sponsor/applicant should pay compensation to all participants including healthy volunteers suffering bodily injury, including death, in accordance with this guideline.

### 4.1 Payment of Compensation

The following should be considered in compensation of participants:

- If, on the balance of probabilities, the injury is attributable to the administration of an investigational product or any clinical intervention or procedure provided for by the protocol that would not have occurred but for the inclusion of the participant in the trial.
- Compensation should be paid for a child injured *in-utero* through the participation of the biological parent in a clinical trial as if the child were a patient-volunteer with the full benefit of SAHPRA guidelines.
- Compensation should only be paid for a serious injury of an enduring or disabling nature (including exacerbation of an existing condition) and not for temporary pain or discomfort or less serious occurrences.
- Where there is an adverse reaction to an investigational product under trial and the injury is caused by a procedure adopted to deal with that adverse reaction, compensation should be paid for such injury as if it were caused directly by the investigational product under trial.
- The sponsor/applicant is under strict liability in respect of injuries caused by the investigational product or procedures provided for by the protocol that would not have occurred but for the inclusion of the participant in the trial, regardless of whether the participant is able to prove negligence on the part of the sponsor/applicant or that the investigational product is defective.

## 5 INSURANCE AGAINST TRIAL-RELATED INJURIES

### 5.1 Basic Principles:

5.1.1 Research participants should not have to bear the financial cost of rectifying harms that occur when something goes wrong during the study. It is thus essential that provision is made for comprehensive insurance against medical treatment required for trial-related bodily injury.

5.1.2 The current SA GCP follows the lead of the Association of the British Pharmaceutical Industry (ABPI), which recommends that sponsors/applicant is to adopt the position of paying for treatment in the event of trial-related injury, including death.

5.1.3 If a trial-related serious bodily injury of an enduring nature occurs as a result of participation in the trial, then the insurer pays the medical costs of necessary treatment to restore the participant to his previous status as far as possible.

5.1.4 Payment of medical expenses by the insurer is triggered when, on a balance of probabilities, bodily injury is attributable to administration of an investigational product under trial or to a clinical intervention or procedure provided for by the protocol, which (bodily injury) would not have occurred but for the participant being included in the trial. In the case of an *in utero* injury to an unborn child due to the mother's participation, payment for medical expenses proceeds as though the unborn child is a research participant.

5.1.5 In principle, only bodily injuries of an enduring and disabling character requiring medical treatment (including exacerbation of an existing condition) and/or compensation for death are paid by the sponsor/applicant. Temporary pain or discomfort or less serious or curable complaints are generally not regarded as trial-related bodily injury. In the case of bodily injury caused by the response to an adverse reaction to an investigational product under trial, the insurance cover will apply.

5.1.6 Payment for medical expenses is made without acknowledgement of any liability.

5.1.7 The provision of insurance cover and payment of medical expenses does not mean that an injured participant may not pursue legal action against the sponsor/applicant to claim compensation for loss or harm not covered by the insurance.

**Note:**

Neither the fact that the adverse reaction causing the injury was foreseeable or predictable, nor the fact that the participant has freely consented (whether in writing or otherwise) to participate in the trial should exclude a participant from consideration for compensation under these guidelines.

### 5.2 No Obligation to Pay Compensation

**NO OBLIGATION TO PAY COMPENSATION WILL EXIST:**

- For the failure of an investigational product to have its intended effect or to provide any other benefit to the participant.
- To participants receiving placebo in consideration of its failure to provide a therapeutic benefit.
- For injury caused by other licensed medicinal products administered to the participants for the purpose of comparison with the product under trial.
- In the case of negligence or a serious violation of the protocol by the investigator, his/her personal malpractice insurance would apply. All healthcare professional involved in clinical trials should have personal malpractice cover.
- In case of proven participant negligence, the sponsor/applicant may consider compensation on ethical grounds on case by case basis.

The amount of compensation to be paid should be appropriate to the nature, severity and persistence of the injury and should in general terms be consistent with the quantum of damages commonly awarded for similar injuries by a South African Court in cases where legal liability is admitted.

## 6 INFORMED CONSENT (IC)

The informed consent discussion and the written informed consent form or any other written information to be provided to participants involved in a clinical trial must include clear instructions on reporting trial related harms and include explanations of the compensation and/or treatment available to the participant in the event of trial-related injury. The details for submitting a claim should be explained to the participants and included in the Patient Information Leaflet and informed consent discussion.

## 7 INSURANCE CERTIFICATE

It is unacceptable to have deductibles or co-payment for which the participant is liable.

**7.1 Requirement for the Certificate:**

When applying to SAHPRA for approval of a clinical trial, an insurance certificate should provide

the following information and meet the following criteria:

- Name and local address of the insurance company, including contact name and telephone number.
- Title and protocol number of the clinical trial.
- Date of commencement and termination of coverage.
- Liability limit – per occurrence and total per occurrence and total for the study. Note that the limit should be adequate enough to cover extended stay in an intensive care unit or hospital.
- Date of issuance of the insurance policy and expiry thereof.
- Original or electronic signature of the insurer.
- Special conditions if any. It is unacceptable to have special conditions which may invalidate or abate the clinical trial cover.
- Any additional coverage.
- Declaration of compliance with latest SA GCP guidelines and ABPI guidelines on the certificate and in the PIL.
- Where the insurance is not provided by a local company, a local insurance vendor must be identified with full details.

7.2 A pro forma certificate would be permissible for the purposes of the application. However, a final clinical trial authorisation letter will only be issued once a copy of the original insurance certificate has been provided to SAHPRA which complies with all of the provisions made in the pro forma version with the exception of the date which may be modified to reflect the effective date.

7.3 There should be an unambiguous statement regarding the South African claims procedure for participants in the Patient Information Leaflet.

7.4 The dates for insurance cover should be inclusive of the date of approval of the clinical trial, the anticipated duration of the trial procedures as well as a reasonable period for the emergence of late injuries.

7.5 If the sponsor ceases to exist due to it being taken over by another company, all liability must be taken over by the new company.

7.6 Where insurance is renewable on an annual basis, the certificate to this effect should be provided by the sponsor/applicant.

7.7 The insurance must be underwritten by an insurance company in accordance with the South African Insurance Act 18 of 2017.

7.8 Justification for the liability limits should be provided in the clinical trial application and should be specific to the nature of the health technology profile and disease process being investigated.

Please note: SAHPRA takes no responsibility for any claims for injury as a result of a clinical trial it has approved in pursuance of its statutory duties in terms of Medicines and Related Substances Act 101 of 1965.

## 8 PROCEDURE FOR CLAIMS

8.1 Claims in pursuance to these guidelines should be made by the participant and/or immediate family to the sponsor/applicant, preferably via the investigator, setting out details of the nature and background of the claim and, subject to the participant providing on request an authority for the sponsor/applicant to review any medical records relevant to the claim, the sponsor/applicant should consider the claim expeditiously.

If there is a dispute between the participant and the investigator, claims should be made against the sponsor/applicant, unless it is proven that the occurrence is due to the investigator's negligence. In case of a claim the participant and/or immediate family should be able to contact the broker or insurance company directly.

8.2 Arbitration in case of dispute:

In the case where the sponsor/applicant concedes that payment should be made to a participant but there exists a difference of opinion between sponsor/applicant and participant as to the appropriate level of compensation, it is recommended that the sponsor/applicant agree to seek at its own cost (and make available to the participant) the opinion of a mutually acceptable independent medico-legal expert.

The medico-legal opinion should be given substantial weight by the sponsor/applicant in reaching its decision on the appropriate payment to be made.

## 9 NOTE

- The provisions of this guidance do not in any way absolve the investigator of the requirement for personal malpractice insurance.
- The participant's medical insurance and/or state healthcare system should not be responsible for any part of treatment or compensation for trial related injury/harm. All healthcare professionals involved in a clinical trial should have their own personal malpractice insurance to cover negligence and malpractice in the conduct of clinical trials.
- The fact that a sponsor/applicant has agreed to abide by these guidelines in respect of a trial does not affect the right of a participant to pursue a legal remedy in respect of injury alleged to have been suffered as a result of participation.
- The sponsor should provide indemnity for sites and staff taking part in the study. The following wording serve as a guide for sponsor indemnification for investigators and sites and is not an exclusive approach:

  *In consideration of the {PI's / Institution's / Research Unit's] participation in the study, we shall indemnify and hold harmless [Name of PI / Institution / Research Unit] and its employees from any legal liability for costs or damages for death or personal injury which may result from the administration of [Name of compound] pursuant to the said study. This indemnity does not apply to the extent that such death or personal injury arises out of any negligent act, default or omission of [Name of PI / Institution / Research Unit] or its employees. Furthermore, this indemnity is subject to the condition that the study is carried out in accordance with the Protocol approved by us in writing, that [Name of Sponsor] is notified as soon as possible on receipt of any claim, that [Name of Sponsor] shall have full control of the management and defence of any such claim and that no offer to compromise or settle any claim is made without the written agreement of [Name of Sponsor].*

## 10 REFERENCES

Association of the British Pharmaceutical Industry. 2014. Clinical Trial Compensation Guidelines.

National Department of Health. 2006. South African Good Clinical Practice Guidelines. 2nd ed. South Africa.

World Health Organisation. 2002. Guideline 19: International Ethical Guidelines for Biomedical Research Involving Human Subjects: Prepared by the Council for International Organizations of Medical Sciences (CIOMS) in collaboration with the World Health Organization (WHO); Geneva.

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