

Reducing the risk of litigation: Information for Sonographers

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BMUS)))



ASA - BMUS Joint Statement

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Introduction

The roles of sonographers and many other ultrasound practitioners have undergone significant change over recent decades, which have often resulted in increasing responsibilities.¹⁻⁴ Modern healthcare systems support more patients living with multiple comorbidities, complex needs and high expectations, which puts a greater onus on sonographers. In both the UK and across Australasia these factors have influenced a rise in complaints and litigation. However, many cases may have been avoidable if care and/or communication standards had been higher.

This joint statement between the Australasian Sonographers Association (ASA) and the British Medical Ultrasound Society (BMUS) aims to provide sonographers with clear definitions of common legal terminology and simple recommendations that are designed to keep sonographers and their patients safe through optimal standards of care.

What is a duty of care?

A *duty of care* refers to a legal obligation that is placed on an individual, requiring them to adhere to a standard of reasonable care while performing acts and duties that may foreseeably cause a risk of harm to others. It is the first component that must be established to proceed with an action in negligence.

Am I expected to be perfect?

No, nobody is perfect, however everyone is expected to be safe. When performing acts or duties associated with their role, an individual is required to be an ordinarily competent practitioner within their scope of practice. They will be expected to offer reasonable care, as measured against a reasonably competent practitioner within their field.

But what if my mistake was simply down to human error?

Mistakes in healthcare are often examples of human error. A small omission, miscalculation or distraction from a task may have life-changing and devastating consequences for an individual and their family. A court of law may uphold the claim in cases of human error where the practitioner on a particular occasion falls short of what is expected of someone ordinarily competent. However, other errors may occur because of complacency, lack of awareness and/or lack of understanding on the part of the practitioner.

I'm not a doctor, so if I make a mistake am I responsible?

Yes.

In the UK, it is standard practice for a sonographer to perform the ultrasound examination, interpret the images and report the findings independently, including making recommendations and onward referrals where appropriate. They take full responsibility for their work, therefore, if a claim for a breach of duty of care is made, it would be irrelevant to a court whether the examination had been performed by a radiologist or sonographer. It is relevant only that an expected standard of care was delivered.

Sonographers in the UK should and must seek second opinions and advice as needed during their work. When this occurs, it is vital that the name and grade of the advisor is included in the report. For example, *'Discussed with Dr Smith, radiology trainee, ST4, who recommends urgent MRI'* or *'Discussed with J Jones, consultant sonographer, who recommends follow up scan in 3 months.'*

In Australia and New Zealand, sonographers typically generate a worksheet, with responsibility for the final report lying with radiologists or another reporting doctor*. However, the sonographer is still responsible for maintaining a high standard of care in the roles they play to perform the ultrasound examination including finding abnormal pathology, interpreting images and recording this in their worksheet. As in the UK, sonographers must seek second opinions and advice as needed, and document this in their worksheet.

Indemnity insurance explained

Generally, employers are vicariously liable for their employed staff. They should have an *appropriate* insurance policy in place to address the costs and expenses involved in responding to civil claims as well as any regulatory proceedings that may arise from consumer complaints.

Consumer complaints are a stressful experience for practitioners, particularly if their version of events differ to that of their employer. This is where a secondary indemnity insurance policy can provide value as it provides specific legal representation to assist the sonographer to respond to the complaint in the most appropriate way to get the best outcome.

In Australia, under the *National code of conduct for healthcare workers*, sonographers are required to ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice. **In New Zealand**, arrangements vary, however many employers encourage (if not require) sonographers to hold their own indemnity insurance.

* In New Zealand, some sonographers report their own ultrasound examinations in line with workplace titles, protocols, and employment contracts

For sonographers who perform their services on a contract basis for a single or multiple healthcare providers, adequate and appropriate professional indemnity and public liability insurance is essential to respond to civil actions and regulatory complaints.

In Australia, the ASA provides a Professional Indemnity and Public Liability policy sourced via a risk management partner, Marsh Insurance Brokers, to ensure that sonographers are well represented by an experienced insurance company and law firm for when these scenarios arise.

In the UK, all NHS hospitals contribute to the Clinical Negligence Scheme for Trusts. This scheme enables them to accept vicarious liability for their employees. The level of training and experience will be accounted for in the expectation of competency in lawsuits. Sonographers working for independent providers must establish with their employer if they hold an appropriate insurance policy, and independent sonographers will require their own policy. Further information is available in the SoR/BMUS Guidelines for Professional Ultrasound Practice, *section 2.16 Independent Practice*.⁵ UK companies that may assist are Themis Clinical Defence and Insync Insurance.

Simple recommendations for keeping you and your patients safe

1. Stay in control of the examination room

It is easy to become distracted by the patient's relatives, friends and children if they are in the scan room while you are trying to concentrate. However, a healthcare professional being distracted by a toddler is no defence in court if it has led to a breach of duty of care, so it is essential that sonographers remain in control of their environment. Patients' families may sometimes need to wait outside if their presence is disruptive. As a last resort the examination may even need to be rebooked. Capacity is at a premium but it is still better to rebook the patient than risk failing to identify something of potential clinical significance.

2. Know your local protocols and adhere to them

If your work is scrutinised, it is vital that you have followed the contemporary protocol of your employer even if this differs from national standards. Most local protocols mirror national guidance but occasionally they may not. Practitioners must follow the protocol of their employer, provided they are working within their scope of practice and local statutory and legislative regulations. Therefore, ensure you know where to access a copy in order to act appropriately. This is especially important for new starters and temporary staff such as agency workers.

3. Know when your local protocols have changed

If your local protocols have undergone isolated changes or a full annual revision, the department manager is obliged to share this information with all staff. It is important that you know how this information is passed on, be it email, hardcopy or team meeting.

4. Know how long you have for an ultrasound examination

Appointment times for ultrasound examinations include time to identify and consent the patient, perform the examination, interpret the images and write the worksheet, provisional report, or full report depending on your employment agreement. It may also be

necessary to confer with other health practitioners. Therefore, a 20-minute appointment does not equate to 20 minutes of ultrasound scanning. It is, however, unwise to accumulate all supporting images over a very short space of time.

In cases where an error may have been made in ultrasound, it is often because an abnormality was not seen. In preparation for a court of law, expert witnesses are shown the images and accompanying report so that they can make factual comments. If images appear to have been gathered over a very short space of time, it implies the examination may have been rushed, which may be considered a breach of duty of care.

If you are rushed for good reason, for instance, if the patient is late or you have an emergency scan waiting, it is wiser to rebook the patient than risk failing to spot an abnormality through haste.

A common practice in ultrasound is to delay viewing a difficult area and to look again after a suitable time interval; e.g. revisiting the gas-obscured pancreas at the end of an abdominal examination to see if visibility has improved, or asking a pregnant person to return to the department after taking a walk for a few minutes, anticipating that a curled fetus may then have changed position to make cardiac evaluation possible. Evidence of this, which will be visible through the order and timings on saved images, may help support a sonographer by demonstrating reasonable, competent practice.

5. Work only within your scope of practice and scan only for a clinical reason

Sometimes it is appropriate to extend an examination to answer a clinical question, where this extension is within your scope and competence.

However, never be tempted to 'just have a quick look' in an area that lies outside your normal scope of practice and/or field in which you have not been trained. This action could clearly lead to a breach of duty of care. Equally, never agree to scan something outside your scope or ability despite perhaps having pressure applied to you to do it by your peers, manager, or the patient. Furthermore, never scan an area in the absence of a clinical reason.

6. Safety and image quality

Apply the ALARA (as low as reasonably achievable) principle at all times.⁶ Ensure that you comply with the relevant standards of practice and work within the recommended safety guidelines regarding acoustic output and scan times. Ensure that if thermal and mechanical indices are displayed, they remain within safe limits.

Ensure saved images are representative of the examination and are of good quality displaying elements including correct pre-set, focus (where manual rather than automatic), depth, and contrast. Annotation to explain side and plane must be included as a minimum to avoid ambiguity, e.g., right transverse, or left oblique.

Ensure saved images correlate with the written report (or worksheet in Australia and New Zealand). Any pathology/abnormality described in the report (worksheet in Australia and New Zealand) should be accompanied by representative images. Local protocols may also list a minimum number of required images to be taken, although not always.

In the UK, it is the sonographer's responsibility to ensure that the ultrasound equipment is maintained and fit for purpose.⁷ **In Australia and New Zealand**, it

is the employer's responsibility; however, sonographers should report faults or limitations to management immediately, and should indicate in their findings if imagining is considered suboptimal.

7. Report quality

In the UK, always take time to read your report carefully before sending to the referrer. The ultrasound report must be clear and unambiguous. It should include any limitations of the examination and reference previous relevant imaging. The conclusion should attempt to answer the clinical question.

If it is within your scope of practice to make onward arrangements or referrals for the patient, it must be clearly stated what you have done, e.g., 'Our local protocol recommends another scan in 3 months. Please submit a request if you wish for us to arrange this here.'

In Australia and New Zealand, the ultrasound worksheet and findings should be clear and unambiguous before sending to the reporting radiologist or doctor. It should include any limitations of the examination and reference previous relevant imaging. The comments provided should be reflective of the clinical question.

8. Continuing Professional Development

A career in healthcare is a commitment to lifelong learning and continuous professional development (CPD). It is vital that sonographers maintain an up-to-date record of their CPD activities in a suitable repository. If your practice is scrutinised it may be helpful, and professional, to show evidence of a commitment to ongoing learning.

In Australia and New Zealand, for audit purposes all sonographers must maintain a personal record of verifiable documentation for all CPD activities submitted in their CPD summary record or CPD logbook. **In the UK**, local department audit monitors sonographers' performance and, biennially, the Health and Care Professions Council randomly audits a small percentage of those registered as radiographers. Maintaining a personal record of CPD activities is, therefore, recommended.

Sonographers and Artificial Intelligence

The use and applications of Artificial Intelligence (AI) in healthcare are growing rapidly. AI is in the early stages of integration within ultrasound imaging practice, so it is important to view emerging technology as an aid to clinical judgement, rather than a surrogate, until the full place of AI in this workplace is established. Sonographers must be aware of what they are using and how it influences their decision-making. They must also be familiar with their local department policy and employer's directive regarding compliance with any AI software installed on imaging equipment.

In the event of receiving notice of a clinical negligence claim from a law firm

Receiving a formal letter or notice directly from a lawyer is likely to be extremely stressful for the sonographer. It is essential that the sonographer does not panic and does not respond directly to the claim. Instead, we recommend that the sonographer immediately consults

with their employer/manager if they have one, or a representative from their nominated legal firm provided by their insurer if they practise independently.

In the UK, radiographer sonographers who are members of the Society of Radiographers (SoR) may benefit from SoR additional professional indemnity insurance. In the event of an incident/claim, those sonographers should contact the SoR for advice promptly via info@sor.org

Conclusion

The likelihood of being involved in litigation is increasing in the current healthcare environment. However, risks can be reduced by adhering to local schemes of work and by demonstrating exemplary professional conduct at all times. We anticipate this document will act as a refresher for experienced sonographers and a useful aide memoire for newly qualified sonographers. By maintaining best practice, sonographers will keep both their patients and themselves safe. Systematic, methodical behaviour will reduce the risk of errors and ensure the sonographer adopts and maintains good habits.

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6. Guidelines for the safe use of diagnostic ultrasound equipment. BMUS, 2009. [BMUS Safety Guidelines _2009 revision_ Feb 2010.doc](#)
7. Dudley N, Russell S, Ward B, Hoskins P. *Ultrasound*, 2014;22(1)8-14 [BMUS guidelines for the regular quality assurance testing of ultrasound scanners by sonographers - PMC \(nih.gov\)](#)

Useful resources

United Kingdom

[Guidelines for Professional Ultrasound Practice](#), BMUS (bmus.org)

[Ten years of Maternity Claims Final Report](#), NHS Resolution (resolution.nhs.uk)

[Advise, resolve and learn - Our strategy to 2025](#), NHS Resolution (resolution.nhs.uk)

[NHS Indemnity – Arrangements for Clinical Negligence Claims in the NHS](#), NHS Resolution (resolution.nhs.uk)

[National Disease Registration Service \(NDRS\)](#), NHS Digital (digital.nhs.uk)

Australia and New Zealand

[ASA Position Statement: Mitigating Sonographer Distractions in Obstetric Ultrasound](#), ASA (sonographers.org)

[ASA Sonographer Code of Conduct](#), ASA (sonographers.org)

[Professional Competency Framework for Sonographers](#), ASAR (asar.com.au)

[Competence Standards for Medical Imaging and Radiation Therapy Practitioners in Aotearoa New Zealand](#), NZ MRTB (mrtboard.org.nz)

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