



A Physician's Guide to Medical Practice Liability

(Working locum tenens with maximum benefits and minimal risk.)

One of the quickest ways to end a conversation is to bring up the words “medical malpractice.” Whether you’re fresh into residency, or have practiced for years, a malpractice lawsuit is something that most doctors dread – and it happens more often than most people imagine.

This is an educational overview for physicians who are experienced in locum tenens, or who are considering locums as a career path. Because dealing with medical malpractice is a fact of life for physicians, it’s important to know how the process works and what steps to take to protect yourself.

As with patients who may not want to hear or follow advice about health risks, just ignoring the reality of medical malpractice won’t make it go away. The longer you’re in medicine, the more likely it is that you’ll be named in a malpractice lawsuit. The threat is real, but, as you’ll see in these pages, it’s not all bad news.

Litigation can be an emotional and sometimes bewildering process, but we’ve had great success in defending malpractice cases and get compliments from our Weatherby physicians for the claim support we provide. If you arm yourself with facts and get the right partner on your side, an adverse event doesn’t mean that your career or reputation will be damaged. Let’s get started.

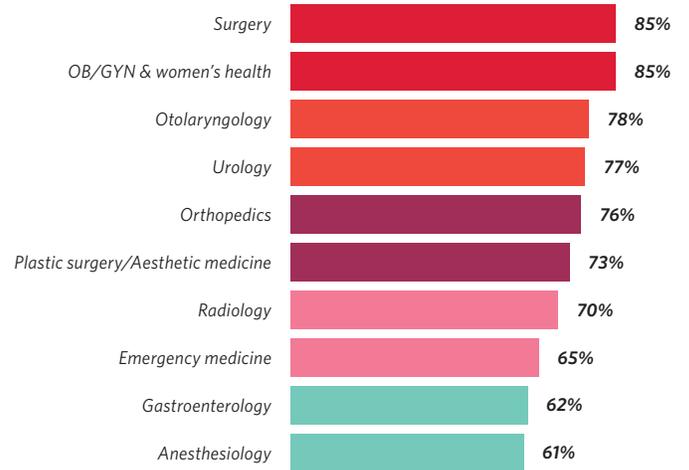


UNDERSTANDING THE RISK

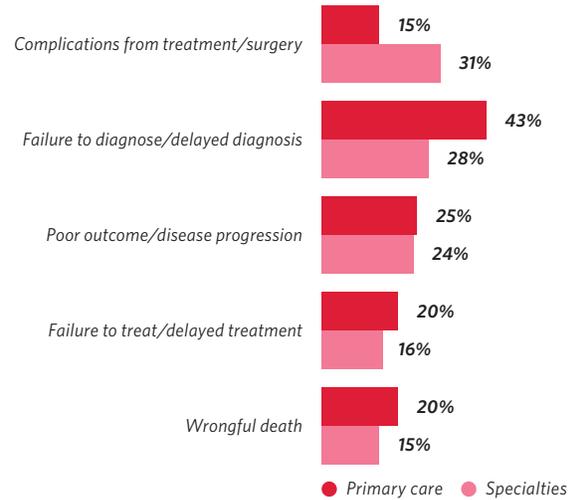
Out of more than four thousand physicians across 25 specialties surveyed last year by Medscape, 55 percent said they had been named at least once in a medical malpractice lawsuit. More than half of that group said it had happened to them more than once.ⁱ

With the odds already tipped against you, the numbers suggest that you may not even see it coming. Eighty-seven percent of the doctors who said they were sued reported being at least somewhat surprised that someone took legal action against them.ⁱ

TOP 10 SPECIALTIES FOR LAWSUITS



WHAT WAS THE REASON FOR THE LAWSUIT?





UNDERSTANDING THE COST

When you add the value of your time, including travel and lost billings at work, the financial ripple effect of dealing with a medical malpractice matter can be significant.

According to the Medscape report, the lawsuit process lasted from one to two years for nearly 40 percent of the survey respondents. Ten percent said it lasted more than five years.

DURATION OF THE LAWSUIT PROCESS



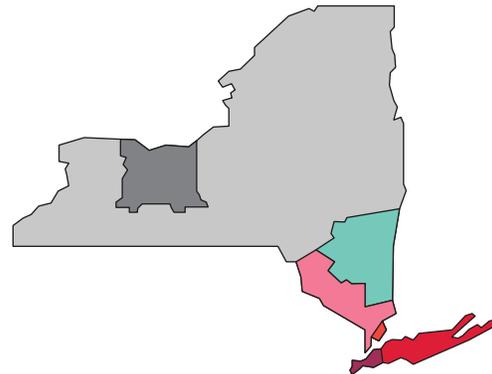
The specialties targeted most often tend to pay the highest malpractice insurance premiums. Generally, your locum tenens agency will cover them, but costs can vary widely from one state to another, and by specialty.

practice in, your specialty, the hours you work, your claim history, your insurance provider, and many other local factors. Based on 2014 studies, the annual rate for a neurosurgeon in Long Island might be over \$300,000 while the rate for an allergist in Rochester might be only \$1,905 per year.ⁱⁱ

The cost of medical malpractice premiums depends on a number of variables, including the state you

NEW YORK STATE MEDICAL MALPRACTICE RATES INTERNAL MEDICINE: 2013-2014ⁱⁱⁱ

Long Island	\$37,877
Bronx & Richmond	\$37,205
Kings & Queens	\$34,766
Manhattan & suburban counties	\$27,011
Mid-Hudson	\$17,989
Other upstate New York counties	\$10,145
Rochester area	\$7,185



A third of the 4,137 in the Medscape survey group said they spent more than 40 hours preparing their defense. After the preparation phase, 20 percent said

they spent at least another one to 10 hours in court and trial-related meetings. Eighteen percent said court time took them more than 50 hours.

Surprise, shock, anger, and fear are common reactions to getting sued for malpractice. More than 95 percent of doctors experience some form of emotional distress in reaction to a medical malpractice lawsuit.^{iv}

Not all malpractice costs are financial. There are real mental and emotional components to manage as well. Even though some cases get dismissed with no impact on the doctor's finances or reputation, going through the process can still be stressful. Medscape survey

responses show that many physicians change the way they practice medicine or relate to patients after being sued for malpractice.

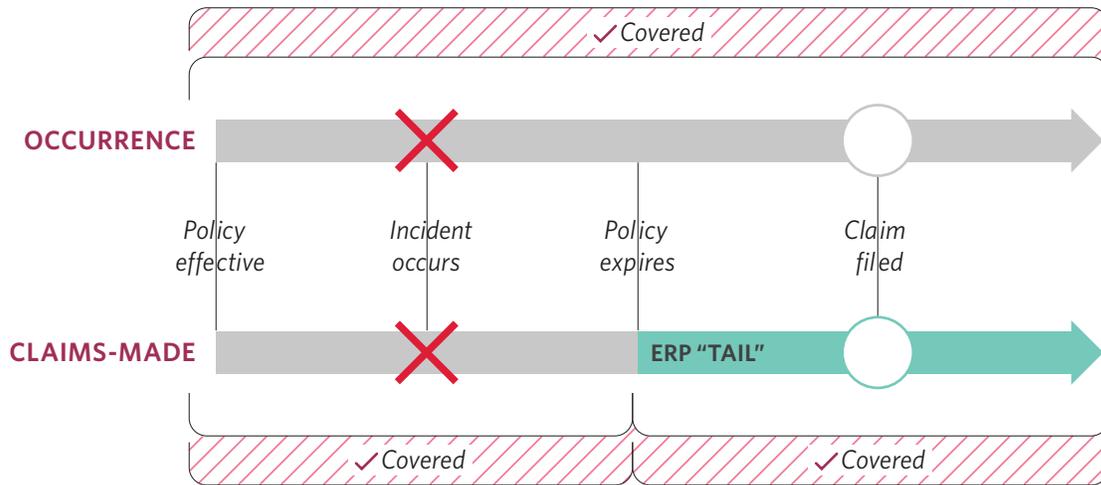
Many of these feelings are normal, but as you'll see in the next section, you don't have to navigate the process alone. When they work with the right agency, locum tenens physicians have someone knowledgeable and experienced on their side to help minimize the personal and career impact of malpractice lawsuits.





UNDERSTANDING THE COVERAGE

Your locum tenens agency may or may not purchase professional liability insurance for you. Weatherby has decades of experience in dealing with professional liability insurance matters and works with a top-tier insurance broker and highly rated national carrier to procure professional liability insurance on your behalf. Even though you may not be shopping for coverage, or purchasing it yourself, there are two main types of coverage you should know about as a locums doctor.



OCCURRENCE POLICY

An occurrence policy protects you from covered incidents that arise out of acts or omissions occurring during the policy period, regardless of when a claim is filed. As long as the adverse event happened during the policy period, an occurrence policy will typically cover you for defense and indemnity costs up to the prescribed limits.

CLAIMS-MADE POLICY

A claims-made policy protects you from covered incidents that arise out of acts or omissions that may or may not have occurred during the policy period, but will only provide coverage for claims made during the policy period. Some claims-made policies exclude coverage for acts or omissions that occurred prior to the policy period. As long as the claim is made during the policy period, absent exclusions for prior acts or omissions, a claims-made policy will typically cover you for defense and indemnity costs up to the prescribed limits. Coverage periods can be extended

by renewal. When a claims-made policy is terminated, tail coverage can be obtained to provide additional protection for claims that are asserted after the expiration date of the original policy.

For reference, Weatherby's coverage structure is claims-made and includes tail coverage for locum tenens physicians.

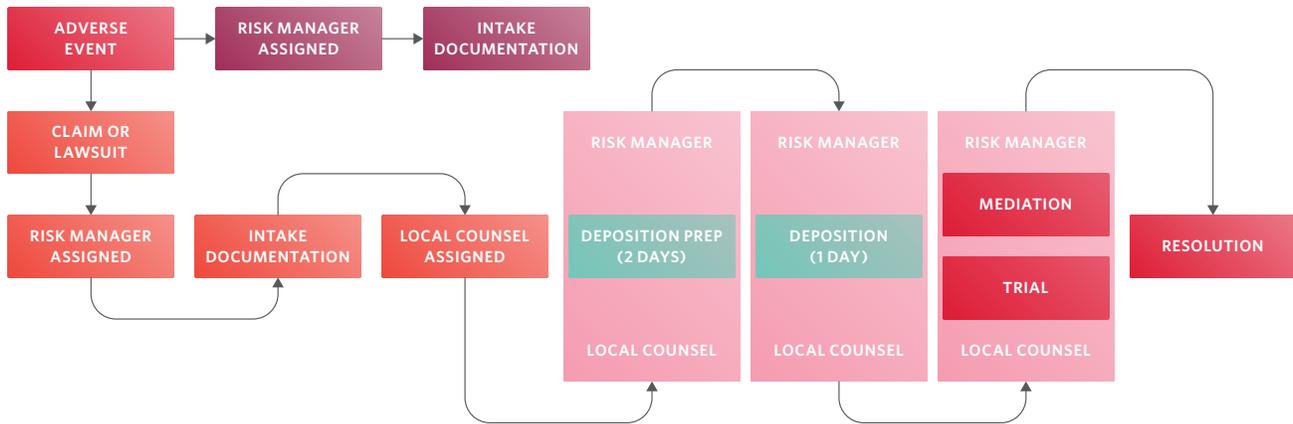
FOR ALL OF ITS LOCUM TENENS PHYSICIANS, WEATHERBY PROCURES A CLAIMS-MADE POLICY IN THE AMOUNT OF \$1,000,000 PER INCIDENT, \$3,000,000 ANNUAL AGGREGATE, EXCEPT WHERE STATES REQUIRE OTHER LIMITS.

Weatherby further procures tail coverage to account for future claims that may arise. If a claim arises, it will be managed by Weatherby's in-house claims management team who retain experienced malpractice defense attorneys in the venue where your case is filed.



UNDERSTANDING THE PROCESS

The more you know about how the medical malpractice process works, the better equipped you'll be to play your part in a successful defense. For clarity, we've oversimplified the process here to illustrate the basic steps you can expect.



Weatherby's risk management team has long experience with medical malpractice litigation, and they will fight the case aggressively on your behalf to achieve the best possible outcome.

For an adverse event where there is no known claim or lawsuit pending, the physician will contact Weatherby Healthcare through the CHG risk management 800 number. An experienced risk manager takes confidential notes on the incident and enters them in a private database. No one other than you and your Weatherby risk management team will ever have access to these notes.

In the event of a claim or lawsuit, the process continues through a few more steps. First, the Weatherby risk management team will assign a local lawyer to your case who is licensed to practice in the jurisdiction where the incident occurred.

When we move forward with litigation, we don't just hand everything off to local counsel and hope for the best. Your risk manager monitors every step of the case and enforces strict litigation guidelines with the entire legal team. Attorneys must adhere to our standards for details like progress reports, expert testimony, and billing.

Depending on the scope and details of the case, you may be called to give a deposition. Providing sworn evidence is an integral part of establishing the facts in a medical malpractice case. Information from depositions is often used to decide how (or whether) to move forward with a case. According to the Medscape survey, 81 percent of physicians named in a malpractice suit were called to give a deposition, so it's important to get this right.

If the need arises, we have expert lawyers who have defended physicians for many years available to assist you with professional deposition preparation. Your Weatherby risk manager and the local lawyer we have retained for your specific matter will be with you throughout the entire preparation and deposition process.

Sometimes, insurers encourage or require physicians to settle a malpractice case. While there are situations where settlement may be in your best interest, Weatherby does not delegate settlement authority to the insurance company or the local attorney. While Weatherby Healthcare retains sole authority to settle, your Weatherby risk manager will communicate with you throughout the process and include you in any resolution decisions.



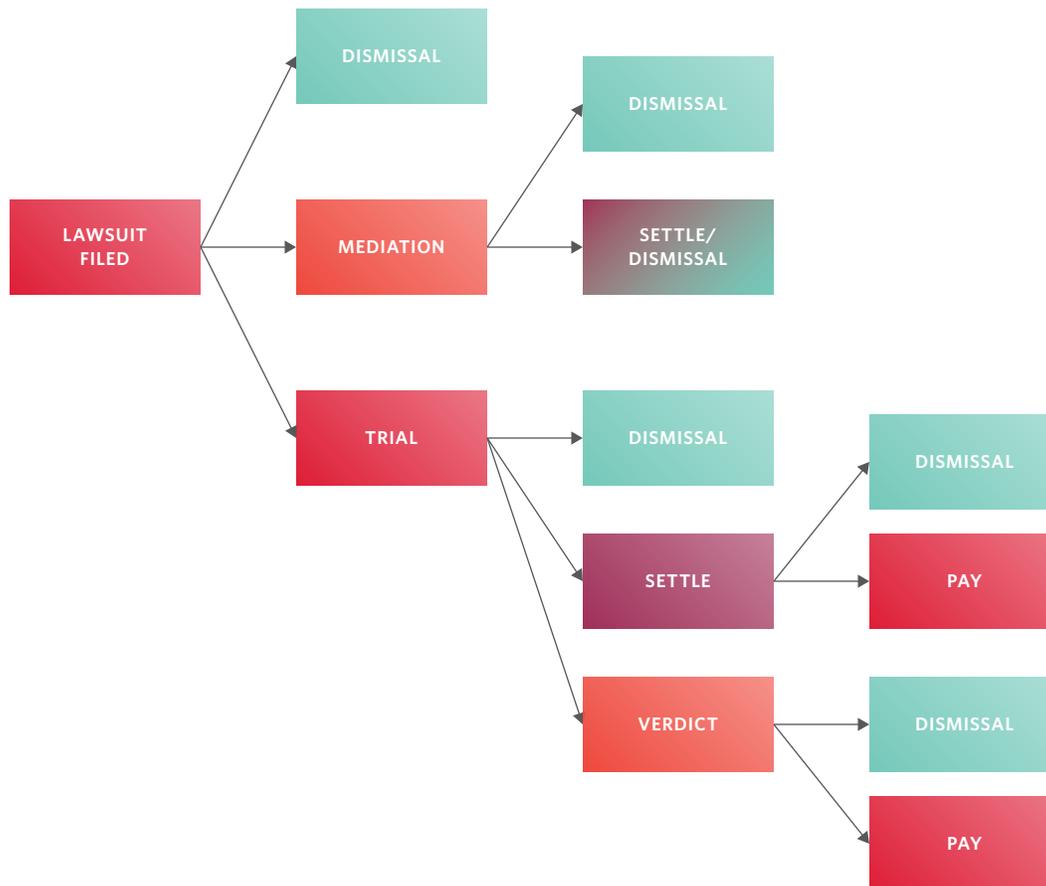
UNDERSTANDING THE OUTCOMES

Unless they skim their basic policy details, many physicians try not to think about malpractice at all. Our experts agree that's a mistake. Not all outcomes are bad: 67 percent of the doctors who responded to the Medscape survey said that their lawsuit had no negative effects on their medical career.

It's important to know that a settlement may not prevent you from getting future jobs. Settlements are recorded in the National Practitioner Data Bank (NPDB), but they don't necessarily prevent or

preclude future hiring opportunities unless the amount, frequency, or other case particulars stand out from industry norms.

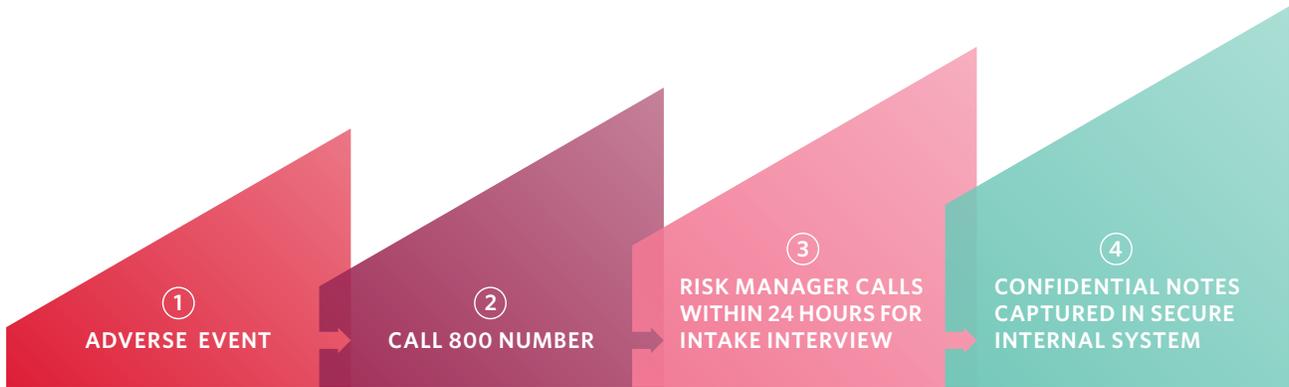
Keep in mind that many cases end in dismissal, either because we're successful in pursuing them on legal grounds, or because we're able to achieve dismissal on factual grounds at some later stage - up to and including trial. Dismissal can happen at almost any point in the process, either because the court decides early on that there's no merit to the case, or because a judge or arbitrator finds in your favor.





UNDERSTANDING YOUR ROLE

Weatherby supports you with a dedicated risk management team. When there's an adverse event, your risk manager guides you through every step of the process.



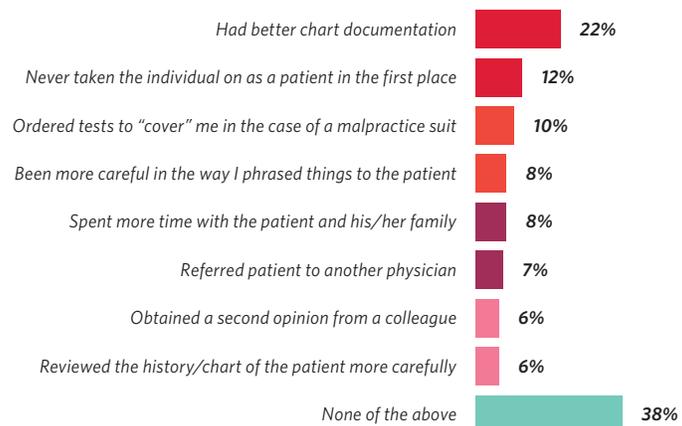
Your obligation is to notify us immediately of any adverse patient outcome which results in injury to a patient or a claim for damages. You may contact our risk management team through your consultant, but it's much faster for you to go directly to the risk management 800 number listed in your welcome letter. An expert risk manager will call you back within 24 hours to do an initial Q&A and get you set up for an intake interview.

These initial interviews give you a safe and supported opportunity to document any information that could benefit you in the event that legal proceedings arise from the adverse event. This information remains secure and confidential, and only your Weatherby risk management team will ever have access to these notes.

Weatherby will handle any claim that's brought against you, retain top-tier local defense attorneys, pay all litigation costs without any erosion of your coverage, and pay damages in the event of a settlement or judgment against you in the amount of up to \$1,000,000. We have a 40-year history and a verifiable reputation to back that commitment.

Based on the real-life experiences of doctors who have been sued, here are the preventive measures that most Medscape survey respondents say they would have put in place.

WHAT WOULD PHYSICIANS HAVE DONE DIFFERENTLY?



FREQUENTLY ASKED QUESTIONS

Q: What is the typical length of a policy period, and what do the limits refer to?

A: Most professional liability policies are issued with a 12-month policy period. The limit of liability is the maximum amount an insurer is obligated to pay for damages under the terms of the policy. Limits are generally provided on a per-claim/-occurrence and aggregate basis. For example, a policy may have a \$1,000,000 per-claim limit and a \$3,000,000 aggregate limit. The most the policy would pay for any one claim is \$1,000,000, and the most the policy will pay for the full policy period for all claims reported is \$3,000,000.

Q: What does a policy typically cover?

A: A professional liability policy is intended to provide coverage for the physician — and, if applicable, his/her corporation (P.C.) and employees for damages resulting from the rendering or failure to render professional healthcare services.

Policies usually include any professional healthcare service specifically related to direct patient care, including but not limited to the furnishing of food, beverage, medication, or appliances in connection with such services and the postmortem handling of human bodies.

In addition, most policies include coverage for the physician while acting in his or her capacity as a member of a credentialing board or committee, and/or defense for disciplinary proceedings brought by a medical licensing board.

Q: Are there limitations on coverage?

A: Professional liability policies do include limitations and exclusions. The policy exclusion section describes each exclusion in detail, along with the circumstances under which coverage will not apply. Common exclusions include:

- Prior acts; sexual misconduct
- Suspended, revoked, or otherwise terminated license
- Criminal or willful acts
- Liability assumed under contract

Q: Is the physician required to pay a deductible?

A: Most individual physician professional liability policies do not include a deductible. Some large physician group professional liability policies do include a deductible. A deductible is the amount the insured physician is responsible for paying when there is a claim settlement or judgment. With Weatherby, you will not be responsible to pay a deductible.

Q: Which states limit the liability of physicians?

A: Currently there are several states that limit all, or certain aspects of, malpractice liability by capping all, or certain aspects of, liability components a physician may incur for any one claim. In addition, several states currently have established Patient Compensation Funds (PCF). The participation requirements vary for each of these states, and participation may be voluntary or mandated by state statute.

Q: What criteria should I use to select a professional liability/malpractice insurer?

A: Key elements for consideration include:

- Financial strength of insurer
- Policy terms and conditions
- Premium
- The policy definition of a claim
- The claim handling expertise of the carrier
- “Consent to settle” terms
- Part-time credit, new to practice credit, or administrative duties only credit
- Tail coverage criteria

Q: How is a claim defined?

A: The definition of a “claim” can vary greatly from insurer to insurer. For example, a “claim” may include “incidents” or may be limited to a “written demand for payment.”

Ideally you want your policy to include an “incident trigger” in the claim definition. This means an incident that you reasonably believe can or will result in a demand for money at some point in the future is recognized by the insurer in the claim definition.

Q: How are insurers rated? Where can rating information be found?

A: Insurers are rated based on their financial conditions. The most commonly used rating resource for insurance carriers is A.M. Best. It has a two-tiered rating system including a rating for the insurance company’s ability to meet its obligations to policyholders and a rating for financial size.

- The insurance company’s ability to meet its obligations is evaluated based on the company’s financial strength; operating performance and market profile, including profitability; leverage/ capitalization; liquidity; adequacy of loss reserves; and management experience.
- The insurance company’s financial size category is an indicator of the size of a company in terms of its statutory surplus and related accounts.
- A minimum A.M. Best rating of A-, VII is recommended.
- A physician can obtain an insurer’s Best Rating by asking his/her insurance carrier, broker, or agent for a copy of the current A.M. Best Report.

Q: What is the difference between an “admitted” and “non-admitted” carrier?

A: Admitted carriers must apply and qualify financially in each state in which they wish to solicit business. They must receive approval of policy forms and rates and in return insureds are eligible for limited protection from the state guarantee fund in the event of carrier insolvency.

Non-admitted carriers, on the other hand, are exempt from state licensing requirements. Policy forms and rates are not subject to approval, nor does the state offer any protection from the guarantee fund in the event of carrier insolvency. A surplus lines tax is required for each policy written on a non-admitted basis.

Q: How does the insurance carrier determine the premium for a professional liability policy, and what is a claims-made progression (claims-made step)?

A: Carriers determine premiums based on your state of practice, medical specialty, types of procedures performed (e.g., surgery vs. no surgery), and your claims-made progression step. Some carriers also allow for additional credits based on favorable loss history, part-time practice, and or participation in preapproved risk management educational sessions.

The period of time covered under a claims-made policy increases over time, based on your initial retroactive date, and your premium is adjusted for this increased period of time over a four- to five-year period. A physician’s first year claims-made premium is only a percentage of the full four- or five-year mature premium. These percentages continue to increase until mature (fourth or fifth year, depending on the carrier). Once a mature premium is achieved, the pricing will remain relatively stable, only adjusting based on carrier-filed rate increases, negative loss history, etc.

GLOSSARY OF TERMS

Claim

The definition of a “claim” can vary greatly from insurer to insurer. A claim may include “incidents” or may be limited to a “written demand for payment.”

Malpractice Insurance

A generic term used to refer to physician professional liability insurance policy. A malpractice policy provides protection against liability that a physician may incur as a result of the rendering of — or the failure to render — medical care. A typical malpractice policy covers (1) the cost of investigating a claim against the insured physician, (2) the cost of defending those claims, and (3) the indemnity cost of a legal settlement on behalf of, or court judgment against, the insured physician, up to the policy per claim/occurrence limit.

Coverage under a physician professional liability policy may be extended to include coverage for his or her corporation (P.C.), as well as employees. Unless specifically endorsed, coverage is not automatically extended to include advanced practice providers (physician assistants, nurse practitioners, nurse midwives, or CRNAs) and may not provide coverage for residents or locum tenens physicians. Most policies are written on either an occurrence policy form or a claims-made policy form.

Occurrence Policy Form

Occurrence policies cover a physician for professional liability/malpractice incidents that occur while the policy is in effect, even if the incident results in a claim reported after policy has expired. With occurrence coverage it is not necessary for a physician to obtain “tail” (extended reporting period) coverage when he or she changes insurers or ceases practice due to retirement, disability, or death.

Claims-Made Policy Form

Claims-made policies cover a physician for professional liability/malpractice incidents that are triggered when a claim is made against the insured during the policy

period, regardless of when the wrongful act took place, except the wrongful act that gave rise to the claim must have taken place on or after the retroactive date.

Retroactive Date

For coverage under a claims-made policy to apply, the incident or claim must have occurred on or after the retroactive date stated on the policy. For most physicians this retroactive date is the first date they purchased claims-made professional liability coverage and should not change as long as you continually renew your policy, or purchase “tail” coverage.

For example, assume a physician has a claims-made policy that includes a January 1, 2000, retroactive date and a January 1, 2014 – 15, policy term. If a claim is made against the insured on July 1, 2014, and the claim arose from a wrongful act that took place on January 1, 1998, there would be no coverage under the policy. This is because the wrongful act took place prior to the January 1, 2000, retroactive date. However, if the wrongful act took place on January 1, 2001, there would be coverage under the policy, because the wrongful act occurred after the retroactive date.

Tail Coverage (Extended Reporting Period)

Tail coverage is only necessary when a claims-made policy is cancelled or terminated AND the insured physician does not secure a replacement policy with his or her original retroactive date from a new insurance carrier. Tail coverage provides protection for claims or incidents alleging medical negligence that occurred while claims-made coverage was in effect — when such claims are asserted after the expiration or cancellation of that policy.

It is preferable to purchase unlimited tail coverage. Some carriers may limit the tail period, and only allow claims to be reported for a specific period (12 months, 36 months, etc.). Carriers typically charge an additional premium for this coverage based on a percentage of the current annual policy premium. In some cases, the carrier will provide free tail coverage if the physician is retiring, becomes disabled, or dies.

National Practitioner Data Bank (NPDB)

The National Practitioner Data Bank (NPDB) is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. Established by Congress in 1986, it is a workforce tool that prevents practitioners from moving state-to-state without disclosure or discovery of previous damaging performance.

Federal regulations authorize eligible entities to report to and/or query the NPDB. Individuals and organizations who are subjects of these reports have access to their own information. The reports are confidential, and not available to the public.

CONTACT

For more information about medical malpractice, or for any other locum tenens-related questions, talk to a Weatherby Healthcare consultant today.

Fort Lauderdale Office (Headquarters):
6451 North Federal Highway, Suite 700
Fort Lauderdale, FL 33308

Phone: 800.586.5022

Umbrella Policy

In addition to a physician primary professional liability policy, you may wish to purchase an umbrella policy. The limits for an umbrella policy apply on top of (in excess of) the physician primary professional liability policy. For example, a primary policy may provide a limit of \$1,000,000 per claim/occurrence and the umbrella policy may provide an additional \$2,000,000. If a claim arises that results in a \$2,500,000 settlement, your primary policy will pay the first \$1,000,000 and, assuming the same terms and conditions apply under your umbrella policy, the umbrella insurer will pay the additional \$1,500,000.



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DISCLAIMER

This guide is offered to physicians and prospective locum tenens providers for general information purposes only and is not intended to influence or replace your own personalized medical malpractice strategy. Neither Weatherby Healthcare nor its parent company, CHG Healthcare, provides legal or insurance advice. Individual circumstances, practice settings, state regulations, and local laws vary, and you should always consult with qualified professionals before executing any legal documents or insurance instruments that may impact you professionally or personally.

SOURCES

i *Medscape 2017 Malpractice Report*: <https://www.medscape.com/slideshow/2017-malpractice-report-6009206>

ii *Medical Liability Monitor*. "Annual Rate Survey Issue." (Vol. 37, No. 10, October 2013): <http://www.doctorcpr.com/blog/2013-2014-malpractice-premiums-doctors-paying-195891-a-year-for-coverage/>

iii Source: *Medical Liability Mutual Insurance Company*. "Physician - What's My Premium?": <http://www.mlmic.com/portal/pages/QuickHelp/wmp.jsp> - Internist premiums cited exclude cardiac catheterization. Rates effective from July 1, 2013, through June 30, 2014.

iv Charles, Sara C.: *Coping with a Medical Malpractice Lawsuit*. *Western Journal of Medicine*, January, 2011. (For The Defense, May, 2017)