

First Defence

A photograph of a man with glasses and a brown and white jacket sitting on the floor, focused on his laptop. In the foreground, the legs of a person wearing blue jeans and a plaid shirt are walking past him from right to left, partially obscuring the view. The background is a plain, light-colored wall.

JMOs + Doctors in Training • Autumn 2009 Issue

MDA National

Facebook - Who's Looking at You?

Taking Care of Your Signature

Public Patient Cover - Is It Enough?

How MDA National Helps You

Welcome to our first issue of *First Defence* for 2009.

We would like to make a particular acknowledgement to the 2009 Interns who will be receiving *First Defence* for the first time.

First Defence provides junior doctors with medico-legal and risk management information that is specifically designed for your working environment and responsibilities. We also support our trainee Members with a series of medico-legal case studies booklets. So keep your eye out for the booklets which include topics such as Dealing with Complaints, Giving Evidence in Court and Clinical Documentation.

In this issue...

Page 3: Facebook: Who's Looking at You?

Page 5: Public Patient Cover - Is It Enough?

Page 6: Taking Care of Your Signature

Page 7: When a Scalpel Comes Flying Across the Room: Human Hazards that Put You and Patients at Risk

Page 8: Risk Management Workshops 2009

Page 9: Take Your Break on Us Competition Winners

MDA National supports junior doctors with medico-legal advice and information that relates to your working environment as a benefit of your Professional Indemnity Insurance Policy*.

Many of your colleagues have sought assistance from our Medico-legal Advisors. However some junior doctors may not be aware of all the type of services that we can provide.

Table A. demonstrates some common situations where junior doctors contact us and how MDA National can help.

All MDA National Members are encouraged to contact us when in need of medico-legal information.

As a Member, you have access to our 24 hour a day, 7 days a week medico-legal advice line. If you require additional advice or information on this or any other medico-legal issue, please don't hesitate to contact our medico-legal advisors on our freecall number 1800 011 255.

* The benefits of your insurance policy (underwritten by MDA National Insurance) described in the table to the right are subject to the terms and conditions of the policy.

TABLE A.

Medico-legal Issue	How MDA National Can Help
I have been asked to write a report for the coroner.	<ul style="list-style-type: none"> MDA National's Claims Managers can provide you with assistance in writing coronial reports. MDA National's Claims Managers can review the report before providing it to the coroner.
I have been asked to attend a coronial inquest (hearing) as a witness.	<ul style="list-style-type: none"> MDA National can provide legal representation at a coronial inquest if necessary.
I have just received my first complaint and I need to respond.	<ul style="list-style-type: none"> MDA National can provide you with assistance in dealing with complaints (written or oral). MDA National's Claims Managers can review your response before sending to the complainant. Ongoing assistance if the complaint is fully investigated.
I have been asked to write a medico-legal report.	<ul style="list-style-type: none"> MDA National can provide you with assistance in medico-legal reports. MDA National's Claims Managers can review the report before providing it to the requestor.
There has been a conflict of interest with a senior colleague.	<ul style="list-style-type: none"> MDA National can provide assistance with a written response. A Claims Manager can attend any meetings with you if necessary. Ongoing advice and Follow Up.
A medico-legal issue could have occurred but did not arise (near miss).	<ul style="list-style-type: none"> MDA National can provide medico-legal and risk management advice. MDA National Claim Managers can provide the hospital with a presentation relating to the issue.
I was involved in an incident that I think could result in a sexual misconduct allegation.	<ul style="list-style-type: none"> MDA National can provide advice (written or oral). Support. Assistance with any investigation. Follow Up.

Facebook: Who's Looking at You?

Case History

In September 2008, a JMO in the UK was suspended from work for six weeks after describing a senior colleague as a 'f***ing s***' on an online social networking forum. A friend of the senior colleague saw the posting and made a complaint about the comments to the JMO's employer. The complainant said she felt compelled to complain after seeing the 'excrementous and scatological' language used in the posting. The JMO apologised for the comments and organised for their removal from the website.

Discussion

Online social networking in medicine is a worldwide phenomenon. Increasing numbers of medical practitioners and medical students are using social networking sites to communicate and share information. The main types of online social networking services are those which contain directories of some categories, a means to connect with friends and recommender systems linked to trust. Online social networking sites include Facebook, MySpace, Hi5, Nexopia, orkut, Friendster and Bebo. Facebook is currently the largest and fastest growing site in the world. In June 2008, Facebook attracted 132.1 million unique visitors. It is clear that not only your friends and colleagues are using these sites, but also many of your patients, teachers and employers. And therein lies some potential problems for medical users of online social networking. As noted by the UK's General Medical Council:

"Medical students and doctors are entitled to a private life and to use their time away from studying and work as they wish [but they] should consider whether the images of what was fun at the time could cause embarrassment if they were accessed by patients or the public, later. In extreme cases such images could lead to a complaint being made".

One of the main medico-legal risks for JMO users of online social networking is breach of patient confidentiality. Confidentiality is an

accepted and fundamental basis of the doctor-patient relationship. Patients have a right to expect that information held about them will be held in confidence by their doctor. The vast majority of cases of breach of confidentiality occur inadvertently. The use of online social networking can lull JMOs into a false sense of privacy and security but in reality the information contained on these sites can be printed and distributed widely (unlike verbal comments). JMOs should also be aware that simply removing the name of the patient will not protect you from an allegation of breach of confidentiality. While medical negligence claims arising out of an allegation of breach of confidentiality are uncommon, they can cause a doctor to become the subject of a complaint and disciplinary proceedings.

A problem arising from the use of online social networking is how we choose to define an 'online friend'. If one's profile was only available to true friends, there would be less cause for concern. However, in a recent study, the Facebook profiles of a group of US medical students were reviewed with the aim of determining how dangerous Facebook could be in the intersection of personal and professional identities. The study found that the profiles of two thirds of the medical students were available to Facebook users who were not even listed as friends. This may have been a conscious decision in some cases, but it may also reflect a widespread ignorance of the privacy settings that are available.

The study also found that some profiles displayed photographs of the students drinking to excess, engaging in sexual behaviour and, in one case, posing with a dead animal. Three of the 10 students had joined groups on Facebook that could be interpreted as sexist or racist. While it is arguable whether the private communications of medical students and JMOs should have an effect on their ability to practise medicine, the posting of private material on such a public arena has the potential to undermine trust in the individual medical professional and also the profession as a whole. The reality is that doctors and would-be doctors are held to higher standards of personal conduct than other groups in society.

A senior lecturer at a UK university recently commented that he had viewed applicants' Facebook profiles out of curiosity during the admission process for medicine. Although he maintained that this had no bearing on his decisions, it highlights the lack of privacy and potential risks of online social networking.

As noted by the Information Commissioner's Office in the UK:

"The cost to a person's future can be high if something undesirable is found by the increasing number of education institutions and employers using the internet as a tool to vet potential students or employees".

Risk Management Strategies

- Be aware of the potential medico-legal risks of using online social networking, such as Facebook.
- Make your profile private, so only your friends can view it.
- Use commonsense and discretion when choosing your profile photo and other information.
- Be wary of joining a virtual Facebook 'group' to discuss workplace and/or patient issues.
- Be careful not to breach patient confidentiality.
- Do not add patients to your network of 'friends'.
- Remember that the information on your profile may be difficult to permanently delete.

Dr Sara Bird Medico-legal Claims Manager

Reference

Graham N, Moore P. *The Dangers of Facebook*. *Stud BMJ*. 2008;8(10):354-355.

Public Patient Cover - Is It Enough?

In all Australian States and Territories, salaried employees are entitled to indemnity for civil liabilities arising from the treatment of public patients in a public hospital.

As you may be aware, this employer indemnity normally excludes cover for Medical Board inquiries, Coronial inquests and inquiries and Complaints body inquiries. However your MDA National Insurance Professional Indemnity Insurance Policy can assist you with legal costs associated with these matters.

What you may not be aware of is that any work (including surgical assisting, locum or private work) or training undertaken outside of the public hospital setting may also not be covered by the state/hospital indemnity.

In the Summer 08 issue of *First Defence* we wrote an article highlighting the needs of locums. In addition to the situation faced by locums, participation in a training program may also give rise to situations where you are not entitled to state indemnity even though you are treating public patients. GP Registrars in South Australia who are not employed by SA Health but are training in a rural area where the GP Practice provides services to the local public hospital are unlikely to be indemnified for these services by the state indemnity scheme. This can be a significant risk as some GP Registrars in this situation will be involved in providing obstetric services.

The MDA National Insurance Professional Indemnity Insurance Policy excludes indemnity for civil claims which arise out of the provision of treatment, advice and services to public patients in a public hospital. Please refer to 10.5 of the policy wording which states:

10.5 *We will not indemnify you under this policy when the claim arises in any way from the provision of healthcare services to a public patient in a public hospital.*

If you do require cover for claims arising from public patients in a public hospital you need to complete a separate proposal form to request such cover.

In Victoria, private hospitals may be used as an extension of the public hospital and trainees might undertake part of their training in the private hospital. Cover may be available under the state scheme (the V.M.I.A.) but only if specific approval is granted. If cover was not available through the V.M.I.A., the public patient exclusion in the MDA National Insurance Professional Indemnity Insurance Policy would not apply as the healthcare services would have been provided outside of the public hospital setting. However, doctors in this situation should still ensure their category is appropriate.

Similar situations may exist in other states. The important issue for Members to note is that you need to consider your indemnity requirements based on your individual circumstances, especially if one of the situations noted above applies to you.

If you have any questions or concerns, please do not hesitate to contact one of our Member Services Advisers on freecall 1800 011 255.

Tarlei Mildenhall
Senior Underwriter

Taking Care of Your Signature

Case History

The JMO was doing an evening shift when he was called to the oncology ward at about 8pm. The nurse asked the JMO if he could 'witness' the signature of one of the patients. The patient's son had brought in a form for his father to sign to give the son an enduring power of attorney. The form required a second signatory stating that the patient was 'of sound mind' at the time that the form was signed. The JMO spent about 15 minutes discussing the form with the patient and the son. There were no other family or staff members present at the time. At the end of the discussion, the patient and the JMO signed the form and gave it to the son.

A few weeks later, the JMO received a phone call from a staff member in the hospital's medical administration department. The administrator wanted to know if the JMO had completed a form attesting to the fact that the patient was mentally competent to understand the nature and effect of granting an enduring power of attorney to his son. The JMO replied that he felt his role was to simply witness the patient's signature and he thought the patient had understood what was happening, despite his illness. According to the administrator, the patient's wife had complained to the hospital that the son had obtained an enduring power of attorney. There was a family dispute and the mother and son had not spoken to one another for some time. The patient's wife felt that her husband had signed the form under duress. The treating oncology team were concerned that the patient's illness, including his widespread cerebral metastases, was such that he may not have had the mental

capacity to understand the nature and effect of completing the form. The hospital wanted the JMO to provide a statement about his involvement in the matter. The JMO sought advice from one of MDA National's medico-legal advisers and was provided with assistance in finalising a statement for the hospital. Fortunately, the JMO did not hear anything more about the matter.

Discussion

This case provides a timely reminder of the importance of taking care of your signature. Be wary of requests to 'witness' a patient's signature, particularly when it involves legal documents. In this case, it would have been prudent for the JMO to refuse the son's request to complete the form and instead ask the son to liaise with the patient's treating team the following day.

Dr Sara Bird
Medico-legal Claims Manager



When a Scalpel Comes Flying Across the Room: Human Hazards that Put You and Patients at Risk

The life of a trainee is hard enough but when feeling anxious about facing work because of fear and trepidation about what's going to hit you today, this can make for an unhappy start to a much wanted and worked for career.

Ducking a flying scalpel may be an extreme example, although it's a true one, but you may also be "hit" by a supervisor bellowing because you have disturbed them in the night or said or done or thought the wrong thing, an overbearing nurse muttering something about deficient medical training or those rolling eyes that tell you "how many times do I have to explain this.....?" This can make you feel so dumb and useless, which you are most certainly not.

This type of behaviour is unwelcome and trainees are not the only targets. Being bellowed at may keep you on your toes but it may also reduce you to a quivering mess, unable to make a decision, to think straight or to feel like the confident, self-assured professional you wish to be. This is when errors can happen or uncertainty about the right thing to do, which may lead to a delay in a procedure or in escalating the level of care required. In a small study of residents, fear of exposing a gap in knowledge and of "being a bother" were cited as reasons for not seeking guidance from seniors. This study found that such uncertainty led to some identified cases of patient harm, including cardiac arrest arising from unrecognised complications¹.

It may also result in loss of confidence and even, in some cases, to anxiety, stress, distress and a desire to quit medicine.

Such conduct from others you work with, whether peers, other staff members or seniors can not only have a discouraging effect on you, it can also upset teamwork and morale. This means that important information may not be communicated and this can have a deleterious effect on patient safety. If team members are too afraid to speak up, to question or clarify instructions or to telephone a senior late at night when floundering over how to care for a critically ill patient, it is clear that some adverse consequences may follow. "The outcome is a deflection away from the patient (or the learning

required to be able to care for patients) to what is happening in the disrespectful exchange."¹

On the other hand, effective communication, teamwork and coordination of care play a key role in keeping patients safe and reducing the likelihood of errors and injury. Members of the health care team who communicate well with each other at handover, at patient discharge, in checking correct sites, sides, patients and procedure before surgery, in noticing a mistake about to happen, checking medicines and prescriptions, in thorough record-keeping, all contribute to providing continuity and safety of care. As a junior, a supportive environment rather than an intimidating one will help nurture the confidence to seek answers and guidance and to learn the qualities of effective leadership through the example of others.

"Respect for everyone involved in the health care environment helps nourish the appropriate moral goals of medicine."¹

If interns and trainees feel they are in this situation, it is important to seek help before you become demoralised and worn out. MDA National's Medico-legal Advisers can offer support and advice on dealing with problems in the workplace. We see how important it is that junior doctors get a good start in their careers and we aim to support you through this time, as well as through your future professional lives. The service is available 24/7 by telephone on 1800 011 255 or email peaceofmind@mdanational.com.au.

Elizabeth van Ekert
Risk Manager

References:

1. Farman, J et al *Resident uncertainty in clinical decision making and impact on patient care: a qualitative study*. Qual. Safety Health Care 2008 ; 17; 122-126

Other reading: Kushner, T and Thomasma, D (eds) *Ward ethics: Dilemmas for medical students and doctors in training*. Cambridge University Press, UK, 2001

Risk Management Workshops

The workshops are available to Members who are in post-grad year two or above. You can register online through the Member Online Services section of the MDA National website or by emailing Risk Management at riskmanagement.com.au

Numbers are limited for these sessions so make sure that you register early to ensure your place. Please note that registration is not available until 3 months before the date of the workshop.



Register
Now
online!

	Day	Time	City	Workshop
21/03/2009	Sat	9am-12pm	Hobart	Mastering Adverse Outcomes
21/03/2009	Sat	1pm-4pm	Hobart	Mastering Shared Decision Making
4/04/2009	Sat	9am-11.30am	Adelaide	Mastering Your Risk
4/04/2009	Sat	12.30pm-3.30pm	Adelaide	Mastering Shared Decision Making
22/04/2009	Wed	6pm-9pm	Brisbane	Mastering Shared Decision Making
2/05/2009	Sat	9am-12pm	Perth	Mastering Shared Decision Making
2/05/2009	Sat	1pm-4pm	Perth	Mastering Adverse Outcomes
16/05/2009	Sat	9am-12pm	Brisbane	Mastering Shared Decision Making
16/05/2009	Sat	9am-12pm	Melbourne	Mastering Shared Decision Making
20/05/2009	Wed	6pm-9pm	Melbourne	Mastering Adverse Outcomes
27/05/2009	Wed	6pm-9pm	Sydney	Mastering Shared Decision Making
27/06/2009	Sat	9am-12pm	Canberra	Mastering Shared Decision Making
27/06/2009	Sat	1pm-4.30pm	Canberra	Mastering Difficult Patient Interactions

Full descriptions of the workshop topics can be found in the Risk Management section of the MDA National website www.mdanational.com.au

All workshops attract CME/CPD points and are free of charge to Members who hold a current Professional Indemnity Insurance Policy. If there are no workshops currently listed that are convenient for you, make sure that you check the online calendar regularly as more will be added for the remainder of 2009.

Take Your Break On Us Competition Winners

In line with MDA National promoting good health and consequently best practice for junior (and senior) doctors nationally, the Take Your Break On Us competition was open to interns starting work in January 2009.

Eligible entrants were given the chance to win a slice of paradise to get away from it all during their Intern year - a \$1,000 Travel Voucher from Flight Centre.

MDA National would like to thank all entrants for their participation.

We are pleased to announce that our 5 Take Your Break On Us competition winners are:

NSW/ACT:

Aurora Yu,
Kellyville

QLD:

Georgina Whittaker, Caloundra

SA:

Kathryn Martinello,
Prospect

VIC/TAS:

Catherine Porter,
Alphington

WA:

James Stacey,
Subiaco

Contact Your State Liaison Manager

MDA National's team of State Liaison Managers are available to provide support to Members through provision of educational and risk management activities and sponsorship of both educational and social activities.

You should contact your State Liaison Manager if you have any suggestions for events at your hospital or within your Area Health Service that MDA National could be involved with.



Olivia Watson
State Liaison Manager - WA
E: owatson@mdanational.com.au



Megan Sheldon
State Liaison Manager - SA
(Students/Interns)
E: msheldon@mdanational.com.au



Anne Powell
State Liaison Manager - SA (DIP/DIT)
E: apowell@mdanational.com.au



Monica Corso
State Liaison Manager - NSW (North)
E: mcorso@mdanational.com.au



Dinethra Nandakoban
State Liaison Manager
- NSW (South)/ACT
E: dnandakoban@mdanational.com.au



Nina Soldatovic
State Liaison Manager - TAS
E: nsoldatovic@mdanational.com.au



Melissa Kruger
State Liaison Manager - QLD (South)
E: mkruger@mdanational.com.au



Angela Barker
State Liaison Manager - QLD (North)
E: abarker@mdanational.com.au



Judi Pickett
State Liaison Manager - VIC
E: jpickett@mdanational.com.au

All State Liaison Managers can be contacted on

Freecall 1800 011 255

Have you moved?

Have your practice details changed?

If so, please take a moment to notify us of your new information. To update your details, please call Member Services on 1800 011 255 or log on to the Member Online Services section of our website www.mdanational.com.au

It is important that you notify us of your updated information to ensure you maintain continuous cover and to make sure that we can continue to contact you with important information about your medical indemnity.

Would You Like to Receive *First Defence* via Email?

We offer all readers the opportunity to receive an electronic copy of *First Defence* instead of a hard copy.

If you would prefer to receive your *First Defence* magazine by email, please let us know by sending an email to firstdefence@mdanational.com.au putting the word 'Subscribe' in the subject line and including your name and Member number in the body of the email.

You will be able to change the way you receive *First Defence* at any time, simply by sending an email to the address above.

It is also possible to change the way you receive publications from MDA National by logging into the Member Online Services and noting your preference on your Membership record. If you require assistance logging into the secure section of the website, please contact Member Services on 1800 011 255 during business hours.



Freecall: 1800 011 255 Member Services Fax: 1300 011 244

Email: peaceofmind@mdanational.com.au Web: www.mdanational.com.au

Perth	Melbourne	Sydney	Brisbane	Adelaide
Level 3	Level 1	Level 5, AMA House	Level 8	Level 1
516 Hay Street	101 Dundas Place	69 Christie Street	87 Wickham Terrace	63 Waymouth Street
Subiaco WA 6008	Albert Park VIC 3206	St Leonards NSW 2065	Spring Hill QLD 4000	Adelaide SA 5000
Phone: (08) 6461 3400	Phone: (03) 9915 1700	Phone: (02) 9023 3300	Phone: (07) 3120 1800	Phone: (08) 7129 4500
Claims Fax: (08) 9415 1492	Fax: (03) 9690 6272	Fax: (02) 9460 8344	Fax: (07) 3839 7822	Fax: (08) 7129 4520

The information in *First Defence* is intended as a guide only and should not be taken as legal or clinical advice. We recommend you always contact your indemnity provider when advice in relation to your liability for matters covered under your insurance policy is required. The case histories used are based on actual medical negligence claims or medico-legal referrals; however, certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved. Insurance policies available through the MDA National Group are underwritten by MDA National Insurance Pty Ltd (MDA National Insurance) ABN 56 058 271 417, AFS Licence No. 238073. With limited exceptions they are available only to Members of MDA National. MDA National Insurance is a wholly owned subsidiary of The Medical Defence Association of Western Australia (Incorporated) ARBN 055 801 771, trading as MDA National incorporated in Western Australia. The liability of Members is limited. Before you make any decision whether to buy or hold any products issued by MDA National Insurance, please consider the relevant Product Disclosure Statement and Policy Wording. Contact us if you require a copy. Privacy: The MDA National Group collects personal information to provide and market our services or to meet legal obligations. We may share personal information with other organisations that assist us in doing this. You may access personal information we hold about you, subject to the Federal Privacy Act. The MDA National Group's Privacy Policy is available by calling us on 1800 011 255 or by visiting our website at www.mdanational.com.au If you wish to change your contact details or to be removed from our mailing list please contact us on 1800 011 255. Form No: 304.11 Feb 09.