

Legal Trends & Risk Management in Healthcare

Reading time:

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Patient complaints, medico-legal litigation, AHPRA notifications, and investigations into healthcare practitioners' professional conduct and behaviour are accepted aspects of healthcare delivery. In recent years, litigation across all Australian jurisdictions has increased modestly, while the chances of being sued remain rare and going to a public trial even rarer. Nonetheless, MIPS has observed a steady increase in complaints and investigations against medical practitioners.

Emerging issues and trends

- Higher numbers of disciplinary proceedings arising out of poor professional conduct
- Telehealth related issues including possible claims/complaints from no exam, failure or delay in diagnosis, follow up etc.
- Medicare and PSR investigations
- COVID-19 related issues
 - failure to prevent exposure
 - failure to communicate potential adverse effects and material risks
 - errors in administering the vaccine
 - failure to obtain valid informed consent to receiving a COVID-19 vaccine

Litigation – State of play

- There is a small increase in the amount of litigation across all Australian jurisdictions. Being sued remains rare and going to a public trial is even rarer.
- Communication is still a major contributor.
- MIPS will look after you!

Risk management advice

Physical examinations - before

- Explain why the examination is necessary, steps involved and provide opportunities to ask questions or to refuse the examination
- Obtain informed consent
- Obtain the patient's permission for other people to be present during an examination
- Assess patient competence to give informed consent
- Allow patients to dress and undress privately
- Allow patients to bring a support person

Physical examinations - during

- Be aware of any verbal or non-verbal sign the patient has withdrawn consent
- Do not continue with an examination when consent is uncertain, has been refused or has been withdrawn
- Provide suitable covering during an examination

Boundaries - avoid these behaviours

- Making sexual remarks
- Flirtatious behaviour
- Touching patients in a sexual way
- Engaging in sexual behaviour in front of patients
- Using words that might reasonably be interpreted as being intended to arouse or gratify sexual desire
- Asking a patient about their sexual preferences or history
- Sexual exploitation or abuse
- Asking a patient to undress more than necessary
- Engaging in a sexual relationship with an individual who is close to a patient under the doctor's care
- Engaging in a sexual relationship with a former patient.

Social media

- Politely decline to interact with patients through social media
- Do not use social media to pursue a sexual, exploitative or inappropriate relationship with patients
- Maintain professional boundaries online and offline
- Engaging in professional commentary in any public social network

Health records

Maintain patient health records that show:

- How long a patient has been attending the practice.
- The management planning, preventive health interventions and referrals made for a patient.
- Evidence of care provided by other healthcare professionals for long-term patients.
- Notify patients when a practitioner leaves the practice.

How to mitigate potential personal effects

- Listen to MIPS/solicitors and educate yourself about the legal or investigation process
- Schedule time in advance for interviews with MIPS/lawyers.
- Take care of yourself. Exercise regularly/eat well. Maintain work /life balance
- Work to restore mastery and self-esteem.
- Engage in activities that will increase competence: courses, accreditation
- Learn from the experience. If necessary, modify practices
- Spend quality leisure time with family and friends.
- Recognise that litigation is often about compensation, not your competence
- Look reflectively at your life - personal, professional, financial, and recreational

- Never treat yourself or self-medicate

How to create a solid defence

- Notify MIPS of any adverse/ unexpected outcome, complaint, claim or investigation
- Records - your primary concern. Must always be sufficiently detailed including consent
- The level of healthcare provided when assessed by in house or by external experts needs to be in line with the usual professional standards, procedures and protocols of healthcare as required by your craft group, your College and or AHPRA.
- Keep up to date with contemporary practices.

As your indemnity provider, MIPS' priority is to support and advise you in the event of an adverse outcome and should be your first port of call. It also helps to talk with your partner, a trusted friend, a colleague or a trained professional and seek assistance where required. It is important to acknowledge the process as part of your profession in healthcare and remember that you will survive and improve along the way.

Any queries, [contact MIPS](#)

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