

Chapter 8

Malpractice Insurance



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8.1 Types of Malpractice Insurance

There are two basic types of malpractice insurance coverage – claims made and occurrence. Claims-made policies are the most common type encountered in private practice. Occurrence policies are more typical with very large employers like the government, universities, and prepaid health plan groups.

Occurrence coverage is the “ideal” type of malpractice insurance. Whenever a patient encounter occurs, your malpractice insurance in effect at that time covers you indefinitely if a claim is subsequently made for that care encounter. If you leave the practice, you don’t have to worry about maintaining malpractice insurance coverage for any prior events. This is the type of malpractice insurance you probably have as a resident. If you go into practice and you are subsequently named in a lawsuit for an event that occurred while serving as a resident, you will be covered by your residency sponsor or employer, usually a university or hospital. Policy limits are usually higher since they are the limits of the hospital or university and cover more than just your individual liability. Occurrence coverage is initially more expensive than claims-made insurance and is more difficult to buy as an individual or small group. Premiums are front-loaded, without early practice discounts, but also, there is no tail coverage that we will describe later.

Coverage under “claims-made” policies is limited to malpractice claims filed while the policy is in force and premiums continue to be paid. Your current claims-made policy may not have been in force when the event precipitating the malpractice claim occurred, just when the claim is made. How far back this retroactive coverage applies is specified in the policy and determines the premiums being paid.

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Claims-made policies are ideal for someone just entering practice. On your first day of work, your residency program covers any prior malpractice liability, and there is no chance a claim will be filed against you. After 1 year, you begin to have a retroactive malpractice risk and this risk is additive each additional year you practice, up to 4 or 5 years, when your risk plateaus and prior patient encounters exceed the statute of limitations for filing a claim (varies by state, but usually 2–5 years after an injury is discovered and sometimes longer for children). Because the risk is increasing, so are your premiums. Your first-year premium may be 20% of your mature premium, and it goes up proportionately each year until that fourth or fifth year of practice after residency, when it plateaus with your risk.

Mature premiums are specialty specific. Primary care specialties are the lowest, followed by those primary care providers who do minor surgeries. On the other end of the spectrum are high-risk specialties such as neurosurgery and obstetrics. Premiums between the two ends of this spectrum may vary tenfold! That's one reason why seeing a neurosurgeon costs a lot more than seeing a pediatrician. Anesthesia is unusual in that one would consider the type of procedural work done by an anesthesiologist would be high risk for malpractice claims. Fortunately, over the past three decades, there has been a strong push for patient safety in anesthesia and the adoption of new monitoring technology has dramatically decreased the risk of injury and subsequent claims.

8.2 Premiums Vary by State

Premiums also vary substantially by state. California has some of the lowest premiums in the country because of the enactment of the Medical Injury Compensation Reform Act (MICRA) of 1975. This California legislation limits awards due to noneconomic damages (e.g., “pain and suffering,” often a large component of a malpractice claim settlement) to \$250,000. This legislation has been used as a model by other states where excessive malpractice awards have driven physicians' premiums so high that physicians can no longer afford to practice there. More than half the States have now followed California's lead in enacting a similar form of medical liability reform. MICRA is subject to constant attack by personal injury attorneys as it also limits their income when a suit is successfully tried or settled.

A summary of MICRA along with some comparisons of malpractice premiums for various specialties in different states can be found at www.micra.org/about-micra/docs/micra_handbookpdf. The practice you are looking to join can give you the most accurate information about the premiums they pay for their specialty in their area.

8.3 Other Determinants of Malpractice Premiums

Just like with other types of insurance, malpractice insurance premiums are also determined by the amount of coverage purchased. A typical policy provides \$1 million coverage for each occurrence and a \$3 million in coverage cap each year if there are multiple occurrences. Lower policy limits exist but are inadvisable if you want to protect your personal assets. Higher policy limits are available, but many decide not to purchase them and thus encourage the patient to look to the doctor as the “deep pocket.” Most malpractice claims name several physicians as well as a hospital where the event occurred. Most physicians prefer that the patient look to the hospital as the deep pocket.

Premiums are also based on the medical or surgical specialty for which insurance is being purchased. The lowest premiums are generally associated with “cognitive” or nonprocedural-based specialties. Examples of specialties with lower premiums are pediatrics and family practice (without surgical assist or surgical procedures). Anesthesia is an anomaly in that it has relatively low premiums yet is associated with many risky procedures. The specialty of anesthesia has done a remarkable job in reducing the incidence of complications and injury associated with anesthesia, and premium rates reflect these improvements.

Malpractice Insurance Resources

Here are a few resources on the web that may be helpful in your research on malpractice carriers:

1. The Doctors Company website is a good resource: <https://thedoctors.com>.
2. Specialty societies such as the American Academy of Pediatrics and the American Academy of Dermatology have published articles on this subject, but specialty society access may be required to view this information. The AAD website has several good links for exploring this subject in more depth.
3. For a listing of state insurance department websites, go to the National Association of Insurance Commissioners (NAIC) website: http://www.naic.org/state_web_map.htm

8.4 Other Malpractice Insurance Issues

Just as it is critical that you individually have coverage, it is essential that your group carries coverage as well. As a member of a group, you share liability with other group members, both because you may have also cared for the same patient, and because the group itself may be named in a lawsuit and you want to protect the group’s assets (like your accounts receivable).

The other important issue we mentioned in an earlier chapter is the malpractice insurance tail coverage. Coverage under a claims-made policy ceases upon cancellation. If you wish to extend the “reporting period” in which a claim would be covered if filed, you have to purchase what is called a “tail.” Tail coverage is quite expensive. It usually costs between two and three times the current annual premium.

If you leave one practice and join another, and continue to pay malpractice premiums, you won’t need to buy this tail. You will need to ensure that prior acts are covered by this new policy. If you maintain the same level of premium, this can be arranged. If you stay with the same malpractice insurance carrier, this is easy to accomplish. If you switch carriers, make sure the proper retroactive coverage period is specified in the new policy.

While it is not on the top of your mind right now, when you retire, long-term policyholders usually don’t have to pay a tail. Their carrier provides it at no cost. On the other hand, if your group changes carriers just before you retire, you may get stuck with a tail payment.

There are several other issues about malpractice insurance that may come up:

- Part-time employment can be covered with reduced premiums. If you work less than 20 hours per week, you probably will pay 50% of the full-time premium.
- Don’t forget that if you do volunteer work in your unpaid hours, you will still need to obtain malpractice insurance for this extra work, paid or not. Hopefully, the clinic or agency you work for will cover you.
- Coverage for locum tenens work is usually provided by the group or the specific physician you are working for. Make sure you get this in writing, preferably from the insurance company providing the coverage.

8.5 How Do You Choose a Malpractice Insurance Carrier?

One final issue about malpractice insurance is the stability of the carrier itself. There are a few leading companies providing malpractice insurance. The largest is a physician-owned cooperative that operates in many states called the Doctors Company. As of this writing, the Doctors Company insures 80,000 physicians nationwide (www.thedoctors.com). The Doctors Company, however, may not be available in your new practice area. A quick search of Google yielded dozens of entries, some much smaller state-specific mutual companies. Even if it’s a major carrier, you should ask the following types of questions to assure yourself that the carrier will be able to help you avoid claims, defend you against a claim if it occurs, and pay any judgments awarded:

- Is the insurance company an admitted carrier in your State and subject to State review? (Best place to start is the State’s Insurance Commissioner. Along the way, check to see if the carrier has been the subject of any disciplinary actions.)
- How long has the company been in the malpractice field?
- What is the experience of their top management?

- How many policy holders do they currently insure?
- What value-added services do they provide? (For example, risk management programs, education, and publications.)
- What is their financial rating? (Standard and Poor's or A.M. Best.)
- Ask to see a financial statement. Are their corporate auditors reputable?
- Do they have sufficient assets to cover large claims?
- What is their track record for handling claims? Are they quick to settle? Do they take every case to trial?

Hopefully, your future group has already done this homework for you in selecting their malpractice carrier, but you can never be too careful when protecting yourself against catastrophic financial loss. Another useful source on malpractice insurance questions is: <https://www.leveragerx.com/malpractice-insurance/ultimate-guide/>