

## THE NEW ACT ABOUT COMPENSATION OF DAMAGES, RESULTING FROM MEDICAL ACCIDENTS

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The Belgian federal Parliament has adopted a new legislation about compensation of damages, resulting from medical care.

The **Act of 31 March 2010** provides compensation for victims and their heirs, resulting from a medical intervention.

The claimants have no longer the burden of proof of a fault as was the case until now. The abolished system created many difficulties with regard to the evidence of a fault by the medical caretaker. This evidence could only be given via a medical survey.

This former legal system created a lot of frustrations as the victim had to advance important fees to the medical surveyors, who were appointed to establish the eventual fault of the caretaker. Moreover such procedure lasted a very long time.

According to the new Act a victim has no longer to evidence a fault but he/she can directly introduce a claim with the FUND FOR MEDICAL ACCIDENTS. The only fact to be established is an "abnormal result" of the caretaking.

Not only mistakes or faults give rise to compensation but also medical complications that create a serious damage such as minimum 25 % permanent incapacity, a temporary invalidity of 6 months, important impact on the life conditions, etc.

The notion fault disappeared completely so that we can speak about a no fault liability.

Damages resulting from experiments or esthaetical surgery are not compensated.

The FUND will, after receipt of the claim, open an investigation and will propose a compensation which has to correspond to the full damages sustained: loss of earnings, moral damages and all other usual heads are integrally covered.

The FUND has the possibility to revert to the medical caretaker or its insurer in case a medical fault apparently has been committed in order to recover the compensations, paid to the victim.

Time limitation period is 5 years to count from the date the victim was aware of the existence of the damage.

As the Act of 31<sup>th</sup> of March came into force the 11<sup>th</sup> of April 2010, only medical accidents, occurred after this date, are covered by the new legislation.

Although the dispositions of the Act are very technical, it is a big step forward in the compensation of victims in the recovery of damages resulting from medical faults or accidents.