



THE TOP 10



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Chris Mariani counts down the top 10 risk & insurance mistakes made by medical practices.

Running a medical practice is a complex business – practice owners face a variety of risks which need to be appropriately managed with

a mix of risk management strategies and an effective insurance program. While no two practices are the same, in my ten years of

working with doctors, there are a number of recurring themes – the top 10 risk and insurance mistakes made by practices:

NO.	ANSWER	DESCRIPTION	KEY POINTS
1	Legal/ accounting structure	<p>There are a number of issues which frequently arise from the chosen business structure:</p> <ul style="list-style-type: none"> I often ask clients 'draw me a diagram of your structure and show me the money flow'. Many clients can't do this as they don't understand their structure. I then ask the client to show me their insurance policies and often they have failed to name the right entities – so they're leaving themselves exposed to uninsured claims. A client once told me their accountant recommended they set up a separate 'shelf' company with no assets in it to employ the staff – on the basis of asset protection (i.e. he could simply close down the company if a staff member brought an employment claim against him). This approach failed to deal with the reputational risk – he was in a specialist market with a limited number of skilled technicians available, all of whom knew each other. Adopting a strategy to close down a company and not pay a valid employment dispute claim (say the practice manager bullied the young technician) could result in reputation damage as an employer. Given he could have purchased employment practices liability insurance for less than the accounting fees, the structure was questionable. 	<ul style="list-style-type: none"> Do you understand your practice structure? Are you naming the right entities on applicable insurance policies? Does your structure provide the asset protection you are seeking? Consider your reputation as an asset as well.
2	Signing contracts	<p>The two most common contracts in the medical space I see issues with are lease agreements and independent medical practitioner agreements. Many doctors fail to obtain legal advice and insurance advice on contracts. From an insurance perspective there are generally clauses under 'Indemnities' and 'Insurance Requirements'. Often landlords will attempt to put in unreasonable requirements - recently a client hospital there were leasing a suite in to insure the doors and partitions in the hospital. Often independent medical practitioner agreements will contain unfair contractual indemnities which are often not covered by insurance.</p>	<ul style="list-style-type: none"> Seek legal and insurance advice on contracts. Pay particular attention to the 'Indemnities' section and 'Insurance Requirements' section. Indemnities often change the legal position of "you're responsible for your mistakes and I'm responsible for mine". This can trigger exclusions in insurance policies.
3	No Privacy Policy/ processes that comply with privacy legislation	<p>It still surprises me by the number of practices that simply do not know they are required by law to have a written Privacy Policy and processes/controls to protect patient privacy. Of those that do, many have not updated their Privacy Policy following the changes in March 2014. An easy way to identify this is new legislation references the 13 Australian Privacy Principles (APPs). If your Privacy Policy still refers to the National Privacy Principles (NPPs), then it's time to update your policy!</p>	<ul style="list-style-type: none"> As a healthcare business you are required to have a Privacy Policy and comply with privacy legislation. Your privacy policy needs to address the 13 APPs.
4	Failing to use the resources of AMA, colleges, MDO and insurance broker	<p>Before you spend hundreds of dollars an hour on lawyers or consultants, can you get it for free or for a reduced cost? For example a number of the state AMAs provide employment manuals and templates, Privacy Policy templates, medical practitioner agreements, etc. These are either free or heavily reduced. If you are buying or selling a practice, or reviewing your processes such as informed content, storage of medical records, then seeking medico-legal advice from your MDO could be helpful.</p>	<ul style="list-style-type: none"> In many cases you can get advice, templates, documents 'for free' or for a reduced cost.

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5	No formal risk management	<p>This is particularly the case in specialist practice where there is no incentive to be accredited.</p> <p>Many clients I see have no process to identify and then risk manage the key risks in their practice (risk register). They have no central system to record patient complaints, adverse events and near misses (incident register). Risk Management is not an item on their management team meetings. They have no processes and procedures manuals.</p>	<ul style="list-style-type: none"> • Have you identified the top 10 risks in your practice and how are you managing these? – a Risk Register • Do you have a central document that identifies all patient complaints, adverse events and near misses? An Incident Register
6	Assuming the doctor/s medical indemnity will also cover the practice entity and employees	<p>In private practice, each doctor buys their own medical indemnity insurance. Each MDO has a different approach as to whether a doctor's practice entity is covered (some require the doctor to wholly own the entity) and secondly whether the employees are also covered (e.g. one MDO excludes all registered healthcare staff such as nurses).</p> <p>Doctors tell me this is an area of great confusion for them, as many policy wordings and surrounding documents are in excess of 100 pages. If you are unsure, ask an insurance broker to review your personal circumstances and provide personal advice.</p>	<ul style="list-style-type: none"> • Does your practice entity require its own medical indemnity cover, or is it covered under the doctor/s personal medical indemnity policies? • The four MDOs differ so you need to review your own circumstances – seek advice from an insurance broker.
7	Buying insurances online or direct with an insurer	<p>It's important to understand the difference between "General Advice" and "Personal Advice".</p> <p>When you deal with an insurer directly, you will likely be receiving "General Advice". This means the insurer is providing you information only, not advice. They are not considering your personal circumstances or needs and they can only sell you the product they manufacture.</p> <p>When you engage an insurance broker to represent you, the broker is licenced to provide you with "Personal Advice". This means the brokers duty is to give you advice on your personal circumstances and to find the right cover from a range of insurers they deal with. The broker's duty is to you as the client and not to the insurer. They're experts in insurance, the same as your accountant and lawyer in their fields.</p>	<ul style="list-style-type: none"> • Does your practice entity require its own medical indemnity cover, or is it covered under the doctor/s personal medical indemnity policies? • The four MDOs differ so you need to review your own circumstances – seek advice from an insurance broker
8	Lack of financial controls and oversight to detect and prevent employee fraud	<p>One of the least understood risks in a medical practice is employee fraud. At the Private Practice courses we've heard from doctors who have had first-hand experience – from employees paying their personal mobile phone bills using the practice bank account, paying wages to employees who don't exist, to medicare fraud.</p> <p>KPMG report in excess of 30% of companies with employees between 1 and 500 experienced a fraud against their company in 2012 (KPMG A Survey of Fraud, Bribery and Corruption In Australia and New Zealand 2012)</p>	<ul style="list-style-type: none"> • Implement dual authorities on payments. • Have an approved vendor list of suppliers and authority to add a new supplier. • Implement regular management oversight, monthly reporting. • Use an accountant that can benchmark your spending relative to other similar practices (e.g. is your stationary spend reasonable?).

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9	Major gaps in insurance coverage	<p>Many practices I visit have not gone through a risk review/ audit process, have not engaged an insurance broker who specialises in medical clients and as a result, they do not have the right insurances in place to protect their assets and liabilities. Some of the most common areas left uninsured are:</p> <ul style="list-style-type: none"> • Lost revenue as a result of an issue with the rooms or key equipment. By example a client recently had a major water leak which resulted in the practice losing one day's revenue during the clean-up. Luckily we had arranged 'business interruption' insurance so the insurer paid their lost revenue. While only one day, many businesses are forced to close for weeks or months in the event of major fire or storm damage. • Management exposures – such as employment practices liability, employee theft, privacy fines and other statutory penalties, and responsibilities of being a director. These risks are easily insurable under a Management Liability policy, with good policies starting from \$1,500 for a \$1 million revenue practice. • Medical indemnity for the practice and staff as noted in item 6. The chances are if you are a multi-doctor practice (including where you rent sessional rooms to other practitioners) you will need a separate medical indemnity policy for the practice. 	<ul style="list-style-type: none"> • Engage a broker to do a risk review of your practice. Ask them about their experience in medical clients and what other client purchase and why. • There are some insurances such as Management Liability which are only available via brokers, so it's important to seek advice on all of your practice risks.
10	No review process	<p>Many practices have no process to review their risks regularly (see point 5) and have not engaged anyone to help them identify their practice risks. For example I visited a client last year who had a large hard file medical records rooms which had no door or lock. The room was down the patient toilet corridor with unsupervised patient access. Given privacy legislation now enables a fine of up to \$1.7 million against the practice entity and \$340,000 against individuals, putting a door and lock on the room was a highly sensible risk management decision made by the management team following my recommendation. What obvious risks in your practice are you overlooking?</p>	<ul style="list-style-type: none"> • Implement an annual review process with your insurance broker. • Make the practice manager responsible for risk management and make it an item on the management meeting agendas.

If you have any questions, would like a risk review or need advice on your insurances, please contact Chris Mariani on 0419 017 011 or chris@mgrs.com.au for an obligation free discussion.

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