

The Optional Separate Limit of Liability for the Corporation in Medical Professional Liability Insurance

What's Often Overlooked

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When purchasing a medical professional liability insurance policy, most buyers are well informed on the standard practice of enacting a separate limit of liability for each physician in the medical practice. They are also typically well versed in the different limits offered, and the pros and cons between carrying higher versus lower limits (if not, that's a subject of a future article I plan to author). However, the way in which coverage is structured for the medical corporation is often given little attention or even overlooked. This ultimately could have a disastrous affect on a medical group if a claim turns out to be uncovered or underinsured.

There are typically three ways available to structure coverage for the medical corporation: self-insured (no coverage), have the corporation share limits with the physician, or enact a separate limit of liability for the corporation. The implications of the first option noted are very obvious, so I won't devote much time to them in this article. Having the corporation share limits with the physician is typically offered free of charge by carriers in the standard market, and has become a more popular choice in recent years. Upon my inquiries, the top reasons most cited for this change are controlling costs, to avoid being a target of claims, and on the recommendation of an advisor (insurance agent, attorney, CPA, etc.). The option of having a separate limit of liability for the medical

corporation across the industry used to cost between an extra 5 percent and 15 percent of the total policy premium, but has escalated to between an extra 10 percent to 30 percent in recent years. This price shift might also be another factor driving the change noted above. Lastly, one major insurer stopped paying insurance agents commissions on the premium associated with the separate limit of liability for the corporation.

The major issue often overlooked when deciding on shared limits versus a separate limit for the corporation is that of vicarious liability. The separate limit of liability for the corporation typically includes vicarious liability for past partners or employees, while the share limit option typically does not. Vicarious liability in this discussion is the corporation assuming the liability of a departed partner or employee. This gap in coverage, which many medical groups are unknowingly self-insuring, can potentially cause great financial harm to the assets of the corporation. I will define the coverage differences by way of examples of potential claim scenarios. Let's suppose a lawsuit alleging medical malpractice names the medical corporation XYZ, M.D., P.A. and Dr. Jones, who left his partnership in the medical group three years earlier to practice elsewhere. Let's also suppose that Dr. Jones had the insurer of his new medical group pick up his retroactive date, when he came onto their policy. If coverage was structured with the corporation sharing limits with the physicians, Dr. Jones would be covered by his new insurer. However, XYZ, M.D., P.A. would be left without any coverage as vicarious liability coverage would only be provided to the corporation for the acts of currently insured physicians. If coverage was structured with a separate limit of liability, Dr. Jones would be covered by his new insurer and XYZ, M.D., P.A. would be covered by its insurer for its vicarious liability for the acts of Dr. Jones. The corporation being protected for vicarious liability from the acts of Dr. Jones with the separate limit of liability holds true, whether he had his retroactive date picked up by his new insurer, purchased an extended reporting

period endorsement (tail), or went without insurance altogether. If this type of claim is left uncovered, the medical group would have to pay for its own defense costs, which could run upwards of \$180,000 for a case taken through trial. If a judgment was rendered against the corporation, the assets would be at risk. The accounts receivable is typically one of the bigger assets of a medical group that would be exposed. Asset protection is a good thing to do, but it is not always guaranteed to work. In this case, I believe that insuring the corporation is the best form of asset protection.

Another issue to consider is having the extra limit for the corporation as to not expose the assets of the corporation or the physician to a catastrophic claim that could not be resolved within the shared limit scenario. For example, if \$1,000,000/\$3,000,000 limits are carried and a judgment of \$1,000,000 is rendered against an employed physician and another \$1,000,000 against the medical corporation, the policy would pay a total of \$2,000,000 if a separate limit of liability was purchased for the medical corporation. Under the shared limit scenario, a total of \$1,000,000 would be paid out. The physician and corporation would be exposed for the remaining \$1,000,000. In addressing the issue of not purchasing the separate limit of liability for the corporation as to avoid being a target or deep pocket for claims, I just don't agree. I believe that by removing the limit to avoid that problem a worse problem is created. That is leaving a gap in vicarious liability coverage for past partners or employees, and exposing the assets of the physician and the corporation. Lastly, depending on the insurer, certain nonphysician employees can share limits with the corporation for free or for an extra premium. This will preserve the physician's limit, which normally would have had those employees sharing limits with the physician.

In conclusion, in the crisis that has affected the cost and availability of medical professional liability insurance, purchasing a separate limit of liability for the medical corporation has become less popular. In some cases, this decision was a well-thought-out calculated risk, however, I believe that in many other cases, the implications were given little attention or even overlooked by both buyers and advisers. If affordable and obtainable, I recommend the purchase of the separate limit of liability to protect the medical corporation as ideal. If ideal can not be achieved, I believe physicians should fully understand the risks that they are taking and what they are insuring versus self-insuring. To achieve this, I recommend that physicians and medical groups be represented by a specialist in medical professional liability insurance who can properly advise them in conjunction with their other trusted advisers. If you are not currently represented by a specialist, please call us for a consultation. ■

