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Medical malpractice insurance – nice to have or need to have?

One of the many benefits of membership of the South African Society of Occupational Health Nursing Practitioners (SASOHN) is access to medical malpractice insurance. The cover provides medical malpractice protection for all SASOHN members in good standing. SASOHN members have had to deal with various types of claims/complaints over the past three years, as reported under the SASOHN medical malpractice insurance policy (see Fig 1). Two examples of the highest value claims managed under the medical malpractice policy are cited below:

1. Late submission of Workman's Compensation claim: legal fees paid to date to appointed lawyers by insurers for the member's legal defence: R29 413.71. It is estimated that the total legal fees the insurers will be required to pay to finalise the case will be approximately R57 500.
2. A patient declared unfit for duty due to drug abuse sued the SASOHN nurse who declared him unfit: patient claimed damages of R200 000 from the nurse. It is estimated that the total legal fees to finalise the case may be as much as R222 348.

If the SASOHN members involved in these two cases did not have medical malpractice insurance, would they have been able to afford the legal costs incurred to defend themselves? As an occupational health practitioner, would you be in a financial position to cover costs of this nature? On average, a medical malpractice defence attorney could charge R2 000 to R7 000 per hour. Legal processes are known to be long and drawn-out. For most practitioners, incurring such costs would either be unaffordable or place the practitioner under severe financial hardship. It is therefore vital to ensure that, when you practice as a professional, you have medical malpractice insurance in place to provide financial protection against malpractice claims.

The SASOHN medical malpractice insurance policy provides cover to SASOHN members for up to R5 million per year (renewed annually) for the following:

1. Claims made against you for actual or alleged breach of your professional duties (by a patient or the family), e.g. breach of your duty to maintain professional secrecy;
2. Claims made against you for your actual or alleged negligence in rendering a professional service that results in injury or death to a patient;
3. Complaints made against you to the South African Nursing Council (SANC);

4. Legal costs of your defence if you are subpoenaed to give evidence at an inquest where your conduct is in question;
5. Public liability, e.g. you leave your bag on the floor in a clinic and someone trips over it and is injured. Such a claim would arise out of your conducting 'business', but not out of your actual rendering of professional services.

Your SASOHN medical malpractice insurance is an indemnity policy, i.e. it indemnifies you for claims made against you by third parties. It does not cover your own losses (known as first-party losses), such as funeral costs or loss of income arising out of your sickness, injury or disability.

The SASOHN medical malpractice insurance also does not cover:

1. Claims relating to your practicing outside of your scope of practice, unless you are deemed to have acted as a 'Good Samaritan' at the scene of an emergency;
2. Claims relating to any professional service that you render, which falls outside the scope of occupational health nursing, e.g. if you are a school nurse and a claim arises from treating children, you will not be covered under the SASOHN policy;
3. Claims relating to the sale of any products, as the sale of products falls outside the scope of practice of an occupational health nurse;
4. Labour-related issues: grievances with your employers, fellow employees, working conditions, etc.;
5. Legal assistance if your employer requires you to attend a disciplinary inquiry. However, the policy will provide assistance if the disciplinary inquiry is in respect of charges made against you that relate to your professional negligence or breach of duty to a patient, which could result in a medical malpractice claim against you or which could result in a SANC complaint against you;
6. Your intentional wrongdoing which causes injury or death, or damage to property;
7. Claims if you are not a paid-up SASOHN member at the time that you became aware of the claim or incident;
8. Claims if you have breached the conditions of the policy;
9. Claims made against you if you do not live in South Africa on a permanent basis.

It is important to remember that, in order to be

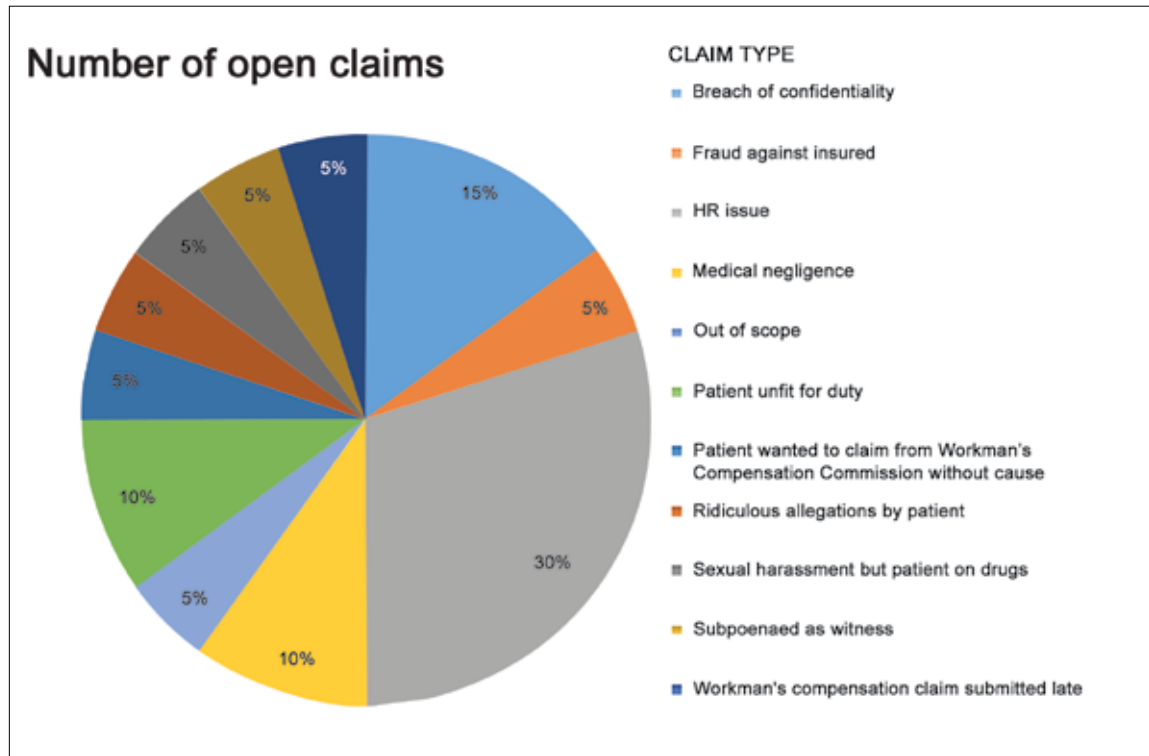


Figure 1. Insurance claims and complaints submitted over the past three years, as reported under the SASOHN medical malpractice insurance policy

covered under the SASOHN policy, you must comply with the terms and conditions of the SASOHN policy document (this is comprised of two separate documents: the policy wording and the policy schedule).

The most important condition of cover is that you MUST report any incident or circumstance of which you become aware, to the brokers, in writing, as soon as you become aware of such incident or circumstance, where such incident or circumstance could lead to a claim or complaint being made against you. The condition applies, regardless of:

1. Whether or not any formal complaint/claim has been made against you;
2. Whether or not any internal investigations into the incident have been completed;
3. Whether or not your employer or their legal representative (or anyone else) tells you that it is not necessary to report this to your policy insurers.

If you are not sure whether you need to report an incident or circumstance, please contact the SASOHN National Office for assistance. If you fail to report a potential claim, incident or circumstance to your broker as soon as you become aware of it, the policy will not cover you for any claim or complaint which arises out of such incident or circumstance at a later date.

SASOHN medical malpractice insurance offers you the additional following benefits:

1. You are covered for services rendered outside of

South Africa for visits abroad that do not exceed 60 consecutive days (excluding services rendered in the USA and Canada).

2. You are covered for your legal defence costs for SANC inquiries regardless of whether or not the inquiry relates to medical malpractice or professional negligence.
3. While the SASOHN policy remains with the current underwriters, SASOHN members who resign or permanently cease to practice in South Africa enjoy five years' free run-off cover under the policy, i.e. if you are sued in this five-year period you will be provided with the same cover as if you were still practicing as an occupational health practitioner.
4. The policy provides cover for your vicarious liability for your employees, i.e. where, as an employer, you are sued for the actions of employees under your control.
5. Corporate cover for partnerships and larger practices is offered.

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