

**Medical Malpractice risks** 04  
What could possibly go wrong?

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**Commercial risks** 09  
The business risks for medical entities

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**Risk management strategies** 20  
Protecting your business from modern exposures

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# Diagnosing Risks to the Healthcare Industry

**Embracing Healthcare Risk Management**

**Thought Leadership Series**

**DELTA**<sup>TM</sup>  
INSURANCE 

# Inside

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The healthcare industry in New Zealand	01
Medical Malpractice	04
Commercial risks to the healthcare industry	09
Risk management strategies	20
Case study scenarios	26
Conclusion	28
Sources	29

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# The healthcare industry in New Zealand

The World Health Organization defines health as a "complete state of physical, mental and social well-being, not merely the absence of disease or infirmity"<sup>1</sup>.

The delivery of health and disability services in New Zealand involves a complex network of organisations<sup>2</sup>. Therefore, providing New Zealanders with healthcare is not without its challenges. The healthcare industry deals with a variety of different risks, not only in the care provided to patients but also other practice operational risks such as cyber-risks, employment disputes and health and safety risks to name a few. Advancements in technology are continually enhancing the way the healthcare industry operates; however, as the technology evolves so do the risks to the healthcare industry.

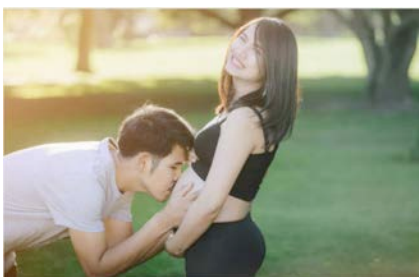
New Zealand is facing long-term health challenges including a growing and ageing population and a higher prevalence of chronic illnesses<sup>3</sup>. People are living longer because of advances in healthcare treatment, access to services and improved quality of care received<sup>4</sup>. With more people to treat and for longer, however, this will put a strain on the healthcare system.

The healthcare industry is extremely broad. From general practices, hospitals and pharmacies to rest homes, massage therapists and acupuncture clinics, they are all subject to risk when providing healthcare. A robust and sustainable healthcare system that minimises risk is essential for ensuring the health of New Zealanders.

The industry faces many challenges and risks with the evolving nature of the healthcare industry – changes in regulations, technology advances and high-stress work environments. It is vitally important for these risks to be managed effectively for both the safety and care of the patients and the viability of healthcare providers and the sector in general.





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A robust and sustainable healthcare system that minimises risk is essential for ensuring the health of New Zealanders.



## New Zealand vs the world

New Zealand is lucky in that we have some of the best healthcare in the world. A study conducted by ID Medical in the United Kingdom ranked countries on their healthcare systems with rankings based on factors such as healthcare spending and numbers of hospital beds. New Zealand made it into the top 20 healthcare countries coming in at 19th.

							
61/100 SPAIN		60/100 BRITAIN		60/100 NEW ZEALAND		59/100 CZECH REPUBLIC	
Healthcare spend	8.8%	Healthcare spend	9.6%	Healthcare spend	9.0%	Healthcare spend	71%
Hospital beds	138k	Hospital beds	169k	Hospital beds	13k	Hospital beds	72k
Doctors & Nurses	434k	Doctors & Nurses	703k	Doctors & Nurses	63k	Doctors & Nurses	124k
Life expectancy	82 yrs	Life expectancy	81 yrs	Life expectancy	81 yrs	Life expectancy	79 yrs

HEALTHCARE SYSTEM SCORECARDS<sup>5</sup>

## Global health challenges

New challenges are emerging every day that will affect healthcare systems around the world. With many people living longer this means health services need to be provided to more people for longer. As well as this, the prevalence of long-term illnesses such as diabetes, depression and heart disease is growing. As new technology is developed, the cost of healthcare is sure to rise. Other big issues could also be antibiotic resistance and new infectious diseases, especially given the devastating impact the recent COVID-19 pandemic has had<sup>6</sup>. These will put a strain on healthcare, so it is necessary to ensure risks to the industry are managed, so facilities are better equipped to deal with these challenges.



## Health and Disability Commission

Anyone receiving health or disability services is protected by the Code of Health and Disability Services Consumers' Rights, which outlines the rights of people receiving health or disability services in New Zealand. The Code of Rights is a regulation under the Health and Disability Commissioner Act and healthcare providers must comply with the obligations outlined in the Code<sup>7</sup>. The Code applies to any businesses or persons that provide health and disability services.

Healthcare providers must ensure that the services they provide don't breach any of the rights of their patients. If a patient does feel that a healthcare professional has breached their rights, they may first complain to the healthcare facility. If the patient is not satisfied with the facility's response, they may then complain to the Health and Disability Commission (HDC). If the HDC receives a complaint about a healthcare facility or professional breaching the code, the HDC may choose to open an investigation into the complaint.



These investigations can last several weeks to months, can be costly to defend, disruptive to the workplace and the process can very stressful for the healthcare provider. The HDC receives more than 2000 complaints per year<sup>8</sup>, and the number is only increasing as more patients realise their rights to proper healthcare<sup>9</sup>. The HDC may sometimes refer complaints to a Regulatory Authority (RA) if the complaint is related to a registered health professional's competence or conduct.

The RA can refer complaints to a Professional Conduct Committee to investigate. This Committee can decide to bring a disciplinary charge against the healthcare provider in the Health Practitioners Disciplinary Tribunal (HPDT), which can then invoke penalties including fines, cancellation of the practitioner's registration, suspension of the practitioner's practising certificate, as well as place conditions on the practitioner's practice, and may order costs against the practitioner.

The RA may also require a healthcare professional to complete a competence review, a process which can take months and have significant legal implications for the healthcare provider that may require legal representation during that process.

The HDC can also refer the healthcare facility or professional to the Director of Proceedings, an independent body. The Director of Proceedings can take action against the provider through the Human Rights Review Tribunal where damages can sometimes be obtained for the patient. The Director of Proceedings can also take a case before the HPDT if the healthcare provider is a registered health practitioner.

The HDC receives more than 2000 complaints per year<sup>8</sup>, and the number is only increasing as more patients realise their rights to proper healthcare<sup>9</sup>.



### The Code of Health and Disability Services Consumers' Rights

1. The right to be treated with respect
2. The right to freedom from discrimination, coercion, harassment, and exploitation
3. The right to dignity and independence
4. The right to services of an appropriate standard
5. The right to effective communication
6. The right to be fully informed
7. The right to make an informed choice and give informed consent
8. The right to support
9. The right in respect of teaching or research
10. The right to complain

# Medical Malpractice

Although healthcare professionals are highly skilled, occasionally errors can be made when providing healthcare to patients; this is commonly referred to as medical malpractice, which is defined as “negligent, improper or unskilled treatment of a patient by a healthcare professional”<sup>10</sup>.

There are many different forms of medical malpractice, including giving an incorrect diagnosis, administrative errors, providing wrong medication, failure to obtain informed consent, and childbirth injury. Medical malpractice can result in serious physical and mental health complications for patients and in some situations, death. Instances of medical malpractice that result in a patient getting hurt are often called treatment injuries. In New Zealand, if a patient believes they have experienced medical malpractice from a healthcare facility or professional, they will sometimes complain to the HDC.

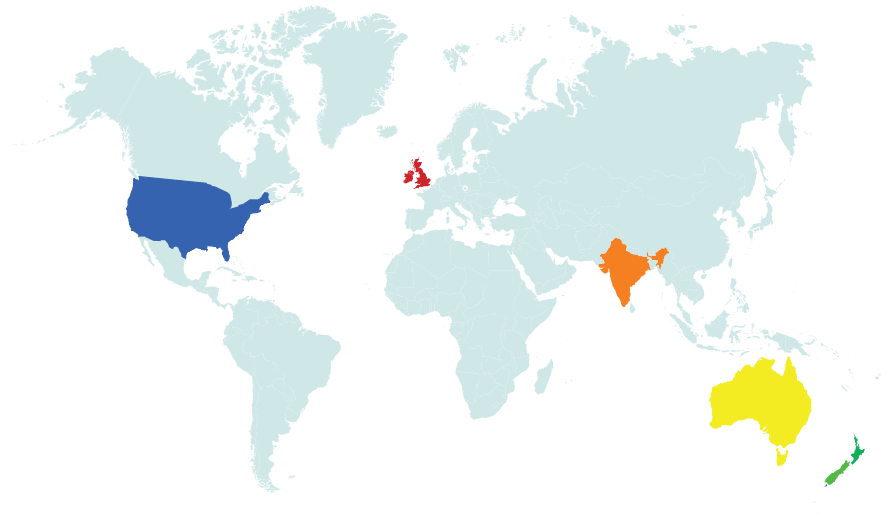
## Accident Compensation Corporation

The healthcare industry in New Zealand is unique globally through the existence of the Accident Compensation Corporation (ACC). ACC is a no-fault, accidental injury scheme to provide compensation for people suffering from personal injury. The Accident Compensation Act 2001 lays out that any person in New Zealand (including visitors), shall be entitled to compensation for most accidental injuries including most injuries from medical malpractice (referred to as “treatment injury”<sup>11</sup>). ACC provides compensation to people in the form of paying for costs of treatment and rehabilitation, and assisting with income if a person must take time off work<sup>12</sup>.

This makes New Zealand a unique case as, unlike other countries, ACC cover greatly reduces a person’s right and need to sue someone for compensation for personal injury. If the injury is not covered by ACC, however, the patient may be able to pursue a civil claim in relation to the injury. There is also a possibility that an injured patient could take a healthcare professional to court seeking exemplary (punitive) damages for conduct that has resulted in personal injury. But the threshold to prove exemplary damages is extremely high and therefore claims for these damages are rare. It is more common to see a case of personal injury as a result of medical malpractice advanced as a complaint to the HDC.



## Medical Malpractice around the World



**India** A woman went into hospital with a rare skin disease and later died of kidney failure in the hospital. The hospital misdiagnosed her, and she was given an overdose of steroids leading to her death. Result: The woman's husband sued the hospital for medical negligence and was awarded NZ\$1.1 million<sup>13</sup>.



**United States** A man complaining of testicular pain went into surgery to have the affected testicle removed. Unfortunately, through a surgical mistake, the wrong testicle was removed. Result: The man sued the surgeon and hospital for medical malpractice and won NZ\$1.2 million in both compensatory and punitive damages<sup>14</sup>.



**United Kingdom** A woman went into hospital with abdominal pain, which was caused by a hernia. The hospital misdiagnosed the problem and as a result of the proper treatment being delayed, the hernia burst and she died. Result: The family of the woman was awarded NZ\$574,970 in compensation<sup>15</sup>.



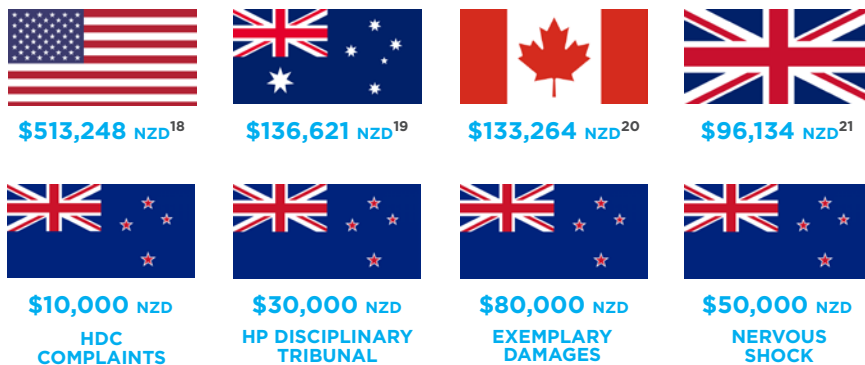
**Australia** A woman suffered from facial-skin depigmentation and dimpling after her beauty treatment to reduce wrinkles went wrong. While this complication is common, the woman was never warned about the risk of this happening. Result: The woman brought a case against the salon for breaching its duty of care to explain the risks, and was awarded NZ\$26,740<sup>16</sup>.



**New Zealand** A man suffering from glaucoma had an appointment with his doctor but the doctor went on leave and failed to re-schedule the appointment which resulted in the man becoming legally blind. Result: The Health and Disability Commission found the surgeon in breach of the code, and the Accident Compensation Corporation paid the patient NZ\$110,555 in compensation<sup>17</sup>.



## Average pay-out for medical malpractice claims



## Common medical malpractice complaints to HDC in New Zealand

“The most common types of medical malpractice cases we attend to relate to those charged with negligence or malpractice under the Health Practitioners Competence Assurance Act, or Health and Disability Act. The most common complaints relate to professional errors (such as inadequate treatment, misdiagnosis, medication error or similar). Complaints typically relate to errors in practice but can extend to inappropriate behaviour (such as disparaging other practitioners, or inappropriate relationships with patients). There are further cases which appear more commonly for each health profession – for example, prescribing issues are usually related to a medical professional, dispensing errors are usually related to a pharmacist.”

ELLIE WILSON AND TEAM,  
DARROCH FORREST LAWYERS

The most common medical malpractice cases relate to those charged with negligence or malpractice under the Health Practitioners Competence Assurance Act, or Health and Disability Act

### Incorrect diagnosis

Misdiagnosis can be dangerous as it can lead to delayed treatment or the patient taking incorrect medication. Providing the correct diagnosis is particularly important in the case of cancer patients as early treatment could prevent complications and even death. Whether a healthcare professional diagnoses the patient with the wrong illness or they miss something vital, both can lead to a complaint to the HDC from the patient. Missed and delayed diagnoses are one of the most common complaints made to the HDC<sup>27</sup>. Factors that contribute to delayed/incorrect diagnosis can include lack of training, poor communication, fatigued staff and technology issues<sup>28</sup>.

### Childbirth injury

Delivering babies can be a very risky process for both mother and child. Common mistakes reported to the HDC include failing to identify a medical condition of the mother, not identifying birth defects, improper use of forceps or failing to complete a caesarean when necessary<sup>29</sup>.

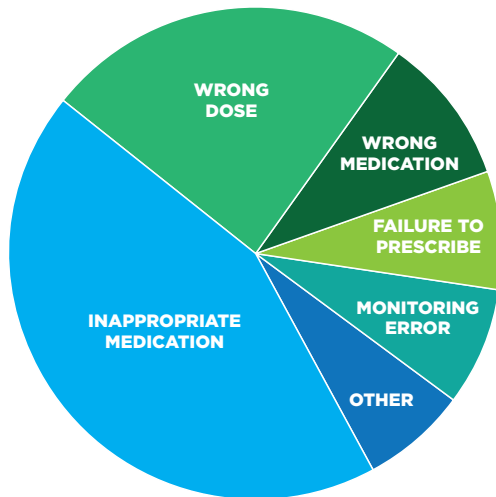


**Surgery errors**

Completing surgery can be a very complex task to carry out and often carries risks. There are often multiple staff assisting, sharp objects being used and potentially harmful medications involved in surgeries. Common errors during surgery reported to the HDC include puncturing an organ, performing surgery on the incorrect body part or leaving surgical instruments or materials inside the patient<sup>30</sup>.

**Medication errors**

There are many things that can go wrong when administering, dispensing and prescribing medication. When providing medication, allergies, side effects and other medications the patient is on must all be considered. These factors can get missed and lead to a patient bringing a complaint to the HDC. Providing the wrong medication or in the wrong dosage can result in serious health consequences for the patient. The HDC has seen multiple cases where patients have died as a result of healthcare professionals failing to provide the correct medication. In some cases the commissioner has found the healthcare professionals to be in breach of the Code of Rights. Contributing factors to medication errors include being short-staffed, confusion over similar-sounding medications, untrained staff and miscommunications.



TYPE OF PRESCRIBING ERROR<sup>31</sup>

**Medical Malpractice potentially not covered by ACC**

Most instances of medical malpractice in New Zealand are covered by ACC and affected patients get cover from ACC for their treatment injury. Patients may also complain about the care they received to the healthcare facility. They may then follow this up by complaining about the healthcare professional or facility to the HDC, Coroner or the relevant Regulatory Authority if a registered health professional is

**A Case Study on Surgical Mesh - Is ACC always the remedy?**

Surgical mesh was used to treat pelvic organ prolapse and urinary incontinence in women, which is often caused by giving birth. Many women around the world began experiencing painful side effects after the mesh was inserted. Complications arising from the mesh and its removal included chronic pain, infections, bleeding and bowel issues<sup>22</sup>.

In Australia, a class action was launched for 1,350 women who experienced complications from the surgical mesh against Johnson & Johnson, the manufacturers of the mesh. The case became the largest women's health class action in the history of Australia<sup>23</sup>. The court ordered Johnson & Johnson to pay AU\$2.6 million in damages to three of the women with the faulty implants<sup>24</sup>.

In the US, action was taken by thousands of women in California against Johnson & Johnson. The company was ordered to pay US\$344 million in damages for deceptively marketing the mesh implants<sup>25</sup>.

Because of ACC, however, women in New Zealand were unable to sue Johnson & Johnson for damages. Women who suffered surgical mesh injuries had to rely on treatment-injury claims to ACC. Out of the 1,018 ACC claims, 771 of these were accepted<sup>26</sup>. There is some disappointment for women who were denied ACC claims and others were disappointed they could not sue Johnson & Johnson for higher compensation.



involved. There are some injuries caused by medical malpractice which ACC does not cover, however, which could alternatively lead to a patient taking legal action against a healthcare professional or facility.

### Failed sterilisations

Sterilisation procedures to prevent pregnancy are common procedures carried out on both men and women; however, sometimes these procedures are unsuccessful and can result in pregnancy despite the attempt to sterilise. For the purposes of ACC, pregnancy can be considered a personal injury if it results from a negligently performed sterilisation procedure. ACC tends to only provide cover for the mental and physical injuries caused by the pregnancy itself. ACC will not cover for the costs of caring for the child or wages if the mother cannot work because of childcare obligations. It is therefore possible that someone could take a civil claim against a healthcare professional or facility for a failed sterilisation to try to win the costs of raising the child.

### Pure mental health injuries

Secondary victims and people who suffer pure non-work-related mental health injuries with no physical injury are not covered by ACC and are therefore not barred from taking a civil claim. For example, a father may suffer nervous shock as a result of watching a traumatic birth in which his baby died as a result of medical malpractice, or a person suffering mental injury from observing a family member jump to their death following a failure by a mental health service to supervise the patient. In these cases, ACC would not cover the secondary victims, so they could take a claim against the healthcare provider for compensation.

### Exemplary damages

A patient who experiences medical malpractice could potentially take the healthcare professional to court and sue the person for exemplary damages. This is rare, as exemplary damages are only awarded in exceptional cases and there is a very high threshold for an award. If a claim is successful, however, the costs awarded are high, as exemplary damages are intended to “punish” the wrongdoer for deliberate bad behaviour. Even if a claim is not successful, the costs of defending the claim can also be expensive and time-consuming.

#### Incorrect medication case 2020

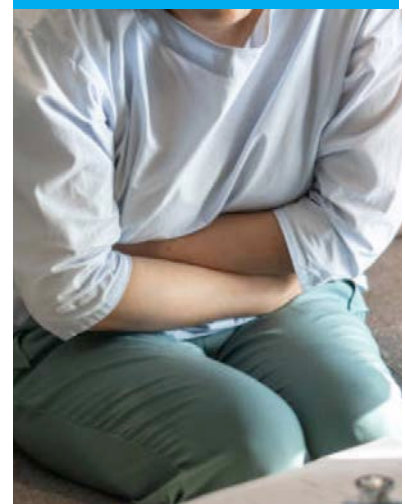
A New Zealand nurse was found to have made several errors when dealing with the medication of her patients. The nurse failed to give a young girl with asthma the respiratory medication she required and did not perform any observations on the girl. The nurse was also found to have failed to give antibiotics to an infant who had pneumonia but filled out the documentation to say that she had. The Professional Conduct Committee of the Nursing Council investigated the case and prosecuted the nurse before the HPDT. The investigation and hearing took four years. The Tribunal cancelled the nurse's registration, barred her from reapplying for registration for three years and ordered her to pay 40% of the costs of the hearing<sup>32</sup>.

#### Exemplary damages - a case study

A pathologist routinely examined patients' cervical smears to look for signs of cancer. One patient had her smears examined by him over four years and he told her she was fine, but she later found out she had cervical cancer. The treatments left her unable to have more children and with weakness in one leg.

Upon investigation, it was found that the pathologist had mis-read four of the cervical smear slides. If he had read them correctly, the woman could have been treated earlier and would not have suffered the complications she did. An investigation also revealed that the pathologist had been misreading 50% of the slides he examined.

The woman successfully claimed ACC and decided to take the doctor to court for exemplary damages. The case found that the threshold for claiming exemplary damages was that the person intended to cause harm or had been reckless as to whether they would cause harm. The court decided that although he caused harm to the woman, the pathologist “did not have a guilty mind that would warrant awarding exemplary damages”<sup>33</sup>.



# Commercial risks to the healthcare industry

## Employment issues and disputes

A commercial risk that the healthcare industry must deal with is the potential for employment disputes. There tend to be high turnover rates in the healthcare industry globally<sup>34</sup>. Some of the causes for this are unsatisfactory working conditions, low pay, high workload, long hours and lack of career advancement<sup>35</sup>.

Because healthcare staff are often dissatisfied, this can lead to employment disputes. For example, in New Zealand an employee could go to the Employment Relations Authority (ERA) over the employer not allowing them to take adequate breaks, unilaterally changing their place of work or hours of work, or materially changing their responsibilities and reporting lines. Smaller organisations, such as many smaller health centres run by a sole health practitioner or a small group of practitioners, do not always have established HR departments and commonly get into difficulties when undertaking disciplinary investigations into an employee's conduct or performance. Employers also have a duty under the Health Practitioners Competence Assurance Act to notify a health practitioner's Regulatory Authority if an employee health practitioner resigns or is dismissed for reasons relating to competence<sup>36</sup>. If the employer does not act in a fair and proper manner when undertaking a disciplinary investigation, the employee can take a personal grievance against their employer to the ERA.

## Workplace health and safety

The healthcare industry has some workplace health and safety risks that facilities should be aware of and be cautious about. Having a workplace in which staff are worried for their safety could mean staff are scared or feel under pressure and may not perform at their best. The most common injuries for healthcare staff include lacerations, musculoskeletal injuries, contusions and needle injuries<sup>37</sup>. Also, when treating patients, many healthcare workers can be exposed to dangerous chemicals and infectious diseases<sup>38</sup>.

Healthcare staff may also find themselves at risk of violence from patients, other employees or members of the public<sup>39</sup>. Healthcare staff could be dealing with tired, over-worked colleagues, patients suffering psychotic episodes, or grieving family members, all of whom have the potential to become violent. Violence against healthcare workers can also occur from patients who aren't aware of the wrongdoing, such as patients with a head injury, intoxicated patients, or patients suffering medication side effects, PTSD or dementia<sup>40</sup>. Violence can include physical assault, verbal and psychological abuse, use of weapons, sexual abuse, gender and racial abuse<sup>41</sup>.

Employers also have a duty under the Health Practitioners Competence Assurance Act to notify a health practitioner's Regulatory Authority if an employee health practitioner resigns or is dismissed for reasons relating to competence.



Healthcare centres need to be seen to be taking all reasonably practicable steps to mitigate the risk of their staff and patients being subject to violence. If a healthcare centre is believed to be not taking all reasonably practicable steps to ensure acceptable levels of health and safety, Worksafe NZ may be notified. Worksafe can open an investigation into the healthcare centre and the healthcare centre could be taken to court or face other action by Worksafe for breaching obligations under the Health and Safety at Work Act 2015.

The fines, reparations, and damages awards can be high and so can the defence costs. Worksafe may prosecute many different people in each organisation, all of whom will require their own lawyer, so defence costs can be expensive. Under this Act, insurance also cannot cover fines which can present a huge bill and a burden that can affect the facility's balance sheet. Factors that can trigger or escalate violent behaviour at work are overcrowding, patients and families under stress, cultural insensitivity and training gaps<sup>42</sup>.

## Bullying

Worksafe's definition of workplace bullying:

**Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.**

- > Repeated behaviour is persistent (occurs more than once) and can involve a range of actions over time.
- > Unreasonable behaviour means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating, intimidating or threatening a person.
- > Bullying may also include harassment, discrimination or violence<sup>44</sup>

### Working in healthcare is a health and safety issue

"Health and safety is extremely challenging in healthcare; there could not really be a workplace more complex in terms of health and safety risks. Take fatigued, stressed workers doing night shifts, working with hazardous chemicals, hazardous and complex equipment, managing bio-hazard risks all within unpredictable clinical situations with time constraints as workload is managed - tell me this is not complex."

ANNE MCLEAN, CONECTUS

### Some incidents reported by the NZ Resident Doctors' Association

- A family member of a patient threatened healthcare staff with a breadknife
- A healthcare professional was attacked by their patient with a pair of scissors
- Someone grabbed a nurse and broke her wrist
- Another nurse was punched in the face
- A patient told a staff member "I can find out where you live, I have a gun, who the hell are you?"<sup>43</sup>



Healthcare providers are one of the organisations with the highest rates of workplace bullying<sup>45</sup>. According to the Health and Safety at Work Act 2015, bullying is a risk to health and safety and employers are legally obligated to take reasonable steps to eliminate or minimise this risk<sup>46</sup>.

#### Hierarchical healthcare - expert view

“Healthcare is traditionally very hierarchical; bullying exists, and this is concerning for many reasons - not just for good workplace relations but patient safety.”

ANNE MCLEAN, CONECTUS



Healthcare facilities could be in breach of the Health and Safety at Work Act 2015 if they are found to not be taking all reasonably practicable steps to reduce the incidence and harm from bullying. Bullying in healthcare facilities can often be a case of the senior staff bullying those under them. The New Zealand Medical Association said it had seen senior doctors who bully junior doctors, then the junior doctors bully more junior doctors and doctors at all levels bully medical students<sup>47</sup>. Bullying in the workplace can lead to claims in the Employment Relations Authority and/or a prosecution by Worksafe in the District Court. Bullying and harassment claims take a large toll on the workforce, and investigations into the claims are often prolonged, difficult and expensive.

#### Cyber-risks

As the health industry becomes more reliant on technology, the risk of cyber-breaches also increases. Healthcare facilities' databases are a big target for cyber-criminals as they tend to hold lots of private information including medical histories, social security numbers and financial information<sup>48</sup>. Stolen health data can be sold on the Darkweb and used in many ways, including leveraging details and identity theft<sup>49</sup>.

When data is stolen, this can put patients at risk and can sully the reputation of the healthcare centre. But cyber-criminals are not the only ones to watch out for; sometimes healthcare staff are the ones putting information at risk. Many staff working in primary care work long, stressful days, so they tend to want to do things that are quick and easy, but this can lead to mistakes. For example, choosing a

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Healthcare facilities' databases are a big target for cyber-criminals



simple password because it's easier to remember can make it easy for unauthorised people to have access to private information.

Another issue with trying to do things too quickly is that information can be sent to the wrong person by mistake, e.g. sending a fax which contains private information to the wrong person. These errors often come down to lack of training, lack of awareness and a culture that does not value cyber-security.

### Cyber-security in the healthcare industry

"The role of digital technologies as an enabler in the New Zealand healthcare sector has developed considerably during the past five years and clinicians in both primary and secondary care have embraced the advances to deliver better healthcare for New Zealanders. So too have consumers.

"There is an implicit trust in systems, providers of services and partner organisations, with no questions asked.

"To add to this, there is an apparent lack of cyber-security literacy at all levels of the healthcare sector. Monitoring and auditing for security events is certainly not happening consistently in smaller healthcare providers like general practices or NGOs. Most processes are ad hoc, manual, with no automation and no documentation, and for the documented processes they often do not match the current environmental requirements.

"The current approach and investment in security is lacking, resulting in poor outcomes for health organisations and people. There are no standards consistently adopted across the sector.

"Until these issues are addressed consistently across the healthcare sector, patients' confidential information will continue to be at risk of breaches."

JOHN, HEALTHPOINT

The current approach and investment in security is lacking, resulting in poor outcomes for health organisations and people. Until these issues are addressed consistently across the healthcare sector, patients' confidential information will continue to be at risk of breaches.



### Tū Ora Compass Health cyber-attack

One famous case of data breaches in New Zealand was the Tū Ora Compass Health cyber-attack which was revealed in 2019. In this attack, a cyber-criminal hacked into the Tū Ora Compass Health database and is believed to have stolen medical records of nearly one million New Zealanders. The data that was taken could have included National Health number, names, addresses, if the person smoked and if they had chronic medical conditions<sup>50</sup>. The hacker is believed to have tried to sell health records for \$200 per record<sup>51</sup>.



## Telehealth

Telehealth is the term to describe using technology to deliver health services, and monitor and provide information to patients. Telehealth is typically used to provide remote healthcare so patients can still be monitored at home and will not have to go into the hospital so often. The need for telehealth has grown, particularly since the COVID-19 pandemic<sup>52</sup>. The rise in remote care has also seen a rise in cyber-crime<sup>53</sup>. Telehealth systems often include the use of patients' medical information which would be a target for cyber-criminals and put patients at risk of privacy breaches. Healthcare centres that do adopt more forms of technology and telehealth could be at higher risk of a cyber-attack.

## Zoom

COVID-19 has drastically accelerated the use of technology in the healthcare industry, as elsewhere. Video-chat platform Zoom has gained a lot of popularity since the pandemic began. Zoom is also now being used by some healthcare professionals as a form of telehealth. Consultations between doctors and patients can now be done via Zoom, as can staff meetings. Healthcare staff should be very careful using this platform, however, as it could lead to issues with privacy. There have been multiple concerns about the security of Zoom. Zoom generates ID numbers for calls, but researchers found that these meeting IDs can be guessed easily, enabling unauthorised access into Zoom calls.

There have been many reports of "Zoom-Bombing", which is the term used to describe people hacking into and joining people's private Zoom calls<sup>54</sup>. This could cause serious issues in the health sector. If someone were to hack into a patient-GP Zoom consultation, the hacker could listen in and extract all the personal information about that person. The hacker could go on to sell the information on the Darkweb or extort the patient by threatening to leak private details.

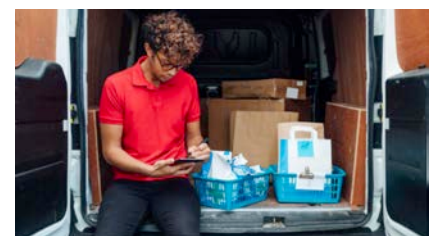
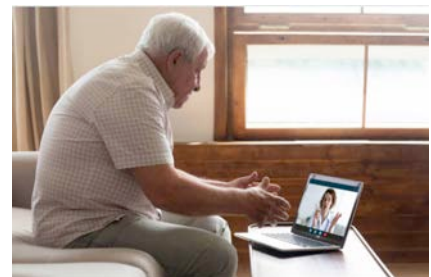
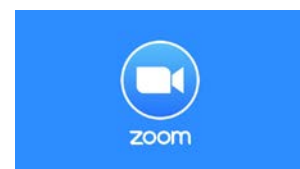
## Damage to supply chain

Having a well-functioning supply chain is an essential part of most businesses. This can be especially important for the healthcare industry; if materials such as medications do not arrive, for example, this can have drastic effects on people's livelihoods.

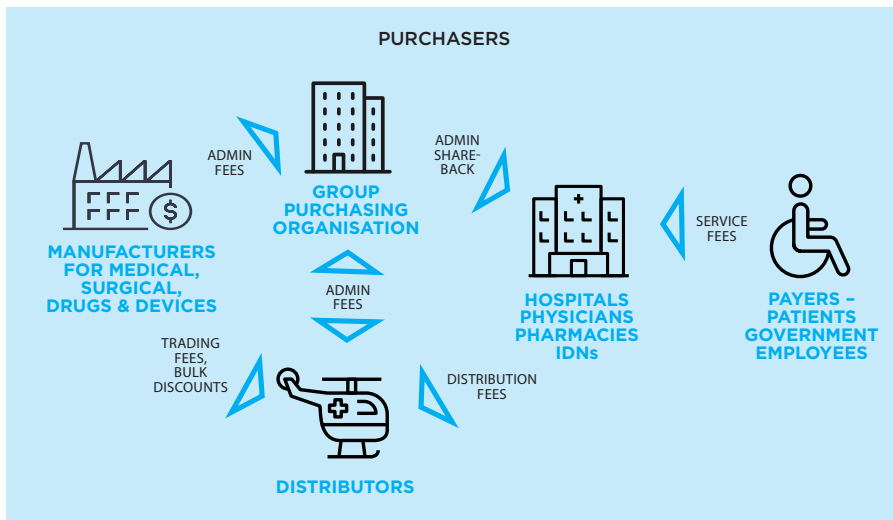
Healthcare facilities have been under increasing pressure to find ways to reduce costs while improving efficiency when it comes to their supply chain<sup>55</sup>. This is because competition in the healthcare industry has increased, customer demands have changed and there is resource pressure faced by private service providers<sup>56</sup>.

Unfortunately, the cheapest supplier is not always going to be reliable or provide the best-quality product. There can also be contractual disputes with suppliers, especially with an uncertain market and supply chain because of COVID-19.

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Another issue with the supply chain can be the storage of supplies. If drugs are not stored at the right temperature, they may become ineffective. Drugs are often expensive so losing them can cost millions of dollars. Some drugs can even become hazardous if used on patients after not being stored at the right temperature<sup>57</sup>.



### Pharmac New Zealand

The global pandemic COVID-19 has highlighted the importance of having a good supply chain and having alternatives in place. COVID-19 caused many disruptions to manufacturers and supply chains. Pharmac, the New Zealand Crown entity that sources the drugs for New Zealand, was affected by COVID-19.

Pharmac noticed some issues with their supply chain and the sourcing of certain medications. In particular, the supply of propofol was under threat of running out because of supply chain disruptions. This drug is used as a sedative in many surgeries, so running out of this could have meant some surgical processes would not have been able to proceed.

COVID-19 revealed a potential flaw in the supply chain of Pharmac. Pharmac previously sourced three brands of propofol, but over the past four years they reduced this to only sourcing one brand.

When COVID-19 hit, this resulted in sourcing issues with the brand of propofol they buy and there was no immediate back-up source of the drug<sup>58</sup>.

Pharmac also encountered issues with sourcing drugs out of India because of manufacturing and transportation disruptions. While Pharmac did manage to source the drugs through alternative transport methods, it incurred extra costs in doing so<sup>59</sup>.





## Changes to the Privacy Act

Another potential risk to the medical industry is the new Privacy Act that will be coming into force in 2021. Many countries in the world have elected to change their privacy laws over the past few years. This arises from the ever-evolving advancements in technology and the storage of information.

The new Act introduces some important changes to New Zealand's privacy laws, including:

- mandatory data-breach reporting
- restrictions on offshore transfers of personal or health information
- clarifications on the extra-territorial scope of the Act.

One significant change is the introduction of a mandatory, data-breach reporting regime requiring a data breach that has caused, or is likely to cause, serious harm to affected individuals to be notified to the Privacy Commissioner. This means if a healthcare facility becomes aware of a privacy breach they reasonably believe has caused, or is likely to cause, serious harm to a person, they must tell the Privacy Commissioner and, in most cases, all the people affected<sup>60</sup>.

In the case of the health information, which is often very sensitive and personal, it is likely that many data breaches of health information would be considered serious. Australia has had a notifiable data-breach regime for some time. The Australian Government released statistics on breaches and healthcare is the industry that has the most notifiable data breaches. It is likely we will see these same trends in New Zealand.

### Mandatory reporting of cyber-breaches

"The Office of the Privacy Commissioner is currently involved in privacy matters in the healthcare industry less often; breaches are typically dealt with by the HPDT. It is anticipated this may change under the new privacy legislation. The most significant of the Privacy Act changes to the healthcare industry is likely to be the mandatory reporting of privacy breaches to the individual concerned and the Office of the Privacy Commissioner in cases of serious harm. This may see more than one agency examining any particular breach (e.g. the Office of the Privacy Commissioner and the practitioner's regulatory body). Given the sensitivity of medical records, it is likely that health agencies will be required to report in most cases."

ELLIE WILSON AND TEAM,  
DARROCH FORREST LAWYERS

Another change to the Act is the inclusion of criminal offences. It will now be an offence to mislead an organisation in a way that affects someone's personal or health information, for example, impersonating someone to get information from an organisation that you are not allowed to see. It will also now be an offence to destroy personal or health information after there has been a request made for it. So, if a healthcare worker deliberately destroys a patient's records after someone has requested them, perhaps to hide wrongdoing, the healthcare facility and the worker could be fined up to \$10,000.

Another potential risk to the medical industry is the new Privacy Act that will be coming into force in 2021.

### Managing privacy requirements is challenging

"Managing privacy requirements in a clinical setting can be challenging. Clinicians often share information between themselves to treat the patient – for medical opinion, for patient safety, for clinical opinion, and, in some instances, for clinical interest and teaching. This sharing of clinical information may occur across many different organisations via different mediums."

ANNE MCLEAN,  
CONNECTUS HEALTHCARE

### Privacy Act cases

A junior doctor at a Waikato hospital had his privacy breached when his colleagues looked at his medical records without permission. The junior doctor realised his colleagues had inappropriately viewed his medical file when he heard people gossiping about his private medical issues. The doctor then went to the Privacy Commissioner and reported the hospital. The commissioner found the hospital to be in breach of principle 5 of the Health Information Privacy Code and that the doctor had suffered harm as he was embarrassed his information had been viewed.

In another case, a person came into a DHB emergency department with a foreign body in his bowel. The man's x-ray was inappropriately emailed to, or accessed by, a significant number of people. This breach of the man's privacy resulted in disciplinary investigations involving several employees. This resulted in the dismissal of some employees and over 30 employees receiving verbal or final warnings.



### Common privacy breaches

There are three common errors of privacy breach typically seen in our practice:

1. Breaches involving a simple mistake, for example where an email is addressed incorrectly, a file is misplaced, or a computer is stolen or lost. These types of errors are common and probably inevitable to a degree.
2. Breaches where a practitioner has accidentally breached privacy, such as making inappropriate disclosures to colleagues about patients or using information for purposes other than intended. For example, if a pharmacist reached out to a prior patient using the information on the prescription for marketing purposes, they could be investigated for breach of privacy by their professional body.
3. Deliberate breaches involving inappropriate accessing or disclosure of information. This typically involves accessing records in the course of work, either through curiosity (if they see the name of someone they know, for example), or for the practitioner's own purposes (often involving Family Court proceedings).

ELLIE WILSON AND TEAM,  
DARROCH FORREST LAWYERS

There are three common types of privacy breach – simple mistakes, accidental breaches from a practitioner and deliberate breaches

## Fraud/crime

Another risk in the healthcare industry is the prevalence of crime and fraud that occurs by healthcare employees. An ACC report estimated that around 3% of healthcare spending was being lost to fraud<sup>61</sup>. While there is no single explanation as to why crime and fraud is common in the healthcare industry, some of it may come down to the nature of the work. Healthcare facilities are likely more concerned with providing quality care to patients than focusing on potential fraud.

Fraud prevention methods, financial controls and thorough audits may be neglected. Healthcare staff work long hours, facilities are often understaffed and employees may work in stressful conditions.

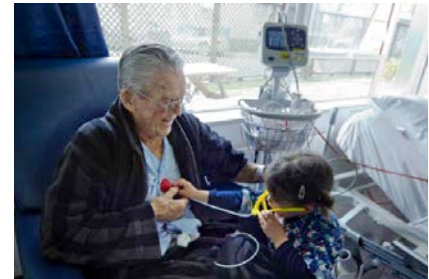
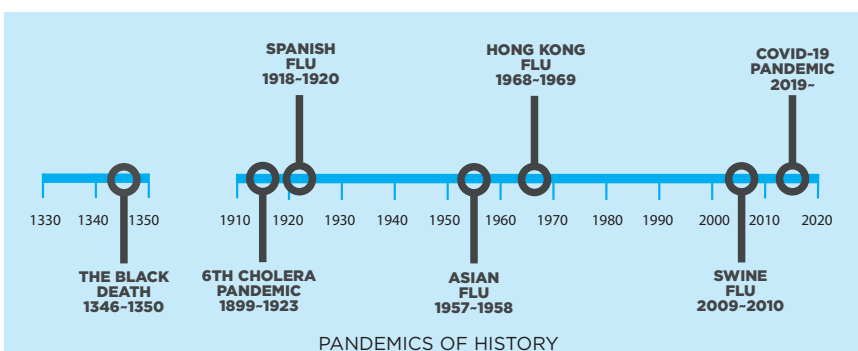
This, paired with the fact that some healthcare staff feel they are underpaid<sup>62</sup>, could provide an environment in which people may look to engaging in some illegal activity. An ACC report revealed that healthcare providers will sometimes invent “phantom” clients to claim ACC payments and pocket the money. The report mentioned prescription fraud, inflating patient registers to get subsidies, and obtaining funding for patients for treatments they are not entitled to, as other instances of fraud<sup>63</sup>.

The fraud tends to be carried out by middle-aged, reliable and trusted staff members who have been with the company a while, perhaps working for payroll or in an administrative role. Because the staff member is in a position of trust, they take advantage of this and often get away with the fraud for many years as there are no proper controls in place and people would not suspect them.

## Pandemics

Another risk for the healthcare industry is the threat of an outbreak of a known or unknown disease. At the time of publication, New Zealand is in the midst of a global pandemic and hospitals around the world have been struggling to cope. The risk of another global pandemic is very real and not a new danger.

When COVID-19 first struck New Zealand, the nation was placed into lockdown at the highest level – level 4. At level 4, all non-essential services were shut down, including private healthcare centres and services.



### Fraud in rest homes - a concerning trend?

There seem to be quite a few reports of fraud occurring in various rest homes around New Zealand. It is unclear why this seems to be occurring so often, but perhaps it is through lack of controls and audits. Elderly people can also be very vulnerable to theft and coercion, which some staff may take advantage of.

#### Rangitikei rest home

Office administrator doctored payslips and stole \$20,000 from the rest home<sup>64</sup>.

#### Auckland rest home

Rest-home owner swindled \$25,000 from one resident<sup>65</sup>.

#### Oamaru rest home

Owner was receiving government subsidies for residents who had already passed away. He received more than \$19,000 worth of subsidies<sup>66</sup>.

#### Wanganui rest home

A caregiver used a disabled resident's credit card to buy things for herself<sup>67</sup>.

#### Waitakere rest home

An employee claimed government subsidies for 13 residents who were already deceased and managed to obtain \$343,000 from the Government<sup>68</sup>.

This was done to mitigate the risk of the disease spreading; since healthcare often involves close contact, non-essential healthcare could not continue. All non-essential and non-emergency healthcare procedures were cancelled until level 4 lockdown ended.



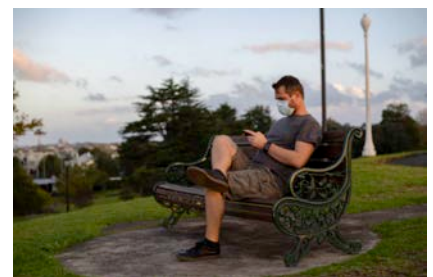
Many private healthcare centres were consequently not earning revenue during the lockdown. Some of these practices had to decide whether to apply to the Government for a wage subsidy package or start the process of laying-off staff. There was a possibility of private hospitals taking on non-COVID-19 related emergency patients if public centres became over-run with COVID-19 patients. This would potentially mean private centres, however, having to pay staff and use facilities to complete these procedures, despite receiving little or no revenue.

There are even risks re-opening private centres post-outbreak. There could be hundreds of postponed surgeries and procedures, so centres could be overloaded with patients trying to get all their procedures done at once.

There is also the potential for people to now have complications or more advanced illnesses from delayed treatment and diagnoses. This could result in healthcare staff potentially working overtime in stressful conditions which could lead to mistakes while completing their duties as well as potentially unsafe working conditions.

Other issues healthcare facilities may run into as a result of a pandemic are employment disputes and health and safety concerns. New Zealand has already seen cases before the Employment Relations Authority regarding forced redundancies, and healthcare facilities could see further cases arising if another pandemic occurs and staff have to be laid off.

Healthcare staff could also easily become infected while treating infected patients, so appropriate protective gear needs to be available and worn. Healthcare facilities could face an investigation from Worksafe if they are found to have not provided enough protective gear and appropriate training on how to use the gear and staff end up being infected with a disease.



Other issues  
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concerns

While there are no comprehensive solutions available in the market for pandemic risk, the best thing a healthcare facility can do is be prepared and plan well for potential pandemics.

### The danger of an overwhelming pandemic

“There are hundreds of risks for healthcare if there is a pandemic. Any pandemic has the potential to completely overwhelm the healthcare system.”

ANNE MCLEAN,  
CONECTUS HEALTHCARE



### Reputation

Complaints to the HDC could also have the potential to damage a healthcare facility's reputation. The HDC puts reports of all the complaints it receives onto its website which is available for anyone to view. While the HDC will often remove names for privacy reasons, the names of the healthcare facilities are often included in the case reports. Because the cases are publicly available, the media will also often publish articles about them. This means when a patient complains to the HDC and they investigate, this can be detrimental to the reputation of the healthcare facility. People may be wary of visiting a healthcare facility if they hear about instances of medical malpractice that have occurred there.

Cyber and privacy breaches also have the potential to leave a black mark on the reputation of healthcare facilities. There have already been a few well-publicised breaches from healthcare organisations in New Zealand, such as the Tū Ora Compass Health cyber-attack noted earlier, the 2012 ACC leak of sensitive information and the 2020 leak of a COVID-19 patients list. If a health organisation does have health information leaked or stolen, depending on the severity and amount of information taken, it could end up being well-publicised. Patients or potential patients may then no longer trust that organisation with their health information.

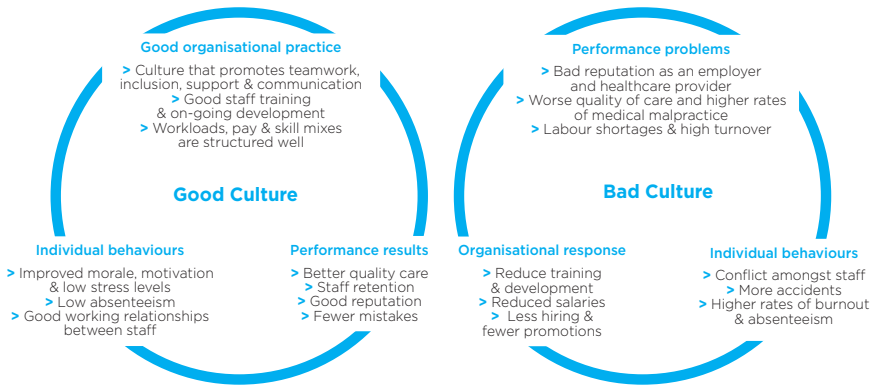
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# Risk Management

## Culture

Perhaps one of the most effective ways to manage risks is addressing the workplace culture. Workplace culture is such an important part of the healthcare industry. Most of the risks that are affected by staff can be reduced if the culture at the healthcare facility is right.



WORKPLACE CULTURE - POSITIVE V. NEGATIVE PERFORMANCE SPIRAL<sup>69</sup>

Fraud, employee disputes, cyber-breaches, health and safety and medical malpractice can all be affected by the workplace culture. Over-worked and tired staff are more likely to make mistakes, whether that is a mistake during surgery resulting in injuries for the patient, or leaving a computer unlocked allowing an unauthorised person to access private information.

These kinds of mistakes could likely be reduced by having a culture that values taking breaks and a manager who ensures staff are not working too many consecutive hours, to the degree that their health suffers. Another important point is ensuring a culture that practises thorough incident reporting and does not punish those who report them. If incidents are kept track of, facilities can very easily see where changes need to be made before a problem ends up being reported to the HDC.

The workplace culture should also be one that ensures proper training for all staff. From training on how to correctly complete a surgery and cyber-safety training to health and safety procedures. These all are extremely important to ensure staff are well-educated on preventing risks to themselves, patients and the facility.



“A culture that values proper incident reporting internally can avoid HDC and ACC claims.”

ANNE MCLEAN, CONECTUS HEALTHCARE

This can often begin with senior management showing staff that they value cyber-security and health and safety procedures, so staff remember not to neglect these. Having the right workplace culture can help the facility run with as few mistakes as possible, ensuring the safety of staff, patients and the facility itself.

The World Health Organization says:

**"...a healthy workplace is one in which workers and managers collaborate to use a continual improvement process to protect and promote the health, safety and wellbeing of all workers and the sustainability of the workplace."**

They do this by considering the following, based on identified needs:

- health and safety concerns in the physical work environment
- health, safety and wellbeing concerns in the psychosocial work environment, including organisation of work and workplace culture
- personal health resources in the workplace
- ways of participating in the community to improve the health of workers, their families and other members of the community.<sup>70</sup>

## Privacy and cyber-safety

Healthcare facilities need to ensure the safety of the health information they collect and store, which needs to be protected from both privacy breaches and cyber-breaches.

The Health Information Standards Organisation provides some guidance for healthcare facilities to keep their health information safe<sup>71</sup>. Healthcare facilities should ensure that they meet all their obligations under the Health Information Privacy Code and Privacy Act. Healthcare facilities should also complete regular audits of their health information - how it is stored and accessed. Guidelines should also be set on how to deal with privacy complaints or breaches of privacy if the facility encounters them.

Thorough and on-going cyber-safety and privacy training should be completed by all staff to prevent staff breaches of data. In addition, the number of people who can access information should be restricted to only those who need to see it. A good way to ensure this is having a digital log of who accessed what information, while audits should also be done of the logs to see if anyone unauthorised is viewing the information.



### Privacy breaches and digital risk

"Avoidance of privacy breaches can be difficult. Often agencies require upskilling in terms of what will amount to a privacy breach, and what to do in the event that a breach has occurred. With the increasing digitisation of data, further consideration will also need to be given to digital risk, and what can be done to prevent data loss in this way."

ELLIE WILSON AND TEAM,  
DARROCH FORREST LAWYERS

Healthcare facilities should make sure their health information is stored securely; choosing robust data-storage networks to hold health information is vital. The proper securing of health information will be critical to avoid cyber- and privacy breaches.

The increased use of Zoom and other video-call platforms in healthcare should be done with caution. CERT NZ has some Zoom safety tips:

- > ensure the most up-to-date version of Zoom is being used
- > use a password to that is long, strong and unique
- > use two-factor authentication (a two-step sign-in involving a password and code)
- > if hosting a meeting, ensure it is set up securely
- > send meeting details directly and only to participants meant to be on the call
- > check who is on the call and lock the call once the meeting has started.

### Health and safety - Safe365

Safe365 is an online health and safety product which assists businesses in every sector of the economy to understand their health and safety capability, culture, performance and engagement and the underlying risks associated with workplace safety.

Each sector has its own safety idiosyncrasies and risks, but all sectors are guided by the same legislative and safety frameworks to make their workplaces safer.

A key challenge for the health sector is the dual responsibility and obligation to not just understand the risks associated with workplace safety but also those relating to clinical safety. The generic workplace safety requirements, to some extent, make the task a lot simpler but there is still an underlying requirement to ensure risks in the workplace are identified, managed and improved over time.

The health sector in this regard is no different to any other sector of the economy. The challenge is to understand existing workplace risks, set a safety baseline and targets to achieve, identify where and how to implement the right interventions to improve safety outcomes and then, of course, measure and monitor these improvements to establish a return on investment for these interventions relative to business performance, productivity and profitability.

There needs to be a clear line-of-sight between understanding your safety risks, what you are doing about them and the positive impact this has on the business, its staff, contractors and community.



#### Controlling risks in the healthcare industry

“In simple terms, Health and Safety in the healthcare sector is no different to Health and Safety in any business. Businesses must identify, assess and control the risks. Focus the most time and resources on the ones that present the most significant threat. Ensure strong awareness and recognition of safety diligence activities at all levels of management, including Board and Executive level. Importantly for healthcare service businesses (and their leaders) they should not accept that worker safety is less critical than patient safety.”

MARK KIDD AND NATHAN HIGHT,  
SAFE365



## Crime and fraud management

The key to managing the risk of crime and fraud is ensuring strong internal controls and regular check-ups to spot any instances of crime or fraud occurring.

First, healthcare facilities should strengthen their controls to prevent the possibility of fraud happening. One way to do this is requiring dual-signature sign-offs to ensure more than one person is approving payments. Another key tool in managing crime and fraud is to undertake regular and ad hoc audits to help reveal any crime or fraud in healthcare more quickly.

Audits should be done of both financial information and any equipment or medication the facility has<sup>73</sup>. Medication stores should be kept well-secured, and the dispensing of medication well-controlled to prevent any drug theft.

Another way to manage crime and fraud is ensuring that staff take their annual holiday leave. Sometimes when a staff member is away and someone covers them, they will discover wrongdoing by the staff member. Healthcare facilities should also be wary of staff who do not take leave. Employees committing offences will often not take leave so no one will discover their misconduct.

Healthcare facilities should be vigilant in putting in place strong controls to prevent crime and fraud, and processes to detect misconduct should it occur.

According to KPMG, the profile of a typical fraudster is as follows:

- 20% of fraudsters exploit weak controls
- their average age is 53 years; 25% of fraud cases involve more than one person
- 70% of frauds are committed by men.<sup>74</sup>



Healthcare facilities should be vigilant in putting in place strong controls to prevent crime and fraud, and processes to detect misconduct should it occur.



## Business continuity management

A Business Continuity Plan (BCP) is a vital tool for healthcare facilities to identify the potential risks and prepare for recovery in the event of a serious disruption. There are a multitude of things that can go wrong in a healthcare facility and by having a BCP in place, healthcare facilities will be in a much better position to deal with many of these risks. A BCP identifies the risks the facility could face and has a plan in place to help the facility to recover as quickly as possible. A BCP can be particularly helpful in preparing a healthcare facility for the potential of dealing with a pandemic.

### Benefits of having a BCP

A Business Continuity Plan:

- > gives staff confidence that the business is prepared for disruptions
- > can help negotiate insurance and lower insurance premiums as insurers will likely consider the business a lower risk<sup>75</sup>
- > ensures the facility is prepared for foreseeable risks and has a solid plan in place to protect the staff, patients and the facility itself
- > identifies and mitigates risks to give peace-of-mind
- > ensures everyone knows what is going on in a crisis, large or small
- > helps the facility to recover quickly and efficiently
- > ensures the least possible reputational damage
- > contributes to regulatory responsibility for health and safety
- > makes the facility battle-hardened and ready to respond
- > is an investment in the future of the healthcare facility.

Almost as important as having a BCP is ensuring that the plan is tested regularly. Testing the plan is a great way to ensure that it will be effective, should a disaster occur. It gives the healthcare facility a chance to make sure it works well and make necessary changes if it does not.

### BCP test types

#### Table-top exercise

This involves a team looking over the BCP, usually in a conference room, and assessing the plan to fill in any gaps.

#### Structured walk-through

Each member of the team walks through their part of the plan looking for any weaknesses; this can involve picking a disaster and role-playing to see if the plan would work.

#### Disaster simulation testing

This is the most involved of the tests and consists of creating an environment that simulates a real-life disaster in the healthcare facility. During the test, staff should gather all supplies and equipment that would be needed to deal with the disaster. The facility should play out the whole disaster scenario and identify any gaps that need to be addressed<sup>77</sup>.

### Six steps to developing a BCP

1. Identifying the scope of the plan
2. Identifying the key business areas
3. Identifying the critical functions
4. Identifying dependencies between the various business areas
5. Determining an acceptable downtime for each critical function
6. Creating a plan for how to maintain operations<sup>76</sup>



HUMAN ERROR



CYBER ATTACK



NATURAL DISASTER



SUPPLY CHAIN FAILURE



VIRAL OUTBREAK



TELECOMMS ISP FAILURE



MECHANICAL FAILURE



POWER LOSS



THEFT



FIRE

## Transferring risk and the importance of insurance

While ACC protects healthcare providers from claims against injuries to patients from medical treatment, it is not a silver bullet for all the liability exposures they face today. Insurance is vital to help protect healthcare facilities from liability arising from both Medical Malpractice and commercial risks. The following chart compares Delta’s comprehensive cover with the standard market cover.

Coverage	Delta Coverage	Standard Coverage
<b>Medical Malpractice Liability Insurance</b>		
Automatic Reinstatement - Damages	●	●
Boards and committees of the Insured	●	●
Breach of Privacy / Confidentiality	●	●
Continuous cover clause	●	●
Defamation	●	●
Dishonest or Fraudulent Employees	●	●
Exemplary damages	●	●
Fair Trading Act 1986	●	●
Good Samaritan acts / Emergency first-aid	●	●
Representation costs for investigations, inquiries and inquests	●	●
Intellectual Property	●	●
Loss Mitigation	●	●
Loss of Documents	●	●
Criminal Investigation Defence Costs	●	●
New subsidiary companies	●	●
Public Relations Costs	●	●
Run off cover	●	●
Severability	●	●
Vicarious Liability	●	●
<b>Medical Practice Legal Expenses Pursuit &amp; Defence Cover</b>		
Practice Property Disputes	●	●
Data Protection	●	●
Statutory Licence	●	●
Employee’s Breach of Restrictive Covenants	●	●
Practice Contract Disputes	●	●
<b>Business Continuity Plan generator - a cloud-based online tool</b>		
	●	●

Cover provided ●

Limited or restricted cover ●

No cover provided ●

## Case study scenarios

Here are some examples of where a healthcare facility may face liability and the likely insurance response.

### Scenario 1: Suspension of licence

Pharmacies must always have a pharmacist present to provide supervision and control over the provision of drugs. This case involved a small pharmacy that only had two pharmacists; at one time, however, one of the pharmacists was on holiday and the other was sick but the pharmacy stayed open to the public and provided medicine without a pharmacist present. The licencing authority shut the pharmacy down and suspended the pharmacy's licence to operate.

The pharmacy contacted their insurer as their policy covered legal fees for appealing a statutory licence suspension. The pharmacy successfully appealed their licence suspension and the legal costs of the appeal were covered by their insurer.



A pharmacy dispensed medicine to the public without a pharmacist present.

### Scenario 2: Privacy breach

A tired nurse was working a long night shift at a COVID-19 quarantine facility. In her rush to leave the facility once her shift was over, she left her computer unlocked. Someone saw that the computer was left unlocked and emailed a list of COVID-19 patients to the media. A man whose name was on the list of leaked patients subsequently complained to the Privacy Commissioner.

The Privacy Commissioner opened an investigation into the facility. The facility notified its insurer and, under their policy, the insurance covered the defence costs involved with the investigation by the Privacy Commissioner.

A tired nurse left her computer unlocked and someone emailed a list of COVID-19 patients to the press.

### Scenario 3: Complaint to Health and Disability Commission

A dentist was performing root-canal treatment on a tooth for a patient. Unfortunately, the dentist performed the root-canal procedure on the wrong tooth. The patient had to come back to the dentist and have the procedure again on the correct tooth. The patient made a complaint to the HDC about the medical error by the dentist.

The dentist's insurer covers defence costs for investigations by the Health and Disability Commission. So, when the HDC investigated the complaint, the costs of the investigation were covered.

A dentist performed a root-canal procedure on the wrong tooth.



### Scenario 4: Supplier dispute

A rest home was desperately running low on beds for its residents. The rest home placed an order with a supplier for more beds. The rest home paid for the beds, but the beds arrived months late and to the wrong specification and thus were not suitable for elderly residents. The supplier disputed that the beds were unsuitable and refused to refund any money or pay damages for the rest home's lost income.

Under most insurance policies, the fees to pursue someone in such a case would not be covered. With Delta Legal Fees Defence and Pursuit cover, however, the rest home could pursue the supplier. The rest home, with support from their insurer, was able to take the supplier to court and managed to recover the money they paid and damages for lost income.

A rest home paid a supplier for new beds but they arrived months late and were the wrong specification for their elderly residents.



## Conclusion

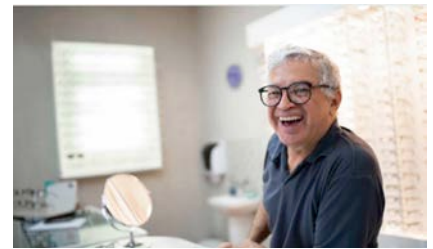
Healthcare is an essential and complex industry which comes with many unique risks, which is why it is so important that these are considered and managed carefully. The COVID-19 pandemic has showcased just how critical having a well-functioning healthcare industry is.

While the care provided by healthcare industries is vital, it must not be forgotten that these are also operating businesses. These facilities still encounter many of the same commercial issues that other businesses face, including employment disputes, fraud and health and safety issues. While the quality of care must be upheld, healthcare institutions also need support in ensuring they can effectively operate their business.

With new technology constantly being developed, the nature of the industry will change dramatically in the future. Facilities must be prepared for this and the potential risk involved with these advances. The increase in use of new technology and increased collection and storage of data in healthcare will mean cyber- and privacy breaches will subsequently grow.

The best place to start in terms of risk management is by addressing the workplace culture. Having a culture that values adherence to procedures, teamwork and ensuring work is done as well and safely as possible will be key in minimising risks. Senior management must lead by example to establish a healthy workplace culture that will filter down through the organisation.

Delta Insurance has developed a specific liability policy which addresses many of the common risks healthcare facilities face, some of which would not be covered by standard liability policies. For more information, please visit the Medical Malpractice page of our website [www.deltainsurance.co.nz](http://www.deltainsurance.co.nz)



Having a culture that values adherence to procedures, teamwork and ensuring work is done as well and safely as possible is the key to minimising risks.

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#### Disclaimer

Delta Insurance has found this information and drawn conclusions based on the information that was readily available through online resources and interviews. The information is presented as accurately as possible and has been based on an internal analysis that may differ from actual statistics.

# About

## Delta Insurance

In 2014, Delta Insurance set up shop in Auckland wanting to operate differently from the status quo by introducing new products into niche markets, delivering exceptional service, being transparent and embracing technology and change in general.



Six years on with 15,000 customers and a footprint in Asia Pacific, the Delta team have maintained the same philosophy as they have from the start.

## Our Philosophy

**Trust and integrity** – Trust in our company and the integrity with which we operate is non-negotiable. We are firm believers in transparency and we deal honestly and openly with our brokers and their customers. We break through complexity so that our policies are easy to understand and our company is easy to transact with. Our reputation is our lifeblood.

**Committed relationships** – We are proud of our long-standing relationships with our brokers and customers. They can rely on us to deliver what we promise – professional service, comprehensive advice and support and a prompt response to claims.

**A performance culture** – We're a dynamic business and act quickly. In our service business, it is the quality of our people that creates the value.

**Fresh thinking** – We draw on our depth and breadth of experience to offer perspectives that add value and encourage an ideas culture. We're not a business that accepts the status quo. We embrace technology and look for better way to do things.

**Inspiring capability** – Our specialist knowledge helps brokers help their customers and this in turn strengthens our relationships with them.

# Big thanks to

## Kate Murray - about the author

Kate worked with Delta underwriters, health professionals and consulting firms to write this White Paper as part of our 2020 summer internship programme. Kate graduated from the University of Auckland with a Bachelor of Commerce, majoring in Accounting and Commercial Law. We are delighted that Kate has now joined the Delta team as a Graduate Underwriter.

## Healthpoint

Healthpoint has over 12 years' experience providing systems, processes and a platform which publishes content-rich information about health providers. The information is regularly reviewed and edited by service providers, empowering consumers to make better choices and giving medical professionals the right information to improve patient flow.



## Conectus Health

Conectus is a child and maternal health research group based at the University of Auckland's School of Population Health. They provide expertise focused on improving health outcomes for infants, children and their families.



## Safe365

Safe365 is an online application that enables you to assess, improve and monitor your organisation's health, safety and wellbeing, culture, performance and engagement.



## Darroch Forrest Lawyers

Darroch Forrest Lawyers act for a number of prominent New Zealand insurers. They specialise in professional indemnity claims and have acted for a wide range of professionals facing civil liability claims or complaints over the last 20 years.



## Our brokers and clients

Thank you for your support and your business. If you have any feedback or queries relating to this White Paper, please feel free to get in touch.

**Disclaimer** - The content of this article is general in nature and not intended as a substitute for specific professional advice on any matter and should not be relied upon for that purpose.

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