

Challenge Medical Indemnity



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Introduction **from MD, Mr David Walsh**



Dear Consultant,

Welcome to the first in our series of Challenge Medical Indemnity newsletters. The aim of this newsletter is to keep you updated with relevant industry news and to provide you with information which could help to keep your indemnity costs down by managing the risks of your practice.

I am pleased to inform you that the Challenge Medical Indemnity scheme is running well since its inception in November 2014. We are experiencing rapid growth as more and more consultants look for ways to reduce their indemnity costs whilst maintaining comprehensive cover. A significant part of our success is due to the comprehensive nature of our cover offering which was developed over a 3 year research period. Having the backing of a reputable global healthcare provider like CNA Insurance Company Ltd is giving consultants peace of mind.

This newsletter will contain contributions from our legal, underwriting and risk management teams as well as updates from industry and state representatives. In this edition, we are pleased to have an opening risk management feature from our lead Medico-Legal Partner, Ms Ann O'Driscoll.

I would encourage you to take the time to read each edition and I'd also like to thank you personally for your support so far. Challenge is widely recognised as a leading supplier of medical indemnity insurance for private consultants in Ireland, we look forward to continued growth and to working with you over the coming years.

Regards

David Walsh
Managing Director
Challenge.ie



Getting to grips with the risks

– by Ms Ann O’Driscoll

DAC Beachcroft Solicitors



Although the terms “Clinical Risk” and “Risk Management” are relatively new to the Irish healthcare sector, the fact of the matter is that clinical risk and risk management have always been part and parcel of what healthcare professionals do, in particular doctors.

An example of this is where a doctor decides to carry out a complicated high risk surgical procedure on a patient. The doctor manages the risks associated with the procedure by:

- Firstly, having a discussion with the patient and informing him/her fully of the risks/possible complications associated with the procedure.
- The doctor may then put together a team with the appropriate expertise to assist in carrying out the surgery which may involve surgeons from other specialities.
- If a complication arises during surgery, measures are taken to contain the problem.
- Intra-operatively and post-operatively, antibiotics may be prescribed and administered to manage the risk of infection.
- If infection does occur, the surgeon may consult a microbiologist to ensure that the appropriate antibiotics are being administered. This is a classic example of team risk management in action by a surgical team i.e. clinical risks are identified throughout the patient’s clinical course while under the care of that team and are actively managed with a view to minimising or eliminating the risks.



However, if while recovering post-operatively on the ward, the patient falls while attempting to get out of bed unaided (due to a shortage of nursing staff) and slips on a wet floor (due to a shortage of cleaning staff), thereby sustaining a severe fracture and developing an embolism resulting in death, this brings into sharp focus the issue of organisational risk management. In such circumstances, it is little consolation to the surgical team that they carried out a very successful operation and managed the risks associated with the surgery if their excellent work is subsequently unravelled by a series of adverse, but avoidable, events which occur while the patient’s management is no longer directly under the control of the surgical team.

The important thing to realize about risk is that there are two types: the risks we know about and the risks we don’t know about. In healthcare, the latter category usually arises in the context of organisational risk where if there is no system within the organisation (and this would include a consultant’s private rooms) for the identification and management of risk, then patient safety is at risk and also the reputations of the treating healthcare professionals, particularly in the context of their exposure to complaints, claims, inquests and fitness to practise inquiries.

The clinical claims experience in this country, of which I have 20 years in defending NCHDs, consultants, nurses and midwives, provides a wealth of information about the lack of risk management systems in healthcare generally; in particular, the claims experience demonstrates that, in some instances, the same mistakes keep occurring. This is worrying as it frequently strikes me, while engaged in the investigation of clinical claims, how easily many organisational risks could be corrected without involving any financial expenditure whatsoever on the part of the organisation. Contrary to popular belief, the solution to a risk is often a mixture of common sense coupled with good communication skills and a bit of thinking “outside the box”.

A consultant is depending not only on their own team but, also, on other teams (clinical and non-clinical) within the organisation to ensure delivery on the common goal of quality patient care. Therefore consultant involvement is axiomatic to ensure that there are robust risk management systems in place in the healthcare environment in which they operate. The input of consultant expertise is essential and core to the clinical risk and patient safety agenda of any healthcare organisation.

If you are a consultant who owns and operates out of private rooms, implementing risk management can be a relatively simple task. If, for example, your team consists of yourself, a nurse and secretary, it would be prudent to engage an external consultant to conduct a risk analysis (clinical and non-clinical) on your practice which is, essentially, a business. The positive thing about a risk analysis is that it frequently highlights the good systems already in place. Likewise, if you are part of a group of consultants who own and operate out of private rooms, it would be prudent and, indeed, very cost effective, for the group to engage a healthcare risk consultant to carry out a risk assessment of your business and to make recommendations for change where appropriate. Patient safety should not be a reaction in the business of healthcare, but a pre-requisite. Patient safety has been and is a fundamental tenet of the vocation of the practice of medicine.

Getting to grips with the risks (Continued)**How to set up a Risk Management Group**

Many consultants have now been appointed as clinical directors, medical directors and clinical leads in our public, voluntary and private hospitals. These appointments serve to strengthen the risk management function in a healthcare organisation.

Healthcare organisations and professionals are often daunted by the prospect of having to set up a Risk Management Committee/Group, however, the reality is that once you gather together a group of appropriately qualified, interested and vision-sharing individuals, it is a relatively easy process. Some of the key components of a successful Risk Management Committee are as follows:

- The terms of reference, the membership, the roles, duties and responsibilities of the Committee should be agreed and drawn up at the outset. Depending on the size of the organisation and the nature of its services, the membership should include the Clinical/Medical Director, the Director of Nursing, the Risk Manager/Quality Manager, the Chief Pharmacist, the Manager of Laboratory Services and the Manager of Theatre Services. If you are working in an organisation which is accountable to a Board of Directors, one of the Board Members should be asked to sit on the Risk Management Committee and to attend the monthly meetings. Some hospitals have a separate Risk Management and Clinical Governance Committee, however, there is no reason why consideration should not be given to merging the two committees into one and, for example, re-naming it the 'Quality, Risk and Safety Committee'.
- The appointment of a strong leader to chair the group (the chair should rotate every 2 years);
- Regular monthly meetings. The meetings should last not more than 1 hour as, firstly, it focuses minds on the agenda and, secondly, healthcare professionals are busy people. Early morning or late afternoon meetings might suit best.
- An agenda should be drawn up and agreed prior to each meeting. If the same unresolved issues/problems keep appearing on the agenda each month, then this needs to be addressed and actioned.

- Invite people, who are not members of the group, to make presentations to the group, when the circumstances warrant it.
- Prepare an annual report to the Board or the Hospital Manager whichever is appropriate for your organisation. An annual report is imperative in order to keep the Manager or the Board informed of the risks within the organization and how the risks are being managed. A short monthly report highlighting any acute risks, to include staff shortages (but one has to show how the shortages impacted on patient safety), should be furnished to the Manager or Board.
- Channels of communication should be strongly encouraged to remain open at all times so that the Committee is constantly engaged in the issues that arise at any given time within the organisation. The better the level of information flow within the organisation, whether between doctor and patient, nurse and doctor, doctors and management, the more a culture of transparency and trust becomes established and embedded in the mind-set of the organisation and which can only lead to a more positive quality of service, safety and care.
- In relation to the **Challenge Medical Indemnity Helpline**, consultants should be aware that the helpline is not merely there to assist with medical malpractice claims, inquests and fitness to practise inquiries, it is there to assist you with patient complaints, complaints to the Medical Council, the management of adverse clinical outcomes, risk management and governance issues and any matters which impact on your day to day practice. It is a 24 hour helpline which is manned by people, such as myself, who are there to guide, assist and support you through the ever increasing medico-legal and organisational governance complexities of every day practice.

The number of the Helpline is **01-2319640**.

*Ann O'Driscoll,
DAC Beachcroft Solicitors*





Guidance note for notifying claims and circumstances

These guidelines are intended to assist you in identifying what you need to report to us under your Medical Professional Liability, Public & Professional Liability Insurance policy. They are not intended to replace the policy terms and conditions in any way.

Claims Process

Swift resolution of claims is reliant upon the quality of the initial information CNA receives. The more complete the information is, the more quickly CNA can move to resolve a claim.

A Claim/Circumstance Notification Form should be completed in respect of all new notifications and should be sent to: insurance@challenge.ie

What needs to be notified

You are responsible for notifying CNA of Claims and Circumstances which may give rise to a Claim under the policy. Such notice should include:

- details of what happened and the services and activities that you were performing at the relevant time; and
- the nature of any, or any possible, bodily injury; and
- details of how you first became aware of the Claim or Circumstance; and
- all such further particulars as CNA may require.

Claims

Under the terms of your policy, any Claim must be reported to CNA in writing immediately.

The definition of a "Claim" is any:

- written or verbal demand made of you; and/or
- assertion of any right against you, including but not limited to any proceedings, including any counter-claim; and/or
- invitation to you to enter into alternative dispute resolution, alleging any occurrence, negligent act, error or omission that may give rise to an entitlement to damages."

Examples of a Claim are:

- A letter of claim from solicitors.
- A letter or verbal demand from a patient or third party, alleging wrongdoing and requesting compensation.
- Legal proceedings (e.g. a Summons/Particulars of Claim, etc.).

Circumstances

Under the terms of your policy, any Circumstance must be reported to CNA in writing immediately.

A "Circumstance" is defined as:

"any circumstances of which you become aware, or should reasonably have become aware, that may reasonably be expected to give rise to a Claim."

Examples of a Circumstance are:

- Any complaint, written or verbal, in which the patient or patient's representative expresses dissatisfaction regarding the treatment received and alleges that, as a result, the patient suffered bodily injury.
- A request for access to medical records received from a solicitor or third party on the basis that a Claim against you/ your service (to include any of your employees) is being contemplated.
- Any incident in which a Serious Untoward Incident Report is generated.
- Any unexpected or unusual death of which you become aware.
- Any adverse outcome or clinical "near miss" in which you believe there may have been a negligent act, error or omission, irrespective of whether or not the patient is aware of this or whether the patient or patient's representative has made a complaint.

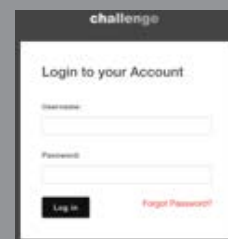
A loss of patient records (which after a relevant search cannot be found).

These examples are for general guidance only and this is not an exhaustive list. If you are in any doubt regarding whether an incident is reportable then you are encouraged to notify the matter to CNA as a precaution.

24 Hour 7 Day Consultant Helpline

In the provision of healthcare, you will encounter unexpected issues which don't always arise during normal business hours and may require a rapid turnaround or even an emergency response. As a Policy Holder with Challenge you have a 24-hour dedicated phone and e-mail helpline service which is provided by our experienced legal partners at DAC Beachcroft Dublin. Consultants should be aware that the helpline is not merely there to assist with medical malpractice claims, inquests and fitness to practice inquiries, it is there to assist you with patient complaints, complaints to the Medical Council, the management of adverse clinical outcomes, risk management and governance issues and any matters which impact on your day to day practice. It is a 24 hour helpline which is manned by people who are there to guide, assist and support you through the ever increasing medico-legal and organisational governance complexities of every day practice.

The number of the Helpline is **01-2319640**.



Consultant Online Portal

All Challenge clients also have 24 hour, 7 day communication channel and access to their insurance documents via our online client portal at www.challenge.ie

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