Medical malpractice insurance: Notification obligations under a medical malpractice insurance policy

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Medical malpractice insurance is a practical necessity in the current litigious environment, writes ***Aneesa Bodiat of Natmed Medical Defence*** (http://www.natmed.mobi/), as an unfavourable judgment can lead to severe financial and reputation consequences.

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Some of the most serious cases, for example where healthcare practitioners are found to be negligent in causing a minor child to suffer a brain injury resulting in cerebral palsy, may result in a judgment being awarded in favour of the patient in an amount of R20 million or more.

A comprehensive medical malpractice policy can assist in covering the medical professional for legal fees and the costs of an unfavourable court order. However, insurance policies are contracts between the insurer and the insured. Reading the policy is vital in ensuring that the medical professional complies with the terms of the policy, and in ensuring the claim is accepted by the insurer.

One of the most important obligations of the insured is to timeously notify the insurer of a claim, or a potential claim. Identifying that a formal claim has been made is often easy, since a summons or other type of formal written complaint will be received. However, policies often require that potential claims, or events that may lead to claims, also be notified. This could include things like a request for medical records, where a claim has not yet been formally made.

Notification must be done even if the medical practitioner believes they were not at fault, e.g. if a baby is delivered and it is found that the baby has suffered some sort of injury in the womb, or potentially during delivery. Such an event should be notified even though the cause of the injury may be unclear at the time; this is especially so where the patient indicates displeasure at the outcome of a medical procedure. Any medical procedure that results in complications, where the patient complains verbally, or where the outcome of the procedure is unusual or makes the healthcare professional feel uneasy, should probably be notified.

Insurers prefer (and even require, depending on the wording of the policy) notification – even where a claim has not formally been made yet. This allows them to prepare for claims that may arise, to set aside reserve funds for potential claims and to manage their liabilities. It also allows insurers to set appropriate premiums based on risk. This is why insurers often write detailed notification obligations into the contract, which serve to ensure that the obligation to notify extends beyond the obvious formal claims that are received.

While claims may be discussed telephonically with the insurer or broker, it is important to note whether there is an obligation for the insured to also notify the claim or potential claim in writing. The notification obligations for renewal of the policy should also be noted, in case they require written notification of past claims or potential claims on renewal as well.

If you are unsure of whether to notify an incident or not, it is better to err on the side of notification and to ensure that you don't fall foul of the notification provisions in the policy.