

A briefing from the Royal College of Nursing on changes to its indemnity scheme

In early September the RCN notified our practice nursing members that we decided to make a change to the terms of the RCN's indemnity scheme with effect from 1 January 2012.

The change will mean that work undertaken by GP employed practice nurses and health care support workers in RCN membership, will be excluded from the RCN scheme. Their GP employers need therefore to ensure that all employed staff, including nurses, are covered through appropriate indemnity or insurance arrangements, whether group or otherwise. The employer will in future not be able to rely on a nurse having personal cover through the RCN. This change means that medical defence bodies will no longer be able to recover costs from the RCN in respect of our members employed by GPs.

This change puts our practice nursing members on the same footing as other employed RCN members, whether in the NHS or independent health care sector. Health care employers have vicarious liability for the actions of all their staff and do not generally seek to recover the costs from the individual practitioner (through his/her membership of a professional union like the RCN) when a clinical negligence claim is settled.

We are making this change for two reasons:

1. It is anomalous and discriminatory to single out employed RCN members for different treatment compared with non-RCN and other staff employed by GPs. Doing so dilutes the principle of vicarious liability which, legally, all employers must accept for all the staff they employ. All employers should accept that it is their responsibility to ensure appropriate indemnity cover for their business.
2. We need to ensure that the costs of our indemnity scheme remain affordable for all RCN members, and that all RCN members have access to a similar range of benefits. Currently, the 40-50 claims arising annually from members employed by GPs account for 90 per cent of the costs falling on the scheme.

Since we wrote to members a number of practice nurse members have sought clarification about the impact of the change and have reported a number of misunderstandings that have arisen within their organisation. These are summarised below:

- a) **Some practice nurses are reporting that their employer says they must have 'personal' cover.** This is neither a legal nor a professional requirement of a nurse, irrespective of the nature of the role being performed (e.g. extended or otherwise). Any work undertaken by an employed nurse in the practice setting should be covered by the employer through appropriate group or individual indemnity arrangements made by that employer. If the GP or his or her medical defence organisation wants the employee to be a member of a medical defence organisation then there is nothing to prevent the GP arranging and paying for this. The RCN scheme will continue to provide 'personal' cover for any voluntary, pro bono or self employed work performed by the nurse.
- b) **Some practice nurses are reporting that their employer says they need personal or separate cover if they are an independent prescriber.** It is neither a professional nor a legal requirement for a nurse who is an independent prescriber to have personal cover. If the GP or their medical defence organisation wants the nurse to have personal cover through a

medical defence organisation, then that is for the employer to organise. The GP as employer is vicariously liable for the action of the employed nurse, irrespective of what that nurse is doing. It is the contract of employment that gives rise to vicarious liability, and the GP is generally liable for anything done by the nurse in that role.

- c) **Some GP employers are making it a condition of employment that the nurse buys indemnity cover, or covers the cost of any change in premium for the practice.** This is unacceptable. There is generally no legal obligation on an employed nurse to pay for personal cover in this way. It is poor employment practice (and almost unheard of in even the most commercial of employing organisations), and does little to enhance good working relationships. Most people would accept that the costs of running a business should be borne by the employing organisation, and not the staff employed in that organisation. The RCN will provide our members with legal advice and representation to resist this move.
- d) **Some GP employers have said that the nurse's employment was conditional on their membership of the RCN and the cover the RCN indemnity scheme provided.** There are two issues here. It is not lawful to require an employee to join a trade union (and the RCN is a registered trade union) or indeed to discriminate against an employee who does. It is poor practice to require an employee to purchase or contribute to the costs of what is in effect the practice's indemnity cover, and the RCN will support its members in resisting this.
- e) **Many GPs are not aware of the range of benefits provided by the RCN.** There is no particular reason why they should be aware of the detail, but it is important that GPs are aware that, unlike the position with doctors and their defence bodies, nurses secure legal support and advice for any case before the Nursing and Midwifery Council (NMC), through the RCN's legal advice and assistance scheme, which is entirely separate from the RCN indemnity scheme. Although most cases referred to the NMC are resolved or dismissed without a hearing, the number of cases referred is rising – it reached 1,000 last year for RCN members and this is a further reason why the RCN needs to focus its legal, representational and indemnity benefits where they are most needed. The change to the indemnity scheme does not affect members' access to legal representation in any way, whether it is because of a referral to the NMC, an employment dispute, an accident giving rise to personal injury, representation at an inquest and so on.
- f) **The position of nurse partners:** where a nurse is a partner in the practice, he or she is required to have indemnity cover through one of the defence organisations, and possibly through any group practice policy. This position is long standing and has not changed. The RCN indemnity scheme cannot apply to doctors, and nurse partners are often employers of salaried doctors, with the result that they have vicarious liability for the doctors they employ. In addition, a partner's joint and several liability for the negligent actions of their other medical partners, cannot be covered by the RCN scheme.
- g) **Genuinely self employed, locum and bank nurses** continue to be covered by the RCN indemnity scheme.
- h) **Some nurses fear they may be personally sued.** It would be helpful if employers would reassure their staff that if a patient were to attempt to pursue any individual employed by the practice, then the practice would deal with the claim in the usual way. Solicitors representing the patient would, in any event in practice, direct the claim against the employer and not the individual nurse.
- i) **Some GPs are suggesting that nurses will get a better deal if they switch to the MDU/ MPS.** The defence bodies offer an excellent service but as the employer should indemnify all their staff, there is no particular reason for a nurse to switch unless she or he wishes to do so, or the employer is prepared to pay for that cover. The RCN is a royal college and a registered trade union offering a wide range of legal and professional benefits, plus indemnity cover where the nurse needs it, all for a modest subscription of £194 per annum. If a GP considers that additional protection for the practice would arise from the nurse being personally covered by the MDU/MPS then of course there is nothing to stop the practice paying for this membership.