

When to report a malpractice complaint or claim to Partners Indemnity

By Hal Huff Sr., Managing Partner, Partners Indemnity Insurance Brokers Ltd.

August 2017 – Your policy states that practitioners are required to report any written or oral complaint received from a patient involving their treatment plan or from your regulatory board/college.

Here are some of the circumstances requiring immediate attention:

- a patient complains to the ND, other practitioners, or other members of the staff that they are unhappy with the treatment that they have received;
- the ND becomes aware of a potential problem due to the patients reaction to the treatment provided;
- a complaint is received from your Regulatory Board/College;
- the ND is put on notice by the patients legal counsel about treatment or
- a formal legal writ (Statement of Claim) is served.

To whom do you report a claim or complaint?

Notice should be provided to Partners Indemnity Insurance Brokers as soon as possible. A written report should be sent to Partners (an editable Incident Report Form is available from Partners and the “Malpractice and Clinic Information” page (see Related Links sidebar) of the CAND members portal at <https://www.cand.ca/login/>). This would include the Incident Report along with all supporting documentation including patient or legal letters and/or Court documents.

For complaints received from your regulator, copies of all correspondence and related documents should be sent to Partners’ office, who will review them prior to reporting the matter to the insurance company. However, if you have any questions with respect to the incident we encourage you to contact Partners’ office. Please note: reporting claims to the insurance company does not impact your premium, thus removing any concerns regarding potential insurance premium increases.

How should one conduct oneself when becoming aware of a potential claim?

It is extremely important to demonstrate a willingness to listen to patients who are unhappy or have concerns regarding their treatment. Listen very carefully and take notes. It is acceptable for you to express that you understand they are dissatisfied without admitting liability. Explain your reasons for the treatment, **however, do not under any circumstances admit liability. Do not discuss any claim or potential claim with anyone** – especially the patient’s lawyer – prior to contacting Partners. If you do, you run the risk of prejudicing your case and the insurance company’s defence if a formal complaint or claim should follow. Most importantly if you admit liability you may run the risk of the insurance company declining to cover the claim.

After reporting the claim or possible claim the insurer, their assigned insurance adjuster or legal council will normally contact you by phone for discussion. This is usually followed up with written instructions. These must be followed. For example if you are instructed not to contact the patient then do not contact the patient under any circumstances. The insurance company has now taken up defence on your behalf and if direct contact with the patient prejudices the insurer’s defence then they could reserve the right to withdraw from the claim. This is not a position in which you would want to find yourself.

Not all patient complaints turn into claims. To avoid any surprises however you should not leave anything to chance. Contact Partners Indemnity and let the insurance company decide whether the matter is a claim or potential claim. The adjuster’s opinion may be that the complaint may not result in a claim. If so they will treat this as an Incident Report, with no further action required at the time.

What should I do when the Regulatory Board is directly put on Notice of a Patient’s complaint?

If you receive a patient complaint from your regulatory board/college, if you become aware of the complaint or even suspect a patient may be considering registering a complaint, you should notify Partners’ office immediately.

1. You have an obligation to do so under your insurance policy.
2. If you do not and the complaint manifests into a claim then you may run the risk of prejudicing the insurance company’s position in defending the claim.
3. Your insurance policy provides legal advice for your written response to the regulatory board/college.

Limits of liability, including legal expense offered through the CAND plan, range between \$2,000,000 and \$5,000,000. When assessing which limit you wish to purchase please ensure you are aware of the limit required by your regulations and note that the limit acquired is the maximum limit for the year for one or more claims.

There are two extensions under your policy of which you should be aware:

1. Disciplinary Notice Legal Expense

This compensates you for expenses incurred for legal counseling while under investigation or called to appear before your regulatory board/college. There is an annual maximum sublimit of \$100,000 in your policy to cover these expenses.

2. Criminal Defence Reimbursement

This will reimburse your legal expenses incurred defending criminal investigations or charges against you under the criminal code. The insurance company must be notified first.

The charges must be successfully defended.

There is an annual policy sub-limit of \$100,000 available for these expenses.

Please note under the above that the limit for legal expenses only applies to criminal matters. This is not to be confused with civil court claims where legal expenses and claim settlement expenses are inclusively provided in your insurance policy up to the limits you chose to purchase.

Summary Claims Guide

1. Let Partners know immediately in writing by phone, fax or email. If your patient contacts you listen very carefully to their concerns, but do not admit liability or fault.
2. Please do not discuss the claim with anyone especially the claimant's lawyer before contacting Partners.
3. Ensure the patient's file is complete and contains full notes on the nature of the complaint as this may become important in your defence.
4. If in any doubt please do not hesitate to contact Partners Indemnity's office as soon as possible for consultation.

Questions about your malpractice insurance?

Contact Kendall Wooding of Partners Indemnity: kwooding@partnersindemnity.com or 1.877.427.8683.