

## **MEDICAL PROFESSIONAL LIABILITY INSURANCE**

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### **OVERVIEW**

Medical professional liability insurance, usually referred to as malpractice insurance, covers damages and defense costs up to the specified limits for claims a psychiatrist becomes legally obligated to pay arising out of either the rendering of or failure to render psychiatric services.

Many states, although not all, require physicians to carry malpractice insurance. If the physician does not obtain medical professional liability insurance, the state will usually require that a bond be posted from the personal funds of the psychiatrist. There are also some states that have enacted legislation regulating the coverage that physicians have to carry ("primary limits"), and these states provide limits in excess of the primary limits for a surcharge assessed to the physician. These programs are referred to as patient compensation fund programs. They vary from state to state and may or may not require mandatory participation by a physician. To learn if your state has specific requirements regarding malpractice insurance, you can contact the state licensing board or the department of insurance. Additionally, many managed care organizations, hospitals, and medical group practices specify how much insurance (the limits of liability) a psychiatrist must carry.

### **SELECTING LIABILITY INSURANCE COVERAGE**

When choosing a malpractice policy you should compare the coverages and benefits offered by each program to ensure that your interests are adequately protected. Knowing the difference between the basic coverages and the "bells and whistles" is critical when considering malpractice insurance. To adequately compare carriers, you should obtain a specimen copy of the policy contract from each carrier. If they are unwilling to provide you with a specimen copy, you may want to seriously consider looking elsewhere.

In the past, psychiatrists have listed the following elements as being important in their coverage.

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### **Competence of Counsel**

Insurance companies should use attorneys who have an in-depth knowledge of state malpractice laws and who have a record of outstanding performance. Specific knowledge of psychiatric malpractice is important since the allegations tend to be more subjective than in other areas of medicine.

### **Access to Attorneys for Pre-Suit Advice**

Psychiatrists should be able to discuss risk management situations and events so that a suit may be averted or damages mitigated.

### **Consent to Settle**

Since every settlement or judgment must be registered with the National Practitioner Data Bank (see Chapter 44), it is important to purchase a malpractice policy with provisions that allow the psychiatrist to participate in the decision of whether to settle a claim or suit.

### **Company Reputation and Financial Strength**

The insurance company's reputation for service and financial stability should be unparalleled. Companies such as A.M. Best and Standard & Poor's rate the financial stability of various corporations that provide liability coverage. A.M. Best has two books of ratings that you should be able to find in libraries, *Best Insurance Reports* and *Key Rating Guide*. In addition, if you would like an updated rating, you can go to their website, <http://www.ambest.com/sales/BIR/>, and purchase updated ratings. For further understanding of the rating system, you can go to Standard & Poor's website at <http://www.standardandpoors.com/ratings/insurance/en/us>. You may also ask the insurance company you are interested in purchasing coverage from to provide you with written information regarding their A.M. Best or Standard & Poor's rating.

### **Understandable Policy Language**

The policy you choose should be written in an easy-to-read and understandable format. Terms and conditions should be defined and exclusions specifically outlined.

### **Coverage Designed for Psychiatrists**

The insurance company should understand and provide coverage and services that meet the unique needs of the psychiatric profession.

The malpractice insurance policy should define psychiatric/medical services, and be designed and written specifically for psychiatrists.

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### **High Quality Customer Service**

The insurance company should have underwriting, risk management, and claim staff knowledgeable about the unique needs of the psychiatric profession. They should be accessible by mail, fax, phone, and e-mail to respond to coverage inquiries, claims, and risk management questions in a timely and effective manner.

## **OTHER IMPORTANT ISSUES TO CONSIDER WHEN YOU PURCHASE INSURANCE**

### **Coverage Options**

There are two fundamental types of malpractice policies; occurrence policies and claims-made policies. Occurrence insurance protects you against lawsuits no matter when they are filed, even after you have stopped your coverage. Claims-made insurance only protects you if a suit is brought while the insurance is current. However, this limitation of claims-made policies can be eliminated by purchasing a prepaid tail (officially, an Extended Claim Reporting Endorsement) at the end of coverage. The tail, in essence, turns a claims-made insurance policy into an occurrence policy. It is important, however, to find out how quickly you must purchase the tail after coverage ends. Insurance companies often have a deadline, sometimes regulated by the state. After this deadline, the company may no longer be required to provide you with tail coverage.

In addition to occurrence and claims-made, some malpractice plans offer modified occurrence and claims-made-with-prepaid-tail policies. These are the same as a claims-made policy except that the premium for the Extended Claim Reporting Endorsement is paid during the policy period rather than after the coverage has been terminated.

### **Costs Involved**

Before deciding on the type of insurance you want to buy, evaluate the costs involved. Claims-made premiums are typically based on a five-year maturation scale. This means that the premium begins at a reduced rate and gradually increases over the next five years. At the fifth year, it levels off and can be slightly lower than the occurrence premium. However, at the time of cancellation, the Extended Reporting Claim Endorsement will be offered at an additional premium cost. Insurance policies written on a claims-made basis should provide a death, disability, and retirement waiver of the premium for tail coverage.

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Many malpractice insurance programs will offer discounts (more properly called premium credits) based on a variety of factors. Be sure to look into what discounts you are eligible for before you choose an insurance carrier.

### **Coverage Limits**

A malpractice policy usually has two limits:

- **Per occurrence:** the maximum amount that will be paid for damages in a single case.
- **Aggregate:** the maximum amount paid for damages in all cases against the insured that are filed for the policy year.

It is very important to determine if defense costs are paid outside the limits of liability. If the defense costs are included in the limits of liability, this may cause your limits to be eroded faster and reduce the funds available to pay settlements or judgments.

### **Portability of Coverage**

If you move to another state, it is important that your insurance carrier is licensed and approved to write business in that state. If it is not, you will be required to cancel your policy and purchase a new one with another carrier.

### **Payment Flexibility**

Some insurance carriers allow you to pay your insurance premiums in installments with no finance charge. This option can be very helpful.

### **Additional Coverages**

In addition to standard coverages, you may have the option to receive coverage for premises liability and vicarious liability.

- **Premises liability:** A psychiatrist who rents or owns an office in which patients are seen will probably want insurance against the normal hazards of running an office. For example, a claim would be covered by this policy if a patient slips and falls on the stairs or has something stolen from the waiting room.

Some policies include this coverage with the malpractice policy. Any policy, that includes this coverage at no additional cost, is highly recommended. The limits of liability are written on a shared basis with the malpractice limit of liability. This coverage does not replace the need for a broad-range general liability policy but may sufficiently meet the needs of the individual practitioner.

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- **Vicarious liability:** Under most state laws, a psychiatrist can be sued for liability for the acts of his employees or contractors, or for negligent supervision. If you have any employees or contractors who have professional contact with patients, make sure that your policy covers such vicarious liability.

If the policy provides vicarious liability coverage, however, it probably will not cover accusations of malpractice made directly against the employee. You need to determine whether employees or contractors such as social workers and nurses should have their own professional liability coverage, or will receive such coverage through a policy purchased by the employing organization.

### **Exclusions**

It is very important to know what is excluded from coverage in a policy. You will want to know about any exclusions before you accept an insurance contract. The following are typical exclusions in a malpractice policy:

- Undue familiarity (when a psychiatrist allegedly becomes sexually involved with a patient or former patient).
- Contractual liability assumed for third parties. Each party to the contract should carry medical professional liability insurance to protect their legal liability. Transfer of liability by contract is typically not acceptable to insurance carriers.
- Liability arising from a psychiatrist's ownership, financial interest, or involvement in any business enterprise.

Most exclusions are standard with any malpractice policy because state insurance laws restrict the type of risks allowed in a malpractice policy. Typically, the exclusions can be covered through other types of insurance policies such as Directors and Officers Liability, General Commercial Liability, Property, or Worker's Compensation policies. In some cases the risk is not insurable, such as criminal or malicious acts or practicing medicine without a valid medical license.