

Professional Liability Insurance Issues for CRNAs

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What is It?

- A Contract for Service and Payment
 - Insurer is provider of service (insurance company)
 - Insured (CRNA)
 - The Contract is secured by payment of a Premium

What is Covered?

- Expenses related to defending a CRNA against a medical malpractice claim, including:
 - Investigation costs
 - Attorney fees
 - ▮ Expert witness fees
 - ▮ Indemnity payment (costs associated with a judgment or settlement)

How Can I be Covered?

- Individual Coverage
- Employer's Policy
 - Purchased or "self-insured"?
 - Group or separate limits?
 - Individually named?

Where do I get it?

- Medical Malpractice Insurance is a unique and specialized market, so specialization is a real advantage
- Licensed Insurance Agents are required to follow state laws
- Staffing agencies are generally not licensed to act as insurance agents, but may have affiliations with licensed agents

How do I Choose an Insurance Company?

- Admitted vs. Non-admitted
- Admitted companies have policies approved by State Insurance regulators
 - Rates are set
 - Policy forms are approved
- Non-admitted companies do not require state approval
 - ┆ Have no limits on rates or policy forms
 - ┆ Are generally only legally offered to purchasers who have been denied by Admitted companies

Who Might be Denied Coverage?

- CRNAs with prior claims
- CRNAs with incidence of impairment
 - Substance abuse
 - Physical limitations
 - ┌ Gaps in practice
 - ┌ Licensing issues
 - ┌ Other risk factors
- Lack of “Tail” coverage (may provide “prior acts” coverage in certain circumstances)
- Practice limitations
 - New graduate
 - ┌ Refresher candidates
 - ┌ Other “special” situations

How do you Choose an Insurer?

- Ratings
 - Several sources, including A. M. Best:
 - Oldest independent rate of insurance companies
 - Based on perceived ability to pay claims
 - Superior A++, A+
 - Excellent A, A-
 - Very good B++, B+
 - Lower rating indicate source of concern

Types of Policies

- Occurrence
 - Cover claims generated by incidents during the period that the policy is in force
 - Coverage regardless of when the claim is made
- Claims-made
 - Cover claims which occur during the period that the policy is in force
 - ┆ Claims must be made during the policy period
 - ┆ Extended Reporting Period Endorsement (“Tail”) is required to cover claims filed after the policy period

Claims-made Policy Issues

- How long is your “Tail”?
 - Some companies offer unlimited coverage
 - St. Paul, TIG, CNA
 - Some companies offer limited coverage
 - Daily policies and non-admitted companies may offer only a one-year reporting period
- Definition of “Claim”
 - ┌ Suit filed and served vs. any communication about an incident with potential for claim

Claims-made Policy Issues

- Premiums
 - “Stair step” up over five year period as a result of increasing likelihood of filing of claims
 - Admitted companies have approved rates
 - Non-admitted companies can charge what the market will bear
 - Beware artificially low first year premiums

Liability Limits

- Per Occurrence Limits

- Maximum payment per claim
- For example:
 - \$ 1 million/\$3 million
 - \$ 1.7 million/\$5.1 million

- Aggregate Limits

- Maximum payment for all claims in total against the insured
- For example:
 - \$ 1 million/ \$ 3 million
 - \$ 1.7 million/ \$ 5.1 million

Other Issues

- Consent to Settle
 - Does insurer or insured have the right to determine whether or not to settle?
 - National Practitioner Data Bank
- Minimum Premium
 - ┆ Is there a minimum charge even with early cancellation on policy or “tail”?

Other Issues

- Deductible?
 - Out-of-pocket costs to insured for legal expenses even if no judgment or settlement is made
- Defense costs
 - Are costs to defend a claim part of occurrence and aggregate limits or in addition to those limits?

Employer Coverage Issues

- Occurrence or Claims-made?
- If Claims-made, is a “tail” available?
 - Who pays for the “tail”?
 - If employer pays, is written documentation of “tail” provided to the CRNA?
 - If CRNA pays, what are the costs?
- If no “tail” is available, how will a claim filed after the policy period be covered?
- Will there be a problem for the CRNA obtaining coverage for his or her next position?

Employer Coverage Issues

- Written verification of coverage (e.g. Certificate of Insurance)
- “Self-insured”? If so, is the plan sufficiently funded?
- Which insurance company provides coverage? Ratings? Physician owned?
- Separate or group liability limits?
- If claim is made, is legal counsel provided?
- Consent to settle?

Employer Coverage Issues - Checklist

- Does the professional liability insurance provided by your employer:
 - Supply you with written verification of coverage?
 - Apply to you by name in the policy?
 - Have a separate limit of liability for you so that coverage cannot be used up by claims against others covered by the same policy?

Employer Coverage Issues - Checklist

- Provide legal counsel representing your interests about who is at fault, even when that's in conflict with your employer's allegations?
- Respond to all types of work you are performing for your employer?
- Include a written agreement from your employer that Extended Reporting coverage must be maintained on your behalf at your employer's expense after you leave your job? (and evidence that such coverage is maintained?)

Employer Coverage Issues - Checklist

- Advise you of settlement offers to those suing you before they are made?
- Advise you of the final disposition of any claims against you so that you know what is going to be reported to the National Practitioner Data Bank?
- ▮ Reimburse you for loss of income because you are required to attend a trial or participate in pretrial meetings?

Employer Coverage Issues - Checklist

- Respond to volunteer or moonlighting activities outside of your principal workplace?
- Provide legal counsel for depositions you are required to attend even if your are not named in the lawsuit?
- Reimburse for costs of legal representation for licensure and/or administrative review?

*(See AANA Insurance Website:
aana.com/members/insurance for further information)*

Current Issues

- CNA
 - November 12, 2003 decided to take \$1.5 billion after tax charge to strengthen reserves + \$332 million after tax charge for insurance and reinsurance receivables
 - As a result, reported net loss of \$1.8 billion for third quarter 2003
 - Claims are mostly for 2000 and earlier, and for asbestos, environmental and mass tort claims, not for medical malpractice claims
 - Maintains its A. M. Best A rating after the charges

Current Issues

- Tort Reform
 - Hot issue in state legislatures and Congress
 - Large judgments are perceived as threat to insurance company reserves
 - Fewer insurers are willing to compete in medical malpractice market
 - Higher rates are driving providers out of practice
 - Investment markets have not produced cushion for increased payments

Current Issues

- CRNAs have access to malpractice insurance in all states
- CRNA rates have not increased at level of many other healthcare providers
- CRNAs need to understand the intricacies of medical malpractice insurance in order to protect their assets and professional practices