

## **JD/DC: A Winning Combination**

### **APPLYING FOR MALPRACTICE/ERRORS AND OMISSIONS COVERAGE**

Kenneth Satin, JD

In today's sue-happy world, it is imperative the DC protect his estate. One of his primary considerations should be obtaining and maintaining adequate professional liability coverage on the most favorable terms possible.

First, the DC will be asked to fill out a claims application. This process is the opportunity for the insurance company to make a determination about the risk in insuring the particular DC and determining whether or not coverage should be extended.

After the application is transmitted or supplied to the insurance agent, typically it is passed along to the underwriting department of the insurance company. An underwriter reviews the information presented and attempts to make a determination as to whether the particular DC would likely be sued for malpractice in the future.

A general rule the DC might follow in filling out the application is to do his best by completely answering all of the questions on the form. Leaving a blank is like a giant "red flag" to an underwriter.

The DC must also answer the questions honestly and disclose all information, favorable and unfavorable. If the DC is less than candid and later a claim is made, the insurance company might attempt to void the policy and not honor the claim as a result of inadequate or incorrect information being supplied on the application form.

If there is any negative information, the DC should disclose it in all candor, and do his best to explain it away by detailing on a separate sheet the mitigating factors.

The insurance underwriter will be (in reviewing the application) particularly interested in the history of previous claims, if any, in the area of the doctor's specialization.

#### **History of Claims**

Most of the application forms will ask the doctor to disclose any previous claims which have occurred within a designated time period. That time period of disclosure differs from insurance company to insurance company. Often it is five or ten years in duration.

The longer the period of time which has passed from the time the doctor last had any claims, even if he had a prior history, the better off he will appear to the insurance carrier.

Even if a recent claim was made against the doctor, he should explain that such a problem is unlikely to happen once again in the future because of changes that were made in his practice (designed to eliminate the problem which caused the malpractice claim initially). Specific information detailing the changes the DC has instituted to avoid similar claims should be emphasized.

Attempting to prove that the prior claim had no merit or was unreasonable usually will not bear fruit with the underwriter. If there was settlement of the claim with the insurance company paying and the settlement was only for economic reasons, i.e., it would cost more to defend than the cost of settlement, that information should be provided. If the errors and omissions (E&O) carrier's lawyer had written a letter to the doctor or copied a letter to the doctor showing that the claim had no merit, that should also be transmitted with the application.

Sometimes the doctor might have an impression that a situation would develop in the future in which a patient, as a result of treatment rendered in the past, might tender a claim for malpractice. It is a difficult choice by the doctor whether to disclose a "claim" which has not yet arisen. To be on the safe side, however, the circumstances surrounding the potentiality of a possible claim should also be disclosed. It is likely that such disclosure will not lead to denial of the application and will stand the doctor in good stead in terms of having his insurance honored in the event the possible claim turns into a real one.

### Areas of Specialization

Not all doctors practice chiropractic in the same manner. Some practice specialties and sub-specialties. Different areas of practice have different elements of risk as far as insurance carriers are concerned. Obviously, the goal of the insurance underwriter is to minimize the risk of the insurance carrier and it is, therefore, important that the applicant make it clear to the underwriter on his application, his specialty or sub-specialty. Certain specialties and sub-specialties might be considered lower risk than others.

Perhaps the DC has authored articles or had books published. If the DC is well-known and considered an expert in a specific area, this may be helpful in his application since, correctly or incorrectly, the underwriter typically believes that a specialist is less likely to commit malpractice than a novice. The DC should, therefore, make certain that if he has any outstanding achievements he should not be modest but rather, disclose them.

In summary, the DC's objective when completing a professional liability application is to present all relevant information completely and candidly, while emphasizing mitigating and risk-minimizing factors. Typically the insurance agent who has solicited the DC in the first place can be of great assistance in helping and identifying the concerns of the particular carrier with the application being written honestly, but with a view in mind of addressing those "red flag" areas which are important to the particular insurance organization.

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