Medical Protection

Ten lessons from private practice cases

Dr Sophie Haroon, Medicolegal Consultant at Medical Protection, reflects on some learning points from managing cases involving private practice.

Demand for private healthcare in the UK remains strong, spurred on by long waiting lists and patients turning to private healthcare through medical insurance or self-funding[i].

Private practice carries with it certain rights and responsibilities. The doctor-patient dynamic is also different. Patients see themselves as customers; and the relationship can be more transactional as fees are exchanged for clinical management. Private patients can be some of the most challenging and demanding and when there is a mismatch between patient expectation and clinical management, complaints and claims in clinical negligence can arise.

In this article, I share some learnings from managing medicolegal cases in the private sector:

1.'The charming patient'

'*Thank you for referring this lovely lady/pleasant gentleman …*' is an opening line of many clinic letters – and admittedly not just in private practice. However, the point is that all patients are pleasant until it goes wrong. Whereas a 'delightful' NHS patient's complaint or claim might fall to the Trust, it can feel quite personal when an individual clinician is pursued in their private capacity. You might imagine that a patient, who has previously expressed dissatisfaction with the service they have received, would have lost confidence and would not wish to consult you again. However, this is frequently not the case. Some patients seem able to view a claim quite dispassionately - rather like a claim on a house or car insurance policy. Taking this altogether, try not to take a complaint or claim to heart.

2.Bearing gifts

It is also reasonable to be circumspect about gifts from patients. In the NHS, gifts are usually towards a team, but they can be more personal when delivered in the landscape of private healthcare. The GMC provides useful advice on what clinicians must consider when accepting or declining such an offering from patients[ii]. The key is to think twice. Ensure acceptance does not affect, or appear to affect, your management of them or bring into question the trust of patients and the public in the medical profession.

3.What's up with Whatsapp?

It is not uncommon for clinicians to share their personal or work mobile numbers with private patients. On the surface, this may appear as an individualised service for the patient, allowing them to message and ask questions of their private clinicians any time, day or night. However, there are downsides. Firstly, for the clinician, being at the beck and call of private patients is not synonymous with a good work-life balance. Secondly, exchanges about clinical care over messaging apps such as Whatsapp are part of the clinical record. They should therefore be recorded in the patients' records, not over a social medium. If a complaint or claim arises, these trails are just as important to disclose. Also, their brevity, as is typical over this form of communication, can be easily misconstrued. My personal opinion is that Whatsapp is not an appropriate medium for patient communication. Furthermore, we only have to read the news to see how seemingly private conversations on social media messaging

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platforms can become public. In medicine this also poses serious questions around confidentiality.

4.It's not you, it's me…

The doctor-patient relationship can sour even in private practice. However, despite the more contractual nature of this relationship, extricating yourself from it is no simpler than it is in the NHS. The GMC is clear that a complaint (or a claim) is not a valid reason for ending your professional relationship with a patient and indeed, could open yourself to criticism[iii]. Their guidance sets out helpful steps to follow before ending the relationship and what to do when a decision has been made to end it – importantly how you must be able to justify reaching the end of the road. Ultimately the professional relationship should only be ended if there has been a complete breakdown in trust and you cannot provide good clinical care. You must then also ensure you transfer your care to another individual, so the patient's ongoing care is not compromised.

5.Cooperate with your medical defence organisation (MDO)

Just like you would expect your patients to co-operate with you when you advise them on their best clinical management, so too should you co-operate with your MDO when you receive a complaint or claim. Letters from patients or solicitors may appear unmeritorious but do not delay sending them to your MDO so they can assess the situation and take any necessary steps to protect your interests. A delay or failing to cooperate with their advice could prejudice your position in the matter. There are always two sides of a story to tell. The patient/their solicitor have one side, give your MDO the time and opportunity to tell your side by liaising with them promptly.

6. 'It's good to talk' - Keep your MDO updated

It is vital that you advise your MDO of the full scope of practice for the work you carry out and ensure other information about your membership is accurate and up-to-date which includes information about income or volumes of work undertaken. This will help to ensure your subscription is more tailored to you. If you do not have adequate protection in place for the types and volume of work you undertake, this may affect your MDO's ability to assist should a claim subsequently arise. No one wants this to happen. Houses and cars have been sold to finance claims which otherwise could have been managed through an MDO.

7.Always check, and double check, contracts

The GMC requires you to have in place indemnity/insurance for the full scope of your practice[iv]. Procuring your own professional protection may sound obvious for work involving private patients but it is also important to bear in mind that it may be required for NHS Waiting List Initiative work where state indemnity does not cover this, and for seeing NHS patients through some private providers commissioned to deliver public care[v]. Importantly, check what it says in your contract regarding where indemnity lies for this type of work, clarify with your employer if needs be, and if you need to provide your own indemnity/insurance, obtain this before undertaking any such work.

8.All professional protection products are the same, aren't they?

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In short, no. There are 'occurrence based' products which cover incidents occurring during the membership period, regardless of when the claim is made, and there are 'claims made' products which only protect against claims brought during the term of your membership period. For the latter, this means that unless you secure 'run-off cover' when you leave the MDO, cease practice or retire, you have no protection in place if a claim later arises and the incident that gave rise to it was not reported within the terms of the policy. There can be many personal reasons for choosing occurrence based over claims made or vice versa. It is important to understand the type of protection you have and when it may possibly cease especially because claims can come out of the woodwork many years after the alleged incident.

9. Indemnity/insurance covers everything bar the kitchen sink?

This is another no I am afraid. Typically you can request assistance with acts and/or omissions arising from the clinical care you provide to patients. Some incidents may arise in a clinical situation but may not be related to direct clinical care. This can be the case, for example, with data protection breaches. Be sure to consider where alternative arrangements are required, like an appropriate Public Liability Insurance policy, or be prepared to seek and finance independent legal advice yourself in the event of such a claim arising.

10.The end of the road

Even private practice can become time limited. Just as important as knowing the ins and outs of starting up is considering how to wind down. Records are essential in helping to manage claims arising after you have retired so they must not be prematurely disposed. The NHS has produced a detailed retention schedule based on the differing types of patient record[vi]. Whilst there is no specific advice for private records, it is appropriate to follow the NHS Code of Practice as the GMC requires records to be disposed of in line with the relevant data protection laws[vii].

References:

[i] Vital signs look good for private healthcare, says Healthcode (independent-practitioner-today.co.uk)
[ii] https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/identifying-and-managing-conflicts-of-interest
[iii] https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/ending-your-professional-relationship-with-a-patient
[iv] https://www.gmc-uk.org/registration-and-licensing/managing-your-registration/information-for-doctors-on-the-register/insurance-indemnity-and-medico-legal-support
[v] https://www.independent-practitioner-today.co.uk/2022/11/dont-simply-presume-youre-covered/
[vi] https://transform.england.nhs.uk/information-governance/guidance/records-management-code/records-management-code-of-practice-2021/#appendix-ii-retention-schedule
[vii] https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality

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