



- for patient safety and justice -

Insurance and Indemnity: a consultation on changes to the Licence to Practise and Revalidation Regulations 2012

AvMA's response to the GMC consultation

Action against Medical Accidents

1. Action against Medical Accidents (AvMA) was established in 1982. It is the UK patient safety charity specialising in advice and support for patients and their families affected by medical accidents. Since its inception AvMA has provided advice and support to over 100,000 people affected by medical accidents throughout the United Kingdom. As an organisation our aims are to champion patient safety and access to justice.
2. AvMA offers specialist services to the public, free of charge across the United Kingdom. This includes a helpline and an individual casework service. AvMA also operates a pro bono inquest service in England and Wales, providing advice and representation for families who have lost loved ones.
3. AvMA provides specialist support services for legal professionals through our Lawyers Resource Service including the recommendation of expert witnesses. We organise specialist training courses and conferences for health and legal professionals, advice agencies and members of the public.
4. AvMA operates a specialist accreditation scheme for clinical negligence lawyers. The AvMA Specialist Clinical Negligence Panel has been running since the early 1980's and is the longest running clinical negligence accreditation scheme as well as being the first accreditation scheme of its kind. We re-accredit our panel solicitors every 5 years to ensure that they are maintaining standards. As part of the accreditation and reaccreditation process, solicitors are required to submit reports on cases they have conducted as a claimant practitioner. This gives AvMA a unique overview of the difficulties faced by patients and their legal advisors in obtaining redress following an avoidable injury.
5. In our response we will refer to insurance and indemnity cover under the heading of indemnity arrangements

Introduction

6. AvMA regularly receives reports from our specialist clinical negligence panel solicitors as well as our Lawyers Service members on behalf of their clients about the problems faced in relation to a doctor's professional indemnity arrangements which can result in patients being denied the redress and compensation they are entitled to. There are a number of key concerns that have been brought to AvMA's attention.
7. A difficulty that has often been reported to AvMA is that of identifying a doctor's indemnity arrangements. This may be because the doctor has failed to respond to correspondence, has refused to provide details of their indemnity arrangements or does not in fact have indemnity cover in place for the treatment provided. This has been particularly evident in the area of cosmetic surgery where the doctor has been found not to have insurance in place. In some cases, it can prove extremely difficult if not impossible to track down the doctor's current whereabouts, particularly if they are thought to no longer reside within the United Kingdom. In all these cases, the

patient may be denied access to appropriate redress. Since 1998, doctors have had a professional duty to ensure that they hold adequate professional indemnity cover but this has not prevented some doctors from either practising without appropriate indemnity cover and/or they or their indemnity organisation being untraceable in the event that an injured patient brings a legitimate claim for compensation. To only require a doctor to provide this information when the Registrar requests it is not sufficient if patients' interests are to be protected and for the proposed changes to be meaningful. This information needs to be held centrally on the individual doctor's GMC record.

8. AvMA has also received reports of instances where the organisation providing professional indemnity cover has refused to indemnify the doctor on the basis that the doctor's actions and/or the period when the treatment was carried out falls outside the indemnity arrangements. There is a current example where patients' legal advisors have been advised that whilst some claims are being covered, claims arising after a specific date will not be covered by the doctor's indemnity arrangements. There have also been issues in relation to the level of indemnity cover and this being insufficient to cover some cases involving catastrophic injury.
9. Solicitors have also reported examples of doctors whose cover has been sourced outside of the United Kingdom, usually from their home country, where the insurance company has refused to cooperate or respond to approaches from the patient's legal advisors. Thus whilst the doctor may be able to tick the box confirming that they have indemnity cover, this cover may in practice provide little protection for the patient.
10. AvMA has seen examples where there has been an apparent misunderstanding about whether a doctor is covered by their non-NHS employer, particularly where there is a chain of sub-contractors involved in the provision of care.
11. In the light of the difficulties experienced by patients and their legal advisors, whilst AvMA welcomes the move to introduce a statutory duty on doctors to have professional indemnity or insurance arrangements in place, we do not believe the proposals as set out in the consultation document will provide adequate protection.
12. For the statutory duty to be meaningful, details of doctors' indemnity arrangements must be held centrally on the GMC Register and disclosed in the event that a patient is seeking redress. A licence to practice should be conditional on the GMC being in receipt of these details.

AvMA's response to the consultation questions

Q1: Are the arrangements set out in section 1 above appropriate and reasonable?

No.

Please give reasons

The arrangements do not go far enough. As set out in our summary above, in order to protect the interests of patients, there need to be additional safeguards in order for the proposals to be in any way meaningful.

AvMA would therefore make the following recommendations:

- (i) A doctor's indemnity arrangements, past and present, should be held on the GMC register and be made available in the event that there is a potential legal claim against the registrant. This is essential in order for the proposed changes to be meaningful.
- (ii) A doctor's indemnity arrangements should be sourced through or associated with a UK based insurance or professional indemnity organisation. This is to avoid the difficulties created by cross border arrangements that may not be workable in the event that the doctor leaves the United Kingdom and/or their European or overseas insurers refuse to cooperate.
- (iii) The GMC should undertake due diligence to confirm that the indemnity arrangements are fit for purpose. The GMC should ensure that guidance is available for doctors to assist them in ensuring their indemnity arrangements are adequate.
- (iv) A doctor who is or has practised within the United Kingdom should be required to ensure that their contact details as held by the GMC are kept updated.
- (v) The GMC should take a strong line on any doctor who fails to comply with the requirements over indemnity arrangements.

2. Request for information: indemnity arrangement

Q2: Do you think it is reasonable that the Registrar will have power to request information regarding a licensed medical practitioner's indemnity arrangements?

We believe that the powers as proposed do not go far enough.

Please give reasons

If patients are to be protected, the Registrar requires greater powers than those proposed in the consultation. It is essential that the Registrar has the powers to require all registrants to provide details of their indemnity arrangements in order to obtain and renew their licence to practise and for these details to be updated annually. These details should be held on their GMC record and should include where appropriate, both current and previous indemnity arrangements, and for these records to be held for the purposes of any future claim that might arise.

Q3: Do you think it is reasonable that the Registrar will have power to withdraw a practitioner's licence to practise in these circumstances?

Yes

Please give reasons

The GMC needs to send a clear message to the small number of registrants who might otherwise believe they can act with impunity in flouting their professional duty to have in place adequate indemnity cover. As set out above, AvMA has seen a number of examples of doctors who have been found to have inadequate or non-existent indemnity arrangements in place despite this being an existing professional duty.

Q4: Do you have any other comments about the proposed changes and additions to the Licence to Practise and Revalidation Regulations 2012?

The aim of requiring doctors to have adequate indemnity arrangements in place is to protect the interests of patients who have suffered avoidable harm. This will only be achieved if the GMC verifies and maintains records of those arrangements. To reduce the potential burden on the GMC in maintaining accurate records of doctors' indemnity arrangements, we would suggest that the GMC enters into discussions with defence organisations and insurers with a view to those organisations assisting with the process of verifying that a doctor has appropriate indemnity arrangements in place.

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Appendix: GMC Consultation Document

Insurance and Indemnity: a consultation on changes to the Licence to Practise and Revalidation Regulations 2012

About this consultation

1. We are consulting on changes to the Licence to Practise and Revalidation Regulations 2012 which will:
 - a enable the Registrar to ask for information about a doctor's professional indemnity arrangements
 - b enable the Registrar to withdraw a doctor's licence to practise if they don't provide the information when requested or if they have failed to obtain, or maintain, an indemnity arrangement which provides appropriate cover
 - c confirm the change we have made to the declaration section of new applications for registration with a licence to practise and restoration of a licence to practise, to include a statement about professional insurance and indemnity.
2. This consultation asks for your views on the changes to the regulations.
3. The consultation runs from 15 October 2014 to 10 December 2014.

Why should the consultation matter to you?

4. **If you are thinking of applying for registration with a licence to practise for the first time (or restoring your licence to practise) with the GMC** – this consultation confirms the change we have made to the declaration section of new applications for registration with a licence to practise and restoration of a licence to practise, to include a statement about professional insurance and indemnity.
5. **If you are already registered with a licence to practise** – you should already be aware that Good medical practice places a duty on you to have professional indemnity or insurance arrangements in place. The new regulations will give us powers to request information about a doctor's insurance and indemnity arrangements and to withdraw a doctor's licence to practise if they don't provide the information when requested or if they have failed to obtain or maintain an indemnity arrangement which provides appropriate cover.
6. **Employers and contractors of doctors' services** – this consultation explains the changes to the Licence to Practise and Revalidation Regulations 2012 relating to professional indemnity arrangements and the impact this will have on doctors who work with you.

How to respond

7. To have your say, send your response by email to IandIregs@gmc-uk.org
Or post it to:
Iona Milton-Jones
General Medical Council
3 Hardman Street
Manchester
M3 3AW
8. If you have any questions about the consultation please call 0161 923 6602.
9. If you need the consultation in an alternative format, email IandIregs@gmc-uk.org or call 0161 923 6374.

Background

10. There is currently no statutory requirement for doctors to have professional indemnity or insurance arrangements in place to provide cover for liabilities incurred in their practice. However, Good medical practice places a professional duty on doctors to do so. Paragraph 63 states 'You must make sure that you have adequate insurance or indemnity cover so that your patients will not be disadvantaged if they make a claim about the clinical care you have provided in the UK.' The duties of a doctor set out in Good medical practice apply to all doctors registered with the GMC, whether or not they hold a licence to practise.
11. An independent review group was commissioned by the Department of Health in 2009 to look at the issue of insurance and indemnity. It reported in 2010 and recommended that making insurance or indemnity a statutory condition for access to the profession is the most cost effective and proportionate way of ensuring that all healthcare professionals have adequate insurance or indemnity cover.
12. The report also recommended that there should be a review of all existing legislation in this area and that the relevant legislation should be harmonised across healthcare professional regulators. It also recommended that within that framework it should be for each healthcare regulator to decide how best to exercise its powers.
13. The Department of Health has drafted and Parliament has now passed a new Health Care and Associated Professions (Indemnity Arrangements) Order 2013, which implements the recommendations of the independent review group and creates a new S44C of the Medical Act 1983.

The new S44C of the Medical Act 1983

14. This provides the GMC with powers to make regulations to:
a request information from or in relation to a licensed doctor or a doctor seeking a licence to practise to demonstrate that they have appropriate cover

under an indemnity arrangement*, or will have appropriate cover†, by the time they begin to practise

b require a doctor to inform us if they cease to have appropriate cover

c require a doctor to inform us if they have appropriate cover provided by their employer.

[* An 'indemnity arrangement' may comprise, a) a policy of insurance; b) an arrangement for the purposes of indemnifying a person; c) a combination of the two.

† 'appropriate cover' in relation to practice as a medical practitioner, means cover against liabilities that may be incurred in practising as such which is appropriate having regard to the nature and extent of the risks of practising as such.]

15. Additionally the new S44C will enable us to refuse to grant a licence to practise where a doctor fails or refuses to comply with these requirements.
16. In determining our proposed approach, we have taken account of the fact that having adequate indemnity or insurance cover is a long-standing professional duty for doctors. Also, in contrast with some healthcare professions, a large majority of doctors will already have such cover as a result of their employment.
17. We are proposing the following.
 - All new applications for registration with a licence to practise and restoration of a licence to practise will include a statement about professional insurance and indemnity. This will be a mandatory tick box as part of the final declaration, and will be a required field in order to submit the application.
 - This will require the applicant to declare: 'I have in place, or will have in place, at the point at which I practise in the UK, insurance or indemnity arrangements appropriate to the areas of my practice'.
18. The new declaration has already been introduced as part of planned operational changes in August 2014. We don't need to rely on changes to the Licence to Practise and Revalidation Regulations 2012 in order to introduce the declaration. This is because there is already a duty on doctors to have indemnity arrangements in place. Failure to comply with this duty may result in a referral for consideration by the GMC's Fitness to Practise directorate.
19. The changes to our regulations will reinforce the duty set out in paragraph 63 of Good medical practice and make it a statutory requirement. These proposals mean that:
 - d** there will be a requirement to include the declaration in the application for a licence in order for it to be complete

e we will have the power to request information from the practitioner or another party to satisfy ourselves that declarations are accurate or otherwise to determine whether the practitioner has appropriate cover in place

f we will have the power to require a licensed practitioner to inform us if they have appropriate cover provided under an indemnity arrangement by an employer and to inform us if their indemnity cover ceases

g we will have the ability to refuse to grant or to withdraw a licence for failure to have appropriate cover or to comply with our requirements to provide the declaration or any further information. On implementing the proposals we will issue a notification to all registered doctors to remind them of their statutory duty. We do not plan to ask for ongoing declarations or information about indemnity arrangements on a routine basis. However we will include a provision in the regulations to enable us to request evidence or information as and when we require it.

20. We do not currently (and do not propose to) review or endorse specific indemnity providers or arrangements. We currently provide guidance for doctors on insurance and indemnity for doctors [here](#), for patients [here](#) and you can find information about medico-legal support [here](#). This guidance will be reviewed as part of the consultation and a revised version will be published when we implement the proposed changes.

Draft amendments to the Licence to Practise and Revalidation Regulations 2012

We are planning to amend the existing licence to practise and revalidation regulations. You can look at the proposed amendments by clicking [here](#). This section describes the main effects of the changes and how they will be applied and asks for your comments on some specific points.

1. Applications for a licence to practise and for restoration of a licence to practise
 - We are proposing an amendment to regulation 1(2) to include definitions of 'indemnity arrangement*' and 'appropriate cover†'
 - We are proposing amendments to Regulation 3(3) and 4(3) which will provide that an application (both new applications and applications for restoration) must include a statement that the practitioner has in place, or will have in place at the point at which the practitioner practises in the UK, an indemnity arrangement* which provides appropriate cover†.'

This means that all applications for a licence to practise (both new applications and applications for restoration) will include a declaration. The declaration will form part of the online application form (a mandatory tick box as part of the final declaration) which will be a required field in order to submit the application.

Although we will require all applicants to complete the declaration, we do not intend routinely to ask for evidence of insurance and indemnity at the point of registration. However the Registrar will have powers to request evidence of arrangements that are in place or steps taken to make arrangements to provide cover at the point the applicant

will begin practising, and to determine whether the arrangements are appropriate. We are likely to exercise those powers only where we become aware of information which may raise concerns about the validity of the original application declaration completed by the doctor.

We do not plan to ask for ongoing declarations on a routine basis.

Q Are the arrangements set out in section 1 above appropriate and reasonable?

Yes/no

Please give reasons

2. Request for information: indemnity arrangement

We are proposing the addition of a new regulation (suggested new regulation 4A) which will provide that:

The Registrar may ask medical practitioners holding a licence, and other parties, to provide information about the practitioner's indemnity arrangements.

The Registrar will have power to request information regarding a licensed medical practitioner's indemnity arrangements, in order to satisfy himself that indemnity arrangements are in place and to determine whether those arrangements are appropriate.

This will give the Registrar power to request information regarding a licensed medical practitioner's insurance and indemnity arrangements, to ensure that appropriate arrangements are in place or will be at any time the applicant is practising, and to determine whether the arrangements are appropriate (this includes the power to request information within a specified timescale to be determined by the GMC).

We will have the power to require a licensed practitioner to inform us if they have appropriate cover provided under an indemnity arrangement by an employer and to inform us if their indemnity cover ceases.

We are likely only to exercise those powers where we become aware of information which may raise concerns about the validity of the original declaration completed by the doctor or which suggests that the practitioner may not have appropriate cover in place.

If it becomes clear that a licensed medical practitioner has not complied with the regulations (by providing the declaration or further information requested) or has not maintained appropriate insurance or indemnity arrangements, the Registrar will have the power to withdraw their licence to practise, or to treat the matter as misconduct and to refer it to the GMC's Fitness to Practise directorate for consideration.

Q Do you think it is reasonable that the Registrar will have power to request information regarding a licensed medical practitioner's indemnity arrangements?

Yes/no

Please give reasons

3. Withdrawal of a licence to practise

We are proposing an amendment to Regulation 4(3) to enable the Registrar to withdraw a practitioner's licence to practise if they have:

- failed, without reasonable excuse, to provide any evidence or information to the Registrar in accordance with [regulation 4A] or
- failed to have appropriate cover in place when practising as a licensed practitioner.

This will enable the Registrar to take action to withdraw a practitioner's licence to practise if they have failed to provide information or evidence in accordance with regulation 4A regarding their cover when requested by the Registrar, or where it becomes clear that they have failed to obtain or maintain an indemnity arrangement which provides appropriate cover.

Q Do you think it is reasonable that the Registrar will have power to withdraw a practitioner's licence to practise in these circumstances?

Yes/no

Please give reasons

Q Do you have any other comments about the proposed changes and additions to the Licence to Practise and Revalidation Regulations 2012?