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Entity Medical Malpractice Insurance Claims Examples

Why do you need Entity Medical Malpractice Insurance?

As healthcare businesses evolve they face new and unexpected challenges, so it is essential that they have adequate insurance to cover them for the wide variety of claims which can arise from previously unforeseen circumstances. Often practices expect that their doctors' own indemnity insurance policies will cover them in the event of a claim, but there are many scenarios where this is not the case.

Seemingly innocent errors of administrative staff can have devastating effects and expose medical practices to litigation, complaints and investigations. Medical receptionists, practice managers, nurses, and administrative staff play a crucial role in any practice, as they are often the first points of contact for patients and are often the intermediaries through whom patient follow up is organised. These staff often undertake important unsupervised activities that may place the practice itself at risk. Practice protocols or system failures, such as triaging and recalling of patients, can also create or contribute to adverse patient outcomes which may expose medical practice entities to claims.

As a specialist healthcare indemnity insurer, we are frequently assisting practices with these claims and complaints.

Real Case Studies

Practice staff's failure to keep up to date contact details compromised timely follow up

The patient was incorrectly advised by a GP that she did not carry the HIV virus when the test result was equivocal and required further investigations. The patient did not receive a recall request actioned by another GP at the practice who had originally ordered the test because her contact details were not up to date on the practice management software. The patient then had unprotected sexual intercourse with her partner. While not a patient of the practice, the patient's partner contracted the HIV virus and brought proceedings against the relevant GPs who settled his claim for $745,000 plus legal costs. The GPs' insurer sought contribution against the medical practice entity and recovered 40% on the basis practice staff had failed to maintain up to date contact information for the patient which meant she was unable to be recalled before she infected her partner.[1]

Real Case Studies

 **Improper storage of medical records**	A medical practice was investigated by the Privacy Commissioner for storing patient records in a garden shed. Patient records and personal health information were compromised when burglars interfered with the site. Following media coverage, the Privacy Commissioner conducted an investigation and determined that the practice had breached its obligations under the Privacy Act to secure personal information or destroy or de-identify personal information no longer in use. [2]
 **Incorrect information provided by receptionist**	The patient presented with a head injury and advised a receptionist he felt he was about to collapse. The receptionist advised he would have to wait hours to be seen by a doctor despite policy requiring that head injury patients were to be seen much sooner. Due to the receptionist providing inaccurate information about waiting times the patient went home and later sustained an extradural haematoma. The court determined that a receptionist is expected to take reasonable care not to provide misleading advice about the availability of medical assistance, and that the standard required is that of an averagely competent and well-informed person performing the function of a receptionist. Whilst a UK case involving a hospital, a similar approach applies in Australia. [3]
 **Sending sensitive health information to the wrong email address**	A GP practice with a special interest in sexual health sent an email to a patient of the practice, and his husband, inviting them to participate in a global study regarding HIV transmission. The practice sent an email to the patient and to an email address containing his spouse's first and last name but which omitted his middle initial, so that an unknown third party received the email. The email identified their names, HIV positive status, same-sex relationship status, the clinic they attended, the fact they had previously participated in a HIV study and, in regard to the patient, his place of employment (which was itself identifiable from his email address). The practice was ordered to pay compensation of $16,400. [4]
 **Failure to implement practice's internal follow up system**	A multi-disciplinary medical practice was required to pay compensation to a family of a deceased patient who died of coronary thrombosis. A GP at the practice ordered blood tests and referred the patient to a visiting specialist (who had visiting rights at the same clinic) so the patient could be investigated for suspected ischaemic heart disease. The patient failed to undertake the blood tests and did not present on the date the visiting specialist attended the practice. The system at the particular practice required that when a person failed to attend the specialist clinic the practice staff were to follow up the patient and arrange for the patient to attend the next specialist clinic. On the day of the planned visiting specialist clinic, the medical receptionist erroneously retrieved the medical record of another patient with the same name, which meant the patient's non-presentation was overlooked. The patient was found contributorily negligent for not undertaking the recommended investigations (reducing the damages payable). The practice (not the ordering GP) was found liable for failing to follow up the patient and was ordered to pay compensation to the patient's family of $236,972. [5]
 **Discrimination – access to medical centre premises**	A patient of a medical centre who had a disability that made it difficult to walk long distances or climb stairs complained to the Australian Human Rights Commissioner when the medical centre she usually visited relocated to new premises where she would be required to use stairs. The Commission held a conciliation hearing and the complaint was resolved on the basis that the medical centre would arrange for the patient to attend appointments and receive treatment in an alternative downstairs room. [6]

These case studies all engage scenarios relating to the distinctive role of a medical practice entity. Without adequate entity medical malpractice insurance, the exposure can fall directly to the practice without recourse against any individual insurance that may be held by the treating medical practitioner.

[1] Idameneo (No 123) Pty Ltd v Dr Colin Gross [2012] NSWCA 423
[2] OAIC Pound Road Medical Centre: Own motion investigation report
[3] Darnley v Croydon Health Services NHS Trust [2018] UKSC 50
[4] SD' and 'SE' and Northside Clinic (Vic) Pty Ltd [2020] AICmr 21
[5] Young v Central Australian Aboriginal Congress Inc & Ors [2008] NTSC 47
[6] Australian Human Rights Commission Conciliation Register 2012-05942