

Pick Up Malpractice Insurance Painlessly

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Ophthalmologists and other physicians are in an insurance crisis. Now, not only is the cost of malpractice insurance rising beyond affordability for many practitioners, but thousands are being forced to find replacements for carriers leaving the market. In this article, I'll provide some guidance for individual ophthalmologists and small-practice administrators that should take some of the pain out of finding a new carrier.

The Scope of the Problem

Two years before the 9/11 terrorist attack that precipitated the current hard market, there were signs that a medical malpractice insurance crisis was imminent. Leading up to September 11, 2001, the frequency and severity of claims had been steadily increasing and carriers were not able to collect enough premiums to cover their losses. Based upon estimates by A.M. Best (a New Jersey-based publisher of insurance company ratings and information), underwriters paid out \$128 in claims and operating expenses for every \$100 of medical malpractice premiums they wrote in 2001. This translated into an industry-wide loss of more than \$1.68 billion.

Virtually all of the remaining medical malpractice carriers have significantly tightened their underwriting requirements and raised re-newal rates in an effort to return to profitability. Although they're reluctant to admit it, it was the carriers' loose underwriting standards and pursuit of market share in the "go-go" '90s that contributed to the current mess. Today, carriers are less concerned by market share and several carriers have placed new executives at the helm, charged with the responsibility to underwrite their way back to profitability. Many companies are cleaning house by sending non-renewal notices to doctors and their groups that don't meet their new standards.

With so many doctors looking for replacement carriers and fewer carriers to choose from, the heyday of a buyer's market is gone. Underwriters for many of the more prominent remaining carriers are now seeing more applications in a month than they previously had seen in six. Because few carriers believe demand will last another 18-24 months, they have not beefed up their staffs to handle the increase in applications. With so many applications to select from, and under extreme pressure to make an underwriting profit, over-burdened underwriters are looking for reasons to say no. Many are cherry-picking by selecting only those that fully meet their underwriting criteria. They are rejecting outright applications that are submitted by brokers not on their approved list, or that are incomplete or illegible, or have been submitted on another carrier's form.

The affordability and availability issues are aggravated by the perception of a "lack of service." Because of the increased volume, applications previously processed in three to five days are now taking three to five weeks. Many would argue that it's unrealistic to expect a response in less time, given the current market conditions and the need to truly underwrite a risk today. To get the best possible result, ophthalmologists in the application stage should thoroughly complete the required forms and all attachments and remember to have patience.

Finding a Carrier

Even doctors fortunate enough to qualify as preferred risks should expect to encounter some trouble finding a re-placement carrier at old rates. Those practicing in high-risk specialties or who have adverse claims histories will find fewer takers. Here's a checklist of things you can do to minimize the misery of finding a new carrier:

- Foremost, don't wait until the last minute to try to find a new carrier. It can take three to four weeks or more to get an underwriter's written commitment.
- Start by enlisting the services of a qualified insurance broker that specializes in medical malpractice insurance. For most specialties, now is not do-it-yourself time. Be sure to ask the broker about fees. Some brokers are charging fees in addition to receiving commission from the carriers.
- Require the broker to provide a list of carriers he or she intends to approach. Ask about their financial ratings, underwriting criteria, medical malpractice premium volume, loss ratios and longevity in the medical malpractice business. Be skeptical if a broker quickly assures you that there will be "no problem" obtaining an underwriter's commitment. Be sure to qualify the resume of the broker before signing over exclusive authority. Require frequent progress reports.
- Carriers are no longer accepting "memo submissions," so be prepared to complete and sign more than one application. Give the selected broker all the information requested, and answer all questions fully, accurately and honestly. Be prepared to provide verification of loss experience from prior carriers even if no losses have been incurred.
- Be patient—within reason. Underwriters don't respond well to demands for immediate attention. Remember, they are under intense pressure from many fronts. As the old saying goes, "You catch more flies with honey than you do with vinegar."
- Price is only one of the issues to consider when selecting a carrier. Many of those no longer in business were known for their bargain-basement prices. The final choice should be based upon, in order of importance: 1) financial stability, 2) longevity and ranking in the medical malpractice business, 3) satisfaction of coverage needs and 4) price.

Unfortunately, there is no quick fix to the current crisis. Until carriers re-turn to profitability and renewed competition softens the market, there are simply fewer options available than there were before. We all hope that the service and price crunch will be short-term. Steps are being taken to bring costs down by the American Medical Association. The AMA has initiated campaigns in about 25 states to convince legislators to adopt tort reforms patterned after California's reform legislation that has proven effective in controlling the cost of malpractice insurance. And, the Bush administration has now weighed in as the national spotlight intensifies. However, trial lawyers will continue to argue that the remedy to the malpractice problem should be on the relatively small number of doctors responsible for many of the malpractice claims.

The good news is, solid medical malpractice carriers still exist; ones with strong financials and long-term commitments to doctors' insurance needs, in both hard and soft market cycles, with or without tort reform. For now it's *caveat emptor*, so be prepared.

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