

# Policy Statement 5.7 – Professional Indemnity

## Position summary

By law, all dental practitioners must be covered by professional indemnity insurance to protect both patients and dentists from events related to adverse outcomes, inquiries, and disputes.

### 1. Background

- 1.1. The National Law requires Dental Practitioners to maintain professional indemnity insurance.
- 1.2. Federal legislation requires that Professional Indemnity be in the form of insurance.
- 1.3. Dentists in Australia are offered Professional Indemnity insurance by insurance companies, often in a scheme in cooperation with ADA Branches.
- 1.4. ADA Branches conduct external reviews of their Professional Indemnity Insurance preferred insurers periodically.
- 1.5. It is acknowledged that a number of factors contribute to changes in Professional Indemnity Insurance premiums to dental practitioners. These factors may include:
  - the current levels of indemnity cover required;
  - the incidence of claims for damages in negligence against dental practitioners;
  - the cost of litigation;
  - the amount of compensation awarded;
  - the incurred but not reported incidents;
  - changing trends in the need for dental practitioners to be legally represented before a variety of courts, panels and tribunals; and
  - activities of regulatory boards and tribunals.

### Definitions

- 1.6. ADVERSE EVENT is an incident in which harm resulted to a person receiving health care
- 1.7. DENTAL PRACTITIONER is a person registered by the Australian Health Practitioner Regulation Agency via the Board to provide dental care.
- 1.8. NATIONAL LAW is the Health Practitioner Regulation National Law Act 2009 as in force in each state and territory.
- 1.9. PROFESSIONAL INDEMNITY INSURANCE is an agreement between parties to provide protection for a person or persons against a contingent liability.
- 1.10. RISK MANAGEMENT includes many aspects of clinical governance, including risk reporting, response to complaints, guidelines, risk assessments, audits and training.

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## 2. Position

- 2.1. Dental practitioners are legally accountable for their professional conduct.
- 2.2. It is essential to distinguish between negligent and non-negligent adverse events.
- 2.3. Effective risk management strategies will minimise adverse events and their consequences.
- 2.4. In the interests of patients, dentists and the public, claims for compensation should be resolved without undue delay, without incurring undue costs, and without causing loss of public confidence.
- 2.5. Increasing compensation awards adversely impact on the community because they are ultimately reflected in rising health care costs. Accordingly, the containment of awards, settlements and litigation costs will benefit the community.
- 2.6. As a requirement for registration, dental practitioners must carry professional indemnity insurance or be covered by their employer's indemnity insurance policy, in order that those patients who may experience adverse outcomes may be swiftly and justly compensated and dental practitioners can be protected from spurious claims.
- 2.7. Dentists should be educated in and implement risk management strategies.
- 2.8. Providers of Professional Indemnity Insurance must be regulated and must meet Australian financial and reporting standards.
- 2.9. There should be greater utilisation of alternative dispute resolution procedures.
- 2.10. Dentists who have had action taken against them for adverse events should be fully supported and defended by their professional indemnity insurer, provided that those events are covered by their insurance policy.
- 2.11. A Professional Indemnity Insurance contract and all information provided to dentists should clearly set out:
  - the level of indemnity cover;
  - forms of assistance available to dentists;
  - costs of premiums and other financial information;
  - the existence of any dental practice activities excluded from coverage;
  - details of retroactivity of cover;
  - the arrangements for run-off insurance cover;
  - the period of cover; and
  - any other relevant information.
- 2.12. Dentists should be entitled to request and receive relevant financial information and data from their Professional Indemnity Insurance provider which will fully inform them of the true financial situation of the Professional Indemnity Insurance provider and their current and future exposure.
- 2.13. Each Professional Indemnity Policy should be a 'claims made' policy.
- 2.14. Professional Indemnity Insurance providers should refer concerns about individual dentists who have multiple claims and questions of substandard practice to the relevant ADA Branch for appropriate review before a decision not to effect indemnity insurance renewal is made or a risk rating applied.

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- 2.15. Professional Indemnity Insurance providers should provide the ADA Branches with de-identified data so that appropriate training and education can be developed to minimise adverse events and outcomes.
  - 2.16. Professional Indemnity Insurance providers should provide dentists with ongoing risk management advice including sponsorship or delivery of continuing professional development.

#### **Policy Statement 5.7**

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