Your Medical Practice Protection:

KNOW YOUR ABCDEs BEFORE SOMETHING GOES BUMP IN THE DARK

PROFILE

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Here are two true stories to start you thinking about insurance. A medical student drove her father's car and rear-ended a stationary Porsche. Suspecting how expensive it might be to fix the bumper and rear-light cluster, her father was glad that his car's insurance policy would pay for all repairs after the first $500 (the excess). However, he was unaware that, as his daughter was both young and a newly qualified driver, this excess would automatically jump to several thousands of dollars — a condition written in his policy.

A 65-year-old type 2 diabetic patient, well controlled on low-dose oral hypoglycaemic agent, had a stent inserted in Tan Tock Seng Hospital (TTSH) as an emergency procedure for acute myocardial infarction (AMI). Upon discharge, she found that her insurance company rejected her hospitalisation claim, as the AMI was deemed a known possible complication of her diabetes mellitus, a pre-existing condition.

UNDERSTANDING INSURANCE

What point are we trying to make? Having insurance but not being familiar with the actual terms can result in rude shocks. We would argue that many doctors in Singapore are similarly naive about their personal protection against medical malpractice. Junior doctors are especially at risk, as many have left it to "what the Human Resource department has arranged as group cover" for years. An A&E registrar from TTSH did not even know that her cover provider had changed from Medical Protection Society (MPS) to Aon Singapore over the last month or two — we wondered who she would have called for emergency advice had she needed it; probably the SMA.

In this short guide, we have listed some key considerations that each of us should bear in mind when we ask the question, "Am I covered when something goes badly wrong?" (Note the use of "when", not "if".) Because doctors sometimes work, rather than sleep, at night; they cannot dismiss "things that go bump in the night" as a bad dream like many other professionals might. The "bump" could be the sound of an incoming complaint or malpractice claim landing in the mailbox. It is thus better to be prepared for adverse events, being fully aware of the limitations of whichever cover we have chosen, however carefully we continue in our daily medical practice. The features vary among the three major providers of practice protection cover in Singapore (namely MPS, NTUC Income and Aon), and perhaps a fourth, yet unnamed, insurance provider that might be negotiating to offer group cover to your hospital. Readers, you are urged to read on and reflect, especially on your own needs. A disclaimer here: The points we will make are for generic information — they are not meant to suggest that any one provider or model of malpractice cover is preferable, nor should the comments be read as such. Some basic principles of medical practice protection are outlined below.

A IS FOR...

ASSISTANCE

When something goes wrong, you may need up to four kinds of assistance. Good **immediate assistance** (advice on what to, or not to, do or say) can prevent things from getting worse, either medically or legally. Professional **post-crisis assistance** in explaining to the patient and family soon after the immediate phase can sometimes avoid the escalation of an incident to a legal event, simply by preventing misunderstanding of what you have done or said. If things unfortunately progress further, you will need **assistance in legal defence**. Finally, if damages are awarded (or a fine imposed), you will need **assistance to meet the resultant financial liability**. As you can see, the total cost for any one unfortunate case can be very high. Practice protection, whether

obtained by joining a medical defence organisation (MDO) or buying an insurance policy, should offer confident access to all of the above, starting preferably with 24/7 access to both immediate and post-crisis assistance.

ASSOCIATION

In UK and British Commonwealth tradition, doctors formed associations to pool, and thus better manage, practice risks and the necessary protection. They were sometimes called MDOs and were also referred to by older doctors as "mutuals". Of course, the assistance offered by such self-help groups can never be unconditional — to keep premiums reasonable, assistance must be restricted to medical malpractice, and when granted, the interests of the doctor seeking help balanced against the interests of other co-members, if necessary, by a board decision. A second approach is for the doctor to buy an insurance policy. The insurance provider would directly meet some of the doctor's initial needs for assistance, and finance the remainder (eg, legal fees for defence and costs of damages awarded) when the need arose.

ASPECTS OF THE COVERAGE YOU CAN RELY ON

There are three aspects you must clearly understand about the nature of any cover you settle for, be it an MDO or insurance. The first is "Occurrence vs Claims-made", the second, "Discretionary vs Contractual" and the third is "Specified or Unspecified Limit to claim".

Occurrence-based coverage is traditionally offered by MDOs. You could apply for assistance for *claims arising from incidents that occurred while you were a member*. The actual time that claims arose and were filed is not relevant — it could even occur after you had left the MDO or retired. The only thing that matters is whether you had been a member at the time of occurrence of the incident. *In effect, occurrence-based cover offers permanent coverage for incidents that occur during the membership period*. This arrangement is expensive. Generally speaking, MDOs now prefer to offer fewer new occurrence-based arrangements. In 2015, MPS announced that, moving forward, new occurrence-based obstetrics and gynaecology cover would no longer be offered, though all other categories would remain.

Claims-made coverage is traditionally offered through insurance policies. Even if the unfortunate event occurred during the time insured, the company *would only pay those claims that arose and were filed during the "reporting period"* specified in the policy. This may be the policy year itself or longer as specified (eg, "the policy year plus the next two consecutive years"), or even "as long as you keep renewing your policy with us" (continuity with the same company being the key). But for such insurance policies, sooner or later, a time will come when it becomes "too late to file a claim". This limited reporting period of claims-made protection is unsettling for some doctors who have heard of cases where claims arose years, even decades, after the incident, or who point to diseases (eg, neurodevelopmental delay or silicosis) where clinical signs take years or decades to manifest — when a request for assistance could no longer be made.

Some insurance companies sell a separate and different policy to partially cover this concern. This is called an "extended reporting period (ERP) cover", otherwise known as "tail cover" or "run-off cover". A doctor buys the *right to extend the time within which he can file a claim*, by the period of the ERP cover (typically a further three or five years). Other insurance companies offer discretionary incidence-based cover after the initial contractual claims-made cover is over.

Discretionary coverage means that help offered, including the extent of help, is decided not by the contract (as in an insurance policy), but by the discretion of a Board convened to decide on these claims. Needless to say, the historical performance of organisations offering discretionary cover is very important when choosing between different types of coverage. In contrast, the conditions under which an insurance policy will offer assistance are specified and *contractual*; if you feel that you did not get what you were promised, you can appeal to the Insurance Commissioner at the Monetary Authority of Singapore.

Finally, insurance policies typically state a limit to the claims that will be paid on a single policy, while MDOs usually do not, leaving it instead to the discretion of the Board discussing that specific incident.

BASIS UPON WHICH ASSISTANCE IS PROVIDED

The six "aspects" of your coverage, namely occurrence basis vs claims-made basis of claims, contractual vs discretionary assistance and limited vs unlimited claims benefit, have been explained above. It is critical for you to know which three of these form the basis of your assistance should you encounter trouble. The first, occurrence basis vs claims-made basis, is the most difficult to grapple with and to recall under stress. We therefore share an example below.

Think in terms of car insurance. Following an accident, you would know, within a day or two, how much it would cost to repair the damage, so a claims-made insurance cover would have been enough. Both car insurance and claims-made cover start with "C". On the other hand, a neonatologist attending to an infant at delivery might be shocked to receive a claim for damages many years later, when developmental delay became obvious. He would have needed occurrence-based cover, paid up during the time of delivery. Alternatively, if he had chosen insurance over an MDO, he would need uninterrupted renewal of his claims-made policy with the same insurance company till the claim arrived, assuming this insurance company allowed that method of extending the reporting period. And if

he had left the insurance company for another protection scheme, or retired, he needed to have bought run-off cover for enough years to meet this day of need.

C IS FOR...

CATEGORY OF COVER

Whether you buy insurance cover or join an MDO, you must subscribe to the correct category of cover that reflects your clinical practice. For example, family practice and aesthetic medicine carry different risks, and thus, each requires payment of different premiums.

CONFLICT OF INTEREST

Many of us have heard of instances where a patient simultaneously sued not only the doctor and his assistants, but also the hospital. Some doctors derive comfort from the thought that MDOs are owned and operated by, and exist for, the interests of doctors (ie, members), and so would always put the interests of the doctor first. Others may express concern that any defence scheme they rely on (be it insurance or MDO) may prefer to reduce expenses by an early out-of-court settlement, refusing to fund a costlier trial that might, if successful, preserve the reputation of the doctor. Where an insurance scheme covers both the hospital and its employed doctors, some doctors may wonder if the insurance company would offer them assistance that puts their interests first, ahead of those of the bigger customer, the hospital. Our advice is to ask whether your insurer or MDO covers your hospital, when covering you. If you sense a potential conflict of interest, use the past behaviour of your insurer or MDO as a guide. For example, whether the organisation had stood up for doctors in the past (eg, supporting appeals to a higher court that subsequently cleared the doctor's reputation) is a useful indication.

D IS FOR...

DURATION OF COVER YOUR MEDICAL PRACTICE WILL NEED

Some of us think that we need cover only from the start of housemanship to the day of retirement from practice. Unfortunately, adverse consequences of our medical work may be alleged even decades after we had seen our last patient. The minimal duration of cover you need is, therefore, the time you begin practice till the time unexpected complaints are no longer "likely" or "possible" (which of these two words is more applicable to you depends on your appetite for risk). "Possible" varies according to specialties. Doctors dealing with infants need, in theory, to be prepared for more than 20 years of possible claim. Understandably, doctors who need security for a longer term would usually prefer an arrangement that offers occurrence-based cover.

DURABILITY OF THE DEFENCE ORGANISATION AND YOUR RELATIONSHIP WITH IT

Older doctors will be able to name insurance companies and MDOs that had come to serve Singapore or our neighbouring countries, which then quietly left. Older SMA Council members will tell you of bad times in the past, when the SMA had to scramble to seek a provider of tail cover for doctors in Singapore left in a lurch after such exits. Before you settle on a specific organisation, ask about the track record of the organisation — both in terms of how long it has been in Singapore and its performance in the other countries it had served.

Durability of your relationship with an organisation is a more difficult topic. Sometimes, one simply cannot continue in the old relationship any longer, whatever one's preferences, and asking "NOW WHAT?" at this stage is too late. This might affect doctors whose employer or institution provides them "Group Cover" or some other "Institution Contract". You need to be very sure that this organisation will sell you ERP cover (tail or run-off cover) in at least three situations: (1) when the employer changes to another provider of group cover; (2) when you change to a new employer (even when old and new have the same provider of group cover); and (3) when you leave the institution (eg, to start private practice or retire). It is not good enough to have saved enough money to buy tail cover, if you find out later that the relevant organisation does not sell it. Thus, you should discuss with your potential employer or institution the availability of ERP cover upon exit *at the time you think about joining it*. To answer the obvious question, "Can I buy my own personal protection and take it with me wherever I go?" This option is not available in Singapore. There is no organisation willing to sell you protection "a second time" when you are already covered "a first time". It is irrelevant that this "first-time cover" (ie, the group policy of your employer) has covered you without your active consent.

E IS FOR...

ECONOMICS

An insurance policy that only considers claims filed within the year of cover (ie, basic claims-made insurance cover) will obviously cost less than its incidence-based MDO counterpart that offers permanent claims cover. If the insurance scheme allows you to extend claims-reporting by renewing your policy in subsequent years, it will need to fund additional claims risks on the second and subsequent years. The annual premium will likely increase till the fifth year, before it plateaus at around the premium of incidence-based coverages. Unless you know this simple truth based on the fundamentals of economics, you may mistakenly select a scheme just because it offers a lower annual premium. Make sure you compare similar offerings — claims-based with claims-based, incidence-based with incidence-based. You will otherwise lose any initial savings later when you need to buy an ERP coverage.

A hospital calling for bids for group cover is subject to the same economic fundamentals. New claims-made bids will always be more attractively priced than current incidence-based costs. The chooks come back to roost only when the hospital administrator wants to exit the insurance scheme (perhaps because he realises that it is claims-made and understands this weakness) and finds out that he now has to buy ERP cover on exit — or worse still, that such cover cannot be had for love or for money. That is why individual doctors need to be clear on how they can buy their personal ERP cover when they exit, before they join a hospital with group cover. In the event of a legal suit, the doctor who is not covered is responsible for both his own legal defence as well as any subsequent financial liability awarded against him.

EDUCATION

Many organisations run classes to teach their members how to reduce their risks of unintentionally doing or saying the wrong things. The SMA runs classes and courses on professionalism and ethics. Sign up and learn. When something goes bump in the night, whether your first words help or aggravate the situation is not dependent as much on your instincts as it is on whether you have bothered to learn and practise what to do and say in such difficult situations. Experts say that a large proportion of problems come from miscommunication or misunderstanding. Learn how to reduce the risk of both.

ET CETERA

Many organisations offer special services that most of us are not aware of, because they are seldom needed. For instance, if you should need advice on answering questions from the Coroner, your defence organisation might be able to help. If you need advice on how to conduct yourself in Court as an expert witness or how much detail you can safely provide to a family pressing you for information about your patient, you might similarly find help there. What about coverage for overseas postings, especially in the US, or for voluntary work in a third-world country? Many of us think of our MDO or insurance provider as an umbrella, simply occupying space until a rainy day. Our advice is this — at least know how to open the umbrella without having to struggle with it in a downpour. At the very minimum, keep in your wallet the name and telephone numbers of the medico-legal hotlines established to help you, should something go wrong unexpectedly. Medicine is a very satisfying calling, but it seems to suffer more rainy days than many of us are prepared to admit.

SUMMARY

Medical practice is one of the more complex professions. We deal with humans who are unwell and families that are stressed. We rely on their understanding our goodwill and assume that they will extend theirs to us. Sometimes things do go wrong, whether from malpractice or miscommunication, or both. When you choose your partner in medical defence, you need to think carefully about the kind of assistance you will eventually need, and match the features offered by each provider with your need. At the minimum, you should be clear about whether you might need this assistance on an occurrence or claims-made basis, and have asked about the track record and reputation of the partner you choose. It would be unwise to choose your partner purely based on the small difference in premiums quoted in the different websites, because schemes that offer you less in their service package can also quote lower premiums.

Similarly, you cannot rely on the group cover provided by your employer or institution unless you fully understand what it covers when you are employed and what you must do to guarantee your extended reporting rights when you leave. If you really do not know or your seniors evade your questions, you might do well to speak with your SMA Council members. We may be able to offer you a perspective that may help, or at least ask your hospital administrator questions in words he cannot duck. Remember, when push comes to shove, you either are adequately covered, or will need to personally cover the costs of defence and awarded damages. ◆