

CLAIMS AND INCIDENT MANAGEMENT

David Balen BIOG

INTRODUCTION

Consumers are becoming more aware of their legal rights and how to exercise them in the Courts should the need arise. The situation is being aggravated by a new breed of legal firms who advertise “no win, no fee” services, and encourage people that they might be able to collect thousands of pounds in compensation. This heightened awareness means that there has never been a greater need for you and your practice to maintain an adequate level of Professional Indemnity and Medical Malpractice Insurance protection, and to be aware of the small print in your policy. In our unique position as the only Insurance Brokers whose main clientele are Complementary Medical Professionals, we see many attempts by members of the General Public at claiming against practitioners. In our experience, these attempts, whether unfounded or not are definitely on the increase, as are allegations of sexual impropriety / assault.

This article is designed to help you recognise possible signs of a potential claim and to give you a little guidance on what to do when one arises.

Precautions:


- (a) do not display your Insurance Certificate on the wall, for some people, it is an invitation to claim, and you could be prejudicing your Insurers.
- (b) that Policy conditions state you should make Patient Records & keep for 7 years. It is your main source of defence – make sure that they are intelligible to others and always keep them in a safe place, preferably locked. Good notes = good defence, poor notes = poor defence, no notes = no defence!
- (c) Confidentiality and Data Protection Issues should always be considered.
- (d) you must notify us within 30 days of any circumstance which may give rise to any claim. Failure to do so could lead Insurers to decline a claim for indemnity arising from such circumstances. Always declare previous incidents on any forms you have to complete when starting or renewing cover, even though you think the underwriter may already know about them.
- (e) take care when advertising, and in conversation, that no claims for cure are made.
- (f) refer when appropriate
- (g) if you are a multitherapist, and you decide to employ a different therapy from the one that your patient came to you for, ensure that your patient is in agreement with that.
- (h) for techniques involving contact in erogenous zones, make sure that you have explained this and obtained patients permission, preferably written, and/or offer a chaperone.

How do you recognise a Professional Indemnity or Medical Malpractice Claim?

Many situations can be regarded as potential claims, before they actually become formal claims made against you, either direct in writing, or via a solicitor. It is important that the warning signs are noticed, and acted upon as soon as possible to reduce the chances of a claim developing further, with the consequent stress and possible effect on your reputation. It is understood that you may not be negligent- the cover is there to help you clear your name if innocent, or deal with the expenses and costs if you are found negligent.

Danger signs include: -

- Verbal complaint from a dissatisfied patient or client, with a threat of taking things further.
- Letter of complaint alleging neglect error or omission
- A patient not showing up for a subsequent treatment without explanation or further contact.
- A client or patient refusing to settle or delaying settlement of your account for an unreasonable period A request for a refund of fees because the treatment has not worked or met with expectations, or is stated as having caused harm in some way



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OTHER TYPES OF CLAIM

Whilst the obvious area of concern is Medical Malpractice, there are many other instances where a practitioner could be held responsible under the law of negligence. You could be held responsible by saying something to the detriment of a fellow professional or trade competitor (we have already seen examples of this in the past) Libel & Slander would be covered under the scheme. You may be accused of causing financial loss to a 3rd party, who may not even be your client, but someone with an interest in that client such as a spouse, or employer/ business associate. Claims from other modalities that you may be qualified to perform. You should remember that any allegations of sexual impropriety come under Criminal Law, and you do need to contact the Helpline number first for advice. The new legal package we have now included will pay for legal fees up to trial.

Important Notice regarding Criminal Prosecution Defence

All potential claims must initially be reported to the Commercial Legal Helpline Service, which operates 24 hours a day, 365 days a year. The 24-hour Helpline is there to provide extra support. In addition, the Commercial Legal Helpline also provides initial advice on any legal problem, whether covered under this policy or not.

What do I do if faced with a possible Claim?

- Try not to panic or get defensive, maintain goodwill, above all, do not admit liability or indicate that you are insured. Your position will get weakened and it will make it more difficult for the insurers to successfully defend you. Remember you must notify your insurers once you become aware of any situation, which may possibly, result in a claim being made against you.
- These are difficult times, and you may feel vulnerable and angry. After many years of study and successful practice, you may feel that your professional life will be jeopardised by adverse publicity or possible financial consequences. It is helpful to talk things over with sympathetic peers and also with us, and to try not to worry or let the situation affect your work. We have found over the years, that these situations do take on many twists and turns, and many attempts to claim do peter out, if the practitioner works the process through over a period of time and if he/she follows the guidance of ourselves and the underwriters' representatives, and complies with the terms and conditions of the policies.
- If the incident involves any possible Criminal Proceedings you should phone also the Legal Helpline, if your policy has one. Many do not.
- Do not make any offers, but contact us (and the Helpline if appropriate)
- We will give initial and ongoing advice and support. A claims handler or solicitor may investigate on your behalf
- Pass on any correspondence received unanswered. Send us patient notes, a copy of your certificate and your written response to the allegations.
- Try not to make any judgements on whether the circumstances are valid or not, leave that to the Insurers or their representatives
- If in doubt – notify!! – We are here to help, and many practitioners over the years have benefited from our support and advice at these times!

DAVID BALEN BIOG is an advisor to professional bodies on insurance and practice management issues, and lectures and writes articles for journals regularly. He is an NVQ assessor and on the faculty of Oxford Brookes University, teaching practice management on the osteopathy course, and also teaches at other establishments. He is also the Chairman of the Trustees of the College of Healing. He can be contacted on 01684 893006.

David will be opening the SMTO Conference 2003, on Saturday 22nd March 2003, with a workshop entitled "FINANCIAL THERAPY" and is a must for everyone. A discussion on Professionalism, Ethics, and Legal and Insurance Stuff – what do you want to know? Bring your questions for a talk and interactive session.

WORKSHOPS IN ABERDEEN

REMEDIAL MASSAGE WORKSHOP

8th/9th February 2003

A chance to review Remedial and Sports Massage skills and expand into, or review, Advanced Remedial Massage techniques – with Maggie Brooks-Carter 10 – 4 both days
Cost £60 (members) / £90 (non)

ENERGIES WORKSHOP

4th May 2003

A chance to discuss Energies and take part in a "working with energies" workshop – with Maggie Brooks-Carter
9.15 – 12
Cost £15 (members) / £20 (non)

Further details from 01224 822956