The Management of Claims & Complaints

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Types of Matters Managed by MIIs

• Medical Indemnity Insurance is a class of professional indemnity (liability) insurance

• MIIs therefore primarily cover liability claims arising out of professional (medical) practice

• Significant additional role in providing cover for various types of legal or statutory investigations arising out of medical practice
Complaints & Claims covered by the ‘average’ MII

- Ongoing influence of MIIs’ history as discretionary mutuals for benefit of members

- Historically covered compensation claims plus all medical-practice related investigations where legal representation or assistance was required
Complaints & Claims covered by the ‘average’ MII

• High degree of similarity in the insurance cover provided by all MIIs

• Minor variations in terms & conditions of cover between MIIs

• Some MIIs offer optional extensions of cover &/or cover additional discrete areas
Complaints & Claims covered by the ‘average’ MII

- Liability claims arising out of medical practice

- Cover generally also provided in respect of legal assistance and representation re:
  - Coronial investigations
  - Medical registration body investigations
  - Complaints to statutory health bodies
  - Medicare & like investigations (some limitations)
Complaints & Claims covered by the ‘average’ MII

Types of Claims/Complaints by Frequency

- Litigated claims
- Unlitigated claims
- Medical Board/Council
- Coronial investigations
- Statutory complaints authorities
- Medicare
- Other
Complaints & Claims covered by the ‘average’ MII

• May also cover such things as:
  – Drugs & Poisons Unit investigations
  – Criminal investigations &/or charges
  – Intervention orders against patients & others
  – Employment &/or credentialling disputes
  – Defamation
  – Tax audits
  – Loss &/or reconstruction of records
Sources of Claims & Complaints

- Coronal investigations & Inquests
  - Minor variations in jurisdiction from state to state
  - Jurisdiction regarding unexpected & unexplained deaths, or deaths in suspicious circumstances
  - Includes intra & immediately post-op deaths
  - Role to investigate, make findings as to:
    - Cause of death
    - Persons or factors contributing to the death
  - Additional role re referrals to other agencies:
    - Police re possible criminal charges
    - Medical registration bodies
Sources of Claims & Complaints

• Coronal investigations & Inquests (cont’d)
  – Typical clinical issues which result in a Coronal investigation or Inquest include:
    – Diagnosis errors
    – Deaths following obstetric care
    – Treatment errors (especially drug-related)
    – Deaths associated with surgical procedures
    – Death by suicide or overdose of a psychiatric/disturbed patient
    – Possible euthanasia
    – Homicides believed to have been committed by a patient
Sources of Claims & Complaints

• Medical registration boards/bodies
  – Role to oversee the registration of medical practitioners
  – State/territory based – some procedural variations
  – Role includes investigating notifications of concerns concerning registered practitioners which might constitute a threat to public health or safety &/or be regarded as ‘unprofessional conduct’
Sources of Claims & Complaints

• Medical registration boards/bodies (cont’d)
  – Typical clinical issues which result in an investigation by a medical registration body:
    – Patient complaints regarding communication problems/errors
    – Diagnosis errors
    – Errors or concerns about treatment
    – Concerns regarding practitioner impairment
    – Concerns regarding practitioner competence
    – Inappropriate behaviour, including alleged sexual & other assaults, fraudulent activities, prescribing issues, inappropriate relationships with patients & non practice-related issues going to character
Sources of Claims & Complaints

- Medical registration boards/bodies (cont’d)
  - Types of remedies available:
    - Dismiss complaint/report as unfounded
    - Conduct informal hearing & dismiss complaint/report
    - Conduct informal hearing & find guilty of unprofessional conduct ‘not of a serious nature’ with possible remedies:
      - Caution/reprimand
      - Requirement to undertake training or other program
    - Refer to formal hearing
    - Formal hearing, same remedies as informal hearing plus:
      - Practice under specified conditions/restrictions
      - Suspension or deregistration
Sources of Claims & Complaints

• Statutory Complaints Authorities
  – State/territory based jurisdiction
  – Major role to investigate patient initiated complaints and offer conciliation
  – Power to assist in negotiating compensation but not to order payment
  – Generally a cost and lawyer free jurisdiction
  – In some states (eg NSW) work closely with Medical Board to investigate and manage complaints
Sources of Claims & Complaints

• Statutory Complaints Authorities (cont’d)
  – May be a source of referrals to Coroners or medical registration bodies if relevant issues identified
  – Do not preclude a patient from pursuing compensation through the legal process
  – May assist in resolving misunderstandings between practitioner & patient/family
Sources of Claims & Complaints

• Statutory Complaints Authorities (cont’d)
  – Patient can request compensation
  – Typical matters considered include:
    – Complaints regarding unsatisfactory consultations
    – Complaints regarding poor/unexpected outcomes
    – Complaints/misunderstandings arising out of poor communication
    – Complaints regarding practice staff or procedures
    – Complaints regarding privacy/access to medical records
Sources of Claims & Complaints

• Statutory Complaints Authorities (cont’d)
  – Authority may:
    – Investigate complaint (including seeking explanation from practitioner or seeking expert opinions)
    – Invite parties to conciliation conference
    – Facilitate an apology
    – Facilitate a settlement (but cannot order payment)
    – Assist complainant to understand legal rights
    – Assist complainant to obtain legal advice
    – Refer complainant to other agencies
Sources of Claims & Complaints

• Compensation Claims
  – Involve a request or demand for compensation by a patient or his/her relatives
  – Will be dealt with in detail by Allan in his presentation
  – May be:
    – Unlitigated (claimant self-represented)
    – Unlitigated (claimant represented by a lawyer)
    – Pre-litigated (jurisdictions which have pre-litigation processes)
    – Litigated
Sources of Claims & Complaints

• Complaints re business aspects of practice
  – MIIs may also be asked for advice or assistance regarding a range of other legal or quasi-legal issues arising out of medical practice

  – These may include issues such as:
    – Employment disputes of various types
    – *Trade Practices Act* type issues
    – Disputes with other practitioners
    – Disputes with patients regarding billing, appointments etc
    – Complaints regarding locum or after hours arrangements
Sources of Claims & Complaints

• Complaints re business aspects of practice
  – MIIs will generally provide preliminary advice to the extent that the issue relates to clinical practice, even if not covered under the policy
  – Where the issue relates to business aspects of practice, most MIIs don’t provide cover or advice
  – Advice & assistance may be available through other agencies, eg AMA (which provides advice and assistance to members regarding disputes of an industrial relations flavour)
Handover

• Allan Tattersall, Head of Claims
  MDA National Insurance

• Will talk about:
  – The life cycle of a claim
  – Impact of government support schemes on claims
The Life Cycle of a Claim

• Nature of member notification varies:
  – an unexpected outcome
  – direct complaint
  – complaint to Medical Board or similar authority
  – coronial investigation
  – solicitor’s letter
  – writ
The Life Cycle of a Claim cont’d

• Determine whether to grant indemnity:
  – MII’s no longer grant discretionary cover
  – Need to look at the incident in relation to the policy coverage
  – Main issues:
    • Claims made cover
      – Date incident occurred
      – Date incident notified
      – Date of inception of policy (and retroactive date)
The Life Cycle of a Claim cont’d

• Prepare the Member’s statement:
  – Obtain a copy of the medical records
  – Discuss details of incident with Member
  – Prepare statement based on the Member’s records and recollection of the incident
The Life Cycle of a Claim cont’d

- Review the medicine:
  - Medically trained staff
  - Seek opinion from medical experts
    - Look for credible experts
    - ‘Hired guns’ of little value
The Life Cycle of a Claim cont’d

• Review by Cases / Medical Experts Committee
  – Medical issues presented to the committee
  – Provision of advice on:
    • standard of care (peer / reasonableness test)
    • Causation (did the incident cause or contribute to the outcome)
    • May also comment on contribution from other parties
  – Leads to a determination of Standard of Care
The Life Cycle of a Claim cont’d

• Defend or Settle Decision
  – Standard of care decision considers the medical aspects of the claim
  – Will the defendant be a good witness
  – Will the experts be good witnesses
  – Are there opportunities to consider a commercial settlement (e.g. where defensibility is borderline)
The Life Cycle of a Claim cont’d

• Quantum
  – Difficult to assess when a claim is first reported as key information is often not known
  – Initial quantum assessment is often based on a claims manager’s experience with similar claims (a global estimate)
  – As more information becomes known, quantum can be determined with greater accuracy
  – At time of settlement, settlement is more scientific
The Life Cycle of a Claim cont’d

- Quantum Certainty –v- Time
The Life Cycle of a Claim cont’d

- Key Heads of Damage:
  - general damages (non economic loss)
  - past and future out of pocket expenses
  - past and future economic loss
  - past and future cost of care
The Life Cycle of a Claim cont’d

- Key Drivers of Quantum
  - Age / life expectancy
  - Past and future earnings
  - Cost of future care
  - Medical costs
The Life Cycle of a Claim cont’d

• Appointment of Solicitors
  – May have their own internal legal practice
  – May use a limited number of external firms (helps to develop expertise in a specialised area of law)
The Life Cycle of a Claim cont’d

- Claim Settlement
  - Small proportion go to trial
  - Settlements can generally be achieved via negotiation with or without the involvement of lawyers or legal proceedings
The Life Cycle of a Claim cont’d

• Summary
  – Obtain the facts
  – Assess the standard of care
  – Defend or settle
  – Determine quantum
  – Progress to closure
    • Settle
    • Withdraw
    • Defend
Government Claims Support Federal

• High Cost Claims Scheme
  – Amount payable equates to 50% of the cost of claim in excess of the threshold
  – Threshold:
    • $2,000,000 where the claim or incident is first notified on or after 1 Jan 2003 but before 22 Oct 2003
    • $500,000 (on or after 22 Oct 2003, before 1 Jan 2004)
    • $300,000 (on or after 1 Jan 2004)
Government Claims Support Federal

• Exceptional Claims Indemnity Scheme
  – Amount payable equates to 100% of the cost of claim in excess of the threshold
  – Threshold:
    • $15,000,000 where incident first notified on or after 1 January 2003 and before 1 July 2003
    • $20,000,000 where first notified on or after 1 July 2003
Government Claims Support Federal

• IBNR Indemnity Scheme
  – Claim payable under this scheme where:
    • the MDO had an unfunded IBNR exposure on 30 June 2002:
      – Incident occurred on or before 30 June 2002
      – Incident notified after 30 June 2002
      – occurrence based cover with an MDO

Funded (at least in part) by the UMP Support Payment
Government Claims Support Federal

- Run-off Cover Indemnity Scheme
  - Eligible Member:
    - Age 65 and retired from private medical practice
    - Under 65 but not engaged in any private medical practice for past 3 years
    - Maternity – ceased all practice
    - Permanent disability – ceased all practice
    - Deceased
Government Claims Support
Federal

- Run-off Cover Indemnity Scheme cont’d
  - Eligible Claims:
    - The doctor was eligible at time of notification
    - Incident first notified on or after 1 July 2004

Funded via a levy on insured medical practitioners
Government Claims Support State

• VMO Scheme (Indemnity for claims by Public Patients in Public Hospitals)
  – Where incident occurred on or after the MII provided ‘claims made’ cover, and
  – Reported on or after 1 July 2003
  – State Government provides indemnity
Government Claims Support State

- Indemnity for Private Patients in Rural Areas
- Indemnity for Private Paediatric Care in NSW
- Care provided by Staff Specialists in any Queensland Health facility
Government Support

• Summary:
  – Federal:
    • High Cost Claims Scheme
    • Exceptional Claims Indemnity Scheme
    • IBNR Indemnity Scheme
    • Run-off Cover Indemnity Scheme
  – State:
    • VMO Scheme
    • Rural schemes
    • Area of need schemes (e.g. paediatrics)
Lessons to be Learnt

Close

Chair:- Dr Stuart Boland