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Selecting the Ideal Professional Indemnity Insurance – What to Lookout for by the Dental Practitioner?

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ABSTRACT

As countries become more developed, there will be a need for more sophisticated dental treatment provided which may bring about adverse outcomes. To protect oneself against any financial loss or any legal liability, dental practitioners have to acquire an insurance policy. This research is to determine the different benefits provided by the professional indemnity insurers. The objectives were to gather the type of cases of complaints made, to ascertain the different insurers involved in providing indemnity insurance, the various treatments covered. An interview was done with four insurer's representative and the data obtained were analysed based on the premium rates and increments, compensation limits, additional limit reinstatement, retroactive and run off covers, limit of claims made, locum dentists' cover, institutional coverage and any additional benefits according to each insurance policy. The findings indicated insurers have a lower premium rate for a reasonable compensation; another with a higher premium with a comprehensive dental insurance coverage which manages from the clinic to any court settlements. There is one to cater for those wishing an insurance based Shariah principles and another which not only covers indemnity but also any damage to clinic and any adverse action by any of the employees.

Keywords: Malpractice, Protection, Insurance, Claims, Compensation

Introduction

As countries become more developed, there will be a need for more sophisticated dental treatments to be provided to a better educated class of the population. For these reasons and also with the ever increasing number of dental surgeons seeking employment (especially in the private sector) there is bound to be an increase in the number of cases of complaints against dentists. In addition, doctors and dentists sometimes unconsciously take more risks with the advancements in medical and dental technology and this may increase their chances of misadventure[1]. No dentist likes reading a complaint or receiving criticism from a patient. It must be borne in mind that even the best dental surgeons can have adverse outcomes with their treatment. In today's litigious world, negligence claims can pose a significant threat to the financial security for a dental or medical practitioner[2]. To protect oneself against any financial loss or any legal liability, many are forced to buy an insurance policy. However there is an increasing number of companies which seem to provide different types of protection, causing apprehension to dental practitioners.

Dental or medical negligence is when the practitioner breached the duty of care to the patient and as a direct result of the breach the patient suffered harm[3]. Therefore, it is necessary to know what are the different tests performed to determine professional standards. The renowned Bolam Test stands with the principle that a practitioner is found not guilty of negligence if he has acted in accordance to accepted medical practice[4]. Later, another assessment was introduced, which is the Rogers v Whittaker Test where doctors are obliged to inform their patient of all material risks inherent in a proposed medical treatment, including death[5]. The Montgomery Test too came into light emphasizing that the privilege of being a doctor does not allow the practitioner to choose the treatment for a patient but ensuring the patient is also aware of alternative or variant treatments[6,7]. It is necessary for every practitioner to be aware of the evolution of tests for the last six decades on what deduces a complaint as being negligent. Recently, a doctor was charged with manslaughter (criminal prosecution) for a negligence case in Britain[8]. It has therefore become more pressing for a practitioner to possess a professional indemnity insurance for an adequate protection.

The general aim of this study was to study the policies of dental indemnities offered by different insurance companies. The objectives are:

1. To gather the number of cases of complaints made by dissatisfied patients from the Malaysian Dental Council.
2. To ascertain the different companies or organisations involved in providing indemnity insurance to dentists and ascertain the benefits provided by them.
3. The various treatments covered by their insurance policies.
4. To find out whether they provide a single premium policy or that the premium is dependent on the type of treatment provided.

Moreover dentists working sessionally (e.g. university lecturers) are they subjected to the full premium cover or their premium is proportional for the time spent with patients? It is also necessary to find out if dental specialists pay higher premium than a dental practitioner. Moreover, this study findings will also confirm that if a dentist retires from practising dentistry, will he be still be covered by the said insurance company in case he gets sued (runoff cover). In other words will the protection still be offered when he has ceased paying his premium[9]. It is also necessary to

determine how many of the insurers provide retroactive cover. This coverage provides for claims made against the insured from the set retroactive date, even if the insurance had not been purchased at that set date[10]. The findings will then be analysed objectively and recommendations can be made for the most suitable insurance policy to ordinary dentists, for the specialists and those dentists who may be privileged or credentialed to do any specialised clinical procedures. Furthermore, it will be possible for the practitioner to ascertain which company provides the best indemnity cover, good services in the event when an unfortunate incident occurs and which has the payment of the premium that is inexpensive. It is well acknowledged that the dental indemnity cover costs are increasing yearly and obtaining value for the money paid on the premium is extremely important.

Materials & Methods

This research was supported and approved by the Institutional Ethics Committee (RMC/EC010/2018), MAHSA University.

The preliminary investigation was to gather the number of cases of complaints made by dissatisfied patients. This information was obtained from the Malaysian Dental Council (MDC). The MDC had set-up the Preliminary Investigation Committees (PIC) to make investigations into complaints or information received against registered dental practitioners regarding disciplinary matters[11]. The confirmed cases of incompetence or indiscipline are then discussed in the MDC meetings for penalising the errant dental practitioner.

Then after it is necessary to ascertain the different companies or organisations involved in providing indemnity insurance to dentists. During the cross-sectional survey a total of four insurance companies were confirmed to provide this service.

1.Avicenna Medical Practitioners Takaful (AVIT) [12]

2.Jardine Lloyd Thompson (JLT) Sdn Bhd (MEDEFEND)[13]

3.Zurich General Insurance Malaysia Berhad (ZGIM)[14]

4.Medical Protection Society- Dental Protection Limited (DPL)[15]

However, due to sensitivity of disclosing the indemnity policy materials of each individual insuring company or organisation, only the policy benefit matters are discussed in an anonymous manner.

The following are the set of questions prepared for each interview with underwriters, telemarketers and managers of the financial department of the respective insurance companies;

1. Premium rate (Initial)
2. Is it a single premium payment or multiple premium rates for different dental and specialist treatments?
3. Premium rate (Increment)

1. Will the premium increase the following year if a claim is made against the dentist/specialist?

1. Any other terms and conditions?
2. Coverage

1. How many number of complaints is permitted per year?

2. Do you provide coverage for freelance locums practising occasionally in your clinic?
3. Do you provide coverage to government dentists from Ministry of Health Malaysia working as locum (with permission) in dental clinics?
4. If the mishap is caused by Dental Surgery Assistant, is the dentist or clinic still covered (due vicarious liability)?
5. Do you cover university lecturers and students who are under the supervision of their respective lecturer?
6. Is there any compensation limit per year?
7. Any retroactive cover?

(If yes, any additional cost?)

1. Will you indemnify former members of the insurance who retired or completely ceased practising and are being sued by their patients?
2. Any restrictions in the types of dental treatment covered?

1. Additional Service
    1. Do you provide any medico-legal assistance or any legal representation to assist the dental practitioner when there is an adverse outcome during his/her professional obligation to the patient?

Articles on medical/dental negligence were also perused in order to determine how dental surgeons reacted when affected in such cases. The various information obtained were deciphered, tabulated and analysed to realise the desired objectives of this research.

Results

There have been total 193 cases under the PICs since 1997-2017. with 53% alleging negligence, fraud or incompetence (103 cases), unethical behaviour (54 cases), irregular professional fees (14 cases) and unethical advertisements (16 cases)[11]. Moreover there is a steady increase in the number of complainants against their dentists (Fig.1 & 2)

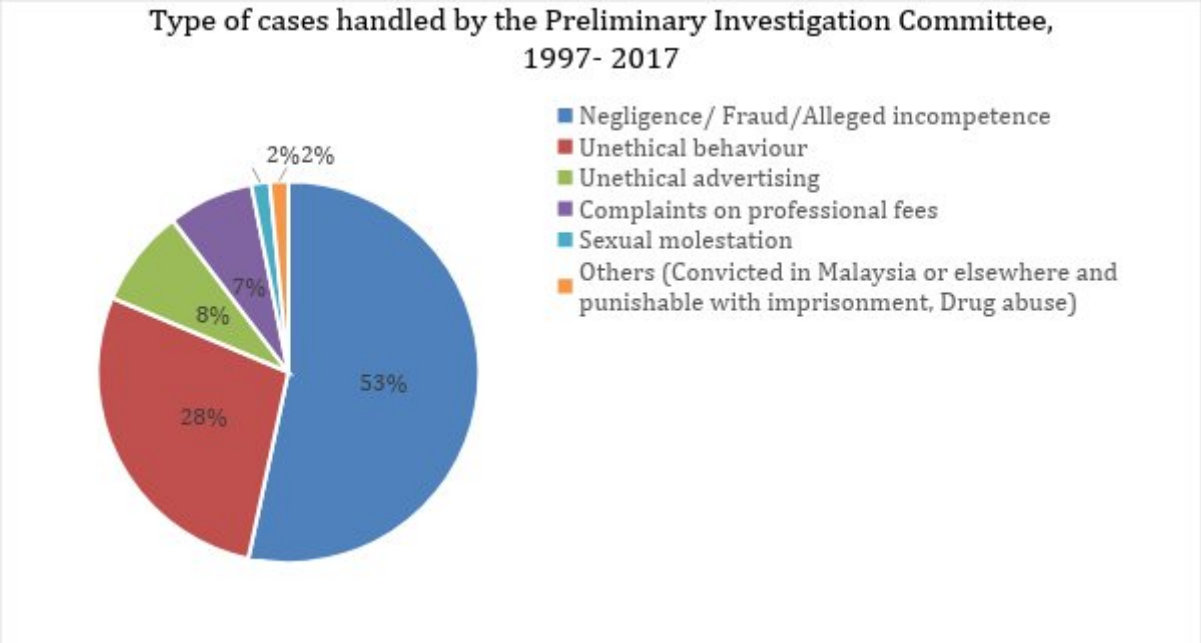

Fig. 1: Type of cases handled by the Preliminary Investigation Committees, 1997- 2017.

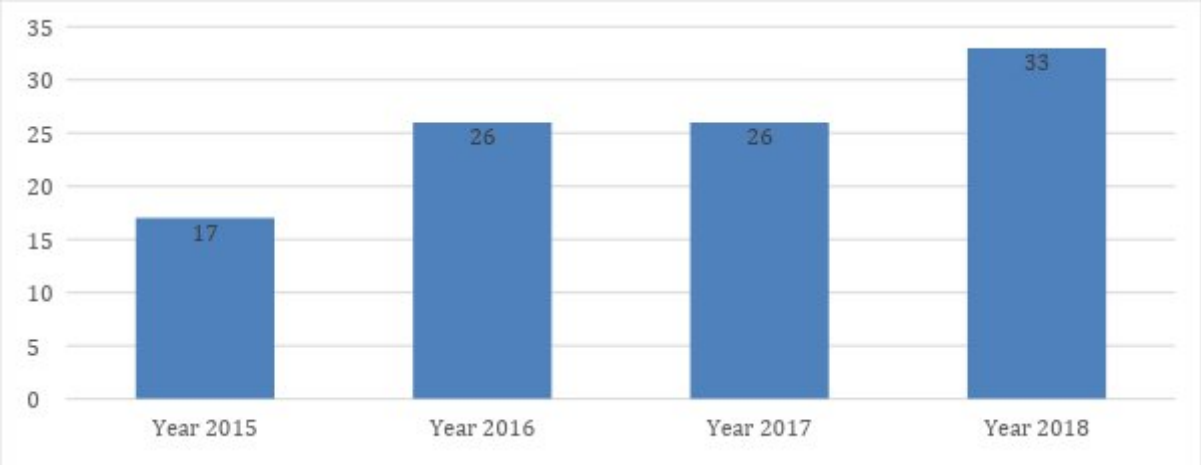

Fig. 2: Complaints against dental practitioners (2015 - 2018) showing a steady increase in the number of cases in the recent year

The benefits provided by the various companies that offer dental indemnity insurance

Many of the indemnity insurance scheme were started for general medical practitioners. Having successfully managed the scheme, insurers decided to extend the scheme to general dental practitioners and the pharmacists. Schemes have to be comprehensive and has taken account of the current trends and responsibilities of the dental practitioner under the Dental Act and also the legal requirements of the Private Healthcare Facilities & Services Act[16].

Generally most companies provide access to experienced and qualified medico-legal advice and claims assistance. Advice and assistance with legal representation (when necessary) at Dental Council disciplinary hearings is sometimes provided. They will work closely together on the member's behalf by navigating the ethical and legal maze and provide the necessary support. Generally all insurers' cover is provided on a claims-made basis (this means that the indemnity is provided for claims made against the dental practitioner whilst he/she is a member of this scheme).

Additional benefits of certain policies provides full retroactive cover up till 6 years provided the participant was not under any other policy within the aforementioned time. Moreover the dentist will have run off cover depending on the coverage but free run off is sometimes given if the practitioner has engaged a policy continuously for 5 years before retirement or becomes disabled or is deceased and therefore his estate is protected. Furthermore, some policies protects against any unfortunate Good Samaritan Acts and also provide protection to help minimise actual or potential harm arising from defamation, social media backlash and privacy infringement that may affect your reputation. Insurers can also issue press statements and act as a spokesperson to the media to shield the member (as far as possible) from having to deal directly with the press.

Furthermore, companies do provide for the cover of locum dentists at no additional cost while some would like you to have separate cover for them. Some companies do have separate premiums for dental practitioners in the private sector and government service. Even indemnity cover can be provided to freelance dentists and government dentists who work as locum dentists in the private clinics.

Apart from indemnity insurance, a company was willing to offer multi-line insurance offerings for clinics. The highlights of this policy are fidelity guarantee (coverage for loss of money and/or property due to fraud or dishonesty of employees), employers liability (coverage for a claim made by any employee as a consequence of injury in the course of employment at the clinic) and public liability (protection against claims resulting from accidental bodily injury to third parties and/or damage to their property whilst they are at the premises).

Another established policy by a company is providing educational resources, with the aim of preventing avoidable harm to patients and reducing risk. They organise seminars and talks to ensure adequate history taking, examinations, diagnoses and treatment principles are adhered to. One of the most important resource is the access to Case Studies (online) which are based on real events - hence dentist can learn from the listed unfortunate events and thereby becoming more alert to avoid any unfavourable happenings during practicing.

One other company provides Takaful type of insurance system which is based on the laws of Sharia or Islamic principles. It is a mutual risk transfer arrangement in which both parties (the insured and insurer) will share the profit and loss equally according to the investment made, subscriptions and compensation/s paid. By subscribing to this indemnity insurance, the practitioners are covered for the loss resulting from an unfortunate incident in the provision of healthcare services.

Discussion

With the new Malaysian Dental Act 2018 soon to be enforced[17], every dental practitioner is deemed to have a professional indemnity as a safety net that protects against any mishap that can happen without notice. Practitioners must choose the best indemnity for themselves wisely. The authors have made the effort to collect and interpret information as much as the companies/organisations are willing to disclose to the general public.

Premium rate

It is apparent that most insurance companies have similar premium for a contract of RM1 million coverage. It is noted that for higher medical/dental risks, companies can provide a coverage of RM5 million for government dental practitioners and RM2.5 million for private dental practitioners. However one company has no limit to coverage but has a fairly higher premium rate. Members of

the Malaysian Dental Association (MDA) pay a discounted subscription with this company but it is still a little expensive.

Premium increment

For some companies premium increment is made at the discretion of the company based on the amount claimed and the number of claims made per year. One company set a guideline whereby by the fourth year if no claims are made, there will be no increment in the premium. Another insurer's premium rate increase is based on the number of years after graduation with RM250 for the first year, RM480 for the second year and full subscription rate from the third year onwards. This is probably to encourage the young dentist to get an inexpensive cover as he would be having limited number of patients in the early years of his private practice. It must be noted that companies (except for one) do increase their premiums if dental practitioners undertake risky procedures like implant placements and orthodontics.

Compensation limit

Most companies have set a compensation limit according to the amount of coverage acquired. Only with one company (which has the highest premium) has no limit imposed to the amount of compensation that can be claimed.

Additional limit reinstatement

Limit Reinstatement is an insurance policy clause that allows the policy limits to be returned to their maximum compensation amount during the policy's period. These reinstatements are used when the original limits of the policy have been impacted by claims paid, or by any other impairment that reduces the limit[18]. Two companies impose a payment of 10% of premium rate in order for the limit to be reinstated. Reinstatement charges for another is made at the discretion of the company.

Retroactive cover

A retroactive cover provides coverage for claims made against the insured from the set retroactive date even if the insurance had not been purchased at that set date[8]. The retroactive cover for two companies starts from the date the insured starts practising. One company sets its retroactive date at 6 years before the insurance policy is acquired while another indicates that it's at the discretion of the insurer.

Runoff cover

Runoff insurance is an insurance policy provision that covers claims made against companies that have been acquired, merged or have ceased operations[19]. In this case, it applies to the dental practitioner who have ceased to practice. One company provide lifetime coverage without premium payment after dental practitioner was paying premium continuously for 5 years with that company, prior to cessation of practice. Similarly another company provides runoff cover with no additional payment up till 6 years after practice is ceased.

Number of claims per year

For one company, there is no limit to the number of claims made per year. However, the amount of claims made per year for other three companies have to be within the policy coverage.

Locum dentist

There are no additional charges for dentists working as locum for a practitioner whose policy is with one company, however, government practitioners are only allowed to practise locum once a week. Whereas two other companies maintains that government practitioners are required to pay only 30%-60% of the premium rate while private practitioners are required to pay the full premium rate. One company has variable premium rates according to the number of hours practised.

Institutional coverage

Only two companies provide a customised insurance policy for institutions - for example, the universities. Another stated that they do have this with their insurance plans for institutions, however consideration can be made upon request. Interestingly, one company provides coverage for individual students for free.

Other additional benefits

These are other additional benefits provided by the insurers which varies amongst them. These include protection against defamation, intellectual property infringement, loss of documents, public relation costs for improving reputation, confidential counselling sessions and workshops to reduce risks during dental treatments.

Professional indemnity insurance provides insurance cover to professional people for financial protection against potential negligence claims by patients, errors or omissions committed by the practitioners. The best defence for any practitioner is avoiding any lawsuit by maintaining a highly ethical and competent standard during professional practice[20]. However, any adverse outcome may occur and once a negligent lawsuit is filed against the dentist, a complex legal system is opened[21]. Interestingly, many of the insurance companies only provide dentolegal services when the complaint has been brought up to Malaysian Dental Council, while it is preferred if insurers handles in-office complaints too so as to prevent further escalation and help prevent claims arising from a complaint to save costs.

One company has Syariah compliant policy and meets the standards underlined by requirements of Syariah principles, where items of ‘gharar’ (the sale of probable items whose existence or characteristics are not certain or due to the risky nature which makes the trade similar to gambling)[22], ‘usury’ (the practice or act of lending money at exorbitant rates of interest)[23] and ‘maisir’ (easy acquisition of wealth by chance; whether or not it deprives the others’ right) [24] are not present in and during transactions. As stated earlier, both parties will share the profit and loss equally. For practitioners who prefer a tailor-made product, one insurer may be able to meet the need of the practitioners. It is more than just a professional indemnity product as you can request additional protection for clinic premises and any untoward or unfavourable action by an employee to the clinic.

It must be categorically stated here that the details provided in this research is solely based on information provided by the companies. However more evidence may be sought from the contractual agreements signed by the practitioners with the different companies. Recently Inland Revenue Board of Malaysia announced that all premium payments for professional Indemnity insurance (even as a partner) is tax deductible from your gross income[25]. Therefore all dentists can afford a good coverage without considering the premium for an indemnity insurance as burdensome.

Finally, it is apparent that the current practices regarding patient record keeping in dentistry fails to meet guidelines across many aspects. This is the only material for defence when a litigation arises. It is therefore advised to embrace electronic record keeping (including the use of digital audio recording) to overcome some of the practical problems of maintaining adequate dental records in an accurate and contemporaneous manner[26]. Moreover never attempt to alter records as this will be misconstrued as changing evidence and will lead to dire consequences.

Conclusion

In conclusion, the dental insurance deals differ with the four different companies studied. However, factors have been taken for practitioners who are cost conscious, one who prefers a policy with Shariah principles or one wishes for coverage of clinics and any adverse action by any of the employees. Therefore the selection of the dental indemnity insurance is dependent of the practitioners' needs and demands.

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Conflict of interest

The authors do not have any conflict of interest to declare.

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What's New in This paper

What is already known on this topic?

Many dental practitioners, especially those from developing countries are aware that they can protect themselves against negligence claims or any legal liability by paying the premium to medical indemnity insurers. However, many are not aware of the benefits they are entitled to.

What this study adds?

This study is aimed to determine the different professional indemnity insurers providing insurance cover and also their various benefits to dental practitioners. The data obtained were then analysed based on the premium rates and increments, compensation limits, additional limit reinstatement, retroactive and run off covers, limit of claims made, locum dentists' cover, institutional coverage and any additional benefits according to each insurance policy. The dental insurance deals differ with different insurers and therefore practitioners must choose the best indemnity for themselves wisely. 3.

Suggestions for further development

This is first time a comprehensive study has been done for the Malaysian dentists. Practitioners in other countries should also find out what benefits are provided by their indemnity insurers as the selection of the dental indemnity insurance is dependent of the practitioners' needs and demands.