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# Fiji College of General Practitioners

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## INDEMNITY SCHEME

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1ST FEB 2016 – 31ST JAN  
2017

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## **FCGP INDEMNITY**

The following information is valid from 1st Feb 2016 until 31st January 2017. Any future changes to the terms below shall be notified, in advance, to all FCGP members, before taking effect.

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## INTRODUCTION

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Providing certain conditions are met, and subject to exclusions (all outlined below), the FCGP as a corporate body properly constituted under the Medical & Dental Practitioner's Decree 2010, has a discretion to indemnify (i.e. pay) the financial costs associated with a compensation claim against you for clinical negligence arising from your alleged carelessness, including the costs of defending the claim, where this is appropriate.

### **The compensation may include:**

- Non-financial loss (such as physical injuries suffered by the patient)
- Financial loss associated with the personal injury (such as cost of future care, lost wages)
- Legal costs.

The FCGP scheme may cover members for costs up to a maximum of \$40,000 for any one claim. Where more than one member is involved in the same incident of clinical negligence, the FCGP's liability will be limited to \$40,000 in respect of all claims arising from that incident.

The FCGP scheme will have a maximum limit of \$100,000 per calendar year for the payment of claims against its members, after which the individual member will be responsible for his/her own indemnity

For the avoidance of doubt, the payment of any compensation and costs under the FCGP indemnity scheme is entirely at the discretion of FCGP Executive Council, and subject also to the rules set out below.

The FCGP also reserves the right to withdraw the benefit of cover under the indemnity scheme given the claims history of the member.

The FCGP scheme is not a policy of 'insurance' but rather a discretionary contractual indemnity arrangement.

### **Key factors to consider:**

- Cover may be affected by your employment status
- You must be in the correct category of membership
- The general conditions of the scheme must be met
- General exclusions apply (and special exclusions in certain circumstances)
- Cover may be affected by the activity you are undertaking; it must be a health and social care service acceptable to the FCGP.

## **INDEMNITY IN THE CONTEXT OF FCGP MEMBER BENEFITS**

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FCGP indemnity cover only applies to members of the FCGP and is one of a range of member benefits.

Provided you are in the correct membership category, your eligibility (or otherwise) for indemnity cover will not affect your ability to access these other benefits.

For example, even if the FCGP indemnity scheme is not available to you, (subject to conditions) the legal advice and representation scheme entitles you to:

- Legal advice and representation before the Fiji medical & Dental Council (FMDC)
- Legal support if you are involved in criminal proceedings arising in the course of employment
- Legal support if you have an accident – anywhere, at any time.

In addition, members have access to learning resources via the FCGP website, opportunities for continuing professional development and the chance to network with other doctors and health practitioners through the branch structure, FCGP Annual Conference and other specialist forums. Details of the full list of member benefits are available on the FCGP website or you can consult the Members' Handbook.

To find out whether the FCGP indemnity scheme applies to your practice, please read the general conditions set out below, together with any other special conditions applicable to your membership category or type of practice and the general exclusions.

## **GENERAL CONDITIONS**

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All members who wish to benefit from the FCGP scheme must satisfy the following general conditions.

### **Professional standards**

You must:

- have undertaken appropriate training which ensures that you can demonstrate competence in your area of practice (i.e. have the knowledge, skills and experience to perform the task or role to the appropriate standard of care)
- Work within the scope of recognized best practice
- Work within the law
- observe the FMDC Code on Standards of Conduct, Performance and Ethics (if a registered doctor), and any other published standards.

### **Practical considerations**

You must also:

- notify the FCGP, as soon as reasonably practicable, of any claim against you for clinical negligence
- notify the FCGP, as soon as reasonably practicable, of any circumstances known to you that may give rise to a claim
- Act in good faith in all your dealings with the FCGP
- co-operate with the FCGP in providing information, including documentation, when requested to do so by us
- not, without the prior written consent of the FCGP, admit any legal liability for a claim or settle a claim in respect of which the FCGP may be required to indemnify you (which is not the same as offering an apology for the care given).

### **FCGP indemnity and employed status**

It is a general exclusion of the FCGP indemnity scheme that members will not be covered for their practice under a contract of employment, whether working in the Government or independent health care sector.

Both Government employers and independent sector employers have what is known as 'vicarious liability' for the actions of their employed staff. This means that employers have legal responsibility for tasks carried out or actions taken by their employees, connected with their employment. The injured patient or client will therefore ordinarily direct the claim to the employer, if an employee is careless.

To cover the risks of a claim, employers will usually arrange appropriate indemnity/insurance cover for their organization and staff.

Likewise, employers in the independent health care sector will make similar arrangements through an insurance company.

However, a member can voluntarily choose to join the FCGP scheme and pay the appropriate fees and may therefore be indemnified under the scheme despite being employed by the government or by an independent health care provider

If members undertake health care work outside of their employed role, vicarious liability will no longer apply and the FCGP indemnity scheme will cover the member for that work, subject to the rules below. For example, in the absence of an organization` with vicarious liability, the FCGP scheme will cover members for voluntary or charitable work outside of employment, or if acting in a 'good Samaritan' capacity.

Likewise, if the member undertakes self-employed work, they will remain covered, subject to the conditions applicable to self-employed work set out below in summary:

- Employers will always have legal responsibility for the actions of their employees at work
- All health care employers should have insurance/indemnity arrangements in place to cover employees in the event that something goes wrong.

Therefore:

- Personal cover (such as that provided by the FCGP scheme) is not necessary for employees in relation to their employed work unless the employee voluntarily chooses to be part of the scheme
- The FCGP scheme does not apply to members where the employing organization is vicariously liable for the actions of that member unless the employee voluntarily chooses to be part of the scheme.

### **Categories of membership**

Please check that you are a member in the correct category of FCGP membership and have paid all past and current dues for membership. Not all membership packages include FCGP indemnity cover as a benefit.

Please also note that to benefit from the scheme you must be in membership at the time of the incident giving rise to the claim and your membership must be current and up to date The important date for eligibility will therefore be the date of the incident, not the date the claim is lodged or when a member first becomes aware of the patient injury/complaint.

### **General exclusions**

The scheme will not indemnify you:

- to the extent that you are entitled to indemnity under a policy of insurance or contractual indemnity
- in respect of work done under a contract of employment unless you have opted to join the scheme and paid the required fees/ premium
- in respect of a claim which is made or a circumstance which arises relating to the provision of professional services by another person not in membership of the FCGP

- in respect of a claim not arising from the provision of a health and social care service acceptable to the FCGP
- for any circumstances arising outside of any period of membership of the FCGP
- in respect of any trading or personal debt incurred by you; any fine or civil or criminal penalty; or any punitive, aggravated, additional or exemplary damages; any indirect or consequential loss, or loss of profits or of earnings by you
- in respect of a claim or circumstances arising in any way out of the ownership, lease, use or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises; or out of the manufacture, distribution or sale of any products
- in respect of any claim or circumstances arising from allegations of defamation
- in respect of any claim or circumstances arising from any material published or broadcast by you or on your behalf to which you have contributed in any way
- in respect of aesthetic or cosmetic therapies.
- in respect of any claim or circumstances arising in any way from your insolvency or bankruptcy
- in respect of any claim or circumstance arising in any way from proven or admitted criminal activity or criminal behavior, whether or not within the provision of a health and social care service acceptable to the FCGP
- in respect of a claim or circumstance arising in any way from proven or admitted sexual harassment, sexual misconduct, or unlawful discrimination
- in respect of any claim or circumstance arising in any way out of your deliberate intent to cause harm, or your fraudulent, dishonest, malicious or reckless act or omission
- if your negligence causes only a financial loss, not associated with any personal injury or damage to property
- self-employed members (or members who run/own their own businesses), whether you operate as a sole practitioner, partner or through a limited company, who employ in their business other health care workers (irrespective of whether that employee is a member of the FCGP or not), or engage in their business other health care workers as independent contractors who are not FCGP members
- members working or resident abroad or where legal proceedings arise in another country
- in respect of any claim or loss arising from HIV infection or Hepatitis Non A
- members employed by a general practitioner, partnership of general practitioners or limited company operated, controlled or owned by general practitioners, are not covered for any work performed under their contract of employment.

The FCGP reserves the right to withhold cover under the indemnity scheme, as a benefit of FCGP membership, given the claims history of the member.

## **Voluntary work**

The FCGP scheme will generally cover members who work in a voluntary capacity, subject to the general conditions and exclusions, and dependent on the type of activity you are undertaking. This will only include voluntary work undertaken in Fiji

The scheme will also cover members acting as 'good Samaritans', subject to the general conditions and exclusions.

## **Working on a self-employed basis or running your own business**

The FCGP scheme will cover members in their own business, subject to the general conditions and exclusions, and dependent on the type of activity you are undertaking.

## **Business insurance**

Members who run their own businesses must read the scheme exclusions carefully. For example, the FCGP scheme will not cover members for claims arising in any way from their insolvency or bankruptcy, and special considerations apply for claims against the member/business for a pure financial loss.

Self-employed members must also remember that the FCGP scheme provides personal cover for the member, in relation to the performance of a health (or social) care service, when that performance results in physical or mental harm or damage, and associated financial loss to a patient/client. The scheme will not cover all liabilities that could potentially be incurred by the member's business.

## **Employing or 'engaging with' others**

FCGP indemnity cover is a benefit of FCGP membership, i.e. personal to you as a member. People who are not FCGP members, or who otherwise do not benefit from the FCGP indemnity scheme because of their employment status, will not be covered by the scheme.

Therefore, you will be excluded from the indemnity scheme if you at any time

- employ under a contract of employment in your business other health care workers, who are not FCGP members
- engage (i.e. on a self-employed or independent contractor basis) in your business other healthcare workers who are not FCGP members, to perform tasks for the business.

In the above circumstances, you will need to make your own arrangements for insurance cover for your business, which will include your own practice in the business. You should note that this exclusion applies irrespective of whether the other health care worker was involved in the care of the patient or client who is now suing you. You are free to work alongside other health care workers, but if they form part of your business at any time, then this exclusion will apply.

If the other health care worker(s) involved in your business are all FCGP members, or practicing as independent contractors, then no difficulties should arise – if they also meet the conditions of the FCGP scheme, you and they will be covered. It is therefore

important that each individual FCGP member checks the conditions and exclusions of the scheme carefully.

A self-employed member may operate as a sole practitioner, in a partnership, or through a limited company. You fall within the category of self-employed member if you have any ownership or control of the limited company, even if you are also employed by the limited company.

### **Health and social care services acceptable to the FCGP scheme**

Only a health and social care service acceptable to the FCGP will be covered by the FCGP indemnity scheme. There is therefore a basic distinction to be drawn between health and social care services that are:

- Generally acceptable to the FCGP (as accepted practice) for health care workers
- Acceptable to the FCGP in relation to the indemnity scheme (which may not include all accepted practices above)
- Not accepted by the FCGP and hence not acceptable under the FCGP indemnity scheme.

Health and social care services acceptable under the FCGP indemnity scheme are those which:

- are clearly aimed at addressing an expressed patient or public health or social care need
- demonstrate how the practitioner is being personally accountable for their actions and omissions in their practice
- involve the application of rigorous clinical evidence or widely accepted professional practice to the care or support of others or their families.

Any determination of what healthcare and social care services are accepted practice for GPs will be the prerogative of the FCGP Executive Council

Registered doctors must demonstrably address the requirements of the FMDC Code of Conduct, for example:

- making the care of people your first concern, treating them as individuals and respecting their dignity
- working with others to protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community
- providing a high standard of practice and care at all times
- being open and honest, acting with integrity and upholding the reputation of not only your profession (if you are a registered practitioner) but also of the wider health care worker community.

## **SPECIAL CONDITIONS**

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### **Procedural GPs**

Please check that you are a member in the correct category of FCGP membership. Not all membership packages include FCGP indemnity cover as a benefit.

Please be aware that the scheme does not cover:

- Any obstetric or gynaecological procedures other than what could be reasonably expected of a family physician in general practice
- Any major surgery or procedures conducted under general anaesthesia
- fetal (ultrasound) scanning.

The 'good Samaritan' cover does not extend to a doctor providing ante-natal care for an expectant mother who suddenly goes into labour.

### **Voluntary work and elective placements outside Fiji**

Please note that the scheme's territorial cover does not extend to any claim made in any country other than Fiji, irrespective of where the alleged negligence occurred.

### **Specific practices, procedures and treatments**

- **Complementary therapies and homeopathy**

The FCGP does not cover homeopathy in any circumstances.

The FCGP believes that complementary therapies should be used alongside but never replace the treatment offered by clinicians as there are very few high quality studies about the effectiveness of such treatments.

Therefore the FCGP scheme does cover the use of a limited number of complementary therapies within an acceptable health or social care service as an extension of health care practice where the practitioner (whether a registered practitioner or not) has undertaken a certified course of study within the last five years and is practicing such therapies with the knowledge and consent of the patient and their employer.

The FCGP only provides cover for the following complementary therapies within the indemnity scheme:

- acupuncture
- hypnotherapy
- using essential oils within recognized health or social care settings
- massage (note: members must also hold an accredited qualification in massage at level three or above on the National Qualifications Framework).

- **Counselling and psychotherapy**

The FCGP does cover members who apply counselling and psychotherapy techniques within the field of practice, providing they have undertaken a properly certified course of study. The FCGP also covers members who practice as counsellors or psychotherapists in addition to any other role they may hold as a doctor or health care practitioner providing they meet the previous criteria.

The FCGP will only indemnify members who are practicing psychological therapies which are evidence-based. Examples of counselling/psychotherapy that are covered by the FCGP scheme:

- Cognitive behavioural therapy (CBT)
- Eye movement desensitization and reprocessing

- **Exercise classes**

Exercise classes that are carried out in pursuit of a health-related objective will qualify for cover under the RCN scheme subject to the general conditions and exclusions outlined above and also to the member having completed a properly certified course.

A care plan must exist for each member of the class. Classes available to the public without the presence of an individual care plan (e.g. in leisure centres and sports centres) will not be indemnified.

The above also applies to antenatal exercise classes provided by registered midwives, subject to the general criteria of the scheme and the exclusion of cover for independent midwives providing intrapartum care (care during labour and delivery).

- **Expert witnesses**

Indemnity will be provided for FCGP members practicing as expert witnesses as long as above exclusions and conditions are met, along with the following additional criteria.

The expert:

- should have a written contract with the instructing party once an agreement is reached that the expert is appropriate
- should have undertaken relevant training including report writing, courtroom skills and procedures
- must be able to demonstrate a level of expertise appropriate to the type of work undertaken by the doctor who is party to the proceedings
- must adhere to court guidance in acting responsibly as an expert.

Please note that the general exclusion relating to pure financial loss does not apply in the case of expert witnesses. In other words, the FCGP scheme may indemnify expert witnesses notwithstanding that their negligence causes only a financial loss, not associated with any personal injury or damage to property.

- **First Aid**

Members who have a recognized up to date first aid qualification (such as a qualification obtained through St John Ambulance or a commercial training company) will be covered by the scheme, subject to the general conditions and exclusions outlined in this

document. This also applies to members providing first aid on a voluntary basis, for example at sports events.

- **Sexual health and contraception**

The FCGP may indemnify members for inserting contraceptive implants and fitting intrauterine devices, subject to the usual conditions and exclusions of the scheme. Members must have completed a properly certified course in order to be covered by the scheme.

- **Telephone support/advice**

There is no requirement for the health or social care service to be hands on or face to face. Members who offer advice or information via telephone may be covered by FCGP indemnity, subject to the conditions and exclusions outlined throughout this document.

- **Training**

The FCGP may indemnify a trainer if they are held legally liable for bodily injuries caused directly to students whilst they were training them, or indirectly by students applying incorrect techniques to third parties due to negligent training, subject to exclusions and conditions outlined throughout this document.

- **Research**

The FCGP may indemnify doctors involved in conducting; managing or commissioning research provided the member concerned is carrying out such activities within approved national standards for ethical research and good governance

However, if the member undertakes research as part of a higher degree under research governance arrangements then generally their higher education institution is obliged to indemnify them.

If you are unsure of whether the FCGP indemnity scheme applies to you, please contact FCGP Direct for a discussion with an adviser.

## **FURTHER HELP**

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