

Challenge Medical Indemnity



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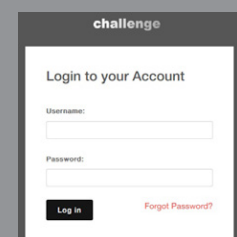
by Joanne O'Sullivan and
Shanna Dunne,
Kennedys Law



**Challenge Covid
Support Measures**

**24 Hour 7 Day
Consultant
Helpline**

The number of the Helpline is
085 8065794



**Consultant
Online Portal**

All Challenge clients also have 24 hour, 7 day communication channel and access to their insurance documents via our online client portal at www.challenge.ie



Dear Consultant,

I hope all is well with you and your family during this unprecedented time.

We are pleased to bring you this newsletter which includes up to date advices on how best to manage your practice and its exposures over the coming months.

The priority at Challenge during this time is to support and protect all of our private consultants. A large part of the Challenge success is down to the comprehensive nature of the coverage we supply. We spend a lot of time researching and negotiating with insurance companies to ensure we are maximising the cover offering and we see now how it pays off at a time like this.

Please have a read through the Challenge update which outlines how your exposures will be covered over the coming months; there is also a comprehensive article from Kennedys Law firm with advices around the provision of telemedicine services which many practitioners are utilising at this time.

I would encourage you to contact us directly with all indemnity related queries and can assure you of prompt, accurate and up to date information at this difficult time for you all.

Indemnity should not be a barrier for the application of best practice in the nationwide fight against COVID-19.

Many thanks for your continued support and commitment to care for all in the coming months.

Stay safe,

David Walsh
Managing Director
Challenge.ie

Challenge Indemnity Update

30.04.20



To our Consultants:

We wanted to take this opportunity to update you on the current indemnity arena from a Challenge perspective.

Firstly it is important to state again that there have been no changes made to the current consultant indemnity contracts (outside of additional covid support measures). All of the change in circumstance, scenarios and patient status is occurring on the Private Hospital, HSE and State Claims Agency (SCA) end. We have been in communications with the relevant parties and continue to be up to date on a weekly basis.

There are an increasing number of possible scenarios which our consultant clients may or may not find themselves in, which are generating queries like, is it a public or a private hospital? is my patient public or private? are my rooms covered? can I work offsite? what defines a public patient? and so on.

We have a good working relationship with the SCA and as an indemnity supplier it is important to have an understanding of how each moving part works. We can confidently advise you that no consultant indemnified through Challenge will go exposed during this covid period once they are providing services within their current policy terms and conditions and/or under the Clinical Indemnity Scheme (CIS) umbrella.

The CIS update over the weekend was as follows:

“UPDATED NOTICE CONCERNING CLINICAL INDEMNITY SCHEME COVER FOR HOSPITAL CONSULTANTS IN RESPECT OF THE TREATMENT OF PUBLIC PATIENTS IN A PRIVATE HOSPITAL”

All Consultants who treat public patients in a private hospital, which has signed up to the Heads of Terms agreed with the HSE, will be covered by the Clinical Indemnity Scheme (CIS).

Cover under the CIS also applies in circumstances where the Consultant, at the time of providing such treatment, has not yet signed a locum Type A contract with the HSE. CIS cover will apply, including retrospectively, in respect of the treatment of such patients, provided that the Consultant, where he/she has not yet signed a locum Type A contract,

agrees not to charge a patient, insurer, hospital or the HSE for such treatment.

CIS indemnity for Consultants who treat patients in a private hospital and who have not yet signed a locum Type A contract is time-bound and will last until midnight, Sunday 3rd May 2020, pending clarity in respect of on-going contract negotiations between the Irish Hospital Consultants Association and the HSE.

*State Claims Agency,
April 2020.”*

Relevant points:

- All Consultants who are indemnified through Challenge have a comprehensive contract of insurance with regulated insurance firms.
- Coverage will continue to apply in the same way as per the healthcare services declared in their respective application forms and as per their existing policy terms and conditions
- Whilst it would be preferable for our clients to be paid for their services, remuneration is not a prerequisite for coverage to apply.
- The Territorial limits are for hospital practice within the Republic of Ireland.
- CIS coverage will apply in the scenarios as outlined in their recent communications.
- We advise our consultants to notify us of any change in their practice which would be deemed a material fact by an underwriter.

Challenge Indemnity Update (Continued)

The below scenarios are exclusively in respect of services provided at a PHA hospital who have signed up to the Heads of Terms agreed with HSE.

Scenarios where a private consultant does not sign the HSE Temporary Type A Contract

- All private healthcare services provided up to and including 31st March 2020 will remain covered under their indemnity contract as per existing policy terms and conditions.
- All remunerated private healthcare services provided after 01st April 2020 will remain covered under their indemnity contract as per existing policy terms and conditions.
- All non-remunerated (pro-bono) healthcare services provided after 01st April 2020 up to and incl 3rd May 2020 will be covered by CIS
- All healthcare services provided after 03rd May 2020 will be covered under their indemnity contract as per existing policy terms and conditions

Scenarios where a private consultant does sign the HSE Temporary Type A Contract

- All private healthcare services provided up to and including 31st March 2020 will remain covered under their indemnity contract as per existing policy terms and conditions.
- All remunerated private healthcare services provided after 01st April 2020 will remain covered under their indemnity contract as per your existing policy terms and conditions.
- All HSE Temporary A Contract and non-remunerated (pro-bono) healthcare services provided after 01st April 2020 will be covered by CIS (cessation date to be finalised)

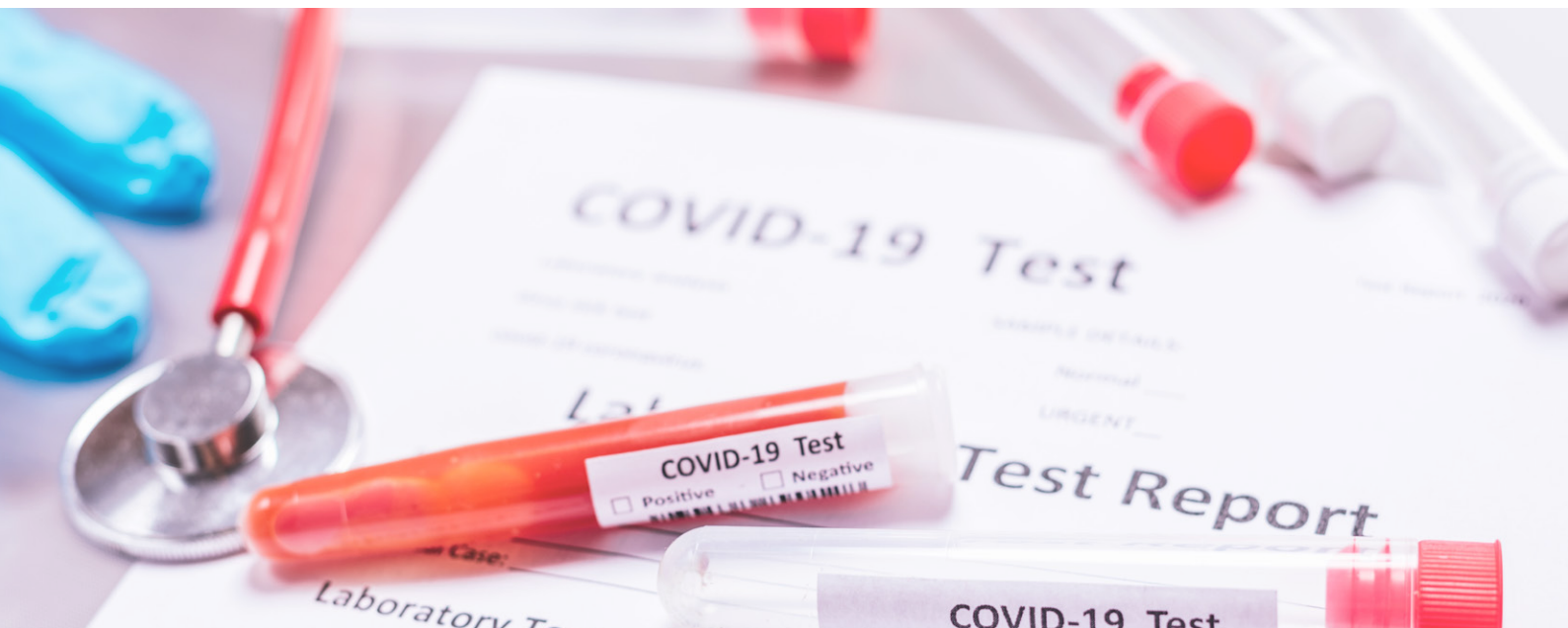
The priority at Challenge during this time is to support and protect all of our private consultants. A large part of the Challenge success is down to the comprehensive nature of the coverage we supply. We spend a lot of time researching and negotiating with insurance companies to ensure we are maximising the cover offering and we see now how it pays off at a time like this.

Can I encourage you to advise any consultant with an indemnity query to contact us directly so we can provide them with prompt, accurate and up to date information at this difficult time for you all.

Indemnity should not be a barrier for the application of best practice in the nationwide fight against COVID-19.

Many thanks for your continued support and commitment to care for all in the coming months.

Challenge Healthcare Team



COVID-19: practical tips for conducting telemedicine consultations in Ireland

April 2020

– by Joanne O’Sullivan and Shanna Dunne, Kennedys Law



As a result of the COVID-19 pandemic many healthcare practitioners are opting to conduct GP and outpatient clinics using alternative means, such as by telephone and through video platforms. The Medical Council has, for some time, recognised that telemedicine can be practiced in appropriate circumstances.

Telemedicine consultations will not be suitable for every patient and healthcare practitioners will have to decide on the appropriateness of a telemedicine consultation on a case by case basis.

Telemedicine consultations will still demand that a high standard of care is provided to patients as at an in-person consultation. The obligations of documenting the telemedicine consultation and the requirement for follow up of particular patients will, however, arguably be more onerous. This obligation arises out of the very limitations of a telemedicine consultation, particularly so during the time of the pandemic. For instance, not being able to ‘see patients in the flesh’, to carry out usual tests, to physically examine patients and to arrange usual referrals for specialist investigations.

This article sets out some guidance on conducting telemedicine consultations, with particular focus on adhering to regulatory guidelines and also taking into consideration potential medico-legal issues.

Preparing the patient for the virtual assessment

As with any patient-doctor engagement, patient consent is required. While this may be implied by their participation, it is preferable to seek consent from the patient to carry out a telemedicine consultation.

You should identify a backup means of assessment such as obtaining a mobile number should the video consultation fail.

For the purpose of protecting patient confidentiality, you should advise the patient that should they wish for the telemedicine consultation to be entirely private they should ask any third parties to leave the room where they are situated, before the consultation commences.

You should advise the patient on what to expect and risks associated with telemedicine, including additional risks where the consultation does not involve a physical examination.

All of these initial steps should be documented.

New patients and telemedicine

A very important consideration in a first patient consultation by telemedicine is patient identification. Ensure that you ask and document relevant information to demonstrate that you have made reasonable efforts to identify that you are speaking with the patient. Likewise, if your consultation is with a caregiver.

If you are asked to undertake a remote consultation with a new patient, it is advisable to request the medical records from the patient’s previous doctor prior to your consultation. If you cannot access their records, you should consider whether you are able to adequately assess the patient clinically and document that consideration. If you cannot adequately assess the patient, then you should recommend the most appropriate route for the patient to seek medical assistance, in accordance with local public health/government guidance.

COVID-19: practical tips for conducting telemedicine consultations in Ireland (Continued)**Vulnerable patients and telemedicine**

If arranging a telemedicine consultation with a vulnerable patient, consideration may have to be given to the issue of patient capacity. There is a presumption of capacity in relation to every adult patient. However, if there is evidence to suggest otherwise, an assessment of capacity, in accordance with the National Consent Policy may have to be considered.

If you consider that the patient may have difficulty understanding or engaging in a telemedicine consultation, you should seek the patient's consent, where possible, to arrange for a carer or next of kin to be involved in the telemedicine consultation to provide any required assistance. The involvement of a third party and the consent in this regard should be documented.

It is important to document and consider any difficulties that a vulnerable patient may have, when using a telemedicine platform. For instance:

- Inexperience using video-conferencing technology
- Poor hearing, compounded by using digital technology
- Anxiety around using digital technology.

Ensure at the outset of the consultation that the patient can hear and see you clearly. A simple audio-visual check can be carried out and this should be documented.

At the end of the consultation, ask the patient to repeat any advice given so that you are assured, to the best of your ability, that the patient has understood. Again, the advice given and the patient's confirmation of understanding in this regard should be documented.

Confidentiality

When using a digital platform to conduct a consultation, you still need to safeguard confidential patient information in the same way you would with any other consultation:

- You should ensure, with your IT advisor, that the platform you are using to host your telemedicine consultation and/or to share information with the patient is GDPR compliant and provides all appropriate safeguards for protecting sensitive patient information.
- You must make sure the records you are responsible for are made, stored, transferred, protected and disposed of in line with the GDPR. Again, you should consult with your IT advisor in this regard.

- Ensure that all information is recorded in the appropriate care record (as you would normally do). This is particularly the case if you are receiving records/information through different digital mediums.
- If you intend to record the telemedicine consultation you must obtain, and document, patient consent in advance of doing so.
- Patients themselves may be more likely to record a telemedicine consultation and clinicians should bear this in mind.

The HSE has partnered with Wellola, an online platform for the delivery of GP assessments. A GP can register for this platform on <https://www.hsecovid19.ie/>.

Safety netting advice during COVID-19

During the current crisis, resourcing issues will mean that difficult decisions may need to be made not only in relation to managing suspected COVID-19 patients but also in relation to triaging non-emergency patients. The Department of Health has produced a helpful ethical framework for making decisions during a pandemic.

Services whose postponement would not be deemed life-threatening and would not adversely affect the patient's health could potentially be deferred either in the short-term, until a specific surge in demand has passed, and/or in the longer-term until the pandemic itself is over.

In relation to higher risk elective patients where, in the usual course, you would have referred them on for further investigations/specialist intervention, it is imperative that your risk assessment in deciding to not refer at this time is carefully documented. Importantly it is advisable that you should engage in pro-active intermittent follow up of the patient, by phone or video-call, until you are satisfied that their symptoms have abated or you consider that their condition is now an emergency and they need to be referred on accordingly. Such pro-activity may require practitioners to forward diary any such follow-ups, which normally may not occur in a non-pandemic scenario.

Your duty of care will require you to rearrange appointments for relevant follow-up as soon as possible once the requisite resources are no longer needed to supplement the critical care demand, and/or once the level of risk to patients in attending the institution for the treatment has lessened. This will require fastidious follow-up and documenting that this has been done.

COVID-19: practical tips for conducting telemedicine consultations in Ireland (Continued)**Tips to consider and document – pre-consultation**

- Is the patient's clinical need suitable for a telemedicine consultation?
- Are you using an appropriately GDPR compliant digital platform to host your telemedicine consultation?
- Does the patient have access to a smartphone, iPad or laptop to engage in the telemedicine consultation? Have you provided the patient with clear instructions either in writing or by phone, in advance of your consultation, providing them with guidance on how to partake in a telemedicine consultation?
- Do you have access to the patient's medical records?
- Is there any evidence to suggest a compromise of the patient's capacity to understand telemedicine treatment and its limitations?
- Do you have appropriate consent to conduct a telemedicine consultation?

Tips to consider and document – inter-consultation

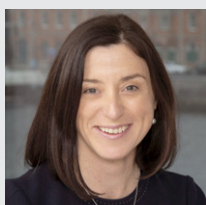
- Check at intervals during the call that the patient can hear you.
- Check at intervals during the call that the patient can see you.
- Ensure that you take your usual detailed history and document this carefully.
- Be aware that typing during the consultation may impede the ability of the patient to hear you clearly.
- At the end of the consultation ask the patient to repeat back to you any advice given, in order to satisfy yourself that they have been able to hear and understand your interaction during the telemedicine consultation.
- Provide the patient with all appropriate safety netting advice.

**Tips to consider and document – post-consultation**

- Carefully document the details of your consultation, discussed above, including safety netting advice.
- Document all follow-up interaction(s) which you engage in with the patient.
- Document where you have arranged appropriate follow-up in circumstances where the usual channels of onward referral may, for instance, be unavailable.

Further information

To find out more about our services and expertise, and key contacts, go to: kennedyslaw.com



Joanne O'Sullivan
Partner

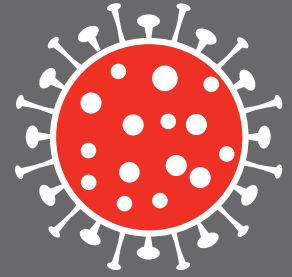
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Challenge Covid Support Measures



Challenge recognise that this is a very difficult period for our dedicated Full Time Private Consultant Practitioners and we are here to support you. We are in contact with all relevant bodies and are up to date with how your exposures are changing as a result of Covid-19 and the temporary PHA/HSE agreement. We are happy to confirm the following support measures to help you through this difficult period:

- We have confirmed an automatic 3 month policy period extension, at no additional cost, to all individual consultants due for renewal from 01st May 2020. Each consultant will receive an endorsement to their existing contract confirming the extended policy period.
- Claims-made based insurance policies require that coverage is kept in place at all times so there is no change to your current indemnity contract.
- Your current indemnity contract will remain in place and will continue to cover practice scenarios which fall outside CIS coverage, as per your policy terms and conditions.
- Challenge consultants are underwritten individually so will have an opportunity during their renewal process to project revised private practice numbers which influence premium levels.
- Challenge Helplines and range of Supplementary Services will continue to be available for all consultants whether working inside or outside the public health system.
- We have extended coverage for all consultants to utilise telephone and video consultation technologies.
- Consultants who pay their indemnity via monthly instalment plans will be able to seek flexibility with their repayment amounts. Currently there is an option to reduce the next 3 instalments by 50% and have them added as additional instalments within the extended policy period months. We can also discuss a possible deferral of monthly payment on a case by case basis.