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Professional Indemnity Insurance for Medical Professionals

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Doctors in India, since Vedic time, have been equated to God. No other profession, whether it is priest, lawyers, judges or politicians, occupies the same status as that of the medical doctors. Medical profession is the noblest profession.

However, doctors are also human beings and "**to err is human**". Medical error or injury has been known since the time of Hippocrates as principle of non-maleficence, derived from the doctrine of "*primum non-cere*", which means "first do no harm" and its natural corollary, beneficence or "do good", which means doing the right thing for the patient.

With the modern advancement in medical profession, the doctor-patient relationship has also changed from "paternalism", where doctors were "parent figures" taking medical decisions on behalf of their patients to the current "patient-centric" where the patient is an "equal partner". Thus, the type of patients has also changed from ignorant to enlightened.

With the advent of Consumer Protection Act, 1986 and various judgments by the Hon'ble Apex Court of the country and other courts and commissions, patients have started questioning the doctors and their treatment. Numerous cases are being filed against the doctors, hospitals, medical staff, etc., under consumer law, criminal law, civil law, etc. Compensation in lakhs and crores of money is being awarded in favor of the patient or his/her relative, which is to be paid by the doctor from his own pocket.

With increasing litigations against the doctors in the country, it has become very important and vital for the doctors to obtain insurance cover against all such litigations and compensation to be paid, if any. Accordingly, in the year 1991, the **Professional Indemnity Insurance** was introduced for the doctors and hospitals in the country.

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MEANING OF THE TERM "INDEMNITY"

The term "indemnity" means "to compensate" or reimburse. The principle of indemnity is strictly followed in liability insurances.

Indemnity means a legal obligation to cover the liability of another. "To indemnify" does not merely mean to reimburse in respect of money paid but to save from loss in respect of the liability against which indemnity has been given.

"To indemnify" means to make good a loss suffered by a person in consequence of the act or default of another.

Indemnity is a contract, express or implied, "to keep a person who has entered, or is about to enter, into a contract of liability indemnified against the liability independently of the question whether a third party makes default or not."

PROFESSIONAL INDEMNITY INSURANCE

Professional indemnity insurances are designed to provide the insured person protection against the financial consequences of legal liability. This policy is meant for professionals to cover liability falling on them as a result of errors and omissions committed by them whilst rendering professional service. If the insured is legally liable to pay damages or compensation to others, the policy will indemnify him subject to the terms and conditions and limitations of the contract.

Indemnity is also available in respect of legal costs awarded against the insured as well as legal costs and expenses incurred by the insured with the written consent of the insurers in the defense or settlement of claims.

IMPORTANCE OF PROFESSIONAL INDEMNITY INSURANCE IN MEDICAL PROFESSION

The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care.

The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

The Hon'ble Apex Court in the matter titled as **"Kusum Sharma & Others versus Batra Hospital & Medical Research Centre, 2010 (3) SCC 480** has held that-

> *"94. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:*
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> *i. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.*
>
> *ii. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment…."*

Gross negligence is intentional failure to perform a manifest duty in reckless disregard of the consequences. Ordinary negligence is based on the fact that one ought to have known results of his acts, while gross negligence rests on the assumption that one knew results of his acts, but was recklessly or wantonly indifferent to the results.

If there is gross medical mistake, then the doctor will be liable for the negligene committed by him. In such case, doctor would be liable to pay huge compensation to the patient or his/her relatives.

To protect oneself from such huge compensation to be paid, if any, it is important and vital to obtain professional indemnity insurance.

SALIENT FEATURES OF PROFESSIONAL INDEMNITY INSURANCE

Indemnity

The professional indemnity insurance is meant for professionals to cover liability falling on them as a result of errors and omissions committed by them whilst rendering professional service. The indemnity applies only to the claim arising out of bodily injury and/or death of any patient caused by or alleged to have been caused by error, omission or negligence in professional service rendered or which should have been rendered by the insured or the assistants or the team of people employed by the insured.

Policy Period

Period commencing from the effective date and hour as mentioned in the policy and terminating at the midnight on the expiry date as mentioned in the policy.

Period of Insurance

Period of insurance means period commencing from the retroactive date and terminating on the expiry date as mentioned in the policy.

Commission of Act

The Act (medical negligence by doctor or hospital) has to be committed during the period of insurance commencing from retroactive date.

Retroactive Date

Retroactive date is the date when the risk is just incepted under "claims made" policy and thereafter renewed without any break in the period of insurance.

Limit of Indemnity

Irrespective of the number of persons or entities named in the insurance policy or added by endorsement, the total liability of the insurance company for damages inclusive of defense costs shall not exceed the limit of indemnity as mentioned in the policy.

Defence Cost

The insurance company pays all costs, fees and expenses incurred with their prior consent in the investigation, defense or settlement of any claim made against the doctor or hospital and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct nexus to any claim made or which might be made against the insured. Such costs, fees and expenses are called defence cost.

Claims Series Clauses

Where series of losses and/or bodily injuries and/or deaths are attributable directly or indirectly to the same cause or error or commission relating to discharge of professional services all such losses and/or bodily injuries and/or deaths claims shall be added together and all such losses and/or bodily injuries and/or deaths

IJCP SUTRA: "Eat a variety of foods from each food category, like fruits, vegetables and lean meats. If you think you need vitamin supplements, check with your doctor first."

shall be treated as one claim and such claim shall be deemed to have been made when the first claim was made in writing.

Registration

- **Doctor:** The doctor should be duly registered with his/her respective medical council.
- **Hospital/Medical establishment:** The Hospital/Medical establishment should be registered with competent authority as per local law and rules. In territories where there is no registration facility, then following minimum norms have to be complied with for considering the indemnity insurance policy:
  - At least 10 in-patient facility
  - Fully equipped operation theater of its own
  - Fully qualified nursing staff in its employment round the clock, unless indicated to the contrary and additional premium paid
  - Fully qualified doctor/doctors should be in charge round the clock
  - The insured shall comply with registration formalities as and when official regulations or laws are enforced.

Short Period Policy

Short period policies are not permitted. However, in case of cancellation of the policy by the insured, short period scale rates as provided for will be applicable.

Compromise/Settlement

In normal course, all claims for compensation have to be legally established in court of law. However, insurers can arrive at compromise or settlement if *prima facie* liability exists under the policy.

Jurisdiction

Jurisdiction applicable will be of Indian courts only.

Exclusions

- Liability assumed under the agreement
- Cosmetic surgery (cosmesis)
- Liability arising out of:
  - Deliberate, willful or intentional non-compliance of statutory provisions
  - Loss of goodwill, libel, slander, false arrest, defamation, etc.
  - Fines, penalties, punitive or exemplary damages
  - Genetic injuries caused by X-ray treatment or diagnosis with radioactive substances
  - Professional services rendered by the insured prior to retroactive date
  - War and warlike perils
  - Nuclear fuel/ionizing radiation/radioactive contamination.

Premium Rate of Insurance

Separate rates of insurance are applicable to doctors, medical establishments, medical professionals, etc. Group discounts are available with the insurance companies for a group of doctors. Additional premium is applicable in case doctors want to cover qualified staff working with them. Whenever multiple specializations are involved, then the rate of insurance shall be of the specialization which attracts higher rate of insurance.

List of Eligible Medical Establishments

- Laboratories and diagnostic centers
- Hospitals
- Mental homes
- Nursing/convalescent homes
- Homes for physically disabled
- Clinics
- Dispensing pharmacies
- Veterinary hospitals and/or clinics and the like.

BENEFITS OF PROFESSIONAL INDEMNITY INSURANCE

- It is beneficial not only to the doctors or hospital but also to the patients and their dependents because the insurance company takes care of the compensation.
- Retroactive benefit: This means that the insured will be covered for any professional act or omission occurring during the period of insurance.
- It would take care of the amount of damages against third party.
- Scheme will also compensate on the principle of "no fault liability" to give some relief in the case of death or permanent disablement of the patient.
- The company will also pay the defense costs, which have a direct relevance to the claim.

LIMITATIONS OF PROFESSIONAL INDEMNITY INSURANCE

The only limitation that this policy has is that the amount of compensation is restricted by the limit of indemnity as mentioned in the policy.

CONCLUSION

Professional indemnity insurance is a tool, which not only meets the claim of compensation awarded against doctor/hospital but also gives a sense of mental security that even if some negligence is proved, the insurance company will take care of it.

Professional indemnity insurance covers all sums, which the insured professional becomes legally liable to pay as damages to third party in respect of any error and/or omission on his/her part committed whilst rendering professional service.

The insurance companies not only pay the compensation to other party but also arrange for the legal help from advocates because they sometimes join hand with other party for monetary gains with an excuse that it's the insurance not the doctor who is to pay the compensation.

However, one must never forget that the security is only monetary. The person's reputation and goodwill is not insured. So, all doctors should use their reasonable standard of care while treating and operating on their patients.

SUGGESTED READING

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2. Professional indemnity insurance *vis-a-vis* Medical professionals by Sweta Agarwal * & Swapnil S. Agarwal, J Indian Acad Forensic Med. 31(1).
3. Kusum Sharma & Others versus Batra Hospital & Medical Research Centre, 2010 (3) SCC 480.
4. Legal dictionary.

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Abnormal Clotting Common in More Severe COVID-19

Endothelial damage and subsequent clotting appear to be common in severe and critical COVID-19, which may have implications for treatment. Clots in the small vessels of all organs, not only the lungs but also the heart, the liver and the kidney, have been described by Bin Cao, MD, of the National Clinical Research Center for Respiratory Diseases in Beijing. The investigators had reported March 11 in *The Lancet* that D-dimer levels >1 μg/L at admission were predictive of 18-fold increased odds of dying before discharge among 191 COVID-19 patients seen at two hospitals in Wuhan. D-dimer can exceed 70 or 80 μg/L.

Acute cardiac injury was reported in 12% of COVID-19 cases in a small case series in *The Lancet* which was cited by Cao. Another study reported a rate of 7.2% among 138 patients from another hospital in Wuhan.

Comorbid CVD is a distinct risk factor for COVID-19, associated with a mortality rate of up to 10.5% among over 70,000 patients in one study. The virus can potentially bind to the endothelial cells and damage the blood vessels, especially the microcirculation of the small blood vessels, leading to platelet aggregation. It is not a myocardial infection, not a stroke, but it is the clots all over the body. Hence, the high D-dimer. It is because of the wide spread of abnormal coagulation all over the body.

Besides endothelial shedding and thrombosis in vessels, autopsies have shown inflammatory changes in the heart with fine interstitial mononuclear inflammatory infiltrates, but no viral inclusions in the heart. Other potential mechanisms for cardiac damage include hypoxia-induced myocardial injury, cardiac microvascular damage and systemic inflammatory response syndrome. In the majority of mild and moderate cases, the only cardiac impact was some tachycardia and slightly higher troponin.

Investigators highlighted the case of a COVID-19-infected man with apparent ST-elevation myocardial infarction (STEMI) by ECG, troponin T >10,000 ng/L and creatine kinase muscle and brain (CK-MB) 113 ng/L, but coronary angiography showing no stenosis. After treatment with steroids, immunoglobulin, norepinephrine, diuretic, a vasodilator and antibiotics, the man's ejection fraction recovered from 27% to 66% and his enlarged heart normalized. (*Medpage Today*)