

Medical Professional Liability Insurance: A PRIMER

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With few exceptions, medical professional liability insurance is a required element and major annual expenditure for the practicing anesthesiologist. In addition to variable state requirements, most hospital systems establish insurance prerequisites as a contingency for professional staff privileges.^{1,2} Complicating the situation, medical professional liability insurance policies contain terminology unfamiliar to most anesthesiologists (see table, page 15). As a result, many anesthesiologists choose to pay the annual premium but neglect critical policy details.

Self-Insure or Purchase

Individuals or anesthesia groups may elect to become self-insured or purchase medical professional liability insurance. Options for purchasing insurance include commercial insurance companies, physician-owned companies or risk-retention groups.³ The absence of annual premiums is an appealing attribute of a self-insured platform. Potential disadvantages include a relatively large principal monetary outlay, periodic requirements for supplemental funding and assumption of litigation expenses. As such, most individual anesthesiologists and anesthesia groups continue to trend toward purchasing medical professional liability insurance instead of self-insuring.



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Medical Professional Liability Insurance Contracts

Medical professional liability insurance contracts typically declare indemnity limits in terms of the “individual claim” and “annual aggregate limit.”⁴ The common term “\$1/\$3 million” defines coverage limits of up to \$1 million per claim and \$3 million per policy year in the aggregate. Based upon historic insurance practice, the aggregate limit is usually three times the individual claim limit. Typical coverage limits range from \$200,000 to \$1 million per claim and from \$3 million to \$5 million total per policy year. In 2010, approximately three-fourths of insured anesthesiologists chose \$1/\$3 million coverage (see figure, page 16).⁵ In addition to the limits of liability, many medical professional liability insurance contracts provide for the costs of defending a covered claim. Based upon region and individual preference, some insurance carriers offer secondary (“umbrella”) policy options for losses exceeding the primary policy limits.

As with other types of insurance, a number of individual and organizational factors will impact upon premium rates. In 2010, the average national premium for \$1/\$3 million coverage was \$20,803/year (range \$3,245 - \$54,166).⁵ Recent data cites Connecticut, Florida, Illinois, Michigan, Missouri, Montana, Nevada, Rhode Island, West Virginia and Wyoming as states with the higher-than-average premiums. To the contrary, the same data depict rural areas in Midwestern states as having the lowest premiums.

Scope of Coverage – Inclusions and Exclusions

Scope of coverage defines the terms of the medical professional liability insurance contract.⁴ These details are often outlined in the inclusion and exclusion sections. Notable and common inclusions are condition of notice, duty to defend and consent to settle.

“Condition of notice” defines the obligation of the insured to promptly notify the insurer of any adverse event. Failure to comply with this requirement can result in coverage loss for the specific event. “Duty to defend” specifies the insurer’s contractual obligations to defend the insured for any claim covered under the policy. “Consent to settle” defines the insurer’s obligation with respect to obtaining consent from the insured before settling a claim. With a trend toward more

Table: Common Medical Professional Liability Insurance Terms and Brief Definitions

Term	Brief Definition
Insurance Options	
Self-insure	Individual or practice establishes a monetary fund for use in the defense of liability claims or in the event of loss.
Purchase	Individual or practice contracts with commercial companies or risk-retention groups for coverage against potential liability claims or loss.
Limits	
Individual Claim	Maximum contractual compensation for any individual claim.
Aggregate Annual	Maximum contractual compensation for any policy year.
Litigation Costs	Financial costs incurred in the defense of a covered claim.
Insurance Types	
Primary Insurance Policy	Principal contract rendering protection from liability claims.
Secondary Policy	Optional contract for losses exceeding primary policy limits.
Premiums	Monetary proceeds paid in exchange for medical professional liability insurance contract.
Scope of Coverage	
Inclusions	Language defining coverage included under the contract.
Exclusions	Language expressly limiting coverage for defined situations.
Policy Type	
Occurrences	Covers an injury occurring during the policy period without consideration of the date of claim.
Claims made	Covers an injury occurring during the policy period and is initiated by the "first notice of claim." If acceptable notice of claim occurs after policy conclusion, extended reporting period coverage is applicable.
Extended reporting period ("Tail")	Covers an injury that occurred during the claims-made policy period, but is filed after policy conclusion.

liberal National Practitioner Data Bank and state medical board reporting, the anesthesiologist should consider actively participating in any liability payments on their behalf.⁶

Exclusions delineate conditions under which the medical professional liability insurance company contract will not provide indemnity coverage. Medical professional liability insurance generally covers liability for injuries occurring in the course of usual medical practice. However, insurance contracts are specific. Exclusions may extend into subspecialty areas, such as interventional pain management, and expert legal testimony.⁷ Any medical practice outside of the usual and customary setting of the insured specialty should be addressed with the insurer. Additional common exclusions would include criminal acts,

practicing medicine under the influence of illicit substances or acts pertaining to fraud.

Policies – Occurrence or Claims Made

Professional liability policies are defined on an "occurrence" or a "claims made" basis.^{3,4} Occurrence policies, which are less common, state the insured is covered for events occurring during the period of coverage. As an example, suppose an obstetric anesthesiologist was insured in 2000 and has a claim filed on behalf of the child in 2010. Under an occurrence policy, the claim is covered as the incident occurred during a year in

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which the physician was insured. From an insurance industry perspective, the potentially long period between events and filing resulted in difficult cost forecasting and unstable premiums.

Under a claims-made policy, coverage is initiated upon first notification of a claim. Some claims-made medical professional liability insurance policies allow coverage to be triggered by precautionary reporting of adverse events within the policy period exclusive of a filed claim. The claims-made platform potentially simplifies an insurance company's ability to predict costs and stabilize premiums. However, should an anesthesiologist change jobs or retire under a claims-made policy, an additional contingency for ongoing coverage must be considered. Extended reporting period ("tail") coverage addresses any claims "occurring" during the period of coverage that have not yet been "filed." This coverage usually requires an additional premium. Some policies, however, provide for free extended reporting period coverage upon retirement, disability or death.

Many medical professional liability insurance companies have specific insurance contracts for part-time or locum tenens physicians.⁸ The details regarding work hours, case limitations or extended reporting coverage are worthy of review.

Summary

Medical professional liability insurance is a reality of medical practice. A small amount of education will return volumes of benefit. As with any contract, read before you sign. If you have any questions, most medical professional liability insurance companies are exceedingly helpful and willing to clarify any issues. Ultimately, you are the consumer and you need to understand the product you are purchasing.

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References: Available at the back of the *NEWSLETTER* e-version online at www.asahq.org or by request by sending an e-mail to communications@asahq.org.

Figure: 2010 Liability Limits (by percentage) for Anesthesiologists

