SDMS INSURANCE SERVICES

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Understanding Diagnostic Medical Sonographer Malpractice Insurance 101

Whether you buy your own malpractice insurance or it is provided for you, you need to have a working knowledge of malpractice insurance. This document will give you a basic outline of the things you need to know.

1. Types of Malpractice Insurance Coverage

There are two types of malpractice coverage. The first type is occurrence coverage. With an occurrence policy, a claim will always be covered as long as the event causing the claim happened during the policy period. For an occurrence policy, it makes no difference when the claim is reported.

The other type of coverage is claims-made. Claims-made coverage is more complex than occurrence coverage. Just as with occurrence coverage, the event causing the claim must happen during the policy period. Unlike occurrence coverage however, the claim must also be reported during the claims–made policy period if it's going to be covered. When the policy ends, the policyholder has the option to purchase a "tail" which gives the policyholder additional time in which to report claims that happened during the policy period. If no "tail" is purchased, then there's no coverage available under the claims-made policy.

If you are purchasing your own policy, you can probably manage the complexities of a claims-made policy. If your employer has a claims-made policy, things can be a bit more challenging. You have to make sure coverage will be available to you if you change jobs or retire.

2. Limits of Liability

Every malpractice insurance policy has two sets of limits. The first limit reflects the amount the insurance company will pay out on any one claim. The second limit is the total aggregate amount the insurance company will pay out over the annual policy period.

In most states, the usual and customary limits of liability for a Diagnostic Medical Sonographer are $1,000,000 per occurrence and $3,000,000 aggregate. If a policyholder has a $700,000 claim, the claim would be covered if the per occurrence policy limit is $1,000,000. With a $3,000,000 aggregate, the aggregate would be reduced to $2,300,000 by a $700,000 claim.

If you are purchasing your own policy, only you can erode your limits of liability. If your employer or facility provides your coverage, you may not have your own separate limits

of liability; you may be sharing limits of liability with all of the other providers covered under your employer's policy. If that's the case, you could be left without coverage if the claims of the others on the policy erode away the aggregate limit. You also need to be aware that aggregate limits of liability are calculated differently on occurrence and claims-made policies.

3. Coverage Extensions and Limitations

Not all Diagnostic Medical Sonographer policies are created equal. Some polices can have very broad coverages, while other can be very restrictive.

How does your policy define a claim? Unlike an occurrence policy which allows for an unlimited period of time in which to report claims, a claims-made policy requires that the claim be made during the policy period to "trigger" coverage. How a claims-made insurance company defines a "claim" could impede your ability to report a claim.

If you have a claims-made policy, you should find out how your insurance company defines a claim. Some companies have a very liberal definition. Some insurance companies may require that you actually be sued and served with suit papers before they will trigger coverage on your behalf. Why is this particular claim definition a problem? Because it severely limits your ability to report a claim and reduces the time you have to report a claim. This is especially true if the insurance company cancels you because of the claim or if you've purchased less than an unlimited tail.

How does your policy address expenses incurred in defending you if you have a claim? Some policies pay those expenses in addition to policy limits described above. Others will deduct those expenses from the limits of liability. You should have a clear understanding of how claim expenses are handled by the policy covering you.

If you are involved in a claim, will you have any say in how your claim is handled? Does your policy have a provision in it that requires your consent before any claim is settled? Not all policies do. That means an insurance company could make a business decision to settle a claim rather than taking your interests into account and fighting for you. In most cases, if you are dependent upon an employer or facility for your malpractice coverage, this consent to settle option will not be available to you since you are not the actual policyholder.

In addition to the coverage which defends you and pays out claims on our behalf, does your policy cover you for things like administrative/disciplinary hearings and expenses you incur while you are away from work attending a trial or a hearing? Will the policy provide coverage for you to get an attorney if you are involved in a deposition where you are not being named in a claim or suit? If you are purchasing your own coverage, these coverages may be available to you. If your policy is being provided for you by another party, you probably won't have the benefit of these coverages.

Besides being aware of what coverage extensions are or aren't available to you, you need to be diligent about identifying restrictions or limitations your policy might impose upon you. You need to find out if your policy prevents you from doing any specific procedures or working at any particular practice settings. Do you have to have a certain number of years experience before a policy will allow you to work at the fullest extent of your licensure and scope of practice? Does the policy require any supervision or medical direction for you to be covered by the policy? It is important to understand exactly what your policy covers and what it doesn't.

4. Insurance Company Considerations

The very first thing you should consider about an insurance company is its financial stability. You want to be certain that the company will be around to pay claims both today and in the future.

The definitive source for financial information on insurance companies is Best's Insurance Reports. The A.M. Best Company was the first insurance rating organization (1889) and is recognized as the industry leader. Best is independent and receives no funding from insurance companies.

Best rates insurance companies on the basis of their ability to pay claims. Outlined below are Best's ratings for insurance companies that are considered secure:

- Superior: A++, A+
- Excellent A, A-
- Very Good B++, B+

Unless you absolutely have no other options, you should never buy an insurance policy from an insurance company that is unrated by Best. If at all possible, you should also avoid insurance companies with Best ratings lower than B+.

The next thing you're going to want to know about your insurance company is whether the company does business on an ***admitted*** or ***non-admitted*** basis. The differences are significant and you need to know how these differences might impact you.

To be considered ***admitted***, an insurance company must have its rates (the premiums that it charges) and its policy form (the coverages it provides) approved by the department of insurance in the states where it plans to do business. Once approved, that company is considered ***admitted*** and can sell only the policy form it was approved to sell. Once approved, the ***admitted*** company cannot charge a higher premium than was approved, nor can it restrict or reduce the coverage of the policy it was approved to sell.

In order to provide coverage for applicants who are declined by ***admitted*** insurance companies, state departments of insurance allow insurance companies to provide coverage on a ***non-admitted*** basis. Because they are willing to accept applicants who

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do not meet normal underwriting guidelines, ***non-admitted*** companies are able to charge whatever premium they want and can limit or restrict their policy however they want. The policy forms and rates used by ***non-admitted*** insurance companies are neither reviewed nor approved by any state department of insurance. A ***non-admitted*** company is not held to the same stringent insurance laws and regulations as an ***admitted*** company. Clearly, the ***non-admitted*** insurance policy will not normally be as consumer-oriented as the ***admitted*** insurance policy.

For various reasons, Diagnostic Medical Sonographers who have not been declined by ***admitted*** insurance companies are sometimes offered coverage through ***non-admitted*** insurance companies. Unfortunately, this coverage is being offered improperly and without appropriate disclosure to the Diagnostic Medical Sonographer. Agents who improperly insure individuals with ***non-admitted*** insurance companies would seem to putting their interests ahead of their Diagnostic Medical Sonographer clients.

If your malpractice coverage is provided by a ***non-admitted*** insurance company, there are a number of questions you should be asking.

- **Why am I being insured by a non-admitted insurance company?** If you purchase your own policy and you weren't declined by an ***admitted*** insurance company, you should not be insured by a ***non-admitted*** insurance company. If the coverage provided by your employer or facility is through a ***non-admitted*** insurance company, you really don't have any say in the matter. You may want to consider getting your own policy to supplement your employer's policy.

- **Will you have access to your state's guaranty funds if your insurance company goes bankrupt?** No protection is afforded to ***non-admitted*** insurance companies by your state's guaranty fund. In the event that an ***admitted*** insurer is financially unable to pay claims or becomes insolvent, financial assistance would be available to policyholders through their state's guaranty fund. However, when a ***non-admitted*** insurance company is financially unable to pay claims or becomes insolvent, that company's policyholders are left to fend for themselves.

- **What type of coverage are you being provided?** Most ***non-admitted*** insurance companies only offer claims-made coverage.

- **If you have a claims-made policy from a *non-admitted* company and you have to buy a tail, how long will that tail provide coverage for you?** Unlike the tail offered by an ***admitted*** insurance companies which provide coverage for an unlimited period of time in which to report claims, ***non-admitted*** companies generally offer tails that provide only a one-year reporting period. After that year is up, no coverage is provided by the ***non-admitted*** insurance company.

- **How does your *non-admitted* insurance company define a claim?** A ***non-admitted*** insurance company's definition if a "claim" is not usually as broad as that of an ***admitted*** insurance company.

- **Does your non-admitted policy provide a "consent to settle" provision?** ***Non-admitted*** insurance companies (as well as many ***admitted*** insurance companies outside of Medical Protective) don't normally provide consent to settle coverage as part of their policies.This means that if you are involved in a claim, the insurance company doesn't need your consent to settle the claim. Even though you may have done nothing wrong and there was no negligence on your part, the insurance company can make the business decision that it would be less expensive to pay a claimant's demand rather than defend you and your professional reputation. Even if your ***non-admitted*** policy does provide a consent to settle provision, it will have limitations that are so restrictive that you will probably be compelled to settle a claim even if you don't want to.

A Risk Retention Group is another form of insurance company. RRGs are very similar to ***non-admitted*** insurance companies. Just like ***non-admitted*** insurance companies, RRGs are far less regulated than ***admitted*** insurance companies. Their policies and premiums don't have to be approved by the departments of insurance in the states where they do business. Be especially wary of RRGs that are unrated by Bests. Just like ***non-admitted*** insurance companies, state guaranty funds provide no protection for RRG policyholders if their RRG goes bankrupt.

5. Your Malpractice Insurance Agent

Your choice of agent is probably the most important factor to consider when purchasing malpractice insurance. You will be relying very heavily on this person's advice. Make sure this person is an expert and they know what they're talking about.

Select an agent that specializes in handling malpractice liability for healthcare providers. If possible, select an agent that specializes in malpractice liability for Diagnostic Medical Sonographers. Just like medicine, there are times when you want a specialist rather than a generalist.

Your professional liability coverage is not the sort of insurance you want to leave up to our automobile or homeowner's agent. Professional liability can be very complicated. You want somebody who understands this coverage and deals with it on a daily basis.

An agent that specialized in professional liability generally handles a large number of policies. That means the agent will certainly have more clout with the insurance company than the agent who handles a few policies. That's important to you. That clout may be useful to you if you're ever involved in a claim or have a coverage need that's out of the ordinary.