

# Bulletin



## It's renewal time again

It's hard to believe, but another year has gone by and it's time for renewal again. Members would have received their renewal package by now.

**In prior Bulletins we have communicated the Federal Government's change to the High Cost Claim Scheme threshold which has the effect of increasing the cost of claims to all insurers from 1 July 2018<sup>1</sup>.**

Premiums have increased by a small amount this year to cover the additional costs of these claims. However, the good news for you as a member is that given the Group's strong capital position, this year we have absorbed the impact of inflation that would generally also lead to increasing premiums.

This is one of the benefits of belonging to a mutual insurance company. Our philosophy as a mutual revolves around personal care, support, quality service and expert advice. Not being profit driven enables us to employ excess capital for the benefit of members, rather than being focused on returns to shareholders.

Importantly from the perspective of our Boards, absorbing the impact of inflation on your premium supports our strategy to maintain stability in premiums for you.

### Being part of a mutual

As a doctor-owned mutual, we are dedicated to serving the needs of the medical profession. We operate on the basis of a very different set of guiding principles than a commercial insurer. This has positive impacts for how we run our business for your benefit, and how we approach the services we offer to support your practice:

### Member-owned

Run by our doctor members for the benefit of members, putting people before profit.

### Not for profit

Surpluses are directed to maintaining our financial strength and security, offering affordable insurance and delivering additional services to support your practice.

### Supporting members and the profession

We provide an extensive range of support services to our members.

### Focused on service

Always captures our commitment to reliability, professionalism, expert advice and being available to you when you need us.

### Community and common purpose

In our fast paced and ever changing world, individuals may increasingly feel more isolated. There is a very real movement across the globe of people looking for connectedness, a sense of community and common purpose. In this environment our 'mutual' business model is arguably more relevant and more important than at any time in the past.

With our heritage, experience and track record of supporting doctors for more than 118 years, we look forward to continuing to support you as a member of MIGA and being there for you now, and when you need us most.

**Dr Martin Altmann**  
Chairman

**Mandy Anderson**  
CEO & Managing Director

## June 2018

### A change is coming

Medical Board Professional Performance Framework

### Restraint of trade clauses

Are they fair?

### Privacy update

Mandatory data breach notifications

### 'To err is human'

But what of the implications for your practice?

### MIGA Plus Business Insurance

What happens if you are under-insured?

### Midwives

Beware the Medicare Audit

<sup>1</sup> The HCCS reimburses medical indemnity insurers 50% of the costs of claims over \$300,000 up to the limit of the practitioner's cover, for claims notified on or after 1 January 2004. From 1 July 2018, the threshold will increase from \$300,000 to \$500,000.



With many of our clients due to renew their insurance this month, please don't forget that the Client Services Team are here to help you. We can answer any questions you may have, update your practice details and take your payment over the phone.

Remember, you can also earn Qantas Points on your insurance payment!<sup>1</sup> If you have not provided us with your Qantas Frequent Flyer or Qantas Business Rewards number, you can provide it to your Client Services Officer over the phone or you can register your details on the **MIGA Plus Offers** page of our website. It would be a shame to miss collecting those extra points!!

As the 30th of June falls on a Saturday this year please note that payment by phone will be available until 3.00pm (ACST). Alternatively, you can pay online up to 9.00pm (ACST) on 30 June.

From 9.00pm on 30 June we will be undertaking end of year system maintenance, during which time online payments will be unavailable. Online payment will reopen at around mid-day on Sunday 1 July.

We hope having our office open on 30 June will be useful for you but encourage you to make your payment early.

**Hannah Potter**  
Client Services Officer

Win a share of  
**10 million**  
**Qantas Points!**<sup>1, 2</sup>  
**20 chances to win**

Simply pay your MIGA  
renewal premium by direct  
debit by 30 June 2018 and  
you'll automatically go in the  
draw to win! It's that easy!

- 1 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 ([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).
- 2 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 2018 by opting into direct debit on or before 30 June 2018 and paying at least one instalment by 24 July 2018. Each of the 20 winners receive 500,000 Qantas Points. The maximum notional value of each Prize is \$14,852 with a total prize pool of \$297,040 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 21 August 2018 at the above address. Each winner will be notified by email. Winners will be published in 'The Australian' on 31 August 2018. Authorised under NSW Permit No. LTPS/18/23732, ACT Permit No. TP 18/00581, SA Licence No: T18/507. Ts & Cs available at [www.miga.com.au/qantas-tc-10mpoints](http://www.miga.com.au/qantas-tc-10mpoints)



**Renewal payment**  
Extended hours  
Saturday, 30 June

As the 30th of June falls on a Saturday this year our office will be open to assist those clients who wish to make their payment by telephone that day.

**On 30 June**

- You will be able to pay over the phone until 3.00pm (ACST)
- You can pay online until 9.00pm (ACST)
- From 9.00pm we will be undertaking end-of-year system maintenance, during which time online payments will be unavailable
- Online payments will reopen at around mid-day on Sunday 1 July.

We encourage you to make your payment prior to 30 June if possible.

**General enquiries and Client Services**  
Free call 1800 777 156

# A change is coming

## Medical Board Professional Performance Framework

Late last year, the Medical Board of Australia (MBA) announced a new Professional Performance Framework (PPF) for Australian doctors, which is the culmination of the MBA's 'discussion' around revalidation of the professional competence of doctors.<sup>1</sup>

The PPF aims to ensure that all doctors practice competently and ethically through their careers and provide safe care to patients. It is intended to build on existing frameworks and systems. It covers:

### Strengthened continuing professional development (CPD) requirements

- Doctors choose a CPD 'home' (college or other education provider) and develop a professional development plan with the support of their college/provider;
- Minimum 50 hours CPD each year - 25% each for education, performance review and outcomes measurement, with the balance split across all three areas;
- Colleges to have a stronger role in working with doctors to determine appropriate CPD for scope of practice, supporting remediation where it is needed and sharing information with employers and other bodies where there are risks to patients; and
- Colleges will have a mandatory requirement to report to the MBA if a doctor has not completed CPD requirements.

### Active assurance of safe practice

- Responding to risk factors relating to age and professional isolation;
- Formal peer review and health check for all doctors from age 70, and three yearly afterwards - outcomes of these processes are not reported to the MBA unless there is a serious risk to patients; and
- MBA to provide guidance on what professional isolation is and how to manage it, and increase peer-based CPD for isolated doctors.

### Strengthened assessment and management of doctors with multiple, substantiated complaints

- Focusing on the 3% of doctors who account for nearly 50% of complaints; and
- Requiring formal peer review in cases of multiple, substantiated complaints – there is no set threshold for this, and it will initially depend on the circumstances. The MBA considers results and determines any necessary action.

### Guidance to support doctors

- Stakeholder consultations to revise the Board's *Good Medical Practice Code of Conduct*, and revise/develop a range of new standards, including for CPD and personal health; and
- Colleges to increase support for career transitions, including changes in scope of practice and retirement.

### Collaboration to foster a culture focused on patient safety and respect, encouraging doctors to take care of their own health and well-being

- Looking at how to improve professionalism in students and younger doctors, including behaviour and personal health;

- Addressing under-developed and fragmented systems for early identification and remediation of under-performance in doctors; and
- Encourage 'large data holders' to make information available for the benefit of individual doctors, and explore scope for organisations to share data around poor performance and public risks.

The framework is subject to further consultation on how it will work in practice, and will be introduced in phases over the next couple of years.

MIGA has contributed to various consultations and discussions around PPF/revalidation over the last couple of years, including through stakeholder meetings, convening high level discussion forums, raising key issues through professional publications and at conferences,<sup>2</sup> and providing detailed submissions to the MBA.<sup>3</sup>

Given what we have now is only a broad framework, much work remains to be done on the specifics of PPF and its operation. There are key issues around assessment processes, thresholds for reporting and further action, remediation, sharing information and professional expectations which are still to be worked through. We are also conscious of the emotional and resourcing burdens that this new system may place on our members and the broader profession, and are looking to minimise this wherever practically possible.

We will continue to advocate in the interests of members, work with the MBA and other stakeholders, and keep you up to date as the framework develops and implementation approaches.

### Timothy Bowen

Senior Solicitor – Advocacy, Claims & Education

- 1 Details of the PPF are available at [www.medicalboard.gov.au/Registration/Professional-Performance-Framework.aspx](http://www.medicalboard.gov.au/Registration/Professional-Performance-Framework.aspx)
- 2 See MIGA session at Rural Medicine Australia 2017 – 'Revalidation – revolution or incremental reform' – available at [webcast.gigtv.com.au/Mediasite/Catalog/catalogs/rma2017](http://webcast.gigtv.com.au/Mediasite/Catalog/catalogs/rma2017)
- 3 MIGA's detailed submission to the Board's consultation on initial proposals is available at [www.medicalboard.gov.au/documents/default.aspx?record=WD16%2f22228&dbid=AP&chksum=9Lv0h0yc7WrzUmiEFusn%2bg%3d%3d](http://www.medicalboard.gov.au/documents/default.aspx?record=WD16%2f22228&dbid=AP&chksum=9Lv0h0yc7WrzUmiEFusn%2bg%3d%3d)



## MIGA Plus Business Education Kickstart your Private Practice Career

Thinking about entering private practice, but not sure where to start? MIGA offers two exciting education opportunities to help you on your way.

### One day workshop Kickstart your Private Practice

A powerful one day workshop to prepare trainees, recent fellows and staff specialists for the challenges involved with establishing and managing their own successful medical practice.

**Saturday 4 August 2018** 8am – 5:30pm  
Stamford Plaza, 111 Little Collins Street, Melbourne  
**Fee \$275 (Inc GST)**

**Book your place online at**  
[privatepracticeseминаr.eventbrite.com.au](http://privatepracticeseминаr.eventbrite.com.au)

### 3 day course The Private Practice Comprehensive

Developed for advanced trainees, recent fellows and consultants seeking a smooth and efficient transition to private practice.

The three day course aims to prepare you for the challenges involved with establishing and managing a successful medical practice. Additionally, the course provides training on the action, processes and habits required to achieve and maintain your desired lifestyle.

**Adelaide** 24 August (Hurry - places filling fast)  
**Sydney** 14 September  
**Melbourne** 19 October

**Find out more and book visit**  
[www.miga.com.au/business-education](http://www.miga.com.au/business-education)



## Case Study

# Restraint of trade clauses Are they fair?



### Key issue

Employment contracts for medical practitioners that include restraint of trade clauses are becoming increasingly common.

### Key takeaway

Doctors need to fully consider the ramifications of clauses in their employment contract and negotiate changes before they sign them.

### Anita Filleti

Solicitor – Claims & Legal Services

We are very pleased to welcome Anita Filleti to MIGA. Anita joins us as a Solicitor in the Claims and Legal Services Team and comes to us from Gilchrist Connell Lawyers where she has gained extensive experience in employment related matters. This is an area where increasing numbers of our clients are seeking our assistance. It is a complex legal area which can often involve career consequences. Anita is well placed to assist our clients and we welcome the expertise she brings to our team.

Anita's bright personality is very welcome at MIGA and if you have an employment issue, you will find her to be a wonderful asset and source of guidance.

An increasing number of health practitioners are seeking our assistance regarding the validity of restraint of trade clauses included in their employment contracts. Unfortunately, our assistance is often sought under circumstances where the clause has already been breached by the health practitioner. Accordingly, MIGA strongly encourages our members to carefully consider the terms and conditions of proposed employment contracts before accepting them, as a failure to do so may have career consequences.

### What does a restraint of trade clause look like?

It is now common place for larger medical practices to require a health practitioner to accept a restraint of trade clause before being permitted to work at the practice. A typical restraint of trade clause might state:

*"The Doctor acknowledges and agrees that upon termination of this contract, he or she will not, without the prior written consent of the Medical Centre, be directly or indirectly involved in any other medical centre and shall not attempt to entice or obtain any patients to another medical centre within a radius of 15km and for a period of 12 months from the date of termination of this contract".*

### Is the restraint of trade clause in my contract unfair?

Whether or not a restraint of trade clause is fair and enforceable is ultimately determined on a case-by-case basis, however the following general matters are likely to be considered by a court or tribunal when making its assessment:

1. Whether the geographical distance and period of time prescribed is required for the reasonable protection of the employer's legitimate interest. In a medical setting, the legitimate interest of the employer is likely to include preserving the confidentiality of its patients' information.
2. Whether the geographical distance and period of time prescribed is reasonable based on the location of the employer and the nature of the business. For a medical practice based in a metropolitan area, a court or tribunal may consider a restraint in excess of 15km and 12 months to be unrealistic and therefore unreasonable.
3. Whether the parties voluntarily accepted the restraint of trade clause at the time of entering into the contract. It will be difficult for a health practitioner to later claim that the clause is unreasonable if he or she voluntarily agreed to it before commencing employment.

### What might happen if I have already breached the restraint of trade clause in my contract?

The following remedies are available in the event of a breach of a restraint of trade clause:

1. A court or tribunal ordered injunction.  
An injunction might restrain the health practitioner from working at another medical practice for a certain period of time. The period of time set by the court or tribunal might be equal to the amount originally envisaged by the employer (i.e. 12 months).
2. A Court ordered monetary award that is payable by the health practitioner in favour of the medical practice. The amount of the award as determined by the Court is likely to be an amount that is sufficient to compensate the employer for any financial loss incurred as a result of the breach (i.e. the loss of patients to another medical practice during the period of the breach).

### What can I do if I think the restraint of trade clause is unfair?

MIGA encourages our members to engage in open and transparent communications with their potential employers prior to entering into any employment contract and avoiding engaging in any activity that may constitute a breach of a restraint of trade clause.

It is open to both parties to negotiate the terms of a proposed contract prior to and during the term of employment. We recommend documenting such negotiations in writing to protect both parties in the unfortunate event of a future dispute. This process is often facilitated by other terms in the employment contract which set out alternative dispute resolution processes for the parties (i.e. in the event of a disagreement or dispute regarding the terms of the contract).

If you suspect that you may have already breached a restraint of trade clause in your employment contract, we suggest that you contact our Claims and Legal Services team for further advice and support.



## Case Study

# Privacy update Mandatory data breach notifications



### Key issue

The Office of the Australian Information Commissioner has released the first quarterly report on Notifiable Data Breaches.

### Key takeaway

The first report contains statistics that will be of particular interest to medical practitioners and those who own or operate medical practices. Key highlights are outlined below.

### Emma Cocks

Solicitor – Claims & Legal Services

We have been keeping our members updated on developments regarding privacy legislation amendments and the new Notifiable Data Breaches scheme and have received many enquiries since the scheme was introduced. Further information on the nature of the scheme and what it means for health practitioners and healthcare practices can be found on the MIGA website.<sup>1</sup>

The Notifiable Data Breaches first quarterly report was recently released by the Office of the Australian Information Commissioner (OAIC), and it provides useful information on the state of play since the new scheme came into effect.

Following the introduction of the scheme on 22 February 2018, the OAIC reports that<sup>2</sup>:

- There were 63 data breach notifications in the first six weeks (compared with 114 notifications in the financial year ended 30 June 2017 under the previous voluntary notification scheme).
- 33% of all breaches were reported to involve health information, and the vast majority of breaches (78%) were reported to involve an individual's contact information.
- More than half of the breaches notified indicated that the cause arose from human error and just under half from malicious or criminal attack. Only 3% of breaches notified arose from system faults.
- Health service providers were listed as the top sector in terms of notifying the OAIC of breaches, sitting at 24% of all notifications.
- The OAIC's acting Australian Information Commissioner and acting Privacy Commissioner, Angelene Falk, said these results highlight "the importance of implementing robust privacy governance alongside a high-standard of security. The risk of a data breach can be greatly reduced by implementing practices

such as Privacy Impact Assessments, information security risk assessments, and training for any staff responsible for handling personal information".

MIGA considers it is an opportune time for health practitioners and healthcare practices to review their information security standards and ensure compliance with the Australian Privacy Principles (APP). In particular, an APP entity that holds personal information must take "reasonable steps" to protect the information from misuse, interference and loss, as well as unauthorised access, modification or disclosure.<sup>3</sup>

The RACGP has recently released a new policy on Information Security in General Practice.<sup>4</sup>

Some of the key points to think about include:

- Practices should have information security policies which are known, accessible and remain up-to-date.
- Use access controls for practice staff, providing only the necessary access to data to enable work to be undertaken.
- Undertake risk assessments of security controls and have a business continuity plan which covers information recovery.
- Have resilient back-up and restoration processes and regularly update software.
- Have policies around e-mail, practice website and other secure messaging use.
- Have a policy on using mobile devices for clinical and business purposes – devices should be password protected, use data encryption where possible and should not be used to send or access sensitive data on public or unsecure networks.

### Further Resources

#### OAIC – Notifiable Data Breaches scheme

[www.oaic.gov.au/privacy-law/privacy-act/notifiable-data-breaches-scheme](http://www.oaic.gov.au/privacy-law/privacy-act/notifiable-data-breaches-scheme)

If you are unclear about your privacy obligations or need to consider a mandatory data breach notification, please contact our Claims and Legal Services team.

1 [www.miga.com.au/data-breach-scheme](http://www.miga.com.au/data-breach-scheme)

2 [www.oaic.gov.au/media-and-speeches/news/notifiable-data-breaches-first-quarterly-report-released](http://www.oaic.gov.au/media-and-speeches/news/notifiable-data-breaches-first-quarterly-report-released)

3 See Australian Privacy Principle 11, which can be accessed at: [www.oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-11-app-11-security-of-personal-information](http://www.oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-11-app-11-security-of-personal-information)

4 [www.racgp.org.au/your-practice/health/protecting-information/information-security/](http://www.racgp.org.au/your-practice/health/protecting-information/information-security/)





## 2018/2019 Risk Management Program (RMP)

### Understand your risks and reduce the chance of a claim or complaint

Risk Education Online (REO) will be our new on-line risk education platform to be launched in July 2018.

But don't wait to book a Conference or Workshop! You can register **now** in the Client Area of our website.

The structure of the RMP remains the same but there are more options for you to choose from. You can still complete the RMP in person at our Risk Management Conferences or Workshops and via our on-line options, soon to be delivered via REO.

Complete two education activities, earn CPD points, and a earn 10% premium discount when you complete the RMP. To make it even easier, some of the activities are bundled into one 10 Point activity.

The Terms and Conditions of the Program can be found via MIGA's website or in the Risk Management Booklet distributed in June 2018.

## Doctors

10 POINTS

Complete 1 of the following

MIGA Conference: Hypothetical & Workshop

Clinical Practice Review: Audit, Seminar & Action Plan

5 POINTS

Complete 2 activities

REO Module

Workshop

Doctors' Health Assessment (1 per Program Year)

Self-Assessment & Action Plan (14 to choose from)

External Accredited Activity (1 per Program Year)

### Hypothetical Treating Miss Daisy **NEW**

An interactive Claims Hypothetical moderated by Professor Guy Maddern will, with the support of an expert panel, explore the complexity of treating the elderly, with a focus on when and how to treat (the question of frailty), the consenting process, advanced care directives, medication management, de-prescribing and elder abuse.

### Session 2 Choose a Workshop (2 hours)

After the Hypothetical, conference participants have a choice of two new Workshops:

#### The anatomy of a claim

- Follow the pathway of a claim from notification of the incident, the collection of evidence, the defence of allegations and the judicial process
- Unravel the complexities of the adversarial process and expose the critical stages that can influence the ultimate outcome.

#### The perils of silence - Communicating for safety

- Communicating effectively with patients and colleagues is just as important as providing the best clinical treatment
- Explore the role of poor communication in medical errors and discuss strategies for empowering practitioners to communicate for the safety of the patient.

## Midwives

10 POINTS

Complete 2 activities

REO Module

Workshop

Self-Assessment & Action Plan (14 to choose from)

External Accredited Activity (1 per Program Year)

# 'To err is human'

## But what of the implications for your practice?

If you own, partly own, or are involved in managing a practice providing health care services, it is important you ensure the practice is appropriately protected against claims that could be made by patients.

Patients generally make claims when they feel events surrounding their treatment have contributed to a poor outcome.

Whilst the doctors in your practice generally have their own medical indemnity insurance, it is important to understand that a doctors' medical indemnity insurance policy is designed principally for the benefit of the doctor, not the practice. These policies do not cover the practice and it may therefore be exposed.



### Relatively common examples where the practice may be exposed include:

Where the patient follow-up system within the practice fails to appropriately notify or contact a patient in a timely manner, or at all; and/or

Where staff fail to pass on a message, or misinterpret a message (or its importance) that should have been given to a doctor in the practice.

In the above examples, the practice's staff, systems and processes can create situations that potentially result in patient claims where the practice would be liable for both the failure of the practice systems and for the actions of the staff involved.

MIGA can help you protect your practice. Our Healthcare Professional Indemnity Insurance Policy has been developed specifically to meet the needs of medical practices and healthcare companies, and to work in concert with the medical indemnity insurance held by doctors.

When you insure with MIGA you also have free access to key services such as risk management advice for your practice and access to medico-legal advice. These services are not typically provided by commercial insurers and could save you thousands of dollars in professional fees.

Some key elements of the cover provided by MIGA's Healthcare Professional Indemnity Policy include:

- Protection for the practice entity that owns and controls the practice and provides the healthcare services
- Cover for the staff employed by the practice entity for any claim or complaint made against them in the conduct of their duties (except employed doctors);
- Cover for the practice's vicarious liability in relation to the conduct of its employed staff (specific conditions apply in respect to employed doctors, including in relation to medical indemnity insurance held by doctors and the practice's obligations to ensure doctors are all times appropriately insured); and
- Cover for claims and complaints arising from a failure of systems, procedures or protocols.

The 'human element' is ever present in healthcare service delivery and there are many examples of situations that can expose your practice to financial loss. We are well placed to provide you with advice and to help you work through options for protecting your practice. Please call us for advice.

#### Neil Rankine

Senior Underwriter – Healthcare

## MIGA Plus Business Insurance

### What happens if you are under-insured?

MIGA is pleased to offer Business Insurance as part of MIGA Plus via Guild Insurance. Read an interesting article from Guild about what happens if you don't have adequate insurance.

Insurance policies come in different shapes and sizes with variations in coverage, some of which are cosmetic in nature, relating to policy sub-limits and excesses however, some variations are more significant and can have a far greater impact on a potential claim settlement.

One such example is the application of the 'averages' clause commonly found in property insurance policies of all kinds (including home insurance policies).

One feature that sets MIGA Plus Business Insurance apart is the inclusion of a 'Reinstatement Plus' basis of settlement. This provides an added layer of protection against inadvertent underinsurance and the application of the dreaded 'averages' clause.

#### 'Reinstatement Plus' provides protection on two fronts:

1. The policy holder is not subject to the 'averages' clause contained in the policy.
2. The policy holder receives a 50% uplift of the sum insured where the stated sum insured is lower than the actual loss.

#### Here's how it works in a 'real life' example

##### The circumstances



An insured leased approximately 80 square meters of space in a shopping centre. In the early hours of the morning a fire started in an adjoining property. Extensive damage to the insured's contents was caused by the fire, smoke, heat and the fire extinguishment procedures.

The practice owner had the following sums insured on their policy:

- Contents - \$198,000
- Business Interruption - \$160,000.

The Business Interruption sum insured was adequate, however upon review of his contents following the fire, it was discovered that the actual sum insured for contents should have been \$320,000.

#### The assessed loss



Damage to the office fit-out, equipment and stock was assessed at approximately \$300,000. Business Interruption loss was assessed at \$140,000.

#### The claim settlement



The practice had inadvertently underinsured its contents by \$122,000. Being under-insured by this amount would normally bring the "averages" clause into play when calculating settlement for other insurers. For this practice, the settlement figure for the loss of his contents would have been \$184,000, under such a clause. **This would have meant the practice would have had to find \$116,000 out of its own pocket to replace the damaged items.**

#### If however the practice was insured with MIGA Plus Business Insurance, the actual settlement would have been assessed as

\$198,000 + \$99,000 (50% uplift of the actual sum insured) = \$297,000.

As you can see, instead of the practice having to find a \$116,000 shortfall in the claim settlement, the 'Reinstatement Plus' basis of settlement provided all but \$3,000 of the total assessed loss. This would have enabled the practice to get back up and trading once again.

The true value of insurance is often only demonstrated at the time of a claim. Whilst price might influence who you insure with, remember, premium is only ever one part of the equation. It's important to understand the cover you are purchasing.

#### Joanne St Clair

Regional Manager, Guild Insurance



## Midwives Beware the Medicare Audit

While it's been a few years now since midwives have been able to bill Medicare directly, the issue of Medicare's Audit and Professional Services Review may not have been adequately on midwives' radar.

Medicare's position is that it has a legal obligation to recover money owed to the Australian Government if a Medicare benefit has been claimed incorrectly or payment has been made incorrectly.

Medicare can conduct compliance audits of all health professionals who claim Medicare benefits, randomly, or if a suspicion is raised that payments or billings are incorrect. If Medicare finds a payment that appears incorrect or inappropriate, the practitioner is given the opportunity to respond and, if necessary, repay the incorrectly claimed benefit.

Medicare is quite clear: unless there is documentation to support the Item claimed, then it is very likely that Medicare will take the view that the service cannot be substantiated and therefore the midwife will be obliged to repay any benefits paid to the midwife.

It is also important to remember that the obligation is on the midwife to ensure that Medicare benefits have been appropriately claimed. In many practices, the administrative aspects of billing are delegated to the administrative staff of a medical practice. While there is no prohibition on this practice, Medicare is firmly of the view that it is the responsibility of the midwife to correctly claim the Medicare benefit irrespective of who performs the billing tasks.

### Documentation is key

In order to meet the standard of documentation, the *Health Insurance (Professional Services Review) Regulations 1999* requires:

- ✓ The record to clearly identify the name of the patient;
- ✓ The record to contain a separate entry for each attendance by the patient for a service;
- ✓ The date on which the service was rendered or initiated;
- ✓ Each entry to provide clinical information adequate to explain the type of service rendered or initiated;
- ✓ Each entry to be sufficiently comprehensible so that another practitioner, relying on the record, can effectively undertake the patient's ongoing care; and
- ✓ That the record be completed at the time the practitioner rendered or initiated the service, or as soon as practicable after the service was rendered or initiated by the practitioner.

### Reduce your risk

- 1 You must fulfil the requirements of the item number set out in the Medicare Benefits Schedule. You can search the MBS online for the rules and item descriptors.
- 2 Ensure your documentation is sufficient to meet the item descriptor.
- 3 If you have any doubts about the use of a particular item number, you should consult Medicare and ideally obtain Medicare's position in writing.

Medicare has a wealth of information available to assist midwives in relation to its investigatory processes and substantiation of Medicare benefits claimed. Please visit [www.psr.gov.au](http://www.psr.gov.au).

If you receive a notification from Medicare that an investigation is to be carried out, contact us as soon as possible so that one of our solicitors can assist you with your response.

### Liz Fitzgerald

National Manager – Risk Services

Always the  
first choice for  
your Medical  
Indemnity  
Insurance and  
protection



**miga** ALWAYS

### General Enquiries and Client Service

Free Call 1800 777 156  
Facsimile 1800 839 284

### Claims and Legal Services

(Office hrs and 24hr emergency legal support)

Free Call 1800 839 280  
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### 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 at [miga.com.au](http://miga.com.au).

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