

Emergency Career Planning: Life After Residency

Malpractice Insurance Considerations



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Agenda

Section 1: Overview (what is malpractice, standard of care, statistics)

Section 2: The Claims Process

Section 3: Risk Management Strategies

Section 4: Types of Malpractice Insurance / Basic Terms & Definitions

Section 5: Key considerations as you prepare to start your career



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Definition of Medical Malpractice

Medical Malpractice: Professional negligence by a health care provider that deviates from the accepted standards of care, resulting in harm



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Standard of Care

- Not perfection!
- What a reasonably competent and skilled provider, with similar background and training would have done in the same situation
- In order to prove that the standard of care was or was not met, attorneys on both sides may bring in an expert witness to testify

If, for example, an Emergency Medicine doctor's actions are being questioned, another ER doctor or specialist in the given field may testify to show that the provider *failed to do something* that he/she should have done or *did something* that he/she should not have done.



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According to the National Association of Insurance Commissioners, there will be approximately **110,000** medical liability claims filed in the United States this year.

% Face First Lawsuit By Age 45

Physicians in Low Risk Specialties (e.g. Allergist) – 36%
 Physicians in High Risk Specialties (e.g. Neurosurgeon) – 88%

% Sued By Age 65

Physicians in Low Risk Specialties (e.g. Allergist) – 75%
 Physicians in High Risk Specialties (e.g. Neurosurgeon) – 99%

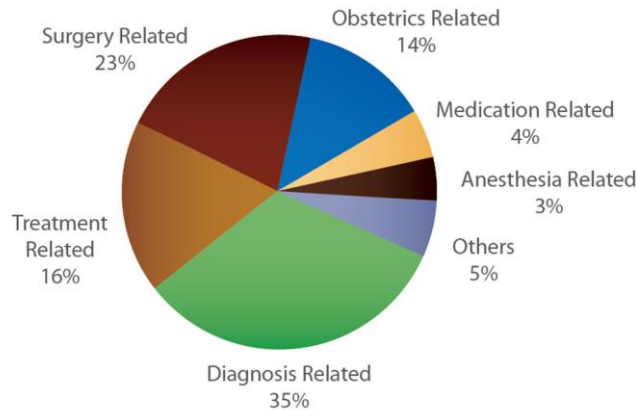
Other Statistics

Average payment per claim nationwide – \$320,000
 Average defense cost if case is dismissed – \$24,000
 Average defense cost if claim is settled before trial – \$70,000
 Average defense cost with trial – \$137,000



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Top Allegations



Source: National Practitioner Data Bank Public Use File



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Top Allegations in Emergency Medicine Claims (with payouts)

- 59% Diagnosis-Related / \$480,468
- 15% Medical Treatment / \$221,518
- 10% Medication-Related / \$416,710
- 16% Misc. other factors



Source: National Practitioner Data Bank Public Use File

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Minimizing Risk

Effective risk management is critical for all health care professionals. Risk management solutions should enhance your productivity and improve patient safety in your practice. It requires extensive knowledge of the myriad issues affecting today's providers, and helps you find creative answers and meet the most pressing challenges.



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Tips to Help You Avoid a Malpractice Claim

1. Practice a good “bedside manner”
2. Spend time with the patient
3. Educate and communicate
4. Make sure you have complete, accurate, legible charting
5. Be aware of the patient’s entire medical condition/history
6. Explain risks & side effects of treatment/procedure and prescribed medications
7. Obtain informed consent yourself
8. Avoid overly aggressive bill collecting
9. Complete patient follow-up
10. Hire and train competent staff
11. Request consults in a timely manner
12. Continue your medical education



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What to do after an adverse event

1. Immediately notify your practice administrator / risk manager, who will contact the malpractice insurance company.
2. Secure all patient records related to the case. Do not produce the records for inspection or photocopying unless your carrier or attorney advises.
3. Keep patient records related to the case wholly intact, and ensure that no one makes any additional entries, corrections, or deletions to the records.
4. Do not create notes or narratives describing the event, unless instructed by and under the direct supervision of your defense counsel.
5. Do not discuss the case with anyone other than your professional liability company’s representatives and your defense counsel.

Additional Thoughts...

1. ***Talk to the Patient or Family (and be ongoingly accessible)***
2. ***Don’t Play the Blame Game***
3. ***Consider write-offs / no overly aggressive collections***



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Elements of Proof

Plaintiff must establish 4 legal elements:

1. Duty owed by the health care provider to the patient
2. Duty breached, failure to conform with the relevant standard of care
3. The breach caused the injury and resulted in damages
4. Damages, i.e. pain and suffering, economic loss, medical bills, future medical costs, etc. Without damages, there is no basis for a claim.



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Damages

The plaintiff may seek recovery for both compensatory and punitive damages.

Compensatory damages:

- Economic (examples include: loss of income, medical expenses, future medical care)
- Non economic damages (examples include pain and suffering, scarring, humiliation, permanent loss of an organ or limb, reduced enjoyment of life, etc.)

Punitive damages:

- Only awarded if the conduct is found to be willful and reckless (results will vary by state and law availability)



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The Claim Process



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How Emergency Medicine Doctors are Covered for Malpractice

Option #1: Coverage under Employer

Pros: Premium paid by employer
No hassle (they take care of it for you)

Cons: You may not get the kind of coverage you want
Coverage will likely be limited to the work that you do for that employer



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How Emergency Medicine Doctors are Covered for Malpractice

Option #2: Individual Coverage

Pros: You get to select the coverage that's best for you (not have it dictated by an employer)

The policy can cover you wherever you go

Cons: You will pay the premium yourself & have to do the research to find a suitable carrier, complete the application, etc.



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Occurrence Coverage

An Occurrence policy provides coverage based on when the incident occurred, regardless of when the patient files a claim. No tail insurance is required...ever. That is true even if a claim is made after the policy period expires, after you change employers or after you retire. Because the insurer must plan for long-term liability coverage, this policy generally has a higher up-front cost.



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Claims-Made Coverage

A Claims-Made policy provides coverage based on when the claim is actually made against the insured, as long as the incident giving rise to the claim took place after the policy's retroactive date. This means that you must have coverage in place at the time when the claim is filed. If the policy is no longer active, the insured must obtain tail insurance to cover themselves for any future claims that may be filed against them.

The Claims-Made policy is typically less expensive during the first few years, but "steps" up in price to reflect the increased exposure to liability for the previous years. Tail insurance is an additional expense down the road.



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Limits

Limits are how much the insurance company will pay to cover your claims in accordance with the policy. Limits are usually comprised of a "per occurrence" amount and an "aggregate" amount.

These dollar amounts are typically written together in the following fashion: \$1,000,000/\$3,000,000. This figure means \$1 million is available to be paid "per occurrence" and \$3 million is the maximum "aggregate".

Note: defense costs can be inside or outside of the limits



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Occurrence vs. Claims-Made Limits



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Sample Premiums

Emergency Medicine in Detroit, MI			Emergency Medicine in Traverse City, MI		
\$1,000,000 / \$3,000,000 standard limit			\$1,000,000 / \$3,000,000 standard limit		
	Occ	CM		Occ	CM
Year 1	\$37,715	\$12,446	Year 1	\$13,199	\$4,356
Year 2	\$37,715	\$21,874	Year 2	\$13,199	\$7,656
Year 3	\$37,715	\$28,663	Year 3	\$13,199	\$10,031
Year 4	\$37,715	\$31,302	Year 4	\$13,199	\$10,955
Year 5	\$37,715	\$35,829	Year 5	\$13,199	\$12,538
Tail Cost	\$0	\$64,492	Tail Cost	\$0	\$22,568
Total	\$188,575	\$194,606	Total	\$65,995	\$68,104

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Key Considerations as you Enter Private Practice:

- Who is buying your malpractice insurance?
 - Is it an “A” rated carrier?
 - Or do they self-insure?
- What kind of coverage is it?
- If Claims-Made, does it include tail? If not, who buys it when you leave?
- Is the coverage limited to the work that you do for that practice?
- Do you have consent? Can you request your own defense attorney, if needed?
- Does it make sense to purchase your own “broad” policy to cover you anywhere?
- If you purchase your own, will they reimburse you for any portion of the premium?



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Questions?

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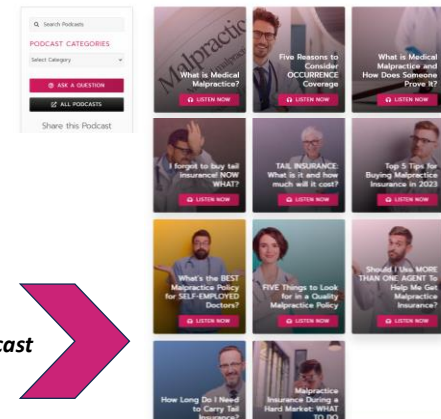
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Additional Resources...

Malpractice Insights Podcast

YouTube, Apple Podcast, Spotify, etc.



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