

Medical Negligence Litigation in Australia

Reading time:

Tom Wilson

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In Australia, although litigious action brought about by medical negligence is relatively rare and the publicity around cases that do appear before the courts is even lower, it is still a matter of concern for a number of MIPS members as they often want to know the score.

In this webinar we will aim to explore a list of considered 'dos and don'ts' to help limit your risk exposure. We will tackle litigation in Australia from our expert presenters, Rob Samut and David Maddocks. We will examine a selection of relevant case studies and recent case precedents to highlight the complexities of medical negligence in Australia.

Learning outcomes

At the end of this webinar, participants will be able to:

1. Discuss the potential for litigation and the current Australian litigation scene
2. Discuss relevant case study precedents and how they might apply to your practice
3. Describe practical strategies to implement in clinical practice to help you identify, prevent and manage the risk of litigation.

Presenters

Rob Samut, Principal lawyer with Barry Nilsson is passionate about providing education and training to clients and the wider insurance and health care industries. He is recognised as a thought leader and is regularly asked to comment on insurance and risk issues and has been widely published in the area.

David Maddocks has practised in litigation with particular emphasis on professional indemnity and personal injury. He has extensive litigation experience and has been involved in defending claims against healthcare practitioners and advising MIPS members for the past 15 years.

[Watch the webinar](#)

Q & A

⊕Disclaimer

⊕When should you inform your medical indemnity insurer about a potential medical negligence claim?

⊕I've heard that medical practitioners shouldn't be afraid of saying 'sorry' when things go wrong at the practitioner's fault and that it can even minimise the harm done when the patient or the family receives bad news. Ignoring the moral virtue of taking ownership and apologising for one's wrongdoing or mistakes, is there any circumstance where apologising be taken admission of liability, and how must one tread this ground?

⊕What comeback do surgeons have when our medico legal "expert" colleagues write reports that are so blatantly inaccurate and give opinions that would fail a fellowship examination

⊕Please discuss, legal/litigation influence of AHPRA Code of Conduct 'Good Medical Practice and other AHPRA accredited Medical College guidances on an expected standard of conduct and clinical practice eg RACGP (eg in respect of opioid and benzodiazepine prescribing) or others eg Faculty of Pain Medicine ANZCA (eg on cannabinoid prescribing).

⊕As a junior doctor who is many years away from private practice, how much should I be worried about litigation, and what can I do now to prepare myself and develop good habits?

⊕Is there a specific source we can refer to gain knowledge of the legal side of clinical practice in Australia?

⊕Why are our time and energy not compensated as a fee that MIPS can recoup from the opposition legal team and claimant when costs are awarded against them?

⊕If a patient has signed Advance Care Directive (ACD) and wants no invasive treatment, but the person listed as the substitute decision-maker wants the patient to receive invasive treatment, what is the right approach? To treat to not to treat?

⊕How does NDIS impact catastrophic claims payouts?

⊕Could you please share some information on cases where damages awarded are greater than MDO cover? How common is this, and how does it usually end?

⊕Could surgical assistants be involved in liability?

⊕If a doctor is a full-time permanent employee of the public hospital in QLD and treats a private patient in a public hospital, in case of any issue, is the doctor also liable, or just the hospital is liable?

⊕What is the current maximum threshold for all "damages" in eg Victoria?

⊕Is it fair to state that most claims are successful when both court rulings and out of court settlements are taken into account?

