

Is Buying Insurance Solely on Price Selling Yourself Short?

by Paul K. Tuggle

Everyone has had thoughts about what they would do if they had more money. Some people would want to have a bigger house or a newer car, to take a trip or even do more for the community. It would be no great revelation to say that every dollar that you can save on your insurance program is a dollar that you can spend on something else that you want or need. But, don't take this statement the wrong way; I am not saying to buy cheap insurance coverage. In fact, buying insurance based solely on price is simply selling yourself short. What I am saying is that as an insurance consumer myself, I understand that all insurance purchasers want the proper protection at the lowest cost; in other words, the greatest value for the premium.

I will attempt in this article to outline for you how to select the right medical professional liability protection to achieve the greatest value for you.

So, what is currently happening in the medical professional liability insurance industry?

- In general, malpractice premiums decreased significantly during the 1990's—in some cases more than one third.
- During this same period, between 1988 and 1998, nationwide the number of catastrophic medical malpractice claims (indemnity payments over \$1,000,000) tripled: from ~1.25% of all paid or settled claims to ~4.5%.
- A study by the *Georgia Trial Reporter* of 65 closed malpractice claims during a period from 1998 to 2000 showed that ~13.8% of the claims in Georgia resulted in indemnity payments in excess of \$1,000,000.
- According to A.M. Best Company data, the com-

bined ratio for medical malpractice companies was 129.5 in 1999 and 133.5 in 2000. That translates into “for every dollar the industry received, it paid out \$1.33 in paid claims, defense and administrative costs.”

- The market for professional liability insurance is rapidly changing. During the fall of 2001, three prominent carriers left the national market—two because of the unprofitability of this line of insurance. The third carrier was put into “supervision” by the Pennsylvania Department of Insurance because of solvency issues. In 2002, four more carriers have chosen to withdraw from the market or have had their financial rating downgraded. All of the companies who remain are being very selective of the accounts that they choose to write.

Based on these facts, Georgia physicians have not been immune from the national rise in catastrophic claims or the constriction of the market for professional liability insurance and their future premiums will most likely reflect these changes. This is probably true regardless of the insurance carrier that the physicians ultimately choose. Therefore, obtaining the most value for your premium dollar is more important now than ever.

COVERAGE + SERVICE + COST = VALUE

Value in an insurance program can be reduced to three general, but vital considerations. They are, in order of importance: Coverage, Service & Cost.

COVERAGE

If your insurance doesn't protect you as it should, you might as well not have it. How do you make sure that you have the proper coverage for your practice's exposure?

Aren't all medical professional policies more or less the same? They are not. While the insurance industry has a standard for homeowners' policies and for automobile policies and workers' compensation policies, there is no such thing as a "standard insurance form" for a medical professional liability policy. **This means that a coverage comparison is more important, and difficult, when choosing a malpractice insurance carrier than almost any other type of insurance.** Some of the issues that should be considered when selecting a professional liability carrier are:

What is the company's "Rating"?

Rating companies, such as A.M. Best, Standard & Poors and Weiss, rate insurance carriers based upon their financial stability, ability to pay claims, diversification of lines of business, their claim reserving practices, etc. They also classify the company based upon the size of its "Policyholder Surplus." The highest Best's Rating is "A++ 15" (Only one current carrier in Georgia has this rating.) The other rating companies use similar codes such as "AAA" to rate companies. Selecting a company which is considered "excellent" by the rating companies is recommended.

What is the policy's "consent to settle" provision? Does it have a "Hammer Clause"? Presently, most carriers in Georgia (all of the carriers that I represent), require the physician's consent to settle a case on behalf of the physician. They also do not have a "hammer clause" which would limit the carrier's liability to the settlement amount that was being offered by the carrier. This may not be the case with some of the Excess & Surplus Lines carriers that are becoming more preva-

lent in the current turbulent market.

Is the policy written on a "claims-made" basis or on an "occurrence" basis? Most physicians are covered by policies written on a claims-made basis. If your policy has a retroactive date, you are written on this type of coverage.

In English, what a claims-made policy covers are claims first reported during the current policy period as long as they are the result of care that was provided on or after the retroactive date in the policy. When the policy period expires, a policy with the same retroactive date must replace it in order to continue to provide coverage for these "prior acts." An alternative, which is usually exercised at retirement or when prior acts coverage is not provided by the new policy, is the purchase of a "Tail" or Extended Reporting Endorsement. This endorsement extends the time period to report a claim for care that was provided between the retroactive date and the policy expiration.

An occurrence policy covers claims that arise from care that is provided while the policy is in force, regardless of when the claim is brought. Homeowners and auto policies are generally written using this form. (Only one Georgia carrier currently offers physicians professional liability coverage on an occurrence basis.)

Let me state at this point that neither form is necessarily better than the other is. They both have advantages and disadvantages that space does not allow me to expound upon here.

Assuming the policy is claims-made, what are the policy's conditions for receiving a free Extended Reporting Endorsement or "Tail" for retirement? What about disability?

All non-surplus lines policies (that I am aware of) have a free retirement provision. A common requirement would be something such as 5 years with the carrier and age 55; some are

as little as 1 year, one "program" that I administer has a provision for retirement at any age with no vesting period. This provision will vary among carriers.

The same non-surplus lines policies mentioned above also have a free disability provision. Disability is defined by some carriers as the inability to continue to practice medicine and by others as the inability to perform the duties of your occupation. A six-month waiting period is common and the disability must be considered permanent. Some policies will exclude disability for intentional acts such as suicide attempt or racing.

These are only four of the many things that you should consider in evaluating a carrier. An example of the detail of questions that should be answered follow. (These questions are regarding non-physician employees of the practice.)

- Does the policy cover the practice's non-physician employees individually or only the physician for their vicarious liability?
- Is the coverage different if the employees are nurses or nurse practitioners?
- Are volunteers covered?
- If the employees and volunteers are covered, are they sharing the physicians' limit or are they sharing the corporations' limit?
- Do you need to notify the carrier if a new employee joins or leaves?

The answers to these questions vary between insurance companies and, if you are participating in a special program within the insurance company, it may differ from other policyholders of the carrier.

This is a relatively simple example, but you can see that not knowing the answer or even the right question to ask can make the difference between having coverage, not having coverage

or, worst of all, having the coverage but not properly utilizing it.

As important as what the policy covers, is what the policy excludes. No matter who you are currently insured with, PLEASE TAKE THE TIME TO READ YOUR POLICY'S "INSURING AGREEMENT" AND THE "EXCLUSIONS" and ask your insurance representative about anything that you don't understand.

Another factor that may hinder you from obtaining an impartial coverage comparison between two companies is that your agent, or the persons offering you an alternative to your current coverage, may represent only one insurance company. This may be the case if they are either an employed agent of a direct writer or as an independent agent with only one medical malpractice company contract. As an agent who represents many professional liability carriers and who is also licensed to independently advise clients for a fee, let's see if I can give you a politically correct analogy.

"As a physician, if the only antibiotic you could prescribe was erythromycin, you could treat your patients for many types of infection. With the ability to write prescriptions for additional antibiotics, you would probably be able to more effectively treat your patients' infections, possibly with fewer complications, by selecting a drug that is most appropriate for them. That is not to say that there is anything wrong with erythromycin. There certainly is not."

If this analogy holds true for antibiotics, it would also probably hold true for insurance agencies/carriers.

SERVICE

If the agency/company team you have selected isn't capable of delivering the quality of full range service you deserve, when you need it

and where you need it, you're not getting what you pay for.

If you don't look closely at an insurance firm (agency/company) before choosing one, you won't know how well it will perform until you have a problem. And that's no time to discover that you've chosen the wrong one!

An insurance policy is not a product; it is a unilateral **service** contract. That means that you agree to pay the carrier a premium and they agree to perform the services provided in the contract only **if** certain covered events occur. This relationship can be described as "trading a known loss (the premium) for an unknown loss (catastrophic financial loss from a covered event)." For this reason, insurance is sometimes called "a contract that eliminates uncertainty," or "purchasing peace of mind." How do you make sure that you have chosen the right firm to provide this peace of mind?

Your relationship with your agency/company involves much more than the policy alone. To serve you well your agent must understand the complexities unique to insuring your individual practice. The firm should have extensive knowledge of the insurance industry and employ a staff of highly qualified professionals. An insurance firm's financial stability and commitment to service is the foundation upon which its relationship with you is built. It is important for you to know that the firm you select has demonstrated a consistent level of performance, has a sound balance sheet and will be here not just today but tomorrow as well.

Among the questions you should consider in evaluating your insurance firm's service team are:

- Where is their service office? Is it local, regional or does it have a toll-free number? Does this level of service meet your needs?

- How do you get in touch with them if you have a question or need assistance after hours or on the weekend? Do they have an emergency paging service?

- Do you have a designated service team or do you get a different person each time you call?

- What law firms will represent you if you need defense? Do these law firms represent other leading insurers?

- What is the experience of the sales staff? Are they experienced in the medical field or are they getting "on the job training" on your account?

- Does the firm specialize in the healthcare industry? How many of their employees deal exclusively in medicine and how many are in another industry, say, construction?

- Does the firm have a commitment to improving their employees knowledge of the insurance industry i.e. helping you to identify loss potential and to address those causes of loss in your practice? Hint: do the CSR's have letters like CISR and the sales people have letters like CIC, ARM & CPCU following their names? If they don't, why not?

- Has the company grown at such a pace that their resources and financial responsibilities may have them overextended? Has the firm suddenly stopped writing a line of business? Was it because of unprofitability?

Your practice has a way to reach you, or a covering physician, if a patient has a medical need. Your corporate attorney probably specializes in working with physicians or other healthcare professionals. Your accountant is most likely a CPA. Your investment advisor has access and knowledge of a good portfolio of stock and funds. Why would you

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expect less than this from the professional that insures your practice?

COST

Cost is only meaningful as it relates to the two considerations above. "Low Dollar" isn't necessarily the best selection. The potential cost of an uninsured loss is another way of measuring the expense of an insurance program. As an insurance consumer myself, I will attest that the best coverage and service are not a good value unless they are reasonably priced.

In summary, as the medical professional liability insurance market becomes more turbulent, not all insurance firms (or the physicians that they protect) will survive. **Your greatest value will be from a long-term rela-**

tionship with an insurance provider that can:

- **Identify & meet your current and future coverage needs;**
- **Provide you with the appropriate level of support, education & service;**
- **Have the financial stability to survive the impending liability storm at a reasonable, but probably cheap cost.**



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