

# Bulletin



April 2019

**That's not true!**

To sue or not...

**Navigating the legalities of medicine**

**Two very different 'M's which affect you**

**Midwives**

Testimonials in advertising

## Your renewal is fast approaching

For our doctor members and midwife clients, it's hard to believe but the year is passing rapidly and renewal is almost upon us again.

One of the things that is so special about MIGA is our dedication to providing you with personal service, be that from your own dedicated Client Services Officer in relation to your insurance cover, risk management education and advice from our Risk Services team, or support from our team in relation to medico-legal matters or claims. The bottom line is that we recognise you are an individual and we are here to provide you with the help, guidance, advice and assistance you need.

You will soon be receiving some information from us to help you with your renewal and we want to ensure you are aware of the ways we are trying to make your renewal both easy and rewarding.

**Direct debit**

A very significant number of you now enjoy the benefit of direct debit with MIGA – a benefit we offer at no charge. It enables you to spread the cost of your insurance across the year and facilitates automatic renewal meaning you don't have to worry about doing anything for renewal.

**Our Qantas Partnership**

Through our partnership with Qantas, you can earn Qantas Points on your premium payment to MIGA. A very significant number of our clients have enjoyed the benefits of Qantas Points across the last year or so.

We are proud of our partnership with one of Australia's most respected and recognised national brands. We have given **195 million Qantas points** to our members and clients since the partnership started.

Many of you are frequent travellers for business and pleasure, and offering Qantas Points is a valuable way of recognising your loyalty and giving you something in return.

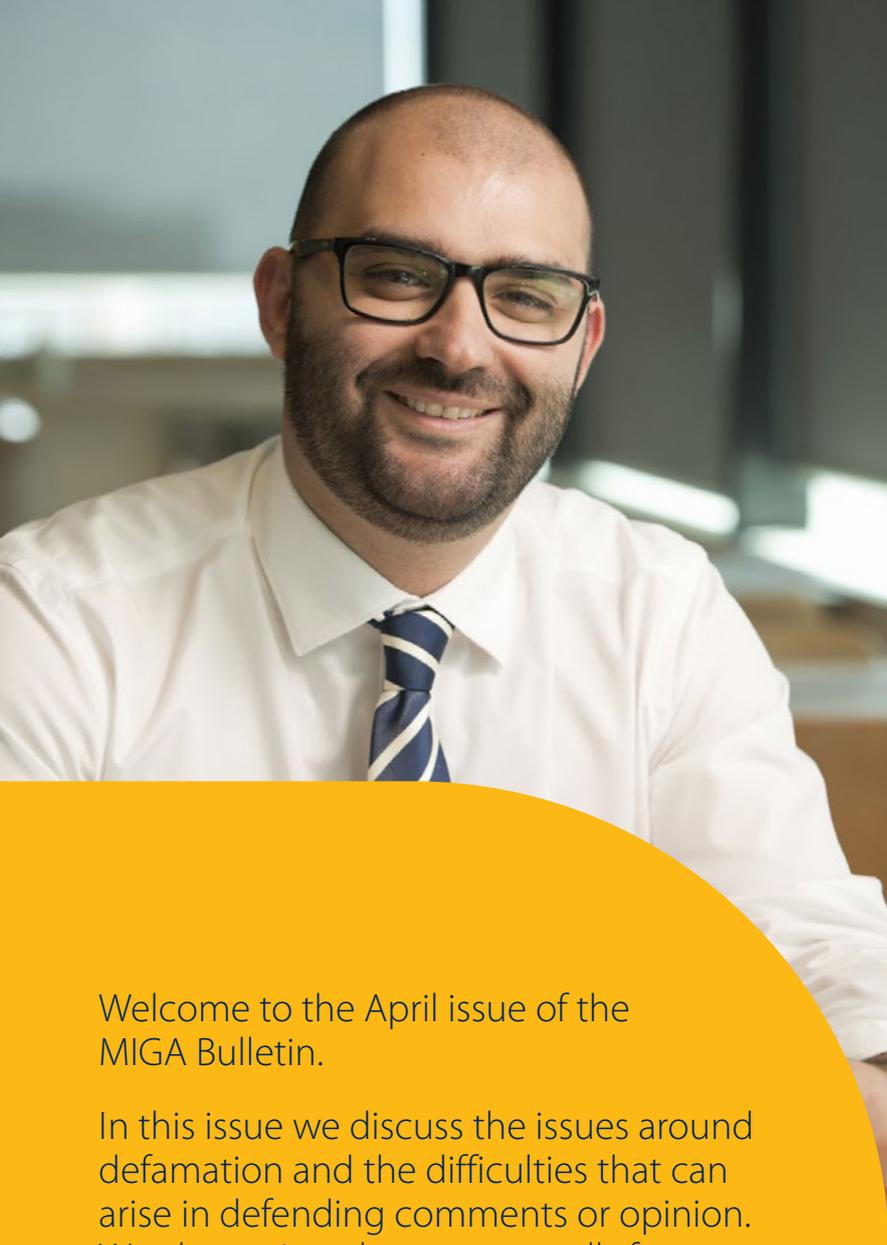
**We are pleased to announce some exciting offers associated with your up-coming renewal.**

**Win a share of 10 million Qantas Points!**<sup>SM</sup> – We are again offering a competition for those renewing in June this year, with 20 prizes of half a million Qantas points available.

**2019 Member Loyalty Benefit** – Members who are eligible (based on your years insured with us) will see on their renewal notice details of a **2019 Member Loyalty Benefit**<sup>†</sup>, a reward we're pleased to provide as thanks for your ongoing trust and support of MIGA.

And everyone insured with us will of course be able to earn 1 Qantas point for every dollar they pay in premium to us.

*Continued on page 2*



Welcome to the April issue of the MIGA Bulletin.

In this issue we discuss the issues around defamation and the difficulties that can arise in defending comments or opinion. We also review three recent calls for medico-legal advice and discuss each issue and how we were able to assist our client. Remember, whatever your concern we are here to help you. Even if you already have a course of action in mind, it never hurts to get a second opinion.

And with renewals just around the corner, I am one of MIGA's Client Service Officers here to assist you if you have any questions or concerns with your insurance.

Our team is here to help you at any time. I look forward to supporting you through this year's renewal.

**Frank Macheda**  
Client Services Officer

## Your renewal is fast approaching

(Continued from front cover)

### Support in other ways

Don't forget, with MIGA you also have access to:

- Indemnity insurance for your practice or company – designed to dovetail with the individual cover we offer to you and helping to avoid gaps in cover
- MIGA Plus Business Insurance – covering the day to day insurance risks of running a healthcare business
- MIGA Plus Business Education – with courses designed for the healthcare profession assisting our clients with developing their business management skills

### Feedback from our members

**98% of our members would recommend MIGA to a colleague<sup>1</sup>**

**MIGA was ranked 1st out of medical indemnity insurers on "Likelihood to Recommend" by GPs and Specialists surveyed across Australia<sup>2</sup>**

We really value and appreciate this feedback as it shows what we are doing is valued and we are delivering on our promises.

- <sup>1</sup> Respondents to MIGA Client Surveys October 2018
- <sup>2</sup> Independent research conducted by IQVIA October 2018

Our services are available to support you 24/7, including for emergencies, so if you need advice or assistance please don't hesitate to call our team.

If you would like to arrange payment by direct debit, or have not yet provided us with your Qantas membership details, we encourage you to call your dedicated Client Services Officer and they will be very happy to help you.

**Don't forget, when you need us, help is just a phone call or e-mail away!**

**Mandy Anderson**  
CEO and Managing Director

## 2019 Member Loyalty Benefit

Exciting news! If you are eligible, your next renewal will include details of a **2019 Member Loyalty Benefit<sup>†</sup>**, a reward we're pleased to provide eligible clients as thanks for their ongoing trust and support of MIGA. Check your renewal information for details – coming May 2019!

<sup>†</sup> Eligibility criteria apply.

# Changes to MIGA's Boards

## Farewells and new appointments

We will say farewell to our Chairman, **Dr Martin Altmann** and to **Mr Henry Botha**, the Chairman of the Group's Audit Committee, at the end of September 2019.

In line with good corporate governance, our Boards have a policy that directors must retire after a maximum term, recognising the importance of continual change and renewal to ensure the Boards remain open to new ideas and independent thinking, whilst retaining an appropriate skill mix and adequate expertise. Both Martin and Henry will reach their tenure in September 2019, which is why they will be retiring from the Group's Boards.

### New appointments to Chairman and Deputy

Given these changes, we are pleased to confirm the following appointments:

- **Dr Andrew Pesce**, our current Deputy Chair, will be appointed as Chairman of both MDASA and Medical Insurance Australia
- **Dr Roger Sexton**, a current director on our Boards will be appointed as Deputy Chairman of both companies.

Andrew is a practising Obstetrician and Gynaecologist in NSW and will be well known to many members as a former Federal President of the AMA.

Roger is a General Practitioner who works predominantly in rural South Australia with a special interest in Doctors' Health.

Andrew and Roger both have a strong understanding of our business, having served on our Boards for many years. We look forward to their ongoing contribution to the Group in their new roles.

### New appointment to the Boards of Medical Insurance Australia

With the vacancy to be created by Dr Altmann's retirement, we are pleased to welcome **Dr Stephen Parnis** as a new member of the Board of Medical Insurance Australia Pty Ltd.

Stephen is a Senior Specialist in Emergency Medicine in Melbourne and is active in providing advice on matters of medical practice and health policy. He has previously held senior leadership roles within the AMA, most recently as Federal Vice President in 2016.

Having a medical director based in Victoria is important to us, given MIGA's national representation and significant membership in that State.

Stephen's appointment to the Board of Medical Insurance Australia will take effect from 31 May 2019 and to the Board of MDASA from 1 October 2019 (as per Article 51 of the Constitution). In accordance with our Constitution, Stephen will stand for re-election at the next AGM in November 2019.

We congratulate Dr Andrew Pesce and Dr Roger Sexton on their appointments, which will take effect from 1 October 2019, and we welcome Dr Stephen Parnis to our Boards.

Both Martin and Henry have contributed so much to MIGA over their years on our Boards and we will miss them enormously.

We will say thank you and farewell to them more formally later in the year.

### Mandy Anderson

CEO and Managing Director



**Dr Martin Altmann** Outgoing Chairman



**Mr Henry Botha** Outgoing Board Member



**Dr Andrew Pesce** Incoming Chairman



**Dr Roger Sexton** Incoming Deputy Chairman



**Dr Stephen Parnis** Incoming Board Member

**Win a share of  
10 Million Qantas Points! <sup>^</sup>**

**20 chances to win!**  
**Simply pay your MIGA renewal premium  
by 30 June 2019 and you'll automatically  
go in the draw to win! It's that easy!**

<sup>^</sup> A business must be a Qantas Business Rewards Member and an individual must be a Qantas Frequent Flyer Member to earn Qantas Points with MIGA. Qantas Points are offered under the MIGA Terms and Conditions (links to [www.miga.com.au/qantas-tc](http://www.miga.com.au/qantas-tc)). Qantas Business Rewards Members and Qantas Frequent Flyer Members will earn 1 Qantas Point for every eligible \$1 spent (GST exclusive) on payments to MIGA for Eligible Products. Eligible Products are Insurance for Doctors; Medical Indemnity Insurance Policy, Eligible Midwives in Private Practice; Professional Indemnity Insurance Policy, Healthcare Companies; Professional Indemnity Insurance Policy. Eligible spend with MIGA is calculated on the total of the base premium and membership fee (where applicable) and after any government rebate, subsidies and risk management discount, excluding charges such as GST, Stamp Duty and ROCS. Qantas Points will be credited to the relevant Qantas account after receipt of payment for an Eligible Product and in any event within 30 days of payment by You. Any claims in relation to Qantas Points under this offer must be made directly to MIGA by calling National Free Call 1800 777 156 or emailing [clientservices@miga.com.au](mailto:clientservices@miga.com.au).

<sup>\*</sup> The promoter is Medical Insurance Australia Pty Ltd (ABN 99 092 709 629) of Level 14, 70 Franklin Street, Adelaide SA 5000. Entry only available to doctors and midwives registered in Australia who renew with MIGA from 1 July 2019 by paying in full by 30 June 2019, or opting into direct debit on or before 30 June 2019 and paying at least one instalment by 24 July 2019. Each of the 20 winners receive 500,000 Qantas Points. The maximum notional value of each Prize is \$17,444 with a total prize pool of \$348,888 based on a sample of the Qantas Frequent Flyer Rewards that could be obtained by redeeming through the Qantas Frequent Flyer program. The draw will take place at 10am (ACST) on 20 August 2019 at this address. Each winner will be notified by email. Winners will be published in 'The Australian' on 30 August 2019. Authorised under NSW Permit No. LTPS/19/32995, ACT Permit No. TP 19/02964, SA Licence No. T19/405. Ts & Cs available at [www.miga.com.au/qantas-tc-10mpoints](http://www.miga.com.au/qantas-tc-10mpoints).



## Case Study

# That's not true! To sue or not... The law of defamation in about 700 words

**Baron Alder**  
Partner – Moray and Agnew Lawyers

Every other week we read about a public figure suing a media outlet for defamation, seeking to vindicate their eminent reputation following something that has been said in a national newspaper, on the six o'clock news or on commercial radio: Geoffrey Rush and The Daily Telegraph; Craig McLachlan and the ABC and Fairfax; Rebel Wilson and Bauer Media. But it is not only celebrities whose reputations are important and which are protected by the law; and it is not only major broadcasters or publishing houses who are sued for defamation.

Defamation involves no more than a publication by one person to another (other than the plaintiff) that is likely to reduce the reputation of the plaintiff in the minds of right-thinking members of society generally.<sup>1</sup> Many careless statements that occur almost as a matter of course are potentially defamatory. A defamatory publication can be oral or written. In some cases defamatory meaning can be conveyed by conduct, without any written or spoken communication.<sup>2</sup> Defamation is a tort of strict liability which means that the publisher may be liable even though he or she did not intend injury to the plaintiff's reputation and acted with reasonable care.<sup>3</sup> Anyone who in any way participated in a defamatory publication is liable for it. For these reasons, it is surprisingly easy to defame another person – regardless of the subject's celebrity or the publisher's audience.

Professionals, including health practitioners, are quick to respond to attacks on their reputations, particularly when their professional skills and judgment are impugned.

This is understandable. A professional's reputation is a large part of their stock-in-trade.

At the same time, professionals including health practitioners, are often called on to pass judgment or to critique others' professional skills and judgment or adherence to ethical standards. Some obvious examples are:

- under section 141 of the Health Practitioner Regulation National Law Act 2009, a registered health practitioner is required to report another practitioner's 'notifiable conduct';
- doctors may be required to advise patients about the adequacy or suitability of another doctor's treatment provided to a patient;
- health practitioners might be required to comment about another's performance as an employee and those comments may be adverse;
- a practitioner might write an academic article critical of another practitioner's theories or research.

In the ordinary course, these types of publications will be protected by laws which acknowledge a public interest in open communication on certain subjects. Section 237(3) of the National Law provides that a practitioner making a notification under section 141 of the law does not incur a liability for defamation. Defences may also be available under legislation and at common law. Most relevantly for health professionals:

- justification (truth) may provide a defence if the imputation about the plaintiff is true in substance and in fact;
- qualified privilege protects statements made by a person who has a duty or interest to make the statement to a recipient who has a corresponding duty or interest to receive it;
- fair comment permits the expression of comment based on facts that are truly stated and which is fair;
- honest opinion permits the expression of an honestly held opinion based on proper material and that relates to a matter of public interest.

However, it is far preferable to avoid a situation in which it is necessary to attempt to invoke a defence that might be available.

First, the defences to defamation actions are subject to limitations. For example, if the statement has been published widely including to people without a particular interest in the subject matter, a qualified privilege defence might not be available (this is particularly important to remember when posting comments on social media). Other defences might not be available if the statement has not been made in good faith or its publisher has not acted reasonably.

Secondly, the publisher bears the onus of making out any defences that might be available. The defences often turn on technical

legal points and can be difficult to establish. For example, it might be difficult to succeed on a truth defence if witnesses are not available or will not co-operate. Regardless of their merits, defamation defences are invariably emotionally taxing and expensive to run.

Professionals frequently become involved in differences of opinion with others. Often, these turn on tightly held points of principle into which there has been considerable emotional and intellectual investment. These are the perfect conditions for defamation claims and there is almost no way for professionals entirely to eliminate the risk of them. There are, however, ways of minimising the risk:

- chat rooms, blogs and on-line review sites are one of the largest sources of defamation claims against professionals. They are either treated as a forum for informal repartee in which careless but harmful comments can be made or as a soapbox for disgruntled activists. Resist the temptation to make casual negative comments about others or grand denunciations when posting online;
- exercise caution when publishing about others in e-mails. It is very easy for e-mails to be forwarded many times;
- humorous comments can also be defamatory.<sup>4</sup> Avoid publications that ridicule others, even if they are meant in jest;
- when expressing opinions, ensure that the facts on which they are based are readily identified;
- an apology may ameliorate the effects of a defamatory comment if it is published with the same prominence as the defamatory publication. Before publishing any apology, it is preferable to seek legal advice to ensure that it does not aggravate the initial defamation (by, for example, repeating the defamatory imputations).

"The law is an ass" so if you want to talk about publications that concern you in any way, take a moment and seek advice from MIGA.

<sup>1</sup> *Sim v Stretch* [1936] 2 All ER 1237

<sup>2</sup> *Phelan v May Department Stores Co* 443 Mass 52 (2004)

<sup>3</sup> *Lee v Wilson* (1934) 51 CLR 276; *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575

<sup>4</sup> *Parmiter v Coupland* (1840) 6 M&W 105

## Benefit from our experience

As a member of MIGA you have access to our dedicated and expert staff providing a range of services designed to support you in practice

**Broad  
insurance  
cover**



**Risk  
education**



**Medico-legal  
advice**



**Advocacy**





## Case Study

# Navigating the legalities of medicine

**Cheryl McDonald**  
National Manager – Claims & Legal Services



The Claims team at MIGA receive in excess of 3,000 calls per annum for support. These are generally contacts from members and clients where there is no claim for compensation or complaint, but help or advice is needed to sort a medico-legal problem. Here are a few examples:



**A female doctor was having a break from paid employment as she cared for her three-month-old baby. Some years prior, as part of her training, she had completed a rotation in the paediatric department of a large teaching hospital.**

She was recently contacted by the hospital and sent a subpoena, which had been received by the hospital requesting the doctor attend court to give evidence.

The doctor could not recall the case (not surprisingly) and was living some 300km from the court. She sought advice on her legal obligation to attend.

The doctor was advised about the court rules associated with the service of subpoenas. Not all of the rules had been complied with including the requirement to provide conduct money. In this instance, we wrote to the party who had issued the subpoena setting out the conduct money requirements to facilitate attendance. This included a request for upfront payment for costs for travel, accommodation and engagement of a nanny.



**On the after-hours line we were contacted by a doctor working in the adolescent health unit of a major teaching hospital. The patient was 14 years of age and suffered chronic anorexia nervosa. Her metabolic situation was stable (had improved during hospitalisation) but remained severe. Ongoing hospitalisation was recommended.**

The patient's parents were keen for the patient's discharge against medical advice. The plan was for the patient to travel overseas with the parents for treatment.

We discussed the doctor's mandatory reporting obligations pursuant to child protection legislation and police report. We also spoke about documentation, contact with airlines and further contact with the patient and her parents to advise on the patient's critical medical needs.



**Another situation recently dealt with was a doctor who contacted us as she felt very threatened by a patient who was dissatisfied with his surgical outcome. The doctor was of the view the patient had an obsessive personality. Concerns were raised about defamatory comments being made by the patient about the doctor in the local community. In addition there were safety concerns for the doctor and her staff consequent on the patient's behaviour.**

We discussed strategies to minimise these concerns including police reports, court applications to formally prevent the patient from being within a declared vicinity of the doctor and how to manage some of the horrible social media postings.



The practice of medicine in 2019 and beyond brings with it many challenges, not all medical.

We are very proud of the quality of advice and prompt and professional service we provide.

The medico-legal sphere is broad and challenging and MIGA is here to help for all matters, big and small.

Please do not hesitate to call if there is any matter at all you would like to discuss.

Claims management



Insurance advice  
Personal and practice cover



MIGA Plus

Business insurance  
Business education  
Qantas Points



We tick all the boxes with services and support you rarely find from other insurance companies.

Visit [www.miga.com.au](http://www.miga.com.au)  
Call us on 1800 777 156

## Two very different 'M's which affect you

Two very different 'M's, mandatory reporting for treating doctors and Medicare's Shared Debt Recovery Scheme, are important issues which MIGA is at the forefront of dealing with through its advocacy work.

### Treating doctor mandatory reporting

MIGA has been seeking changes to treating doctor mandatory reporting obligations.<sup>1</sup> Our efforts focus on removing impairment reporting obligations where they can be difficult to interpret and be a barrier to doctors seeking care. We believe risks to the public are best dealt with through professional and ethical reporting obligations.<sup>2</sup> We also sought a 'reasonable excuse' defence for a treating doctor who, in good faith, decides not to make a report and to improve Medical Board / AHPRA processes for doctors who are reported.

MIGA was in multiple rounds of consultation on national reform proposals, including an invitation to give evidence at a parliamentary hearing late last year.<sup>3</sup>

Changes have now been announced to treating doctor mandatory reporting (outside WA) for impairment, significant departures from expected practice and intoxication (including changing the reporting threshold from 'substantial risk of harm' to 'risk of substantial harm') and to extend reporting for sexual misconduct to include risks of it occurring. A date for these reforms to commence is yet to be set and guidelines are to be developed, with input from MIGA.

MIGA welcomes reforms to reporting thresholds, but believes more is needed, particularly a broader approach which deals with barriers to seeking care, uncertainties in whether to report and supporting doctors through Medical Board / AHPRA processes.

### Medicare – shared debt recovery scheme

A new Medicare Shared Debt Recovery Scheme will commence in mid-2019.

Medicare will be able to apportion repayments for incorrect billing between doctors and entities which could have controlled or influenced incorrect billing, who stand to benefit (directly or indirectly) and where it is "fair and reasonable" to recover from them.

MIGA is now involved in consultation on scheme operation. Our focus is on ensuring individual cases are looked at on their merits, without pre-conceptions. As part of broader Medicare advocacy efforts, we emphasised the challenges doctors face in understanding complex Medicare requirements, and the need for improved education and ability for Medicare to explain and better clarify uncertain items.

### Timothy Bowen

Senior Solicitor – Advocacy, Claims & Education

- 1 Outside WA, doctors treating other doctors and health practitioners must presently report certain situations of impairment (physical or mental health conditions detrimentally affecting practice, or likely to do so), intoxication, significant departures from expected practices and sexual misconduct in the course of practice. There are no mandatory reporting obligations on WA treating doctors.
- 2 For details of MIGA's position, see its submission to a just completed Queensland Parliamentary inquiry into national reforms - [www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2018/HealthPractRegNLAOLAB18/submissions/025.pdf](http://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2018/HealthPractRegNLAOLAB18/submissions/025.pdf)
- 3 MIGA's evidence to the inquiry is available at [www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2018/HealthPractRegNLAOLAB18/trns-ph-HealthPract-5Dec2018.pdf](http://www.parliament.qld.gov.au/documents/committees/HCDSDFVPC/2018/HealthPractRegNLAOLAB18/trns-ph-HealthPract-5Dec2018.pdf)



## Insuring your gross profit

### It's just as important as protecting your physical assets

The Insurance Council of Australia estimates that less than 50% of small business owners hold a Business Interruption Insurance policy. This is an alarming statistic, considering that small businesses, like some medical practices, have a far less chance of surviving a major loss without this insurance cover in place.

Most practice owners understand the importance of insuring their tangible business assets from natural perils, such as fire, flood, storm and earthquake. Unfortunately, many medical businesses don't always consider the impact of not being able to trade for a period of time because of a catastrophic event. When advising medical practices on their insurance needs, one of the first questions our MIGA Plus Business Insurance team ask is "What would happen to your business if it was unable to trade?"

Business Interruption Insurance is one of the most important, yet least understood classes of insurance. It's not something that protects the business owner themselves, in the way that an income protection insurance would; instead, it's an insurance that protects the 'insurable gross profit' of the business itself.

Following a claim where physical assets are damaged as a result of a natural peril, there will inevitably be a downturn in turnover and associated gross profit. Business Interruption Insurance seeks to indemnify the business for that loss of gross profit over a specified period of time, which for example may be 6, 12, 18 or even 24 months.

Even once the repairs to physical premises are complete, a business may not necessarily return to the same level of activity, and therefore gross profit it was earning prior to the damage occurring. For example, previous patients may have found alternative providers or be slow to return if unaware the practice is back up running.

Business Interruption Insurance can continue to make up the shortfall in gross profit even after a practice begins trading again, until such time as the business returns to pre-claim gross profit levels.

Remember, setting the correct sum insured is essential to maximising your entitlements under the policy in the event of a claim and to avoid any costly exposure to underinsurance. Above all, you should ensure that Business Interruption Insurance should complement and not substitute a sound business continuity plan.

**For more information on this cover and other policy features available through MIGA Plus Business Insurance, contact our expert team. You can also visit our website to view available packages and provide your details via our simple online form to obtain a quote.**



**MIGA Plus Business Insurance team**  
Call 1800 835 808  
Email [businessinsurance@miga.com.au](mailto:businessinsurance@miga.com.au)



**Get a quote online**  
Visit [miga.com.au/business-insurance](http://miga.com.au/business-insurance)

**Joanne St Clair**  
Regional Manager, Guild Insurance

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## Treating Miss Daisy

### Did we treat this elderly patient well?

MIGA's Hypotheticals moderated by Professor Guy Maddern, and with the assistance of an expert panel, always entertain as well as inform. Lively audience participation ensure their success.

The topic for the 2018/2019 risk management program hasn't disappointed.

"Treating Miss Daisy" covered 5 complex areas in treating the older patient:

- When and how to treat – the question of frailty and medical futility
- How to manage the consenting process
- Advance care directives and end of life
- Medication management – polypharmacy and deprescribing
- Elder abuse.

In the climate of the Royal Commission into Aged Care (announced during the course of the 8 hypothetical events held), this topic was timely. With a well-respected panel comprising geriatricians, pharmacists and lawyers, the doctors who attended had access to insightful opinions, information and advice. Even doctors who generally don't treat the older Australian, found this topic interesting from a personal if not professional view:

#### The evaluations

*I'm a paediatrician but see occasional elderly patients in ED plus have elderly relatives. So I found it really informative* Paediatric Medicine

*Good overview on case of elderly and excellent panel discussion* Orthopaedic Surgery

*Fantastic morning. I enjoyed the presentation and the panel discussions* Ophthalmology

*Well constructed, interesting panel and important topic* Psychiatry

*Another fantastic event* Anaesthesia

*Excellent as usual* Radiologist

*First class* Emergency Medicine

*Very useful, especially ACD's etc* Gynaecology

*Most of my patients are younger...however on a personal level very relevant* ENT Surgery

*I enjoyed this session. Topical, relevant to current practice. Provided useful resources for own use and for teaching purpose* General Practitioner

*Interesting and well presented* Neurosurgery

#### What's next?

The topic for the next Claims Hypothetical is Medicare audits and the Professional Services Review (PSR). This is definitely a hypothetical not to be missed. The first two months of 2019 has seen the Director of the PSR enter into 9 agreements with practitioners which will result in repayments totalling \$2,840,000.<sup>1</sup> Doctors who get it wrong may also lose their right to bill certain item numbers.



**Are you confident of your billing practices?**

**Why not join us at a Conference!**

Visit [reo.miga.com.au](http://reo.miga.com.au) to book or email [reo@miga.com.au](mailto:reo@miga.com.au)

**Keryn Hendrick**  
Risk Education Manager

<sup>1</sup> <https://www.psr.gov.au/case-outcome/psr-directors-update-january-and-february-2019>



## Indemnity insurance tailored to healthcare companies and medical practices

At MIGA we have a wealth of experience in serving the needs of the healthcare sector and are passionate about protecting our clients and helping them manage the ever changing challenges of working in the healthcare sector.

MIGA's Professional Indemnity Insurance for Healthcare Companies and its employees for legal liability for claims arising out of any act, error or omission in the provision of health care treatment, advice or service<sup>1</sup>.

The cover we provide is tailored to meet the needs of businesses providing healthcare services. We believe it is competitively priced and provides true value for money. MIGA also provides some benefits that may not be provided by other insurers:

- ✓ one automatic reinstatement of the limit of cover selected, at no additional cost
- ✓ 24 hours a day, 7 days per week emergency claims and legal advice across Australia, provided by our own expert staff
- ✓ risk management education sessions, including practice reviews provided by our in house risk management team
- ✓ payment by direct debit (annual or monthly) at no additional cost
- ✓ MIGA Plus – access to partner insurance product and service offers
- ✓ Qantas Points on payment to MIGA.

Most importantly, MIGA offers a unique ability to minimise gaps between the insurance cover arranged by the doctors who work in a business and the company.

**Call us to see how MIGA can help you with indemnity insurance for your practice or company.**

**Maurie Corsini**  
National Manager - Underwriting

<sup>1</sup> Subject to the Terms and Conditions of the Policy.

# Midwives

## Testimonials in advertising

### Are you at risk of breaching the law?

We published this article a few years ago but felt that, because MIGA continues to receive enquiries from clients that relate to issues with advertising, and AHPRA's focus on this aspect of health practice, it was valuable to offer it again.

It can feel like a tough balancing act to promote your business but not run afoul of AHPRA's Guidelines. The nature of advertising means that often complaints to AHPRA come from clients, whose expectations have not been managed.

Websites and social media have become a significant part of business advertising and it is important that you satisfy yourself that you understand the Regulations set down under the National Law and that you are not in breach of that law.

The National Law Act 2009 expressly states: *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that - uses testimonials or purported testimonials about the service or business.*

The National Law does not define 'testimonial', so the word has its ordinary meaning of a positive statement about a person or thing. In the context of the National Law, a testimonial includes recommendations, or statements about the clinical aspects of a regulated health service.<sup>1</sup>

The National Law ban on using testimonials means it is not acceptable to use testimonials in your own advertising, such as on your Facebook page, in a print, radio or television advertisement, or on your website. This means:

1. You cannot use or quote testimonials on a site or in social media that is advertising a regulated health service, including patients posting comments about a practitioner on the practitioner's business website, and
2. You cannot use testimonials in advertising a regulated health service to promote a practitioner or service. Health practitioners should therefore not encourage patients to leave testimonials on websites health practitioner's control that advertise their own regulated health services, and should remove any testimonials that are posted there.

#### Case Studies and birth stories

Case studies (written by the midwife) and birth stories (written by clients) can provide valuable messages and insights for potential and current clients. If you incorporate these into your advertising (website, Facebook) it is recommended that you review the entries for any possible breaches.

#### How NMBA deals with breaches and penalties

The Nursing and Midwifery Board will issue an escalating series of written warnings to the midwife, initially reminding them of their obligations in relation to advertising. If no corrective action is taken, the Board may ultimately take legal action against them for non-compliance with the Board's standards. This may include limiting, suspending or cancelling a midwife's registration and their ability to practise.

A registered health practitioner, or a business providing a regulated health service, whose advertising breaches the National Law, may be liable for a \$5,000 penalty (for an individual) or \$10,000 (for a body corporate).

#### Next steps

So if anything you do in your practice constitutes 'advertising', we recommend that you:

- Familiarise yourself with the guidelines available at [www.nursingmidwiferyboard.gov.au](http://www.nursingmidwiferyboard.gov.au)
- Review all your advertising outlets (particularly websites)
- Satisfy yourself that you comply
- Call MIGA's Risk Management team if you aren't sure or would like advice.

#### Liz Fitzgerald

National Manager – Risk Services

<sup>1</sup> <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/Guidelines-for-advertising-regulated-health-services.aspx>



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[miga@miga.com.au](mailto:miga@miga.com.au)  
[www.miga.com.au](http://www.miga.com.au)

#### Join the conversation – Search 'MIGA'



#### Letters to the Editor

We encourage clients to contact us with their views by email to [mandy.anderson@miga.com.au](mailto:mandy.anderson@miga.com.au) or follow the links on our website.

Note: Insurance policies available through MIGA are issued by Medical Insurance Australia Pty Ltd (AFSL 255906). The terms and conditions of the insurance provided by Medical Insurance Australia Pty Ltd are fully contained in the Policy Wording and any applicable endorsements. This document does not form part of the Policy Wording. MIGA has not taken into account your personal objectives or situation. Before you make any decisions about our policies, please read our Product Disclosure Statement and consider your own needs. Call MIGA for a copy or access the document via our website at [www.miga.com.au](http://www.miga.com.au).

Information in this Bulletin does not constitute legal or professional advice. Call us if you need advice on any of the issues covered in this Bulletin.



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