

When a patient asks for your insurance details...

BY JOANNE STAPHNILL

Coming from a patient, the question "Do you have insurance?" is almost certain to put a medical practitioner on edge. Not being a common query, many do not have a ready answer and instead have to grapple with some questions of their own. What is the patient's motivation for asking? Is he or she thinking of making a complaint or claim? Am I obliged to provide that information? Am I obliged not to? Do I need to inform my insurers or medical defence organisation?

NHS or private practice?

If you are a registered medical professional working solely under the auspices of the NHS, the position is relatively simple. It is no secret that, by virtue of being employed with the NHS (or working as an agency worker, locum, student and under certain other contracts), you are fully covered for the medical work you do. Therefore, you can reassure your patient that your work is covered by the NHS's indemnity arrangements in the (hopefully unlikely) event that an unfortunate event might occur that could entitle them to compensation. Sometimes the context, the patient's demeanour or other comments might give you concern that the patient is asking because they are thinking of making a complaint or claim. In that case it would certainly be wise to inform your managers that the patient is asking about insurance, and ask that the situation be monitored in case a complaint or claim follows.

However, for registered medical professionals working in a private capacity, then the position is more complex. In the rest of this article we explore the potential pitfalls and provide some guidance on how best to answer the question.

Prospective private patients

There are situations where the question "Do you have insurance?" may be an

innocent, even positive question to receive. Coming from a prospective patient (perhaps seeking a voluntary or non-urgent procedure), it could simply demonstrate that he or she is being appropriately cautious in selecting a practitioner to place his or her trust in. In turn, the question might give you the practitioner confidence that this prospective patient is sensible enough to consider advice and warnings carefully, and to not develop unrealistic expectations about the procedure's outcome. But how should you answer the insurance question in this situation?

As of 17 July 2014, 'The Health Care and Associated Professions (Indemnity Arrangements) Order 2014' has made it compulsory for registered medical professionals (including doctors, nurses and other specialists) to have an indemnity arrangement. This could be an insurance policy with a commercial insurer, or membership of a medical defence organisation.

Since having an indemnity arrangement is compulsory there is no downside to confirming to your prospective patient that your work is covered by one in the (again, hopefully unlikely) chance that an adverse event might occur that could entitle them to compensation. After all, if you refuse to answer, your prospective patient might think you are an uninsured 'cowboy' or report you to your professional body!

There is no downside in confirming that you are indemnified for your private medical work, but we do not recommend that you provide any more details than that. There is no legal or professional conduct obligation to do so, and giving away more details might leave you vulnerable in the event of a later claim. For example, details such as the amount of insurance you hold (the 'limit of indemnity') could end up being treated as a 'target' for the amount of compensation the patient wants. Giving the name of your indemnifier could also cause problems, if the patient decides to

write to your insurer or medical defence organisation directly rather than raising the complaint or claim with you first.

If the prospective patient presses for more details about your indemnifier or your indemnity arrangements, beware! If he or she is not satisfied with a polite refusal to provide the details, and if they do not have a reasonable reason for the request, consider whether a 'red flag' is appearing. After all, in private practice it is rarely obligatory to agree to treat someone, so ask yourself whether you would be comfortable in accepting that private patient at all.

Private patients and claims

By contrast, for patients to whom you have already provided advice or carried out a procedure the "Do you have insurance?" question might carry worrying overtones, regardless of whether the patient has otherwise expressed any dissatisfaction with your advice or the procedure. Unless your patient happens to work in the insurance industry and is asking out of mere professional interest, it is difficult to avoid drawing the inference that the patient is, at some level, thinking about making a complaint or claim. In this situation, how do you answer the question?

Once again, because having an indemnity arrangement is compulsory there is no downside to confirming to your patient that your work is covered by one in the event it transpires that some error has occurred that might entitle them to compensation. Once again, there is no obligation to provide any more details, and it would not be in your interests to reveal details of your indemnity arrangement that might influence your patient (or his or her lawyers) when deciding whether to bring a claim or not.

The best answer might be to simply explain, politely, that having an indemnity arrangement is compulsory and that you do have one. If the patient

presses you for more details, you need to avoid getting drawn into providing them. To avoid appearing uncooperative or evasive, you could explain that you would need to speak to a third party before you could provide any details, such as your clinic manager or insurance broker.

Is there anything else you need to think about? Absolutely! If the context of the insurance question, the patient's demeanour or other comments gives you any concern that he or she is thinking about making a complaint or claim, we strongly recommend that you contact your indemnifier as soon as possible.

Depending on the specifics of your indemnity arrangement (and particularly the wording of your policy if you have insurance through a commercial insurer), the patient's question might trigger an obligation on you to inform ('notify', in insurance jargon) your indemnifier that a circumstance has arisen which could develop into a claim. Rather than trying to weigh up yourself whether this

threshold has been crossed, it is better to contact your indemnifier and discuss the situation with them. That way, whether a claim follows or it turns out the patient was just being difficult that day, you will have the reassurance of knowing that you have complied with your indemnifier's requirements. Also, your indemnifiers will be highly experienced in dealing with these kinds of situation, so contacting them could also give you access to help and guidance to manage the situation and help prevent a claim arising at all.

Conclusion

In summary, if a patient ever asks "Do you have insurance?" these are the things to have in mind:

- An indemnity arrangement is compulsory for registered medical professionals.
- Therefore, there is no downside in confirming to your patient or prospective patient that you are complying with that legal requirement.

- However, we do not recommend that you provide any more details than that – it could leave you as a hostage to fortune if a claim is subsequently made.
- If you have any concern that the patient's question indicates that he or she is contemplating a complaint or claim, contact your indemnifiers straight away to make sure you fulfil their requirements, and to get the benefit of their experience and advice.



Joanne Staphnill,

Solicitor, Partner and Head of Clinical Risks at Triton Global Limited.

E: Joanne.staphnill@triton-global.com

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Editor's comment

Joanne's legal perspective is very much appreciated. I do wonder though whether the question may have another meaning in the private sector and that is if something goes wrong, one of the complications mentioned, and a return to theatre is necessary, who pays? I would be most interested to hear about arrangements that various practitioners have made to address this possibility. Indeed, many years ago whilst in practice in the UK there was a growing realisation amongst some of the more enlightened private practitioners in that

there is strength in co-operation rather than competition. Arrangements would be made with the private hospital or clinic for a modest amount of each fee to be put aside to cover the costs in the unfortunate eventuality of an 'adverse event' requiring a return to theatre. In addition, there would be a reciprocal arrangement to cover the care for each other's patients if a complication arose when the primary surgeon was not available. What is happening now in the UK and Europe and do we have any good models of co-operative care in the private sector? Get in touch and let us know.