

Professional protection from a medical defence organisation (MDO)



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Introduction

Prior to the introduction of the Clinical Negligence Scheme for General Practice (CNSGP), it was a legal requirement for a GP to be a member of an organisation that provided them with indemnity against a clinical negligence claim made by a patient. This was most commonly achieved by membership of one of the main medical defence organisations (MDOs) – the Medical and Dental Defence Union of Scotland (MDDUS), Medical Defence Union (MDU) and Medical Protection Society (MPS). Now that indemnity is provided for GPs via the CNSGP, a GP may question what benefit they obtain by being a member of an MDO. Insurance companies also provide cover to GPs, often at lower cost than the MDO. This article aims to set out the reasons why a GP may find it beneficial to remain a member of an MDO.

Indemnity

It is important to understand what the term “indemnity” means. The Cambridge English dictionary defines it as being “protection against possible damage or loss, especially a promise of payment or the money paid if there is such damage or loss”.

In GP terms, this means that if a patient sues a doctor for clinical negligence, the CNSGP will protect the doctor against the claim by defending their position if appropriate or paying out any financial damages on the doctor’s behalf if negligence is found proven. Essentially, the requirement to have indemnity is to ensure compensation payment is available for a patient who has been unfortunately subject to negligent care and come to harm as a result.

Risks to a GP

The financial risk of a clinical negligence claim is only one small component of all the risks a GP is subject to in the course of their professional responsibilities.

It is the only risk covered by the CNSGP (further details about the scope of the CNSGP can be found [here](#))

Other professional risks which may require legal representation (at considerable cost) include:

- Referral to, and investigation by, the General Medical Council
- Referral to, and investigation by, the Performance Management Team of NHS England
- Fitness to practice hearings/NHSE oral hearings
- Being summoned to appear as a witness at an Inquest
- A criminal allegation arising out of clinical practice.

The other consideration is that the CNSGP does not provide indemnity for claims arising from private work (which includes but is not limited to the provision of reports) hence if a doctor undertakes such work, they must ensure that they have appropriate indemnity and professional protection in place (the MDOs are able to provide this).

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Benefits of membership of an MDO

If a doctor is a member of a MDO and has purchased professional protection cover, they are able to seek assistance from the MDO in the event of a professional risk occurring during their membership. This entitles the doctor to professional assistance from the MDO, ranging from advice through to instruction of legal representation as required, including in a criminal court if criminal charges arise from allegations arising from a consultation.

Failure to have such professional assistance can come at great cost to a doctor - both financially, as they may decide to fund professional legal representation personally, but also professionally as there is a risk of erasure from the medical register or removal from the National Performer's List, potentially ending their career, and potential loss of liberty if they have inadequate assistance and representation. The MDO's use legal teams experienced in the nuances of medical professional performance investigation.

If a doctor decides not to retain membership with a MDO and purchases "cover" from an insurance organisation it is essential to ensure that the doctor understands exactly what protection they are purchasing. Indemnity cover for clinical negligence claims arising from NHS work is **not** required and should not be purchased. Professional protection cover is what a doctor may consider purchasing but it is important to ensure the insurance company has adequate experience in the field of medical professional performance investigation to provide experienced legal support. A reduced fee for insurance "protection" is of little comfort if at a time of need the assistance provided is inexperienced and inadequate.

Membership of a MDO usually also provides additional resources such as:

- a helpline for assistance with medicolegal queries,
- assistance with complex complaint responses, and
- CPD opportunities free of charge to members.

Londonwide LMCs GP Support

GPs can contact the GP Support directorate for assistance with a range of medicolegal issues. The team has experience in both GMC and NHS England performance management processes. However, Londonwide LMCs does **not** provide substantive assistance with GMC procedures or instruct lawyers to represent constituents hence it is important to have MDO membership (or alternative arrangements) in place to cover this eventuality.

Summary

All GPs should carefully consider their position in relation to MDO membership. Assistance will not be provided by a MDO with any concerns that arose prior to the date of membership, even if the duration of the investigation is during a period of membership. Furthermore, it is important that when seeking a quote from an MDO or an alternative provider that the doctor provides an honest and factual account of their scope of practice (including any non-clinical roles) in order that they are placed in the appropriate category of membership. A failure to have access to experienced support can add significant stress to what is already a very stressful experience.