

Professional indemnity cover: who needs individual insurance policies?

Michael Thompson considers the arguments for and against holding personal professional indemnity insurance and relying on that provided by an employer

PHARMACISTS must ensure that all activities they undertake are covered by professional indemnity arrangements, says the Royal Pharmaceutical Society's Code of Ethics. It does not say that they must hold their own indemnity cover. This means that there is a choice — to rely on cover provided by an employer or to take out their own.

A parallel provision for pharmacy owners, superintendent pharmacists and pharmacy managers in hospitals or other fields of practice requires these pharmacists to ensure that all professional activities under their control are properly indemnified. Once again, they can choose either to provide cover for their pharmacist workers or to require them to arrange their own.

These provisions mean that no pharmacist engaged in professional practice is allowed to assume that cover is in place; they must ensure — that is, take active steps — that cover exists.

This is easy for pharmacists employed in the National Health Service. HSG(96)48 issued on 8 November 1996 states: "NHS bodies should ensure that everyone working within their organisation, whether paid by them or not, has a written contract which includes a clear statement about whether NHS indemnity applies."

There is also a requirement that all NHS bodies take full responsibility for managing and settling claims in all clinical negligence cases. In addition, there is a clear instruction that NHS bodies should not seek to recover any costs from health professionals covered by NHS indemnity nor from any private indemnity which these individuals might have. Specific mention is made of "pharmacy practitioners" among the groups of staff to whom this applies. This includes pharmacists working in the NHS as locums. Only community pharmacy contractors and their staff are excluded from the NHS indemnity scheme.

However, NHS indemnity only applies to work undertaken as an NHS employee, so NHS pharmacists who also work as community pharmacy locums or work sessions in private hospitals or other non-NHS sessions need to make alternative provision.

These guidelines came into force before responsibility for health matters in Scotland and Wales was devolved to the local administrations. Nevertheless, the same principles still apply in Scotland.

In Scotland, for example, the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) came into effect on 1 April 2000 to pool funds to meet financial claims against the NHS in Scotland. The scheme is mandatory for all Scottish trusts, health boards, special health boards, directly managed units and the Common Services

Agency. Under the scheme, individual professionals can opt to be defended separately from their employer, but are liable for any additional costs incurred as a result. They can also be subject to claims from their employers if they unreasonably fail to co-operate fully in the defence of any claim. A spokesman confirmed that CNORIS will not seek to recover damages from individual members of staff unless damages are awarded as a result of a criminal act.

What is clear is that none of the NHS indemnity schemes provides cover for the costs of any disciplinary actions that might be brought by the Royal Pharmaceutical Society. Nor do they provide for representation before industrial tribunals if employees need to seek remedies for breaches of their employment rights.

So far as community pharmacists, including pharmacy managers and locums, are concerned, the major provider of professional indemnity is the National Pharmaceutical Association, which includes Chemist Defence Association cover in its membership charges.

As with the NHS indemnity schemes, cover extends to the actions of employees and locum pharmacists working for any NPA member. The indemnity provided extends to any activity considered by the NPA to be a normal part of community pharmacy practice. This includes the sale of medicines over the internet provided that this is an incidental part of pharmacy business and does not exceed 10 per cent of the pharmacy's total turnover.

So far as the personal liability of employees is concerned, CDA rules say that individual pharmacists will not be pursued for the recovery of any settlement unless they hold personal indemnity cover.

In response to demand, the NPA has established a CDA subsidiary — Pharmacist Professional Indemnity Ltd — to offer personal professional indemnity to pharmacy locums and primary care pharmacists.

So pharmacists need to ask themselves two simple questions: (1) am I covered by

my employer, and (2) is that cover good enough for me or do I want or need my own as well?

Mark Koziol, who runs the Pharmacy Insurance Agency says that all pharmacists should have personal indemnity.

His reason is that an insurer, together with an employer, might decide to settle a case because that is cheaper than fighting it to a conclusion. He suggests that this is possible even when a claim is defensible. His concern is that such a step, taken without the knowledge or involvement of the employee, implies fault and a loss of professional reputation. Individual cover means that the employee can take independent action to clear his name.

Mr Koziol also argues that pharmacists who hold personal cover are more likely to behave properly. This is because there is a level of personal accountability that does not exist if a pharmacist is distanced from the consequences of any action because somebody else is the insured party.

He also argues that the Shipman murders mean that pharmacists need insurance more than ever before, because the Government has announced that all deaths resulting from errors in health care must be investigated to see if there was gross negligence. If gross negligence is found, then a charge of manslaughter is possible. Mr Koziol's Pharmacy Insurance Agency now employs specialist lawyers to try to satisfy the police that charges should not be laid.

The rapid emergence of new professional roles also means that personal insurance is needed in order to keep up with the changing nature of pharmacy practice, according to Mr Koziol.

So what is the real significance of professional indemnity cover and who is it there to protect? John D'Arcy, chief executive of the NPA puts it this way: "At the end of the day, we have to recognise that when something goes wrong and a pharmacist is liable there is a patient who deserves recompense. We owe it to them to make sure that this is provided as quickly as possible."

Pharmacy professional indemnity providers

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Jardine Lloyd Thompson (UK) Ltd Threefield House, 7 Threefield Lane, Southampton SO14 3QH (tel 023 8037 4907, e-mail ProfessionalRisks@jltgroup.com)

Pharmacist Professional Indemnity National Pharmaceutical Association, 38–42 St Peter's Street, St Albans, Hertfordshire AL1 3NP (tel 01727 795014, e-mail membership@npa.co.uk)

Pharmacy Insurance Agency The Old Fire Station, 69 Albion Street, Birmingham B1 3EA (tel 0121 236 0031, e-mail enquiries@pharmacy-insurance-agency.co.uk)