

MEDEFEND: Claims or Circumstances Guidelines on When to Notify Marsh

From 1.1.2021, it is mandatory for doctors practicing in the private sector and those doing locum work to obtain a Professional Medical Indemnity. Professional Indemnity protects both your practice and your patients. Under the MEDEFEND Scheme, when does a situation arise that you should be alerting your Marsh Brokers?

YOU MUST NOTIFY

A. Immediately and no later than 24 hours WHEN YOU HAVE BEEN SUED

How would I know?

- You have received a Writ (a document naming you as a Defendant in a legal Suit).
- The Writ will in general be accompanied by a Statement of Claim (Pernyataan Tuntutan). This document sets out the particulars of the allegations raised against you.

Why is it important?

- Upon receipt of a Writ you have **14 days** to file an appearance in Court. Failing which, a judgment in default of appearance **MAY** be taken against you.

CASE STUDY:

- An internal miscommunication within an Insured's clinic resulted in a notification of a Writ 8 days after it was received.
- All supporting documents were received in 3 working days before the deadline to file an appearance in Court.
- Due to the late notification, the Insurers were not in a position to formalise a decision on policy coverage prior to the deadline. A panel solicitor was appointed but on a *without prejudice basis* in order to immediately attend to the matter.

B. Promptly and no later than 48 hours WHEN A COMPLAINT HAS BEEN LODGED AGAINST YOU TO THE MALAYSIAN MEDICAL COUNCIL ("MMC") or the MALAYSIAN DENTAL COUNCIL ("MDA")

How would I know?

- You would have received written notification by way of a letter from the MMC.

Why is it important?

- A complaint to the MMC is a serious matter that should not be taken lightly. The role of the MMC is to deal with all disciplinary matters involving registered medical practitioners.
- A finding of guilt may result in a fine, a reprimand, a suspension or a striking off the medical register.

CASE STUDY:

- An Insured received a letter from the MMC notifying of the complaint lodged by the Patient and requesting for an explanation within 30 days.
- 8 days later, the Insured responded to the letter from the MMC without notification to us.
- In his response, the Insured made substantial admissions in respect of his treatment and management.
- The Insured later explained that he did not appreciate the gravity of a complaint to the MMC. Instead of putting his best case forward, he had instead conceded his position in an attempt to resolve the matter.

C. Promptly and as soon as is practicable when there is A DEMAND FOR COMPENSATION or A COMPLAINT

How would I know?

1. A Demand for compensation or complaint or both may come in various forms.
2. It may be written or verbal.
3. It may come directly from the Patient or the Patient’s relatives or estate or a solicitor engaged by the Patient or the Patient’s estate.

Examples of Demands	Examples of Complaints
<ul style="list-style-type: none"> • via a written / verbal request from the Patient or a Patient’s relative; • via a Letter of Demand from a solicitor engaged by the Patient / estate of the Patient. 	<ul style="list-style-type: none"> • Complaints may be in written form via <ul style="list-style-type: none"> ○ letter ○ e-mail ○ feedback forms ○ WhatsApp ○ social media platforms • Complaints may be verbal through <ul style="list-style-type: none"> ○ direct communication with you ○ through the hospital / clinic personnel • Complaints may come <ul style="list-style-type: none"> ○ directly from a Patient ○ from a Patient’s relative usually a care giver / parent / spouse / child ○ from the estate of a Patient if the Patient is deceased ○ from solicitors appointed by a Patient or the Patient’s estate.

Why is it important?

4. It allows MEDEFEND Insurers to assess the matter at an early stage and take necessary steps, if deemed appropriate to respond to the Complaint / Demand.

CASE STUDY 1:

- The Patient's family issued a Complaint against the Insured. A verbal request for compensation was made at a meeting held with the Patient's family.
- The request for compensation was not responded to.
- The Patient's family thereafter engaged solicitors.
- It was only upon receipt of the solicitor's letter 5 months later and escalation of the matter, that the Insured first notified us of the complaint and the request for compensation.

CASE STUDY 2:

- The Patient issued a Complaint against the Insured. Meetings were arranged in an attempt to resolve the matter but were unsuccessful.
- 4 months later the Insured received a Writ. It transpired that the Complaint occurred prior to the Insured's MEDEFEND policy being incepted.
The Insured had failed to declare his awareness of the Complaint in MEDEFEND Proposal Form when he first applied.

CASE STUDY 3:

- Insured did not promptly notify Marsh when he received a Complaint by a Patient.
- Two years later, the Insured received a Writ.
- It transpired that there were gaps in the Insured's policy with MEDEFEND. Due to the policy issues, the Insurers were not in a position to formalise a decision on policy coverage before the Court deadline.
- Due to the urgency, the Insurers appointed a panel solicitor but only on a *without prejudice basis* to provide immediate assistance to the Insured.

YOU SHOULD NOTIFY

- A. when there is a REQUEST FOR A MEDICAL REPORT / WRITTEN EXPLANATION in the following circumstances**
- A Patient has suffered an unexpected adverse incident or outcome; OR
 - You are aware of issues relating to the treatment and management of the Patient; OR
 - The Patient / Patient's relatives have expressed dissatisfaction; OR
 - The request has come by way of solicitors engaged by the Patient / estate of the Patient; OR
 - You received a written request from the Hospital or Ministry of Health following a complaint / death of a Patient.
- B. when there is an UNEXPECTED OR ADVERSE INCIDENT / OUTCOME involving a Patient**
- There is no exhaustive list in these circumstances, however it is always a good idea to call Marsh for advice when there is an unexpected death of a Patient.

HOW TO MANAGE YOUR RISKS

Handling of documents

- (1) Always ensure employees authorized to accept legal documents on your behalf are trained to bring such documents to your attention at the earliest opportunity to avoid any adverse outcomes to you.
- (2) Have a designated area which is secure for you and/or the employee to place the said legal documents so that it is easily accessible, easily identifiable and not prone to being misplaced or overlooked.

Communication

- (3) At first instance, always notify Marsh of a complaint. When preparing your response to a complaint take your time to go through in detail the nature of the complaint, your provision of advice and treatment and management of the Patient and upon a detailed discussion with a panel solicitor, when appointed.
- (4) Always notify Marsh of a request from a regulatory body. When preparing your response, always ensure you respond within the deadline set by the regulatory body. However, do not rush out a reply for the sake of a quick response. All replies should be thorough and address the issues.
- (5) Always ensure that a Patient is communicated to. You may do this through various channels. Including maintaining a good relationship with the Patient or via your Hospital or even us, your Brokers, if appropriate.

Early notification

- (6) Notify us, promptly, of complaints and/or demands for compensation, especially in circumstances wherein you think there may be issues (whether negligence related or otherwise) with respect to your provision of advice, treatment and management of a Patient. This will allow the Insurers to decide on whether to engage the Patient to resolve the matter amicably.
- (7) It is not always the case that a Patient seeks monetary compensation, therefore, engaging with a Patient may give a clearer picture of what the Patient wants and what the issues are to possibly avoid escalation.
- (8) Do not wait for matters to escalate, such as an appointment of solicitors by a Patient before you notify us.

Disclosure at the point of application / renewal

- (9) Always inform us of known complaints at the point of application of your policy. A complaint is generally deemed a circumstance which is reasonably likely to give rise to a claim in the future. Your failure to notify MAY result in Insurers repudiating cover due to failure to disclose such information.
- (10) Informing your Brokers, Marsh of a known complaint as soon as practicable when a complaint arises. This will allow for any issue of policy coverage to be resolved early and well in advance of a Writ.
- (11) A late notification of a complaint, only at the point of receipt of a Writ **MAY** result in Insurers declining cover, especially when Insurers' assessment that the matter could have been resolved at an earlier stage.

WHY EARLY NOTIFICATIONS TO US ARE SO IMPORTANT

1. Prompt notifications allow for urgent management of the claim or circumstance.
2. Upon receipt, we are able to provide you on the spot advice and assistance.
3. Where appropriate, we are able to take the necessary steps in engaging and appointing a panel solicitor to represent you without delay.
4. Most importantly, it allows for early assessment of the claim or circumstance and allows for strategies to be formulated early to appropriately address the claim or circumstance.

In summary:

You **MUST** notify when:

- (1) you have been sued;
- (2) a complaint has been lodged against you to the MMC;
- (3) you receive a demand for compensation; and/or
- (4) you receive a complaint.

You **SHOULD** notify when:

- (1) you receive a request for a medical report or written explanation; and/or
- (2) there is an adverse incident or outcome involving a patient.

All notifications received are assessed and subject to the terms and conditions of your MEDEFEND policy. If you are in doubt, please contact us and we will be happy to discuss and assist you.

A message from



Christine J. Ellis

MEDEFEND Legal Claims Manager
Marsh Insurance Brokers (Malaysia) Sdn Bhd
T: +603 2723 3392 | M: +6016 333 2099
Email: Christine.Ellis01@marsh.com