

Medical Professional Liability Insurance Limits – What's the Right Choice?

By Jonathan Katz, M.B.A.

Prior to the medical professional liability insurance crisis in Florida, the most popular limits carried by physicians and surgeons who we represented were \$1,000,000 per claim/\$3,000,000 annual aggregate limits (\$1M/\$3M). The least popular limits purchased were \$250,000 per claim/\$750,000 annual aggregate (\$250/\$750). Over the last four years, we have seen a large up-swing in the popularity of the \$250/\$750 limits vs. the \$1M/\$3M or \$500/\$1.5M limits. As such, we field many inquiries these days asking about what is the right choice when it comes to choosing limits for medical professional liability insurance.

Certainly, one might expect this change in limit choices in the high-risk medical specialties or the higher rated South Florida counties (Dade, Broward and Palm Beach) due to pricing issues. However, the most popular reason cited upon our inquiries as to why a medical group is contemplating moving to lower limits is NOT saving premium dollars (although it is a frequent issue noted). As a side note, by dropping a \$1M/\$3M limit by 75 percent to \$250/\$750, the savings is typically around 46 percent in premium. The most popular reason offered to us for lowering limits is not wanting to be “a deep pocket” for other physicians who practice in the area who now carry the low \$250/\$750 limits. It is this issue that I would like to explore in this article.

A typical call we receive at our firm would involve a physician or medical group administrator calling in to say they are interested in dropping limits as they have heard from an advisor (another physician, CPA, attorney, etc.) that they could be pulled into claims unjustly from other physicians in the area who practice with the lower \$250/\$750 limits (the deep pocket scenario). One premise of this argument is that if they are to carry the same \$250/\$750 limit, they would not be pulled into the claim. I'm not sure I agree with this premise, as I just don't believe any plaintiff attorney would pass on the opportunity to pull a physician into a claim no matter what the limit. If a hospital is involved, they are typically the ultimate deep pocket and the attorneys typically don't pass on the opportunity to bring any physician into a claim no matter what the limit. Another premise pushed forth by this argument is that entire \$1 million limit will automatically be paid as the “deep pocket.” My thinking is that plaintiff attorneys will typically sue a physician for whatever the limit is, but that does not mean that the full limit will ultimately be paid once the claim is resolved. This is an important point.

Another important issue for physicians and medical groups to consider is that medical professional liability insurers have alluded to the fact that they have a higher rate of settling claims at the low \$250/\$750 limits vs. the higher limits. I believe the president of the largest writer of this line of insurance in Florida testified to settling greater than 50 percent of their claims when a \$250/\$750 limit is involved, vs. a much lower percentage (no exact figure was offered in the testimony) when a \$1M/\$3M limit was present. The reason all insurers cite similar deviations is the fear of bad faith claims. Under this scenario they would choose to go to court to defend a physician's reputation, lose a judgment much greater than the \$250,000 limit, and then



be sued for the difference between the judgment and the limit because they could have settled the claim but chose not to. Insurance companies have been held responsible for some extremely large judgments under this scenario. Therefore, if you choose to carry a \$250/\$750 limit, there is a better than not chance that most of your claims will be settled. Although settlements do not count under the three strikes constitutional amendment, it will affect a physician's reputation and future cost and availability of medical professional liability insurance. When the higher \$1M/\$3M limits are involved, insurers are less worried about the bad faith issue, as there is usually enough of a limit involved to cover the worst-case scenario. Also, by lowering limits to avoid the perceived problem of being a deep pocket, other problems are created in addition to the potential increase in settlements. That is exposing a physician's personal assets and a medical group's corporate assets. Asset protection is a good idea, but is by no means a guarantee. I believe that purchasing higher limits of insurance is a wise part of an asset protection program.

I spoke with one very experienced medical professional liability claims adjuster in Florida who told me that he believes that plaintiff attorneys actually prefer that physicians carry the low \$250/\$750 limits. His reasoning is that the plaintiff attorneys' ideal situation

is a physician with low limits and high exposure. This way, they can push forth a guaranteed settlement with not a lot of work, a small investment and no wasted time. The premise of his argument is that most plaintiff attorneys on contingency fees would prefer the sure quick hit versus having to front the time and money to go to trial with the risk of losing and getting nothing in return. He extended this thought further to say that he personally believes that carrying the \$250/\$750 limits might actually attract more claims than the \$1M/\$3M limits. I have not seen any data to support this argument either way, but it is a very interesting premise. He also cited frustration in not being able to do his job in defending physicians properly at the \$250/\$750 limits, but rather being forced to settle claims he would prefer to take to trial.

It is true that physicians can save approximately 46 percent of the premium by dropping their limits by 75 percent. In my opinion, this is the most valid reason to drop limits, especially for physicians who practice high-risk specialties or live in higher rated counties in Florida. However, I do believe that physicians should assess the greater risk of settlements and exposing personal and corporate assets vs. the cost savings in their decision-making. Most importantly, I don't believe that dropping to the lowest limits as means to avoid lawsuits or being a “deep pocket” for other physicians who carry low limits is a valid argument. Proper education and advice from trusted advisors can help physicians and medical groups make good decisions in choosing limits. 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. ■

