

Can Hiring Practices Affect Your Cost or Availability of Medical Professional Liability Insurance?

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When physicians and medical group administrators think about medical professional liability insurance, they often talk about the recent crisis and cost-related issues. Hiring practices are rarely discussed in context with medical professional liability insurance, but nonetheless they can have a significant effect on a medical practice's long-term cost and availability of this type of insurance.

The vast majority of medical professional liability insurance in the state of Florida is written on a claims-made basis. A retroactive date is used to establish the start date of covered medical events, and liability builds over-time with premiums escalating only during the first five years. Physicians who are hired directly out of residency or the military would dictate a retroactive date equal to their first date of employment. However, when a medical group decides to add a physician who has previously been in private practice to their group policy, there are three options available to deal with past liability (prior acts).

Most obvious, the prior acts can be left uncovered by insurance and the new physician can be added to the policy with coverage only for medical events beginning from the first date of employment. The second option to deal with prior acts coverage in adding a physician to a group policy is to match the new physician's retroactive date from their former policy, thereby adding coverage for prior acts. The third option is for the new physician to purchase an extended reporting period endorsement (Tail) for their previous insurer to cover their prior acts, and only enact coverage with the new medical group from the first date of employment.

The distinction between the second and third options detailed above can have a great impact on the future availability and cost of medical professional liability insurance to a medical group. Adding a physician to a medical group by matching the retroactive date from the former policy is quite a popular method in practice today. One of the factors driving this option is that the cost to purchase the Tail is quite expensive. During the recent crisis, the cost of Tail has risen for some carriers, and now typically costs between 1.8 and 2.25 times the expiring premium in the standard market (some are even higher). Therefore, avoiding that expenditure becomes the ideal option for the physician seeking employment, and the course of least resistance for the medical group trying to recruit a new physician. It is not my position that adding a new physician to a group policy in this manner- is necessarily a bad decision. I do, however, believe that in many cases medical group decision-makers or their advisers (insurance agents, attorneys, CPAs) have not given much thought to the implications, which could be huge.

An example I will give to illustrate what I am talking about is a real case scenario that involved a medical group that our firm currently represents. This medical group, which I will refer to as ABC Associates, had a 20-year track record of quality and loss excellence, was located in a geographical area of Florida and considered to be good from a litigious perspective. Prior to our representing ABC Associates, they hired two new physicians who had practiced medicine in Florida for a good number of years with other medical groups. Both physicians relocated from Dade and Broward counties. The insurance agent who represented ABC Associates prior to our involvement advised the managing physician to add the physicians to the group policy by matching their respective retroactive dates, thereby picking up the prior acts coverage. There was no discussion

regarding the multiple methods available in adding a physician to the policy, or the risks associated with the method chosen. Of course, I am sure you are already surmising what the outcome of this story is. Unfortunately, each physician ended up having a claim from a medical event that happened at their previous practices in South Florida. However, since the retroactive dates were assumed by the new employer's policy, the claims were paid by that policy. One claim paid was for \$1,000,000, and the other claim was close to that. As a result of the large claim payouts and related expenses, the insurer non-renewed the policy. We ended up replacing the coverage with another insurer, but with inferior terms at a significantly higher cost.

When hiring physicians who have practiced elsewhere, we consider having that physician purchase a Tail from their prior insurer and adding them to your policy to only cover incidents that occur after the date of hire as ideal. We recognize that ideal can not always be achieved due to the associated costs or competition in recruiting physicians. When ideal can not be achieved, we advise attempting to find middle ground by thinking of creative ideas such as paying part of or splitting the cost of the Tail with the physician by way of a hiring bonus. If ideal or middle ground can not be achieved, it is not necessarily a bad decision to pick up the retroactive dates. We just like for our clients to be educated as to the options available and the risks associated with those options. When hiring physicians who have practiced elsewhere and considering matching the retroactive dates to pick up prior acts coverage, we like to advise our clients to consider the following factors:

- Are there litigious differences by geography?
- How well was the prior medical group managed, and what was the reputation?
- What was the patient population like?
- Did the physician practice a riskier specialty (that is, OB/GYN versus GYN only)?
- Is there any hidden reason of why the physician is really looking for a new job?

In hiring, in general, we also recommend that a medical group consider a physicians training and claims history. Many standard insurers have criteria based on factors such as a being educated in U.S. medical schools, being board-certified and having a clean loss history. I have found that sometimes medical groups hire a physician only to find out that one of these issues leads to the insurer denying covering the new physician. Getting out of an already signed employment contract can be a costly problem if there is not an out clause related to this problem. Also, there is data and information insurers review that medical groups might not pick up on a job application. Therefore, we recommend that our clients have the physician complete an application for insurance company underwriting approval prior to finalizing the hire. If this can not be achieved, we recommend that medical groups work with their legal counsel to develop a clause in the employment contract making it contingent upon acceptance by your medical professional liability insurer at standard coverage and standard rates.

In conclusion, hiring practices can have a significant effect on a medical practice's long-term cost and availability of medical professional liability insurance. Proper education and advice from trusted advisors can help a medical group make good decisions in developing their criteria and making a hiring decision. Being represented by a medical professional liability insurance specialist as one of those trusted advisers is ideal. If you are not currently represented by a medical professional liability insurance specialist, please give us a call. ■

