



The Medical Complaint Survival Guide

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With this guide in hand, you will have everything you need to know to concentrate on your medical duty, rather than on patient complaints.

Medical complaints and you

As a doctor, having a complaint laid against you is never going to be a pleasant experience. Each one costs time, money and patience—resources that any busy healthcare professional would rather use somewhere other than in front of the Health and Disability Commissioner (HDC) or Medical Council.

If you've had a complaint laid against you recently, or are concerned about one in the future, we've put together this survival guide to make sure you feel prepared for whatever hurdles await you.

We'll take you through how much these complaints can cost you, the most common causes and types of medical complaints, how to reduce your chances of incurring a complaint, what to do if you are on the other end of an accusation and how to protect yourself right now against future complaints.

With this guide in hand, you will have everything you need to know to concentrate on your medical duty, rather than on patient complaints.



Read on, and arm yourself with the knowledge you need.



How much does a medical negligence complaint cost?

It might seem like cases of medical negligence and medical malpractice are easy targets for viewer-hungry media networks. They've got it all: courtroom drama, big payouts, angry defendants—but the reality is quite different for the actual doctors involved. Even if they aren't to blame, it can end up costing them a lot, and in more ways than one.

Take a look at the true cost of medical malpractice from the doctor's point of view:

Legal costs and inquiries

Even if you are innocent of any wrongdoing, a medical negligence claim can still cost a lot of money for the doctor accused, in the form of legal fees.

If you are brought before a tribunal to respond to the HDC, you will need to hire a medical lawyer to represent you: this expertise does not come cheap, but it is absolutely necessary unless you want to try and represent yourself.

The upside is that these court proceedings are not adversarial in nature; rather they are investigative. Nobody is trying to assign blame to you. But whatever the outcome, you will still incur costs just by defending yourself.

Actually attending an inquiry

The hearings themselves tend to take place in major city centres, such as Auckland or Wellington. That's great if you live near these areas, but if you are a rural doctor or simply live further out in the regions, actual travel expenses can start to rack up—particularly if your case takes longer than usual and you have to travel multiple times.

On a similar note, if a medical complaint arises from when you were working in locum or even while you were performing charity work overseas, you may find that you need to travel even further to attend the inquiry.



Image source: www.adhb.health.nz



Missing work

Being a doctor is a calling, but it's also a job, and missing work can mean no pay. Medical complaints can take weeks or months to conclude fully, time during which you may be unable to work because of the nature of the complaint or simply because you need to be at a hearing.

This can put a big dent in your finances—almost as large as the fines imposed at the end of the proceedings.

Penalties against an individual

The most obvious cost, and often the most concerning, are any fines or compensation you are required to pay after being found guilty of a particular offence. This can range from a few hundred to thousands of dollars, depending on the incident and the severity of the malpractice.

The actual range of fines associated with malpractice is large: one [medical malpractice](#) claim in 2017 fined a doctor \$20,000 for failing to review a patient correctly, while another in 2001 fined \$3,000 [following the death of a patient](#).

Summary

All up, a medical malpractice claim can cost a doctor tens of thousands of dollars at worst and thousands of dollars at best, either in direct costs or due to loss of income. Thankfully, medical indemnity insurance pays for most, if not all of these costs—but only if you have the right cover from the right insurer. >

The most common causes of medical errors

Even the best doctors in the world are only human, and humans make mistakes. Fatigue, sickness, even just a distraction can all spell serious malpractice for any doctor, experienced or not, so it pays to get to know the common causes of medical errors. These are the situations that you need to be vigilant against:

Assumptions about consent

Doctors often have to make quick decisions in the heat of the moment to keep their patients happy, healthy and, in some cases, to save their life. But many of these decisions need to be made with the consent of the patient, and it is all too easy to cross that blurry line.

Real life example

Your patient Emma goes into surgery and there is a complication that requires an additional procedure to be performed; one that she did not consent to. Without this additional procedure, Emma might not have the most ideal outcome, so you decide to perform it. When she comes to, she is less than pleased to discover that she has received (or lost) more than she bargained for, despite the risk you averted, and she lays a complaint.

How to avoid it

In some cases, additional treatment is necessary to save a life or to ensure healthy living. That's a fact. But it's also a fact that in all cases, the patient needs to be warned of the possibility of complications that may require additional treatment. In other words, where possible, always get consent or at least communicate the possibilities.





Relying on previous diagnoses

Doctors are just one part of a long line of health professionals that patients work with to get healthy. Once a patient comes to you, far down the line, they may already have accumulated a slew of diagnoses and other medical history. You'd be forgiven for assuming that the most recent information is not only accurate, but still reflects the current situation. But assumptions can result in serious medical errors, especially if the patient's outlook has changed since their last touchpoint.

Real life example

Michael, fed up with frequent severe migraines that his current GP is unable to resolve, comes to you for a second opinion. Reading through his medical history, you note a long history of headaches which have, in the past, been brought on by workplace stress and relieved by mindfulness exercises and relaxation techniques. You assume this is still the case, prescribing him the treatment you think most appropriate. A few days later, the headaches have gotten worse, and after a scan, it is found that Michael has a tumour that was unrelated to the original headaches and was undiscovered due to assumptions of previous medical history accuracy.

How to avoid it

Always note the circumstances under which the previous diagnoses occurred, and check with your patient to see if there have been any significant changes to those circumstances. In Michael's case, he might have been able to inform you he has changed to a somewhat stress-free job, clueing you in that the cause of his recent migraines might be something more serious than workplace stress.

Remember, this also counts for your own diagnoses. If circumstances have changed, and the problem remains, then it's time to check for something new.



Poor communication during handovers

From written notes to emails to charts to conversations, there are many ways that healthcare professionals communicate the needs of their patients to one another. But considering the sheer number of people involved in a patient's care, getting clear communication across a dozen or more people is easier said than done. A missed lab result, an illegible medication or just an unheard risk factor can be enough to put a patient at risk.

Real life example

Omar, a patient in your hospital, is handed over to you by the doctor on the previous shift. She mentions that Omar had extremely high blood pressure when he first arrived, but that she had treated him and reduced it to normal levels. She leaves for the day, leaving you with Omar's chart. But she doesn't realise that in her tired state, she misspelled the treatment she gave him. Worse still, the nurses assisting her misheard the treatment as well, creating confusion over what medication Omar has already received.

How to avoid it

Clarify, clarify, clarify, and not just with your healthcare peers. The people who have been taking care of your patient should be able to clearly and consistently tell you, in multiple forms (verbal and chart are most common), what they have done so far with that patient—but the patient may be able to shine light on the situation as well. Doctors, particularly young doctors, are often fearful of asking for clarification of something from their patient, worried about looking stupid. But you won't, and even if you did, would you prefer to look stupid, or for your patient to suffer under your care?



Concentrate on one job at a time, and take the time to do it well.



Trying to do everything yourself

Being a doctor is busy enough, so why would you try to do everyone else's job as well? It's more common than you might think, particularly with new doctors who are still growing into their role. The issue is that trying to do everything yourself results in more mistakes and missed problems than it would if you had assistance. Doing more is great, but doing more while reducing quality and increasing risk isn't.

Real life example

Saavi arrives in your hospital's care for ongoing neck pain. After some scans, it is found that she has experienced damage to the vertebrae, which can be resolved with treatment and anaesthetic. You do some imaging to get the right entry point, as well as providing the anaesthetic and treatment. While trying to concentrate on these three tasks all at once, you make a mistake during the treatment and make the situation worse. Thankfully, the problem is rectified with the help of your colleague, but Saavi still lays a complaint against your treatment.

How to avoid it

The solution is simple: rely on others to assist. Concentrate on one job at a time, and take the time to do it well, rather than trying to play first, second, third and fourth fiddle all at the same time.

Learn these causes, and be vigilant against them in your workday, but remember: mistakes happen. When they do, make sure your medical indemnity insurance is up to standard and call your insurer. >

The most common types of medical malpractice complaints

Everybody makes mistakes; even the most highly trained doctors. But by recognising the most common complaints, young doctors can learn how to provide better care for their patients and avoid the ire of the HDC or Medical Council at the same time.


Of the 2,350 or so complaints [received by the HDC](#) from 2018-2019, these are the most common that new doctors should be aware of:

Inadequate or inappropriate treatment/procedure

9% of complaints

What it looks like

A mother brings their young child in for their 15-month immunisations. The attending doctor accidentally picks out the wrong vaccine from the medical centre's refrigerator and administers it. Later, the doctor realises her mistake and informs the family and corrects the immunisation records. The mother then lays a complaint for an inappropriate treatment.

 **By recognising the most common complaints, young doctors can learn how to provide better care.**

Missed/incorrect/delayed diagnosis

8% of complaints

What it looks like

A woman who has a history of cancer arrives at the hospital suffering from back pain. The medical team conducts an x-ray and notes "no bony lesions", intending to use this as evidence to exclude cancer as a possibility. Her condition is determined to be due to a muscle spasm and she is discharged. Three months later, the woman is diagnosed with metastatic bone disease, which may have been revealed by an MRI scan. The woman lays a complaint against the doctor for an incorrect/missed diagnosis.

Disrespectful manner/attitude

5% of complaints

What it looks like

A morbidly obese woman attends a hospital's surgical clinic to check her suitability for gastric bypass surgery. During these checks, the surgeon attending her grows frustrated at her apparent inability to recognise the lifestyle changes she will need to make on top of the bypass. After a heated discussion, the surgeon becomes verbally abusive. After the appointment, the woman lays a complaint for disrespectful behaviour.

Unexpected treatment outcome

4% of complaints

What it looks like

A young teenager is diagnosed with a cancer of the pelvis, to be treated with surgical treatment and chemotherapy treatment. This treatment comes with a risk of infertility, which was not communicated to him at the time. The treatment went ahead, and later in life the patient had trouble conceiving; only then did he learn of the potential for infertility due to chemotherapy treatment.

Lack of access to services

5% of complaints

What it looks like

A man arrives in a clinic with a suspected broken bone. Following a physical examination by a doctor, the patient expects that they will require an x-ray. Unfortunately, this particular clinic's x-ray machine isn't currently working, and the doctor refers the patient to a local hospital. The patient lays a complaint for inadequate access to expected services.

Inadequate/inappropriate examination assessment

3% of complaints

What it looks like

A middle aged man is admitted to a clinic with complaints of erectile dysfunction. On the health questionnaire, he mentions that he suffers from diabetes and high blood pressure and takes a slew of medications for cardiovascular disease. Despite this, his attending doctor does not perform a physical examination to determine cause before prescribing a common remedy for erectile dysfunction. After the appointment, the man lays a complaint for inadequate examination.

Failure to communicate effectively with the patient

5% of complaints

What it looks like

An elderly man is admitted to a medical centre with the complaint of a sore knee, slow speech and a "fizzing" in his feet. The doctor requests a blood test, and finds a problem. The results are referred to a haematologist, but upon receiving the results back, the GP fails to tell his patient until a few weeks later, after the man had been reviewed at the outpatient clinic at the public hospital. The patient lays a complaint for ineffective communication.

Summary

No matter how rare the complaint type might be, there's still a chance you could be on the receiving end of an accusation. Make sure you have the right cover in your medical indemnity insurance, and you'll be protected if you accidentally slip up and cause a complaint. >

Protecting yourself with medical indemnity insurance



Don't just tick the first box you see. Get the right medical indemnity cover that has the following inclusions:

Certainty of cover

Imagine being faced with a serious malpractice suit and discovering that your cover is actually discretionary—that your “insurer” actually had no legal requirement to pay out on your policy.

That can happen more easily than you might think. Always check that your insurer is exactly that: an insurer. Not a friendly society, a benevolent organisation, or anything of that description. If you see the word “discretionary” at any point, look elsewhere.

Retrospective cover

Ask any experienced doctor: it can take weeks, months or even years for a medical mistake to be uncovered, and even longer for your patient to decide they'd like to lay a complaint against you.

That's what makes retrospective cover so important. Think of it like a pre-existing conditions waiver, except instead of your insurer covering you for recurring **health** problems, they cover you for previous **professional** problems. Don't let present you get future you in trouble; get retrospective medical indemnity insurance.

Medicolegal specialists

In New Zealand, we're lucky to have a medical compensation system that removes most of the financial risk of being a doctor. Elsewhere, to get compensation for malpractice, a patient might need to take their doctor to court. Here, they usually get paid out by ACC.

Despite this, if a complaint is laid against you, you still need to defend yourself in front of tribunals, most commonly the HDC or Medical Council. That's why you need to ensure you have access to medicolegal advice from experienced medicolegal experts included in your indemnity policy—without it, you'll need to become a lawyer as well as a doctor.

Local experts

Medical laws, outcomes and requirements are different in each and every country. Would you trust an expert in US medical law and insurance to protect you while you're in New Zealand? Would they be able to provide you with accurate legal advice and an insurance policy that actually covers your risks?

No. The situations are unique, the laws are unique and the environment is unique. If you want good medicolegal advice as well as medical indemnity cover that will protect you against known risks, you need to work with locals—rather than somebody on the other side of the world in a different legal, medical and risk environment.

Summary

In short, you need:

1. Certainty of cover from an **insurer**
2. Retrospective insurance to protect you from past mistakes
3. Medicolegal specialists to defend you in court
4. Local experts that know the challenges of healthcare in New Zealand.

As long as you have these four requirements ticked, you'll have a robust medical indemnity policy that will serve you well in your health profession. >



Why retrospective insurance matters

Where do you see yourself five years from now? Working in a hospital? A private medical centre? Maybe even opening your own practice?

No matter what you're planning to do, we bet that it doesn't include having to deal with a malpractice complaint from your time as a resident doctor.

But without retrospective cover in your medical indemnity insurance, it's more likely than you think.

Why is retrospective insurance important?

Consider the following: medical treatment can take weeks, months or in some serious cases, years to resolve. Can you be on top form every single day for years at a time? Are you planning to avoid making even a small mistake for your entire tenure as a doctor?

If you're ambitious, you might be nodding your head. But the reality is, doctors are people too. They make mistakes—and sometimes it can take years for that mistake to get noticed, and even longer for a patient to get angry enough to make a malpractice complaint about it.

A single misdiagnosis from your time as a resident doctor could follow you many, many years into the future.

What does retrospective insurance actually do?

Think of it like a pre-existing conditions waiver, except instead of your own health problems, it

covers you for mistakes you may have made before you took on the cover.

With a retrospective policy in place, you get the indemnity insurance and the medicolegal support you need to cover your own costs, as well as defend yourself at the Medical Tribunal if need be. Without it, you'll have to pay out of your own pocket for that support.

An example

As a resident doctor, Dr Yu assisted in a fallopian tube ligation for a woman under the direction of her senior. A few years down the line, after Dr Yu has switched to a retrospective insurance policy, it is found that there was an issue with the surgery, and the woman has now become unexpectedly pregnant. She lays a complaint against Dr Yu, who then has to defend herself for a mistake that was made many years ago.

Thankfully, because she has retrospective medical indemnity insurance, she is given the support to be able to argue her case in front of the HDC and Medical Council with the help of medicolegal experts without having to pay out of her own pocket.

Summary

Retrospective insurance is important. Medical mistakes can take years to be discovered and longer to be acted on. Don't risk your future as a doctor.

Look for retrospective insurance in your indemnity policy. >

Protect yourself and your patients...

Medical indemnity insurance might be mandatory, but that doesn't mean you don't have a choice. Get a quick online quote from NZMII now to find out how much more we can offer you.



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FINANCIAL STRENGTH RATING

New Zealand Medical indemnity Insurance has been issued a Financial Strength Rating of B+ (Good) and an Issuer's Credit Rating of bbb- (Good), with the outlook on both ratings assigned to 'Stable'. These ratings were issued by A.M. Best on 1st April 2022.

