

Professional Medical Indemnity Insurance - Protection for the experts, by the experts

For a patient, the doctor is someone who restores good health from the dire situation of a medical emergency. Unfortunately, human errors cannot be completely eliminated, exposing doctors to the risk of claims from patients who have suffered loss due to perceived or real neglect, error, or omission. In today's litigious world, claims can pose a significant threat to the financial security of a medical practitioner. The doctors' expertise lies in protecting the health of their patients. Medical insurance experts advise doctors on the matters of protection of their professional interest.^[1]

In the context of medical malpractice actions, hospitals can be held directly liable for their own negligence, as well as be held "vicariously" liable for the negligent actions of an employee. Vicarious liability means a party is held responsible not for its own negligence but for the negligence of another.^[2] According to the legal rule of vicarious liability, any employer (including hospitals) is liable for its employees' negligence. So, the hospital is legally liable for any malpractice committed by a physician, nurse, or other health care providers who are employed by the hospital.^[2]

Doctors are probably the only professionals who face the risk of a financial liability in the course of practising their profession. The amount they can be sued for can be very high. Doctors, therefore, require special insurance so that they can protect themselves both financially and legally when they are sued for negligence. Professional indemnity is an insurance plan to financially safeguard medical practitioners against legal costs and claims for compensation by patients in case of a legal row. Indemnity is a special contractual obligation of one party to compensate the loss incurred by the aggrieved party.^[3] The scope of Professional Indemnity Insurance is to provide cover for the extent of financial damage for the loss caused to the victim against unintentional errors and omissions by the doctor, insured qualified and nonqualified employees, and staff. It also covers the cost of defending oneself in the court of law (Cost of Decree). The plan covers liabilities for a year from the point of subscription. However, the policy does not cover criminal actions.

The policy will pay the sum insured that has been set as a limit. The expense over and above the sum insured has to be borne by the doctor. The sum insured is referred to as the Limit of Indemnity. This limit is fixed per accident and per policy period. Indemnity insurance policies should be taken for doctors and hospital with staff separately and should be renewed every year to meet the claims arising out of the Consumer Protection Act (CPA).^[4]

Various organizations in India render indemnity insurance policies for medical practitioners. One can take services from the following:

- Indian Medicolegal Consulting Services or Professional protection groups
- IMA National Professional Protection Scheme

- Professional Indemnity Policies by National General Insurance companies.

The Medico Legal Company or Professional Protection Groups take care of all medicolegal problems and administrative problems whereas routine insurance companies only indemnify consumer claims. Insurance can be taken from Indian Medico Legal Consulting Services Pvt. Ltd.^[5] One can contact the Medicolegal Company whenever one receives a notice from an advocate or a court or a warrant from the police. Also, the company can be contacted whenever one gets into a dispute with patients, when there is an administrative or hospital-related problem, or if an on-table death occurs during an operation or a procedure. They render services by providing insurance cover from a nationalized company such as National Insurance Company, Oriental, or United India Assurance Company. Guidance is given in maintaining medicolegal records. They also give valuable advice, inspect documents, prepare documents and give advisory support, and advocate support in all stages of consumer cases in all consumer forums and appeals till the Supreme Court. In criminal litigations and Medical Council of India actions, they help with advice and documentation.

The IMA National Professional Protection Scheme^[6] aims to protect the members and help them in case of harassment or litigation which may arise during the course of their professional practice. It also aims to provide legal aid to the members of the Scheme. Only life members of the IMA are eligible to become the members of the Scheme. AIOS has a tie-up with IMA for this Scheme which involves a nonrefundable membership fee of INR 3000. Any member can take multiple units by paying membership fee of INR 3000 per unit, as above. The claim amount shall be proportionate to the number of units. First year membership is INR 3000, and if no claims are made, then the membership fee is gradually reduced — second year membership fee is INR 2900, third year membership fee is INR 2800, fourth year membership fee is INR 2700, fifth year membership fee is INR 2600, and sixth year membership fee is INR 2500. Once a claim occurs and is settled, the membership fee for the next year goes back to the baseline INR 3000.

The concerned member shall inform the Honorary Secretary and State Representative of the Scheme as soon as the incident occurs. Incident includes notice from the advocate, or from any Legal Forum, or from the individual patients, or their relatives or an intimation whereby the member gets information that a case has been registered with the police. If the member fails to inform the concerned office bearers of the scheme about such an incident, the member will forfeit the right to enjoy the benefits of the Scheme for that particular case. The concerned member shall obey the instructions given by the management of the Scheme regarding the case. The scheme should not be made a party in the case because the Scheme is not an Insurance Company. Should the member be advised by the scheme to file a counter petition or suit against the party concerned for damages and defamation, the member is bound to obey. In such cases, if compensation is ordered, 50% of the amount should be remitted to the scheme after deducting all the expenses. The Scheme is liable to pay to a member maximum of INR 5 lakhs

as damages for a single case and for more than one case in a year upto maximum of INR 10 lakhs. The legal adviser or an advocate will be selected as far as possible in consultation with the member involved in the case. But if the Chairman/Honorary Secretary feel the need to appoint a different advocate, they will have the right to do so. The scheme will not give protection to the institutions or the management of the hospital for its lapses even if the institution or the management is headed by a member of the Scheme. Case against the individual members for their alleged professional lapses alone will be taken up by the Scheme.

Professional indemnity policies by the National General Insurance companies cater to only consumer claims.^[7] They indemnify any act committed by the insured who shall be a registered medical practitioner giving rise to legal liability to third parties. The insured includes policy holding and his qualified assistants or employees named in the proposal. Policies are available for individuals, hospitals, and diagnostic centers. However, Short period policies are not permitted. All claims have to be legally established, even as the company can opt for an out of court settlement which should be accepted by the claimant. Its jurisdiction covers all Indian courts. Group discounts are offered for more than 200 members. Calculation of premium depends upon any one accident (AOA) limit of 25%, 33.33%, 50%, or 100% selected for any one year (AOY) limit per indemnity. This means that if you take a policy worth 50 lakhs and if the AOA is 25%, you can claim compensation of only 12.5 lakhs per incident. The premium varies across diverse AOA categories. The indemnity is applicable only if the act has been committed during the period of insurance commencing from retroactive date and continued thereafter without break. This means that even if you had a cover at the time of incident happening and in case you had a break in the continuity of the policy, you are not entitled to any cover. One needs to remember that there is no grace period and the policy should be mandatorily renewed before the due date to maintain the retroactive date on a regular basis.

According to a survey conducted in 2016 by the National Law University, Bengaluru,^[8] there has been a whopping rise of 400% in cases related to medical negligence filed in consumer courts. Although only 10–15% cases are genuine, with doctors being found guilty, the medical personnel in the remaining 85% cases are left to defend for themselves. Thus, the need to be financially and legally insured is gaining velocity to protect the doctors if they are sued for mistakes and negligence. With increased awareness of the rights and a strong likelihood of garnering empathy from the judicial system it is imperative to have professional indemnity insurance for doctors that

takes care of the legal and financial implications of the medical practice.

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Access this article online	
Quick Response Code:	Website: www.ijo.in
	DOI: 10.4103/ijo.IJO_2279_19

Cite this article as: Mathur MC. Professional Medical Indemnity Insurance - Protection for the experts, by the experts. Indian J Ophthalmol 2020;68:3-5.

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Dr Mathur has had a brilliant academic record as a resident in ophthalmology at the Sarojini Devi Eye Hospital, Hyderabad, following which he underwent a long-term fellowship in Glaucoma. He has to his credit several scientific presentations at state and national levels. He has convened, moderated and chaired scientific sessions at the state and national conferences. He has conducted hands-on workshops in glaucoma for postgraduate students and practitioners in all the districts and medical colleges of Telangana and Andhra Pradesh. He is also on the faculty panel of Glaucoma Society of India and has independently conducted glaucoma workshops in the states of Maharashtra, Madhya Pradesh and Orissa.

Dr Mathur has received the Best Poster award of AIOS twice and is also the first recipient of the prestigious ET Selvam award of AIOS. He has received the "Achievement Award" of APOS, Raghavachar Award of APOS, Raghunandan Dundoo Endowment Award for Glaucoma, Malleswar Rao Oration in 2013 and AK Das Endowment ACOIN award in 2019. He is also an able organizer having conducted the Annual AIOS Conference in Hyderabad in 2007 and the prestigious combined AIOS-Asia Pacific Academy of Ophthalmology Meeting in Hyderabad as the additional organizing secretary.