
Medical Malpractice Insurance

Considerations in Determining Coverage Needs

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So, you're being proactive. You're thinking through your risks and seriously considering whether it is in your best interest to carry your own insurance policy. Assuming you chose to do so, here are some important considerations when determining your coverage needs. First, let's talk about your employer's coverage. As a licensed professional working in a facility, you may assume that the facility has professional liability coverage which protects you. This is likely true, to an extent. In most cases, if you are acting as an agent of the facility, the facility's policy will provide legal representation to you for depositions and if it goes to the trial.

However, it's important to remember that the client for that policy is the entity, your employer – and not you as the individual provider. Suppose that the hospital is sued due to an adverse outcome directly related to an error or omission on your part. This could demonstrate a conflict of interest between you and the hospital. At the stage of deposition, and although rare, if it does go to trial, the lawyer is going to do what is in the best interest of the policyholder, meaning your employer, and that might be at your expense, especially if you were not following hospital policies or protocols. With your own policy, your attorney will also be at the deposition and/or trial to defend you and represent your best interests.

Perhaps there was deviation from policy that had become a common work-around used by all staff, perhaps what you did was necessary in your opinion to assure proper care due to system issues, or perhaps failure to follow facility policy was simply unintentional. No matter what the facts of the case, it can be reassuring to know that you are personally represented alongside the facility. Also – if a settlement or judgement is awarded against the hospital or facility, they can in turn file a claim against you to recoup those costs. If that happens, your policy will come in very handy.

Here is an actual example of how that works: A Medical Practice in NY employed physicians and a nurse practitioner. A wrongful death claim brought by the patient's family alleged negligence by against the practice, including you and the physicians. Neither the physicians employed by the Medical Practice nor the Nurse Practitioner had their own personal medical malpractice policies and used the counsel assigned by their collective group policy. The plaintiff's attorney settled with the Nurse Practitioner and dropped her from the case, but pursued the case against the physicians and the practice. The jury found for the plaintiff and the awarded them two million dollars. The medical practice's insurance company, who had represented the doctors and the NP, then went on to sue the NP to help recover those losses.

This classic conflict of interest example is why practitioners like you often choose to have their own personal professional liability coverage to protect themselves and their assets. Another thing to consider is coverage for situations other than medical malpractice claims, such as defending you in response to an action by your licensing board. There are different levels and types of coverage under your employer's policy, and it's important to know this may or may not be included. Anyone can file a complaint with the licensing board, and once the board receives a complaint the wheels are in motion for an investigation. The practitioner will be notified of the complaint and the board may request a written response to the complaint. If it happens to you, you'll want to have legal counsel review the facts of the complaint and develop a strategy for responding to the boards investigation prior to responding.

Generally, you will have access to counsel to assist you with navigating this process through your personal medical malpractice company, no matter what position your employer's policy takes. Finally, it's important to know that a plaintiff can go after your assets. We've all heard

some people say “I don’t need liability insurance” because of a perception that plaintiff attorneys are only going to go after those with “deep pockets.” While most medical malpractice lawsuits are settled or dismissed, some do ultimately go to trial. If you are named in a suit and the jury finds in favor of the patient, the jury will determine a monetary award, whether you have insurance or not.

If you have insurance, and the award is covered within your limits this will be handled by your insurance company. However, if you do not have coverage, you will be ordered by a judge under a court order to personally pay that money to the patient or to the family filing the claim. If you don’t satisfy the court order, the courts can enforce that judgement by garnishing your wages. They can even seize your house. And the enforcement gets reported to the board. To not fulfill the judgement can be viewed as professional misconduct and can be treated as a disciplinary action by the licensing board. This leads to yet more legal problems and expense, and can truly impact your finances, your ability to work and your license.

This is why so many of your peers elect to purchase malpractice insurance!