

More than just insurance...



ASSOCIATION OF
OPTOMETRISTS

The AOP's Legal Team

Medical Malpractice Insurance - all practitioners need it. Nobody can join the GOC register without it, yet most people don't understand exactly what it means... until a complaint is made against them... and then the learning curve is very steep.

This document gives an outline of what the AOP does for its members when they are under threat of a complaint made against them and what practitioners need to do themselves to ensure the best possible outcome.

Who's at risk

Statistics suggest that most practitioners will have a complaint made against them at some point in their career. The complaint may well not reach the courts or the Fitness to Practise Committee at the GOC but, nevertheless, the experience can be long, gruelling and expensive. Complaints to the GOC's Fitness to Practise Committee – even ones they dismiss – commonly take over a year to resolve. For the duration of the case, the practitioner feels under suspicion, and his or her livelihood is under threat.

You need more than insurance

AOP membership gives members much more than medical malpractice insurance. Insurance will help defend a civil claim and will pay any subsequent damages. It won't fight your corner against the GOC or in a PCT disciplinary case. It won't advise you if you fall out with your employer.

AOP membership gives access to the best possible advice and representation, given by experienced advisers who assist and advise optometrists and dispensing opticians daily. AOP staff understand exactly what members are going through, whatever the circumstances of the complaint made against you. Their job is to defend members' reputations and livelihoods, understanding your situation and holding your hand through the bad times. It is not about just paying patients to settle claims.

Why the AOP?

Some employed practitioners may feel that they are adequately insured by their employer's policy. Employers' policies may be enough to satisfy legal requirements but, remember, the insurer will look after his client and that isn't you. Usually your employer's interests and yours will coincide,



but there are occasions when they won't and you may have to face the consequences alone. Even where your employer's policy settles a claim on behalf of both you and the employer, it will not protect you from any actions to discipline or dismiss you, arising out of the claim, that your employer may take.

Employed optometrists who rely on their employer's insurance will not be covered if they undertake locum work in practices which are not their employer's. The AOP's insurance covers you for all modes of optometric practice and all employers.

The AOP legal team, including five solicitors, works exclusively with our members. Their experience in defending claims in the optical sector is unparalleled.

What to do if there's a complaint

A member who thinks that there is a possibility of a complaint being made against him or her MUST get in touch with the AOP immediately so that the issue can be handled in the most effective way. Once the AOP know the facts they will guide you through the process and ensure the best possible outcome.

This document sets out, in brief, the legal services provided by the AOP for members. Full details (small print, exclusions, excesses, conditions etc) are available in the AOP Members Handbook.

More than just insurance...

Who is covered?

Membership of the AOP gives every member medical malpractice insurance for the work they carry out in any combination of the following roles:

- Optometrist
- Dispensing optician
- Optometric adviser
- Examiner
- Adjudicator
- Researcher
- Lecturer
- Teacher
- Academic

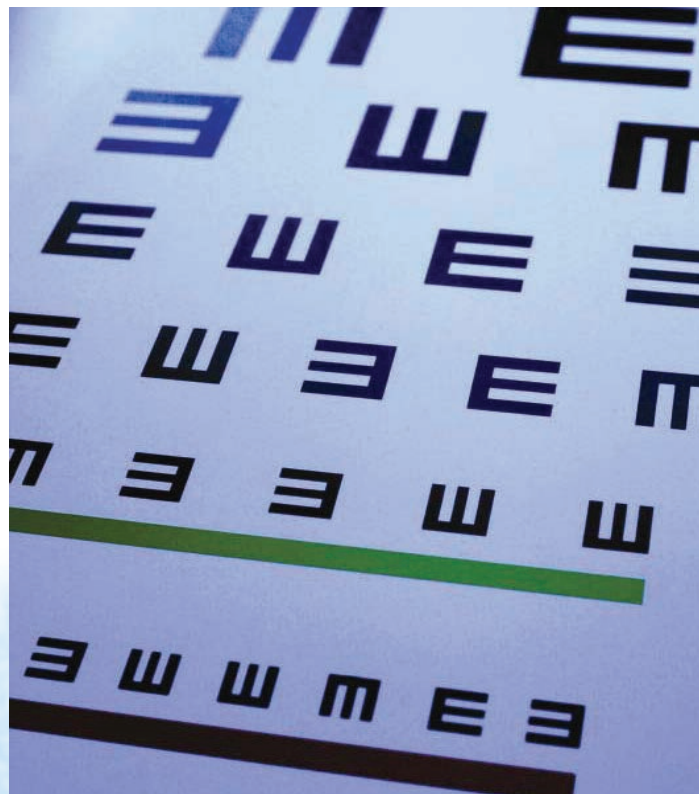
Part time practitioners

The AOP offers concessionary rates for practitioners who work fewer than 100 days per year. The 100 days include any work you do in your capacity as optometrist or dispensing optician – including work as an optometric adviser. You are not able to pick and choose which days you want the AOP to cover you for and which will be covered by an alternative arrangement, such as an employer's insurance. So you cannot work one day a week as a locum and three days a week as an employed optometrist or dispensing optician and rely on concessionary AOP membership to cover you.

Your insurance with the AOP will be invalid if you claim concessionary status when you are not eligible for it. This could leave you open to charges of practising without insurance. If you are in any doubt at all, then give the AOP membership department a call (020 7787 1116).

Protection against claims when not practising

Claims may be brought against optometrists and dispensing opticians when they are not practising (e.g. they have retired or are taking a career break) in respect of work they have done previously. The AOP will cover members who are retiring or taking a career break against such claims.



Retired practitioners

Practitioners who are retiring are strongly advised to take out retired membership of the AOP. A one-off payment will cover you for life and cover the executors or administrators and beneficiaries of your estate.

Career Break

Practitioners taking a break from practice (e.g. to raise a family or travel) can maintain their retrospective insurance cover by opting for the Career Break category of membership. This category of membership is not available to people who remain on the GOC Register.



What to do in the event of a complaint

You must contact the AOP as soon as you have reason to believe that a complaint may be made against you. Do not wait to see what happens. Do not leave it to your employer to deal with. Failure to inform the AOP immediately may materially damage your defence and may invalidate your insurance.

DO

- contact the AOP Legal Defence team immediately
- keep full records of what you have done for each patient
- keep a record of all communications between yourself and the patient (or their representative) and, if you are employed, you and your employer
- draft a fresh account of your dealings with the patient, or your employer, and your comments on the complaint, for your information

DO NOT

- admit liability to anyone – including your employer
- enter into any further discussions or correspondence with any party
- offer to settle any claim
- incur any costs in connection with a claim or complaint
- disclose the terms or nature of your insurance
- make any statement or comment on any situation that could give rise to a claim of negligence
- alter the patient's records



How to avoid trouble

Poor record-keeping is commonplace. If a practitioner is under investigation by the GOC (or a civil court), he or she may have carried out clinically competent work on the patient but, if the records do not show clear evidence of that work, it will be almost impossible to mount an adequate defence.

Why records are so important

There is a strong link between poor record-keeping and successful claims against members for medical malpractice. Optometrists need to be able to provide evidence that a full sight test has been carried out. This should be recorded on the patient's record card. It is not sufficient to say that a particular procedure is routine and therefore does not need to be recorded.

A good record must be legible and should include:

- The patient's details, clinical details and dispensing details
- What the patient reported, the results of all the tests performed and what you advised
- The name of the optometrist responsible for the examination
- If you have not noted down the results of a test, it is assumed you have not carried it out
- All your findings. It is no longer considered acceptable practice to use tick marks or the abbreviation 'NAD'
- A note of all advice given to the patient and any subsequent action, such as referral

Retention periods

Recommended retention periods for records are:

- Adult patients – 10 years following the patient's last visit
- Children – until the patient's 25th birthday
- Deceased patients – 10 years following the conclusion of treatment.

The GOS Terms of Service require you to keep all records including voucher audit trails for 7 years.

Optometrists should bear in mind that the extra two minutes spent on record-keeping may save months of stress in the event of a claim or complaint. Further advice on the issue of patient records can be obtained from the AOP legal team.

The AOP Legal Team

Tel: 020 7401 5313



What are you covered for?

The AOP will advise you in the event of:

- **a patient bringing a civil action against you** – the AOP's insurance policy will cover any awards made against you (up to £5 million pounds)
- **the General Optical Council taking or considering disciplinary action against you** – the AOP will also represent you at any Fitness to Practise Committee hearing
- **your PCT/Health Board taking or considering disciplinary action against you** – the AOP will also attend the hearing with you
- **product liability** – AOP membership gives you insurance cover in the event of defects in any CE-marked products you make and sell
- **Legal Helpline** – AOP membership gives you access to a free legal helpline 24 hours a day, 7 days a week, which will give you advice on any legal questions – whether related to your practice or not



Gerda Goldinger

Director of Legal Services

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Gerda's work in the medico-legal field over the past 20 years provides the AOP with a wealth of experience.



Steven King

Deputy Head of Legal Services

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Steven undertakes most aspects of company secretarial work and deals with the members' general legal enquiries.



Fiona Mitchell

Solicitor

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Fiona is a solicitor and former optometrist, giving her first hand experience of the pressures faced by practitioners.



Sama Hossain

Solicitor

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Sama qualified as a solicitor with the AOP in 2006. Sama is a law graduate with a Masters degree in the Legal Aspects of Medical Practice.



Ella Power

Solicitor

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Ella qualified as a solicitor with the AOP in 2007, having previously obtained a degree in Medical Biochemistry. In 2010 she successfully completed a Masters Degree in Law.



Trevor Warburton

Optometrist and Legal Adviser

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Trevor is a former Chairman of the AOP and has many years experience of assisting the AOP in disciplinary cases before the GOC.



Funmi Jones

Trainee Solicitor

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Funmi joined the AOP as a trainee solicitor after four years undertaking professional regulatory and indemnity work with leading firms of solicitors.