Professional insurance for paramedics

by Michael Eburn and Ruth Townsend

In 2018 it is anticipated that the paramedic profession will be brought under the Health Practitioner National Law. This is the law that governs other registered health professionals including doctors and nurses. Under the Health Practitioner National Law, cl 29 'a registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.'

The Regulation Standard: Professional Indemnity Insurance Arrangements is issued by the Medical Board of Australia (1 January 2016) says (on p. 2):

2. Employment or contractual arrangements in the public sector

Medical practitioners who are employed in the public sector or who work in the public sector under a contract or arrangement may have covered under a master policy, an employer's indemnity arrangements, or be covered by legislation.

3. Other indemnified employer

Medical practitioners who are employed or have a contractual arrangement with a non-government employer may be covered by third party insurance arranged by the employer.

Most paramedics will be practising as employees and as many as employees of state ambulance services. Those services will carry insurance, often under state or territory self-insurance schemes. Virtue of the doctrine of vicarious liability, those employers will be liable for any negligent practice by employed paramedics.

It is likely therefore that paramedic practitioners acting solely as employees, particularly employees of state ambulance services, will be sufficiently covered by the employer's insurance arrangements and not have to purchase insurance of their own. It should be understood that an employee is not paying for insurance on behalf of the employer the employer is insuring against their own risk, but that they are liable for any negligence by employees. If the employer is inadequately insured they are still liable but instead of passing the cost of any negligence to an insurer, they have to meet the liability out of their own funds. Where an employer is the state operated ambulance service, the same statement that is true for insurance, in 'good Samaritan' cases, then a paramedic who is not liable to the employer to meet any liability will not arise. This may not be the case with smaller private employers and therefore something they should bear in mind.

The issues of insurance for paramedics is unique because the type of work, and most particularly, the environment in which they work, is unique. Emergency out-of-hospital card is the essence of practice. A doctor or nurse may feel they need to visit an emergency out of the hospital or clinic setting but paramedics are the experts in out-of-hospital emergency care.

Where a paramedic comes across an accident it is also aware that a person is having a sudden medical emergency, they will be aware that assisting is present the person is the essence of paramedic practice and likely feel that they have a professional obligation to do so.

However, an individual paramedic may not have private insurance because, for instance, they hold a non-practicing registration status or their insurance is covered by their employer. When they are on duty with a state ambulance service. As such, a paramedic may be concerned that they would be held to be practising their profession without insurance, if they offered to provide care, even basic first aid, at a sudden accident or emergency. In submissions to the Paramedicine Board of Australia (PBA), one of the authors of this article (Eburn) has argued that the Board should expressly say that such conduct does not constitute practice without insurance. In such circumstances a paramedic won't be in a position to engage in high risk practices and the delivery of emergency care should be encouraged.

It has been argued that the Registration Standard on Professional Indemnity Insurance Arrangements which will, in due course, be issued by the PBA could make reference to or adopt the type of language used in the 'good Samaritan' provisions that exist in every Australian state and territory. For example:

A paramedic who, in good faith and without expectation of payment or other reward, comes to the assistance of a person who is apparently injured or at risk of being injured, is not considered to be practising paramedic for the purposes of this standard.

A rule to that effect will bring the professional standard in line with the civil law. An off-duty paramedic who steps forward to assist in an emergency would be able to rely on state and territory 'good Samaritan' provisions so that he or she is not liable to pay damages for acts done in good faith. Where they are not liable for acts done in good faith, they should also be reassured that they will not be subject to professional discipline for practising paramedicine without insurance.

Professional indemnity insurance only covers liability to a patient who is injured. Personal public liability insurance usually offers much more. In particular, vicarious liability will mean that one's employer is liable to pay damages to an injured patient, but it will not provide assistance if the paramedic is subject to professional discipline or if their employer tries to take disciplinary action.

Private professional insurance will usually provide legal assistance to the insured in these circumstances.

Paramedics Australia has negotiated with Guild Insurance to provide professional indemnity insurance. This policy provides insurance for many risks associated with running a practice as a paramedic which may not be relevant for a paramedic whose only practice is as an employee but it does provide cover for work done in a voluntary capacity (eg, for a paramedic who is a volunteer first aider in his or her day job) and for 'good Samaritan' actions. Further it provides insurance to cover the legal costs of appearing before an inquiry that includes: an official investigation, examination, inquiry or prosecution directly relating to an act, error, omission, or conduct by you in the provision of professional services:

- brought by a registration board, statutory authority, tribunal or any disciplinary committee of an association or professional body of which you are a member;
- arising from a complaint made against you by a third party to any court, statutory health authority or agency, registration board or a professional association or body of which you are a member; or
- brought by a professional inquiry or royal commission.

These types of costs are not met by an employer and so this form of cover may be attractive for many paramedics, even those who practice only as an employee.

Conclusion

It remains to be seen what the PBA will set as the Registration Standard on Professional Indemnity Insurance Arrangements for paramedics. It is likely that a paramedic who practices only for an employer, and in particular if that employer is a state ambulance service, will not need to obtain private insurance.

However, paramedics should bear in mind that because the nature of paramedic work is to provide out-of-hospital care, then providing 'good Samaritan' assistance may be seen as being more than a 'good Samaritan' for the purposes of the National Law. If the PBA rejects Eburn's submission and determines that it is not necessary that the National Law for paramedics to have public liability insurance, then in those 'good Samaritan' cases, a paramedic practising in this circumstance who does not have public liability insurance may be in breach of the Health Practitioner National Law. The provisions of the various 'good Samaritan' legislation will protect a paramedic in this circumstance from civil liability, but it will not protect against professional disciplinary matters associated with breaches of the National Law. The PBA should address this in the final Registration Standard.

To mitigate against any risk of an alleviation of practise without insurance, and to provide insurance to help cover the costs of matters not covered by vicarious liability, in particular the cost of defending professional disciplinary proceedings, paramedics may like to consider obtaining private insurance.