



CLINICAL INCIDENT MANAGEMENT

Since the removal of qualified privilege from the AIMS form in June 2011, the Association has been working tirelessly to secure protection for our members from the risks of legal exposure resulting from Clinical Incident Management processes.

The Association has recently presented a submission to the Minister for Health, Dr Kim Hames, which calls for legislative reform in two key areas.

The first recommendation relates to the establishment of Quality Improvement Committees. Whilst these committees provide excellent forums for review and improvement of medical services, the administrative and overly bureaucratic processes required to establish these committees are cumbersome. The Association is pushing for law reform to allow for the establishment of Root Cause Analysis (RCA) Committees which would be afforded the same legal protections as Quality Improvement Committees but would be free from the convoluted set-up procedures. RCA Committees would ensure Medical Practitioners are able to hold open and frank discussions regarding a clinical incident without needing to fear legal repercussions.

A similar system already exists in both Queensland and New South Wales and works very effectively. This reform is even more important given the introduction of the Open Disclosure Standard in WA. Whilst the Association supports the concept of open disclosure it is paramount that Practitioners do not fear that any information they give during the investigation of clinical incidents will be relayed back to the patient through an open disclosure process and subsequently potentially used against them in litigation proceedings.

The second reform relates to 'apology legislation' in WA. As part of the open disclosure process, Medical Practitioners are required to make an expression of regret to the patient following a clinical incident. In May 2013 the Australian Commission on Safety and Quality in Healthcare published a revised framework for open disclosure. One of the key changes to the framework was to add a requirement that the words '*I am sorry*' are spoken when offering an expression of regret or apology to a patient or their families. The legal safeguards protecting apologies in litigation proceedings are weak and in need of reform. At present the protections for apologies in WA do not cover statements which admit a liability of fault. When a Medical Practitioner is required to state the words 'I am sorry' it is easy to see how an accidental admission of fault could stem from such a statement. With this in mind the Association is calling for the Minister to amend WA legislation to offer full protection to apologies regardless of whether an admission of fault was made. This would bring our apology legislation in line with ACT, NSW and many other Commonwealth jurisdictions.



Although we hope the Minister will agree with our stance and make the necessary legislative changes swiftly, the Association reminds Practitioners of the Association's previous advice of August 2011 (see last page of this Industrial Update). This advice is still current and Practitioners are encouraged to make themselves aware of the legal implications of completing the new AIMS form in its entirety. The Association reiterates previously issued advice that doctors should continue to notify incidents but only provide information contained within normal patients notes. Anything outside of information in normal patients' notes should only be submitted to a process which provides qualified privilege.

Membership

The AMA reiterates that it is only able to assist financial members of the Association should issues arise in the workplace. Like insurance companies membership provides you with advice and assistance for issues that arise during your membership. Therefore practitioners are strongly advised to join the AMA to ensure that the Association can assist with your future issues. The membership application form on the subsequent page can be completed and sent back to the AMA at 14 Stirling Highway, NEDLANDS WA 6009 or alternatively you can join on-line via www.amawa.com.au.

Support the Association that Supports You! Become a Member now!

MEMBERSHIP APPLICATION

Given Names _____ **Surname** _____
hereby applies to be elected a member of the Australian Medical Association and the Australian Medical Association (WA) Inc.

Signature _____ **Date** ___/___/___

Preferred Name _____ **Date of Birth** ___/___/___ **M** **F**

Correspondence Address _____
To Home _____ **To Practice** _____

Tel _____ **Mobile** _____ **Email** _____

Practice Address _____

Tel _____ **Mobile** _____ **Email** _____

Type of Practice

Specialist Specialty/Specialties _____ Registrar Speciality _____

Sub Specialty/Specialties _____ Level: _____

General Practitioner Specialty/Specialties _____ RMO/ Intern _____

Other (please give details) _____ Level: _____

Mail to AMA PO Box 133 Nedlands WA 6909, or fax to (08) 9273 3073 or email membership@amawa.com.au or join online: www.amawa.com.au. We will send a tax invoice and further membership information upon receipt of your completed application form.

The AMA – advocating, protecting, producing results!



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URGENT INFORMATION REGARDING AIMS FORMS

DATE: 10 August 2011

The Advanced Incident Management System (AIMS) forms are **no longer protected** by qualified legal privilege. Therefore the information you provide on the form could be used against you in legal proceedings and could jeopardise YOUR Hospital indemnity.

The Association and MDA National provided a statement to the membership on 10 June 2011 strongly recommending that practitioners should not complete the AIMS forms without first getting advice from the AMA or your Medical Defence Organisation. This advice was provided because the information provided in AIMS forms used to be protected by Commonwealth legislation as a “declared quality assurance activity”, however this protection has now been removed. As a result, the information in AIMS forms could potentially be used against you in future litigation.

The AMA supported the previous protections which enabled details of clinical incidents to be reported and discussed without fear of reprisal, to maximise the utility of the AIMS process as a genuine quality improvement process. However, since this protection has been removed, it is important to be aware of the implications of providing information on an AIMS form.

Further detail including representations to the Minister and Department are summarised in the July issue of Medicus.

WHAT YOU SHOULD DO! The AMA (WA) and MDA National encourages you to **COMPLETE PAGE ONE** of the Clinical Incident (AIMS) form i.e. provide details notifying of an incident occurring, the name of the patient and clinical details of the incident.

However the AMA (WA) and MDA National **STRONGLY CAUTION YOU AGAINST COMPLETING PAGE 2 ONWARDS** in the absence of advice from either the AMA (WA) or your MDO as the information you provide could potentially be utilised against you in legal proceedings. If practitioners have any questions regarding the above advice or the AIMS form please contact the Association or your Medical Defence Organisation. The AMA (WA) can be reached on 9273 3000 or via mail@amawa.com.au.



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AMA
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