

Putting claims and complaints into perspective - a lived experience narrative

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My mobile phone rang one morning.

"Hello, Doctor? I'm calling from Generic Lawyers and I'm sorry to say you're listed as a defendant in a medical negligence claim that we are bringing on behalf of a former patient of yours."

At least the lawyer apologised. I am a working GP and I have also been a defendant in a medical negligence claim and I am here to reassure you that my world did not end. There's not as much to fear as you might think.

When 'served' legal papers it all seems very formal, urgent, and mysterious, as legal language can be incomprehensible and confronting. What's a writ? What's a Statement of Claim? Official court stamps, deadlines, court appearance dates...Don't panic! Breathe.

Call your medical indemnity insurer. While MIPS is accustomed to assisting members in these situations, we understand how alien and stressful it is for you as a busy practitioner. We will guide you through every step of the process and will instruct the patient's lawyers to deal with us directly, so they will not contact you again.

Here are some of the common questions or concerns voiced by our MIPS members when they first learn that they are being sued. They were questions that I asked myself and MIPS too

Will I lose my registration?

Civil litigation and medical regulatory processes are entirely separate. While patients may sue a practitioner and complain to a regulator, litigation involving a patient is a stand-alone process.

Will I lose my livelihood?

What on earth will I do if I cannot be a doctor anymore? Many of us have never realistically contemplated this question, but it is natural to think catastrophically when one has just learned about the claim. Rest reassured that being the subject to a claim does not affect your registration or your ability to work. However, if anything is going to impact your ability to work, it might be the stress associated with being sued. We recommend that every practitioner has their own GP and it is important to reach out to them and to us at MIPS if you believe you are struggling to process and cope with what is happening. There are many resources out there to assist practitioners who are experiencing challenges with their health and wellbeing

I feel terrible!

This is also entirely understandable. As doctors, we are in the business of helping patients. When something goes wrong, we inevitably feel terrible and responsible for any adverse events or complications experienced by the patient. Even the perception of a patient being upset, angry or dissatisfied can be very challenging for doctors. Ultimately, it is worth remembering that the desired outcome for a patient and their lawyer is usually a financial settlement. It is not personal. I found that it was a surprisingly effective cognitive technique to tell myself: I pay my medical indemnity fees to MIPS for them to worry about this claim, therefore I am not going to. This is especially important when you consider the claim process may take years to resolve, so it is neither healthy nor sustainable to torture yourself psychologically. It is vital to keep a check on your own mental health, and not to underestimate the value of a strong support network of colleagues, family, your own friendly GP, and MIPS. It is all too easy for doctors to internalise their stress, leading to poor confidence, imposter syndrome, sleepless nights, and mental health issues.

Will people think less of me? It's so shameful!

Unfortunately, practitioners still experience shame and stigma associated with a claim or complaint. While it is increasingly acceptable to discuss adverse events with patients through open disclosure, a perception remains that it is not OK to talk about being sued. It is possible to discuss the experience of being sued without divulging confidential information about the patient. I always encourage MIPS members to confide in a partner, colleague, or treating GP. It is common to feel "I'm the only one this has ever happened to", or "It must mean I'm a bad doctor". A problem shared is a problem halved, and doctors are often surprised at how caring and empathetic their colleagues are and often result in similar 'confessions' being shared in return about their own experiences with litigation.

Will I have to go to court?

Medical negligence cases often involve complex factual scenarios and differing expert opinion on whether care was deficient or causative of the patient's injuries. The extent of the claimed loss may also be open to challenge. Mediation is a highly successful mechanism of exchanging positions and addressing issues in dispute. Mediation often leads to a negotiated or compromised settlement outcome. Confidentiality is an important facet in settlement negotiations. MIPS pursues every opportunity to amicably and sensibly resolve civil claims against our members which avoids the stress, interruption and expense

of proceeding to trial. It is unusual for matters to progress to court, but MIPS ensured any member needing to be involved at that stage is fully supported and prepared.

Will I be 'named and shamed'?

In our experience, confidentiality and non-disparagement agreements are highly effective and preclude a patient from disclosing the terms of an agreed settlement.

The take home message

In the unlikely event that you are sued, you should contact MIPS immediately for legal advice and assistance. If your claim is accepted under the Policy, we will take over the conduct of the matter for you and take the stress out of dealing with the patient's lawyers. You should not feel embarrassed to openly discuss your experience of the process with family, friends, colleagues or your GP, without divulging the details of the patient. Remember, your career will not end, so let MIPS do the worrying for you, so you can focus on caring for your patients.

Medical Indemnity Protection Society ABN 64 007 067 281 | AFSL 301912

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Information is only current at the date initially published.

If in doubt, contact our claims and 24-hour medico-legal advice and support team on 1300 698 573.

You should consider the appropriateness of the information and read the [Member Handbook Combined PDS and FSG](#) before making a decision on whether to join MIPS.
