



## THE EVOLUTION OF MEDICAL MALPRACTICE INSURANCE: A 15-YEAR REFLECTION

**By Lauren Anderson, Managing Director Garrun CFP (Pty) Ltd**

When I began my journey as a broker, medical malpractice insurance for low-risk medical practitioners seemed quite straightforward. My early experiences may have differed from others, but it all felt simpler. Typically, I would send out a proposal form, the client would complete it, we would send that to Insurers/Underwriting Managers and Voila!, that was it. There were only a few providers, and their policy wordings were similar, making the process fairly predictable. Even renewals were a breeze—clients filled out a no-claims declaration (NCD) each year, and we were good to go.

One of the most crucial pieces of advice I gave back then was explaining that medical malpractice policies operated on a “claims-made” basis. For many clients, especially those who were making the decision to transition from The Medical Protections Society cover to commercial medical malpractice, or getting coverage for the first time, this was a key point. They had to understand that the policy needed to be in force when a claim was made, not just when the incident occurred. Once this was grasped, everything seemed to run smoothly.

Then, around 2012, things started to change.

### — The Shift in the Market and Rising Claims

In 2012, several key players withdrew from the market, leaving brokers scrambling to find new cover holders for clients. While we managed to find solutions, this marked the beginning of a shift in the medical malpractice insurance space. The legal environment was also transforming, with attorneys increasingly targeting medical malpractice cases. One major catalyst for this shift was the 2008 Road Accident Fund Amendment Act. Though its effects weren't immediate, the act capped damages for road accident claims, causing many attorneys to redirect their focus towards medical malpractice cases. This was particularly true with the rise of contingency-based legal services. Suddenly, medical malpractice claims started to skyrocket.

We could see a similar trend in the state environment - to put this in perspective, at the end of 2010, the South African government faced R9 billion in outstanding medical malpractice claims. By 2023, this figure had ballooned to over R130 billion. The rise in claims isn't just about lawyers chasing settlements—it reflects a more litigious and aware patient population. People are more informed about their rights, and with advancements in healthcare, their expectations have evolved as well.



## The Ongoing Debate Over Mandatory Malpractice Insurance

As the claims landscape changed, so too did the conversations around mandatory medical malpractice insurance. In 2017, there was a serious push from the Health Professions Council of South Africa (HPCSA) and the Department of Health to make malpractice insurance compulsory for private healthcare practitioners. This was driven by a growing awareness of the financial risks facing both patients and practitioners when things go wrong.

However, the proposal was met with opposition. Many healthcare professionals worried about the rising cost of premiums, especially in high-risk specializations like obstetrics. The fear was that enforcing mandatory insurance might drive practitioners out of the sector or lead to increased healthcare costs for patients. As a result, the mandate was shelved, but the need for adequate insurance remained.

Even without compulsory insurance, many private hospitals have taken matters into their own hands, requiring medical practitioners to show proof of coverage before they can practice. This is a step in the right direction, but a crucial gap remains: patients cannot always be sure that their healthcare provider has insurance, leaving them vulnerable in cases of medical negligence.

From an ethical standpoint, I believe that no medical practitioner should practice without malpractice insurance. It's not just about protecting themselves—it's about ensuring that patients can receive compensation if something goes wrong.

## Social Media, Telehealth, and New Risks

As if legal and regulatory changes weren't enough, the rise of social media has added a new layer of complexity for healthcare professionals. Negative reviews or claims of negligence can be broadcast to the world in an instant, damaging reputations long before a formal claim is even filed. This has made reputation management and risk mitigation even more critical for medical professionals.

Similarly, the growth of telehealth has introduced new challenges. Virtual consultations, while convenient, can lead to misdiagnoses due to the lack of physical examination. Data breaches and cross-jurisdictional issues further complicate matters. These new realities have increased the likelihood of malpractice claims in the digital age.

The HPCSA has responded by issuing guidelines to help practitioners navigate these new waters, but it's clear that the landscape is shifting. Telehealth, like social media, has created a need for doctors and brokers alike to be more vigilant than ever.

## Complexity is the New Normal

What was once a straightforward process has now become a maze of unique policy wordings, conditions, and exclusions. Each insurer operates differently, with specific clauses on everything from informed consent to state work. Many general practitioners, especially those in rural areas, now face tough decisions about what they can and cannot do, simply to remain covered. For these doctors, the ethical obligation to provide care often conflicts with the boundaries of their insurance policies.

As brokers, this evolving complexity keeps us on our toes. Medical malpractice insurance is no longer something that can be handled casually—it requires deep expertise. We need to stay on top of every new development, from policy wordings to legal rulings, to ensure we're offering the best possible coverage for our clients.



## The Case for Specialist Brokers

In this increasingly complex and litigious environment, one thing is abundantly clear: medical malpractice insurance should be left to specialist brokers. The stakes are simply too high, and the policies too intricate, for generalists to manage effectively. Clients need brokers who understand the nuances of each policy, who know the legal landscape, and who can navigate the ever-changing world of healthcare insurance with confidence.

Brokers who specialize in medical malpractice insurance are equipped to provide the expert advice that practitioners so desperately need. In a world where one misstep can lead to a career-ending lawsuit, it's crucial that doctors trust their coverage—and that means trusting the brokers who know this space inside and out.

After all, as much as the industry has evolved, the role of the broker has evolved, and protecting our clients is not an easy feat. In today's world, it requires so much more than just filling out forms. It requires specialized knowledge, constant attention, and a deep understanding of the complex risks our clients face every day.

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