

# Bulletin



October 2016

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## Had any interesting cases lately?

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How often have you been asked at a dinner party, as a conversation starter, "So, have you had any interesting cases lately?"?

Well it may not be a surprise to you that as CEO of a Medical Indemnity Insurer, I am often asked a very similar question. I thought I would share with you something that we have noticed in our business that may make you think differently about your insurance with MIGA.

Claims under the legal expenses section of our policy have been increasing generally as complainants pursue recourse through AHPRA and other Healthcare Complaints mechanisms. In these instances our clients require assistance and sometimes legal representation. We have noticed that AHPRA and complaint entity investigations are on the rise, as are coronial and Medicare investigations.

Not too long ago MIGA extended the cover under the legal expenses section of your policy to provide you with cover for employment disputes.

At the time there had been a few instances of clients calling for assistance and we decided that it would be of benefit to extend our cover in this area.

Claims relating specifically to employment disputes with concerns about bullying, harassment, breaches of anti-discrimination or equal opportunity law have also risen sharply. We don't yet have enough data to call this a trend, but it is something that is developing and we thought worth bringing to your attention.

Medical practice is changing and there are many more doctors seeking to work as employees for lifestyle and flexibility reasons while others are selling their practices to work for corporate entities. Employment contracts and working arrangements can be complicated.

This is an often overlooked area of cover and support with MIGA, but one that is becoming increasingly relevant and important for many of our clients.

We are here to help and advise you if you have any concerns in this area.

**Mandy Anderson**  
Chief Executive Officer



Dealing with patients can present many challenges for practitioners. Managing patient expectations and maintaining your own professional standards can at times be difficult and of the utmost importance.

In this issue there is a great Case Study 'Snake oil or miracle cure' which highlights the difficulty of being supportive in a heart-wrenching situation and, from a professional standpoint, also being an objective 'voice of reason'.

The choices these situations present practitioners can sometimes be clouded by emotion, a sense of obligation, or even guilt, so it is always advisable to seek advice before committing to action.

Please remember that our solicitors are always available to provide advice or act as a 'sounding board' to help you find an appropriate course of action.

**Belinda Cullinan**  
Solicitor – Claims & Legal Services

## 2016 Annual General Meeting

An invitation to the AGM for members is enclosed with this Bulletin. If you would like to attend please ensure you RSVP by Wednesday, 2 November 2016.

The business of the Annual General Meeting includes the election of Directors to the Board of MDASA.

As per Article 46 of the Constitution, Assoc. Prof. Peter Cundy and Dr Andrew Pesce offer themselves for re-election.

Nominations for these two Board positions closed on Friday, 16 September 2016. No additional nominations were received.

As there were no other nominations for the two vacancies, no election is required and the Chairman will declare Assoc. Prof. Peter Cundy and Dr Andrew Pesce duly elected at the Annual General Meeting (as per Article 48A(b) of the Constitution).

Although there is no need to conduct an election for Directors this year, if you cannot attend and wish to provide a proxy to vote on the adoption of the financials and last year's AGM Minutes please contact us on 1800 777 156 if you wish to do so.

The AGM will again be held in conjunction with our Adelaide Risk Management Conference. The AGM may be video conferenced around Australia (conference facilities and numbers permitting). Members will have an opportunity to elect attendance sites. Once we have final numbers we will forward confirmation of the venues to all attendees.

If you would like to attend the Risk Management Conference we encourage you to book now through the Client Area of our website.

We hope you will join us at the AGM to hear about developments in the last year at MIGA and to ask questions of the Chairman and CEO.

If you attend in Adelaide, we also invite you to join us afterwards for morning tea with our Boards and staff. It is a great opportunity to get to know them better.

We look forward to presenting our year end results and meet with members in an informal setting.

For our members in other States, over the next 12 months you will have the opportunity to meet with us personally and raise any issues at Risk Management Conferences which will be held in your State.

**Mandy Anderson**  
Chief Executive Officer



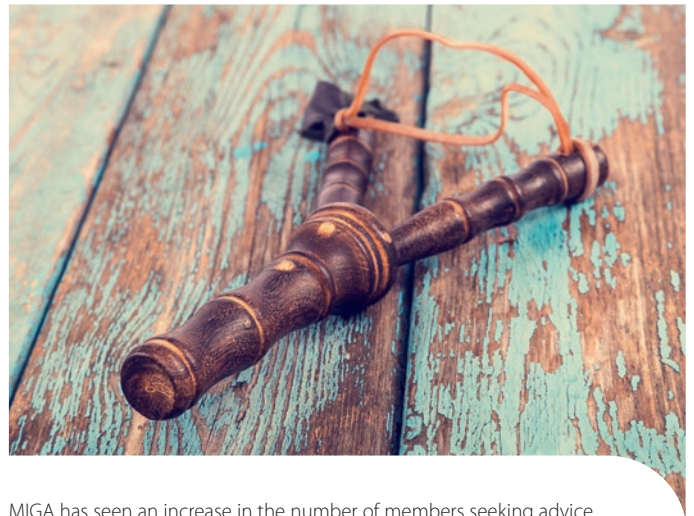
# Sticks and Stones

Bullying and harassment have been a hot topic in the medical media with surgical specialties particularly feeling the heat. It is extremely positive that these issues have been acknowledged and that positive action has been the outcome.

In September 2015, The Royal College of Surgeons apologised, on behalf of all Fellows, Trainees and International Medical Graduates, to everyone who has suffered discrimination, bullying or sexual harassment by surgeons.

The College acknowledged that behaviours had compromised the personal and professional lives of many in the health workforce and committed to bringing about cultural change.

## According to the Expert Advisory Group Report to the Royal Australasian College of Surgeons:



MIGA has seen an increase in the number of members seeking advice and support from our Claims and Legal Services team for situations that involve workplace issues of bullying and harassment.

We realise how distressing these experiences can be for you so this year at our Risk Management Conferences we are running a Hypothetical session titled 'Sticks and Stones' which explores bullying and harassment from a legal, ethical and professional perspective. This is an interactive session, so join your colleagues in the discussion and pose your questions to our expert panel.

### Comments about the session from your colleagues:

**"Excellent, relevant, informative, educational"** (GP)

**"Again, another entertaining, stimulating and thought-provoking expose which facilitates learning"** (Psychiatry)

**"Very topical. Bullying and managing trainees is on all our minds"** (General Surgery)



**Book online now to secure your place**

Visit the Client Area of our website for more information.

**Liz Fitzgerald**  
National Manager – Risk Services

## Making a popular choice

Thank you to all of our clients who recently renewed their insurance with MIGA. The introduction this year of direct debit payments proved extremely popular with 26% of renewed policies now paying by this method.

Client feedback has been overwhelmingly positive with many comments citing the ability to pay by direct debit without any additional fees or charges as a great benefit. We hope the introduction of this payment method makes your future renewals even easier and when paying by monthly direct debit, enables you to better manage your cashflow.

If you didn't take the option to pay your premium by direct debit at the June renewal it's not too late to set yourself up for an easy renewal next year!

**You can make arrangements now to commence direct debit payments at your next renewal. Simply contact your Client Services Officer on 1800 777 156 and they will be happy to assist you.**



## Case Study

# Snake oil or 'miracle' cure?



### Key issue

The difficulty of supporting patients and maintaining your own professional standards.

### Key takeaway

Delivering optimum patient care and complying with a patient's wishes needs to be balanced against your obligations as a medical practitioner.

### Anthony Mennillo

Manager – Claims & Legal Services

Our June Bulletin featured an article about a medical practitioner's obligations when ordering tests or investigations that, in the practitioner's mind, are not necessarily clinically indicated.

The same ethical dilemma and potential legal exposure can arise with practitioners providing treatment that they know very little about, as the following case study demonstrates.

A general practitioner had a young patient who was terminally ill with advanced cancer.

The patient's husband was desperately looking for a cure for his wife or, at the very least, prolong her life.

### The "miracle" cure

As has become commonplace, the husband consulted Dr Google and discovered a medical practice in a foreign country claiming to have a treatment. The treatment involved a live virus being injected into the body to "fight" the cancerous cells.

The husband intended to fly to the foreign country, purchase a large quantity of the virus and bring it back to Australia. He sought the practitioner's agreement to administer it to the patient.

The practitioner made some enquiries with the TGA and ascertained that the treatment was not registered in Australia. In his own view, the treatment was futile and a waste of money and he advised the husband accordingly in a diplomatic way. Despite that, the husband insisted the practitioner administer the treatment.

The practitioner sought our advice.

### MIGA's advice

The practitioner was advised that:

- His ethical and legal obligation was to the patient and not to the husband and, first and foremost, he needed to discuss the proposed treatment with the patient including his reluctance and unease with the treatment
- In the event the patient agreed to have the treatment, the practitioner did not have a legal obligation to carry out the patient's request on the basis that he did not believe it was clinically indicated and had very little knowledge about it
- If he agreed with the patient's request he should ensure that his discussion, (with the patient and her husband) about the experimental nature of the treatment, the unknown benefits and potential complications and side effects are fully documented with the patient ideally co-signing the medical record or a consent form acknowledging the advice given
- Despite informed consent being obtained, should an adverse outcome occur there was a risk the Medical Board would take a dim view on a practitioner administering treatment that they were not familiar with and which the practitioner did not believe was clinically indicated. While it is unlikely that the patient would bring a claim for compensation, the Medical Board's charter is to protect the public and may take disciplinary action against the practitioner.

There is often an internal conflict for practitioners trying to deliver optimum patient care and comply with a patient's wishes balanced with their own obligations as medical practitioners to ensure treatments are clinically indicated and in the patient's best interests.

Such conflicts may arise in all range of specialities and across the broad spectrum of the provision of health services.

Should you find yourself in a similar dilemma, we encourage you to contact our Claims and Legal Services team and speak to one of the solicitors to explore the pros and cons.





## New York City Marathon Fundraiser

Many of our members will be familiar with Anthony Mennillo, either through reading his articles in the Bulletin or having obtained advice or assistance from Anthony following a call to MIGA for medico-legal assistance.

Anthony was diagnosed with Multiple Sclerosis in 2008 and shortly after he commenced the Overcoming Multiple Sclerosis Program. This lifestyle program aims to control the progression of the disease through diet and exercise. The Program has assisted Anthony get the upper hand on the disease, both physically and mentally. Anthony has seen the lesions on his spine disappear, has been MS relapse free and is fitter and healthier than he has ever been. He is an inspiration to all his colleagues at MIGA!

There are over 2.5 million people around the world living with MS. As a charity, Overcoming MS is reliant on donations to continue their work improving the health and lives of people with MS. Anthony has put together a team of friends and family to run the 42.2 km New York City Marathon on the 6th of November this year to raise funds for the charity.

You can find out more about the OMS Program and charity at [overcomingms.org](http://overcomingms.org)

If you would like to support Anthony and Team OMS in their Aussie assault on the New York City Marathon you can donate at [justgiving.com/Team-OMS-NYCMarathon2016/](http://justgiving.com/Team-OMS-NYCMarathon2016/)

You can follow the Team's journey at [facebook.com/Team-OMS-NYC-Marathon-2016-187171431625970/](https://www.facebook.com/Team-OMS-NYC-Marathon-2016-187171431625970/)

MIGA is very proud to support Anthony and Team OMS in their fundraising efforts and recall the words of basketballer, Michael Jordan: "Some people want it to happen, some wish it would happen, others make it happen".

**Mandy Anderson**  
Chief Executive Officer

# Managing risk in your practice

## Lean on us

In a busy practice everyone needs someone to lean on. So when it comes to managing risk in your practice don't forget that MIGA is here to help. We can help you and your team in a number of ways – here is a reminder of what we have to offer.



### Phone advice

The friendly and knowledgeable Risk Management team is available to discuss any concerns you have about risks in your practice. We have team members locally in SA, NSW and QLD but no matter where you are in Australia we are just a phone call away. So when that tricky issue pops up please give us a call on 1800 777 156.



### Reviewing your practice policies

Sometimes writing new policies, or updating those that are a bit dusty, can seem daunting but we are here to make that process as painless as possible. We would be happy to review any new or updated policies that have been developed for the practice. Simply email them through to us along with any supporting documents and we will review them and provide you with advice and recommendations. You can email the risk management team at [risk@miga.com.au](mailto:risk@miga.com.au).



### Risk Resources

Over the years we have written many risk management articles and produced a lot of templates and sample documents. These are available to you from our website, simply visit the Risk Resources page.

These materials will help when putting together a practice manual, reviewing policy or procedures and even for staff training materials. They support you by promoting an understanding of risk in practice and provide practical tools to be used when you need them.

Our knowledge is available to you at the click of your mouse or tap on your tablet. And if you can't find what you need please call or email us.



### Self-assessments

One of our fantastic online tools that is available to you is our Practice Self-assessment. This tool enables you through answering a series of questions to assess how your practise is faring against a number of key risk areas.

Not sure if the way you deal with complaints will keep trouble at bay or if the system you have for maintaining privacy would stand up to scrutiny? Then this tool could be the answer.

Are you curious to see how others, in your area of practise, compare to you? This tool also allows you to access a histogram that enables you to benchmark your practice against others. All data is of course anonymous but it will give you a feel as to where your practice sits within the results of other practices that have also used the tool. To access this tool you will need to be enrolled in the Risk Management Program, so if you are not currently enrolled please email us at [risk@miga.com.au](mailto:risk@miga.com.au).

**Liz Fitzgerald**  
National Manager – Risk Services

# MIGA Plus Business Education

## Working with you to transform the practice of medicine



Dear members and policyholders,

The following is the first of an ongoing series of articles for the MIGA Bulletin from our newly established MIGA Plus partner, The Private Practice - convenors of education programs in business, financial and lifestyle management for healthcare professionals.

We look forward to working together with The Private Practice team to deliver valuable education initiatives to help you gain efficiencies in your practice and personal life.

### **Mandy Anderson**

Chief Executive Officer, MIGA

A business is a 'collaboration' between the principals, management and staff.

A good business can only stem from an effective collaboration between these stakeholders, one that has at its core a shared vision and the appropriate will, systems and procedures to see it through to fruition.

A medical practice is no exception.

At The Private Practice, we have long held that the collaboration between business-minded principal practitioners and an educated and empowered management team has the capacity to transform the practice of medicine.

True collaboration will better position the medical practice to efficiently meet the nation's evolving healthcare demands, as well as the lifestyle requirements of the practitioner and their family and the career aspirations of the practice management team and staff.

Quality service delivery and satisfying careers for practitioners is a vision we share with MIGA. It is with great excitement that we present a series of courses and workshops in Business, Financial and Lifestyle Management across the country throughout 2016, 2017 and beyond.

Our courses cover a variety of topics targeted to practitioners wanting to grow their practice in a way that secures and improves their lifestyle.

The courses cover topics such as:

- Medical practice business planning
- Personal risk management
- Medical practice IT
- Tax, accounting and business structures
- Wealth creation and lifestyle planning
- Growing your practice
- Attracting, retaining and grooming employed doctors.

Our collaboration with MIGA stems from a recognition that together we can help lift the level of knowledge and adoption of sound business and financial principles within the Australian medical community.

**Course information and booking links are available on the MIGA website from the MIGA Plus page.**

**As an MIGA client you have access to a special discounted registration fee of \$330.00 for all educational events. In addition, accompanying spouses or partners receive complimentary registration. This represents a saving of up to \$1,815 for an individual or \$3,960 for a doctor and their partner.**

**To access this special rate please use the Promotion Code "MIGAPLUS" when making your booking online.**

**For further information or queries please contact us at [enquiries@theprivatepractice.com.au](mailto:enquiries@theprivatepractice.com.au).**

We look forward to seeing you at one of our courses and working with you to realise the aspirations you have for your practice and lifestyle.

### **Steven Macarounas**

Head of Education and Managing Editor  
The Private Practice





## Advocacy update

### Dealing with the medical regulators

MIGA keeps a close eye on medical regulator issues, particularly with the Medical Board of Australia, AHPRA and various state-based Boards and complaints bodies.

There have been two key issues recently which we have been engaging in.

#### Medical Board revalidation

The Medical Board of Australia has released its revalidation discussion paper and Expert Advisory Group report.

Together with other stakeholders, we were briefed on revalidation proposals and consultation process in advance of the Expert Advisory Group releasing its final report mid next year.

MIGA has been involved in revalidation discussions for some time, particularly through meetings with Expert Advisory Group members and key stakeholders.

In short, the Board is considering an 'evolutionary' approach of strengthening CPD, and proactive identification and assessment of 'at-risk' and poorly performing doctors. The Board emphasises this is different from UK-style revalidation.

We are now looking carefully at the Board's proposals and considering how they will affect our members and health care in Australia more generally, so we can then contribute to the Board's consultation process.

More information about revalidation and its next steps is available on the Board's website - [www.medicalboard.gov.au/News/2016-08-16-revalidation.aspx](http://www.medicalboard.gov.au/News/2016-08-16-revalidation.aspx).

#### Queensland Health Ombudsman / AHPRA inquiry

The Queensland Parliament is conducting an inquiry into the operations of the Office of the Health Ombudsman, the body which receives complaints about medical care in Queensland, and how it, together with AHPRA and the Queensland Medical Board, handles complaints.

Through assisting our members with the complaints process, and monitoring how the process has developed, we can see where problems have developed.

MIGA contributed to the last review of the complaints process around three years ago, which led to the Ombudsman's establishment. We emphasised the need for efficient and fair complaints handling, and expressed concern about powers to immediately suspend or restrict practice without an opportunity to make submissions, and unrealistic timeframes for practitioners to respond to complaints.

We are still concerned about these issues, emphasising this in our latest submission. We have also raised concerns about delays in dealing with complaints and how complaints are handled by different bodies, and detailed ways matters involving clinical performance or a doctor's health could be handled better.

As always, members with an interest in these or other medico-legal issues are welcome to contact us for further information.

#### Timothy Bowen

Senior Solicitor – Advocacy, Claims & Education



## Trending now

### Multi-disciplinary practices

Is your practice part of the new wave of multi-disciplinary practices springing up around Australia?

There seems to be a growing trend for medical practices to offer a mix of complimentary services ranging from nurse practitioners and physiotherapy to dietitians and dentistry. There are many benefits to offering complementary services within a practice both for patients and from a business perspective. Convenience is a key benefit for patients and referrals across the different practitioners makes good business sense for the practice.

We see some variation in the legal and business structures that support multi-disciplinary practices. In some cases the professionals may be employed by the business, but more often it is a case of co-habitation, where the various professionals share a location, perhaps renting rooms from the business holding the lease on the premises.

If you own or run a practice it is important to understand that these arrangements present insurance implications for the various practices or professions that make up a multi-disciplinary practice. The risks largely stem from:

- The grouping of different types of practitioners and their individual professional indemnity insurance arrangements
- Sharing services and staff, such as reception and administration
- Ownership and employment arrangements which may result in complex legal and business structures.

From a professional indemnity perspective, the varying requirements to hold insurance and the policy covers available to different types of practitioners make it extremely important that you review your professional indemnity arrangements and consider a policy that protects the practice entity and staff.

In the absence of its own insurance, if the business is the subject of a claim, it will need to fund its own legal defence and the cost of any compensation. In many instances this means the business owner(s) will have to meet the costs.

Depending on the nature of the claim these costs can be significant and have the capacity to place the business in financial difficulty or require the owner(s) to liquidate personal assets.

We have assisted many practices to review their existing practice insurance arrangements and their need for practice professional indemnity cover. We have also produced a free e-book to help you understand the types of risk facing your practice which can be downloaded from our website.

If you would like assistance reviewing your current arrangements or if you are setting up a new practice we would be very happy to advise and assist you and we encourage you call us and tap into our insurance expertise.

#### Neil Rankine

Business Development Manager – Healthcare Companies

# Rocky relationships

## Help is at hand for midwives

Access to free medico-legal advice is an important benefit that your insurance with MIGA provides you. Don't forget to call us for assistance. Often you may know the answer but we are here to provide assistance and reassurance that you are on the right path and ensure that you understand and can deal with any medico-legal issues that may arise.

Many midwives have called us to 'trouble shoot' scenarios arising from their daily interactions with their clients. Recently we had the opportunity to assist two midwives who found themselves in complicated situations:



### Case Study

A midwife rang to discuss her worries about recent interactions with a woman who was 28 weeks pregnant with her third child.

There were concerns about the woman's mental health, however, she had refused to see a general practitioner, psychologist or psychiatrist.

The pregnancy was described as "tricky". The woman had placenta previa and was to give birth by caesarean section. She understood and was accepting of this.

The woman was not coping well with this pregnancy and her husband was working away from home at the time.

The following options were discussed and considered:

- Calling a mental health team to assess the woman
- Calling an ambulance for transfer to hospital for assessment
- Continuing to engage with the woman to support and encourage her to accept medical input.

The midwife was concerned with the first two options and the ramifications for her relationship with the woman and it was agreed this level of intervention was not required at this time.

It was agreed that as a first line strategy the midwife would meet with the woman (and if possible her husband) and talk through the benefits of increased medical support to ensure the best possible outcome for herself, her unborn child and her family.

The most important aspect of this discussion with the midwife was the documentation required in a case such as this one. Comprehensive notes on discussions, advice and outcomes is essential.



### Case Study

A midwife called seeking advice on her rights and obligations for ending the professional relationship with a client. The woman was 36 weeks pregnant with a significant history of pre-eclampsia in a previous pregnancy. The woman intended to birth at home and also had ideas about inducing labour at 36 weeks.

The midwife was extremely uncomfortable with this decision and firmly believed this would put the life of the mother and the baby at risk. The midwife considered that the mother should birth her baby in hospital.

The woman had sent the midwife a very "nasty" email making a number of unfair and incorrect accusations about the midwife's care.

Our advice was that clearly the relationship had broken down and that it was entirely appropriate to terminate the care.

We provided advice and reassurance on the appropriate process to terminate the relationship.

A Fact Sheet **Terminating the Midwife-Woman Relationship** is available on our website.

If you need advice, guidance or reassurance about any difficult client interactions we encourage you to call and discuss it with one of our experienced solicitors.

You may find a different perspective very beneficial and we are here to help you.

#### Cheryl McDonald

Manager – Claims & Legal Services

Always the  
first choice for  
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protection

**miga**  
ALWAYS

#### National General Enquiries and Client Service

Free Call 1800 777 156  
Facsimile 1800 839 284

#### National 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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