

Dynamic Chiropractic –

An Insider's Guide to Buying Chiropractic Malpractice Insurance

By DCPI Staff

So, you are trying to decide what chiropractic malpractice insurance to buy and you are faced with an alphabet soup of choices and little to guide you. This is a practical insider's guide on what to look for and how to make decisions.

As everyone will tell you, the two most important considerations are cost and coverage features. Obviously, if all malpractice insurance carriers offered the same coverage, then the only consideration would be cost. Unfortunately, coverage features are not identical, so the only important thing to determine is how to trade off the cost of malpractice insurance against what coverage features you get.

Coverage Limits

Coverage Limits is an area that is often misunderstood. Most doctors carry policies that have limits of \$1,000,000/\$3,000,000 and they typically assume this means that they have \$3,000,000 worth of coverage. This is actually not the case.

The first number is the one that really matters, which is how much coverage you have for a particular claim. The second number only covers how many of those claims that you can have in a particular year. Since multiple million dollar claims against chiropractic doctors are extremely rare, make sure that the first number is adequate.

For example, some doctors carry \$100,000/\$300,000 limits. This means that they only have \$100,000 of coverage. If the cost of hiring your lawyer to defend you is included within that \$100,000, this amounts to very little actual coverage for a claim.

Another issue that you will sometimes encounter is making a choice as to whether or not you want limits of liability (a) to include both your costs of defense and whatever amount might be paid out to the other side or; (b) whether you want defense costs to be outside your limits. The costs of defense outside your limits will always be somewhat more expensive and as a practical matter rarely matters if you are carrying million dollar limits or more. On the other hand, if you are carrying smaller limits such as \$100,000.00 limits, having the cost of your defense within limits can leave very little left over to pay for any judgments or settlements that may be reached.

Occurrence, Claims Made, and Convertible Claims

The important thing to understand about the difference between occurrence and claims made coverage is that the coverage is identical except as to the question of when you can report the claim.

Most coverage outside of malpractice insurance is written on an occurrence basis. "Occurrence" means that if there is a claim made against you that alleges malpractice occurred while your policy was in force, then it will be a covered claim so long as it falls within the terms of the policy.

For example, if you purchase an auto insurance policy with an effective date of January 1, 2009 and an expiration date of December 31, 2009 and you let it expire, and if it was written on the occurrence form, you would be allowed to submit a claim today for any auto accident that was alleged to have occurred in the year 2009.

By comparison, with a claims made policy, the event to which the claim is being made against you must not only have occurred while the policy was in effect but the claim also has to be made while the policy is in effect. Thus, in the example above, if you have a claims made auto insurance policy and allowed it to expire on December 31, 2009, and did not purchase tail coverage (explained below), you would not be able to tender a claim to your insurance company after December 31, 2009.

Why would anyone ever buy claims made coverage? The reason is that when you are done with a claims made policy, you can buy tail coverage and convert it in most cases to an occurrence policy. Thus, the difference between claims made and occurrence is a cash flow issue not a coverage issue. In an occurrence policy, you are pre-paying your tail every year, whereas in a claims made policy you only purchase your tail once, at the end of the policy. Most people, if given the option, purchase claims made coverage because it is cheaper.

Some carriers now offer what is known as convertible claims made coverage and is there when you stay with a carrier for five years, they automatically convert you for free to the occurrence form, eliminating even the need to purchase claims made tail.

This coverage is far and away the best because you not only save the money on a claims made form but never have to purchase the tail.

Covering Your Conduct

Most base malpractice policies exclude coverage for State Board licensing actions, audits, sexual misconduct claims, and criminal prosecution. No malpractice carrier can cover you for criminal actions or criminal prosecutions because coverage of such actions is prohibited by law.

But many malpractice companies will add other types of coverage for conduct by a specific endorsement and that can cover you for your defense costs. It will not cover you for any money that may need to be paid to the other side to resolve the claim.

Usually, these endorsements also have a sub-limit. Thus, instead of having coverage up to the full limits of your policy, you will only have coverage for somewhere between \$5,000.00 and \$30,000.00, depending upon your malpractice insurance company.

Coverage for Manipulation Under Anesthesia Most malpractice carriers will cover a chiropractic doctor for this at no additional charge. This tends to be more of an underwriting issue than a coverage issue. Most malpractice carriers are primarily concerned with the level of training of a chiropractic doctor and where the manipulation under anesthesia ("MUA") is performed. Most malpractice carriers will want the facility in which the MUA is performed to be accredited by either the Joint Commission on Accreditation of Healthcare Organizations, the American Association for Accreditation of Ambulatory Surgery Facilities or the Accreditation Association for Ambulatory Healthcare.

As to training, most malpractice carriers will want proof of training either from an accredited chiropractic college or for the National Academy of MUA Physicians. When MUA coverage is granted, there typically is no lower sub-limit. Most malpractice carriers will want an Informed Consent form, and require that you (a) obtain second opinions before performing MUA; (b) use a physician anesthesiologist or a Certified Registered Nurse Anesthetist for anesthesia.

Issues to Consider When Switching Malpractice Carriers

The obvious thing that everyone looks at when switching malpractice carriers is the cost of the insurance and the policy features. The policy features are discussed above and tend to be fairly similar. One thing that is not always as obvious is that if you have claims made coverage and either do not have or do not qualify for convertible claims made protection, you will need to get a tail when leaving one carrier and going to another carrier. These can sometimes be quite pricey. One thing to keep in mind is that the carrier that you are leaving may charge quite a bit of money for your tail, and the malpractice insurer that you want to go with may be willing to provide it at less cost or at no cost in order to get your business.

In many respects, retiring is the same issue as switching carriers. If you have occurrence coverage or a convertible claims made coverage for five years, you simply can let your policy elapse. If you have claims made coverage with no convertible claims made option, make sure that you purchase tail coverage before you retire so that claims that come in after you have retired will still be covered.

Cost comparison is never precise, but a bit of shopping, armed with this information, should save you money and get you the peace of mind that quality insurance is supposed to offer.



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