



**Office of the
Health Complaints Commissioner
2006**

700-0601031 Medical practitioner –Section 23 (1)(d) – a health service provider failed to exercise due skill – failed tubal ligation

The complainant had a tubal ligation performed at a Private Hospital in 2002. She conceived and gave birth to a daughter in 2004. The complaint is out of time but accepted under s.25 (6) as the reasons for not lodging the complaint within two years of the circumstances giving rise to the complaint, included the illness and death of her eldest child and her own ill health.

The matter was suitable for conciliation and the complainant was willing to attend conciliation in an attempt to resolve the complaint but had issued a writ to remain within time under the *Limitations Act*. The provider, through his solicitors, indicated that he was not willing to participate in conciliation. The issues were whether the failed ligation involved any lack of skill on the part of the surgeon and whether the complainant's consent was fully informed?

The matter was referred to the Medical Council pursuant to s.25 (1A)(a) in March 2006 and in 2007 the Council reported that the doctor "*made an error of judgement and a technical mistake*" in a procedure which has an acknowledged failure rate. The Medical Council consider that this appeared to be an isolated incident and not a case where the level of skill and care was so lacking that further intervention was warranted by way of disciplinary proceedings. Accordingly the Council determined to dismiss the complaint.

Upon being contacted to ascertain whether the parties wished to reconsider conciliation the complainant advised that the matter had been the subject of an out-of-court settlement and the file was therefore closed as resolved.