

Junior Practitioners' Guide to Legal Issues



Reading time:
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While you are statistically unlikely to find yourself the subject of a serious clinico-legal matter as a junior health practitioner, taking stock of a few tips can hopefully minimise the chance of such events even further.

Mistakes can occur, but it's how we react to them that can make all the difference.

Document accurately and vigilantly

In our litigious society, documentation is your best defence. In many months' (even years') time following an incident, it is highly unlikely you will be able to accurately recall your version of events. Maintaining accurate and complete health records protects you immeasurably. It gives you the opportunity and recourse to explain your reasoning and/or circumstances regarding a clinical situation in the workplace.

Do not document anything that you would rather not be asked to explain in a court of law and refrain from writing anything even mildly derogatory about a patient or staff member.

Your signature is your career

You may be asked to sign many documents each day as a recent medical or dental graduate.

Remember your signature is legally binding, something that can be scrutinised in a court and/or by a regulatory body or institution. If you disagree or are unsure about a form or document, do not risk jeopardising your career. Make sure you ask for help from senior colleagues, especially when you are just starting out. This is particularly true for documents such as death certificates, medication charts and blood transfusion request forms, where a mistake, an omission or a misunderstanding on your part has the potential for serious clinical, legal and professional consequences.

Always ask for help or clarification whenever you feel uncomfortable

As junior practitioners, your role is always a supervised one. You might run into trouble when you feel pressured to make decisions without the support or clarification of your seniors. If you encounter a situation where you are uncomfortable in making a decision, always seek clarification with a senior in your team (and if you cannot, for whatever reason, ensure you document that accurately).

Communication is key

In the event of an adverse outcome, patients can be harmed but there is great variability in whether patients complain or pursue legal action in response. Overall, patients are very reluctant to do so, but the chances are far greater when they do not feel respected by clinical staff. How you communicate and interact with patients after an adverse event is the greatest determinant in whether legal action is sought or a complaint lodged, regardless of the extent of the harm or the level of our liability. The expression 'patients don't sue doctors they like' while rather crude, generally holds true. Multiple studies confirm practitioners who are upfront, honest and explain situations with patients after a mistake is made are far less likely to be sued. Open disclosure is promoted throughout the Australian healthcare system and part of your code of conduct.

Be prudent

Medical indemnity insurance is essential to ensure that you have an independent and dedicated defence should an adverse event

arise. We must remember our inexperience means that we generally lack an understanding of how medicine and law interact. The legal side of healthcare may not be top of mind during our time in medical and dental schools and the majority of us have little or no experience in how to best navigate challenging clinico-legal issues in our professional lives.

For further information or advice, do not hesitate to contact MIPS for clinico-legal advice on 1800 061 113.

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