



Insurance Issues Vital to Complementary Medicine Practitioners and their Organisations (and other Health Professionals!)

By David Balen

Insurance is an important aspect of professionalism. Whilst there are a number of legal and ethical principals involved in conducting a practice, the simple fact is that as a professional, you are required to display reasonable due care and skill. If it is judged that there has been a lack of due care, you could be held legally liable. David Balen here asks you to look a little deeper into the cover you think you have. Not all Insurers and policies are the same! Premium isn't the only thing you should be looking at, even though it is an important consideration!

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1. *Journey to the Bridge – How our schemes for Health Professionals were evolved*

It was one of those times in life... a crossroads kind of time. I knew that I had to make a decision about earning a living in the future! I was a musician, aged 21, and was still recovering from a trek overland to India which happened when I was 19. It lasted 11 months and whilst it helped me to break out of my suburban-induced sleepwalk, it also saw me getting ill with a number of various ailments, culminating in infective hepatitis which brought me close to death's door.

One of the positive things about the experience was that I began to take more of an interest in health matters and diet, and met people on the road from the West Coast of USA, where some of the new (some would say old) ideas such as the Macrobiotics were beginning to get popular. I found that eating more consciously and changing to a vegetarian diet helped me feel better in myself, and also fitted in with my changing world view. When I got back to the UK, I carried on living this way, much to the chagrin of my parents. Two cooks in one kitchen with two different philosophies was a certain recipe for friction!

On return to the UK in 1969, I pursued my path as a musician, which led me to meet many different people, brought me into the sphere of healing and eventually into training to be a Yoga Teacher. At this time the career change was happening and I decided to try and enrol to learn Naturopathy and Osteopathy. I was told to come back once I had got O and A level Science subjects, so I pursued no further and I decided for various reasons (some even philosophical) to join the family insurance business! And this, as they say, is where the story really begins!

In 1977 I had a serious accident which was not treated properly by the Medical Profession, resulting in wounds that did not heal for some 7yrs. A number of my contacts and friends during that period were practitioners of different types of Complementary Medicine. A well respected colleague contacted me one day and said that he was perceived there was a need for a policy to protect the therapist for all of their modalities, rather than an inflexible block policy which only covered one particular therapy or approach. At that time Complementary Medicine was still very fringe, and the underwriters – although very polite – were not overly enthusiastic. Some cheap but limited forms of cover were already available, but only for certain approved organisations.

The idea sat on the back burner until I was approached again, this time by the eminent pioneering Consultant Physician Alec Forbes and some other colleagues who involved in an organisation called New Approaches to Cancer. They were looking for a Private Medical insurance to include treatments at the Bristol Cancer Help Centre. Although the scheme did not get off the ground (the market was not ready for it), it eventually led to me getting the Professional Indemnity Scheme organised and after much negotiation a Private Complementary & Mainstream Medical Insurance Scheme (through PPP Medical care) which was launched in 1991 at the Olympia Health Show.

The schemes were initially called “Bridge” – in a broader sense, I have always felt that I have been a “bridge”, due to my eclectic interest in many things and trying to connect them all together. In a more specific sense, the name was and is, about bringing the mainstream and the non-conventional closer together. The mission was to provide quality advice and wide ranging protection to Health Professionals, especially those in Complementary Medicine, and to literally “care for the carers”. All this was happening at a time when the movement was gathering momentum and practitioners were trying to become more organised and professional. Image was beginning to be more important as the movement was much more in the Public Eye, and quality Insurance protection in an ever more litigious climate was beginning to become an important issue.

Unfortunately, it seems that the trends we say in those days have become a firmer reality and we see incidents involving potential claims and solicitors’ letters to practitioners becoming much more frequent these days.

I believe that choice of the quality of Insurance wordings and the Advisor is a key indicator as to the attitudes and choices made by a professional association or individual therapist –What criteria are those choices made? Purely on premium? Convenience? Status Quo? Personality? As Associations and individuals come under greater scrutiny, I believe that all of these choices can prove crucial and are more important than in those early days, when there was more goodwill and possibly less hype about complementary medicine, and claims were far less frequent. Quality advice and wide wordings with few exclusions can save money and hassle.

2. Insurance issues around conduct of practice and professionalism

Insurance is an important aspect of professionalism. The Report and Survey by the British Medical Association took place many years ago, but it set about trying to define “Good Practice” for Complementary Therapists from their perspective, and they suggested that the Public and presumably also any other Conventional Medicine Practitioner in seeking the help of a Complementary or Alternative Practitioner should ask the following questions which are still relevant today:

- **Is the therapist registered with a professional organisation?**
- **Does this body have a public Register?**
- **Does it have a code of practice and conduct?**
- **Does it have effective disciplinary procedures and sanctions?**
- **Does it have a complaints mechanism?**
- **What qualifications does the therapist hold?**
- **What is the type, length or quality of training undertaken to obtain these qualifications?**
- **How many years has the therapist been practicing?**
- **Is the therapist covered by Professional Indemnity Insurance?**

Whilst there are a number of legal and ethical principles involved in conducting a practice (which are outside the scope of this article), the simple facts are that as a professional, you are required to display reasonable care and skill and as a Health Professional you also have a duty of care. You can be held liable at Law for any alleged breach of that duty. Note that this does not just mean liability if you injure someone or damage their property! There is further confusion caused by the fact that many people do not fully understand the difference between a professional indemnity cover, medical malpractice and liability wordings extended to include treatment. There are professional conduct issues that have nothing to do with treating or advising in the typical therapeutic encounter. They revolve around the quality of communication, relationship and behaviour. A suitable worded professional indemnity/Malpractice wording can go a long way to protecting against allegations of misconduct, as well as any allegations of criminal activity. A large number of policies are assumed or portrayed as Professional Indemnity Policies, and yet are nothing of the kind. Some only cover accidental bodily injury, so if you were not causing injury accidentally, you wouldn't be covered!!

I have heard of a number of incidents over the years where a practitioner's policy has not paid out, and financial catastrophe has resulted. I have dealt with and heard about a number of incidents in the course of practice, which would not have been covered under most policies available. One does not even have to be guilty to end up with an expensive lawsuit to clear one's name. I know of practitioners who have given up because of allegations made; these things are stressful enough and if on top of all this, your policy does not cover you for the indecent; it could be the final straw. Whilst no policy can cover all eventualities it is in my view important to get the widest wording with the least exclusions one can find.

I believe that short-term financial gains in insurance are short sighted. When compared with many other professions, the premiums at the present time for therapists are generally small, many being below £100 and some even below £50! This is partly because the covers are not as wide and also because the claims experience is not particularly bad. How long this can be sustained remains to be seen. We are certainly

seeing more incidents and allegations than we did in previous years and the cumulative effect on this could lead to a rise in rates.

Some policies look very wide on the surface, but when you look at the exclusions and definitions of cover, it is not comprehensive and transparent as one would suppose. As some insurers seen unwilling or unable to state categorically what they intend by a particular part of their wording and how they would interpret it, it can lead to speculation if an incident occurred.

As I understand it, it is the intention behind a contract which carries weight and if this can be substantiated then the Absence of specific exclusions may not mean that a particular situation is definitely covered. Here are a few scenarios and questions for you to consider....

We had a claim where a practitioner received a solicitors letter out of the blue, alleging slander against another practitioner (their client), which was causing that practitioner to ;lose clients and students who were coming over to him. Does your policy cover libel or slander? Many do not.

What if a patient confides or let's slips that they are a child molester or a criminal, do you tell anyone? What if you client find out? What if your patient who might even be a successful businessman, sportsman or celebrity loses work or income because they allege confidential information about their physical or mental condition or any other confidence has leaked to their employer or becomes public knowledge?

What if you give advice to someone about the damaging effect of their lifestyle and they follow you advice to change their job and someone else, for example, their previous employer, having lost their star sales director decides to pursue for compensation?

What if you have a first aider's certificate, and you tend someone at your practice if they have an emergency, or at the scene of a road accident, and that someone alleges that you have made things worse?

What if you help someone out or give advice at a social event or for voluntary work at a charity? Is that defined as being "in the course of the business"?

Does your policy cover legal costs on top of the indemnity limit, or only within it?

Are you covered for work you did previously by your new insurer, if you change insurers or schemes? Some don't include this. Is there an excess on your policy, so you have to pay the first £100 or £200 of a claim?

Does your policy cover damage to your reputation caused by a claim?

If you changed your policy or stopped it at some time, have you checked that there is an ongoing cover – if so, on what basis? There all sorts of clauses which give conditional cover when you stop the policy. Might you be a paid a consultancy fee for advice on Health, Lifestyle or Workplace Matters, but not actually treating anyone? We see claims surfacing up to three years after treatment!! One allegation was for 20 years previously when the client was a child!! How far and how well does your policy cover you for this??

Do you get support if a client wants a refund – how should you deal with this? Will they help you write letters to complaining clients?

If your professional association call you to attend a disciplinary hearing, are you going to get advice pre-hearing or during the hearing?

Would you be covered if you were asked for an opinion by a colleague, but were not directly treating the patient? What about causing someone financial loss or breaching of confidence as a result of giving a professional opinion in court? What if you were being paid as an expert witness or doing medico legal work? Whilst you have immunity in court, it is not quite so clear about the position pre-or post trial.

If the Inland Revenue decide to investigate your tax affairs, are you covered for the expenses and defence if it got to court? We have paid a number of claims for this over the years, and a friend of mine who is clearly innocent has been hounded by a particular person at the revenue for over 6 months. That official refuses to believe her evidence and is being very unreasonable. All very distressing, but at least the costs are covered.

For 99% of the time, life goes on and one never has to call on the policy, but if ever you do, it's good to know that you will get support and guidance at a time when stress levels are high, and fingers are being pointed at you. If your policy does not cover you for an event, you will then be left to sort the problem out for yourself and of course, pay for it.

3. Professional Associations: Status Quo or Quality Solution?

If insurance is such an important issue, why is it that so many practitioners, and even their professional associations, seem to have a blind spot about the subject? Even when they investigate and negotiate insurance packages, there is a tendency for their minds to become numbed as the process unfolds. Perhaps image and public opinion have their part to play. Historically, policy wordings – which are legal contracts – are often written in abstruse legal terminology, and because the meanings are not always clear, there is unease that something may be misunderstood or missed. This can lead to mistrust and lack of confidence, or the other extreme, which is to disregard exclusions or limitations on cover, because it is easier to take a line of lesser resistance. The somewhat negative image of the Insurance Industry does not help matters, even though the truth is that a large number of policyholders protected by various kinds of Insurance over the years, have been well looked after by many intermediaries and insurers at times of need .

Over the years, we have seen on a number of occasions associations and professional bodies, after advice, who have taken on board Insurance Covers that have either serious gaps in cover or policies with somewhat ambiguous clauses, and for a number of these groups, there has been an attitude ensuring that the status quo regarding such schemes is usually maintained. Whilst they are undoubtedly trying to do the best for the membership, there are unfortunately many schemes that in our opinion have too many gaps in protection.

The main factors regarding this unwillingness to move from such a stuck position usually are:

- The premiums are low
- The intermediary has confirmed they have comprehensive cover
- The membership generally adopt a passive stance, relying on the Professional Association
- The Association can retain members with the insurance, and it is usually one of the main reasons for staying with it
- Personal relationships which exist either with Broker, Insurer, council member etc

- Fees earned
- Many organisations insist on compulsory insurance to keep rates low (as well as ensuring that members are insured). This can cause extra expense to practitioners who use other modalities or have other activities, such as teaching, which they may have to insure for elsewhere, or pay more money. A large number of practitioners may have to take out a number of policies, if they belong to more than one organisation, where their main association insists on them belonging to the Block Scheme.

If the Insurance is inadequate to provide all-round protection, this can have potentially dangerous consequences. We were advising a large professional body in one of the Professions Supplementary to Medicine recently, who discovered that for years many privately practising members had had no insurance, due to a misunderstanding of the wordings, and inadequate advice. It had not been appreciated that in addition to treating people or advising them, there are situations where pure financial losses can be alleged and injury or medical malpractice has not taken place. A number of their members had been doing consultancy work, writing medico-legal reports, and being expert witnesses, and also advising local councils on building modifications and many other activities, none of which involved treatment! There was also no cover for Breach of Confidentiality and other conduct-related issues. The block scheme was totally inadequate, but they had thought that it was, and it caused a great degree of sustained anger and criticism, which had a series of negative effects on the organisation over a period of years. Confidence and Membership was lost.

4. Why bother?

Whenever I introduce the concept of wider cover to include the “conduct of occupation” rather than cover for “treatment or advice in the course of the business” (as is so often seen in policy wordings), not to mention the various other scenarios mentioned above, I have been given many similar responses over the years, for example. “My treatments are very gentle...have never hurt anybody...” “We have had no claims, there are very few incidents involving Complementary Medicine...” “I can’t see that sort of thing happening...” “I don’t do many treatments...” etc. Etc. I take a deep breath and usually plead for a more common sense and a more professional approach to these matters. It is not only the livelihood of the practitioner which is at stake, it is also the future of the patient/client and the reputation and financial stability of the professional organisation, not to mention the effects on the complementary therapy movement if things go wrong and the matter becomes public.

We cannot forecast that we will never be complained about. None of us can say we are infallible, that we will never overlook something or fail to diagnose a condition or that we don’t get tired, rushed or overworked, and make less than perfect judgements or actions. These and many other questions need answering. Your financial security may even depend on it in the future!

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