



Bentley
Insurance
Group

THE *Best* COVERAGE
FOR THE *Best* DOCTORS.

Preventive *Action*

Quarterly Newsletter for Policyholders
March 2010

What are the Benefits of Coverage Through First Professionals Insurance Company?



- ▶ Over 13,000 professional liability policyholders
- ▶ A national policyholder retention rate of 95%. This strong policyholder retention rate validates policyholder satisfaction.
- ▶ \$1 billion in assets

- **Financial strength validated by an A.M. Best rating of A- (Excellent) and Fitch rating of A- (Strong).** These ratings validate the financial strength of First Professionals and its status as a stronghold among insurance carriers. A significant plaintiff's award will not render the company insolvent.
- **Claims staff averages over 27 years of experience.**
- **First Professionals Insurance Company maintains a commitment to aggressively defend non-meritorious claims.** The

company regularly incurs expenses in defending its policyholders in excess of settlement costs.

Coverage benefits include competitive premiums and defense costs that are included as part of coverage, including defense for allegations of misconduct brought by regulatory agencies. Unlike some competitors, First Professionals also allows policyholders the option to consent to settle - you decide to defend or settle.

When you become insured with First Professionals, you become a member of Bentley, formed for the specific purpose of providing affordable, quality medical malpractice insurance to preferred physicians and surgeons practicing in Illinois.

For more information about the products and services offered by Bentley, please visit our website at www.bentleyinsurancegroup.com or call Jack Ahern at (800) 984-7520. ◀

Thank you for choosing First Professionals Insurance Company (First Professionals) as your malpractice insurance company. *You have been selected as "One of the Best of the Best Physicians" in Illinois.* As a preferred physician, you will benefit from the Bentley Insurance Group (Bentley) /First Professionals partnership and the products and services that are offered.

- First Professionals has been writing business for over 30 years and has maintained a solid commitment to its policyholders. The company has the experience necessary to effectively protect its insureds:

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First Professionals Insurance Company



**Bentley
Insurance
Group**

FREE Risk Management Courses



Bentley has arranged for risk management courses and CME credit hours offered through ELM Exchange, Inc. (ELM)* for First Professionals Insurance Company policyholders in Illinois. The ELM program allows policyholders to complete three courses per year, totaling 5.25 CME credit hours at no cost and receive a 5% discount on their premium. The courses are available to you online through the program. Our research indicates that 83% of physicians taking the three courses online were able to complete each course in just over an hour.

Please visit <http://www.bentleyinsurancegroup.com> for more information, course descriptions and registration. Select the Risk Management Credits section to view the available courses this year.

**ELM Exchange, Inc. is accredited by the Accreditation Council for Continuing Medical Education (ACCME) to provide continuing medical education for physicians. ◀*

News Alert: Illinois Supreme Court Strikes Down MPL Caps



The Illinois Supreme Court has struck down limits on jury awards in medical professional liability cases passed by the Legislature in 2005. The court ruled that the caps on pain and suffering and other non-economic damages—\$500,000 per case for doctors and \$1 million for hospitals—are unconstitutional. Similar laws regarding caps on MPL were passed in 1976 and 1997, making this the third time the Illinois Supreme Court has reversed limits on such awards.

What does this mean to a physician's insurance costs?

Although the reversal of a cap may cause a significant increase in reported claims, the general opinion has been that changes, if any, will come slowly. Before this recent Illinois Supreme Court decision, small increases had already been taken by three major Illinois medical professional liability carriers. Contrary to those carriers, First Professionals Insurance Company has maintained its base rates since it began writing business in Illinois in 2007.

We are aware of current legislative issues and will continue to monitor any activity that will impact Illinois physicians. Meanwhile, you can continue to rely on our expertise to provide the best protection for the best doctors. ◀

Why Medically Defensible Claims Get Settled

The information below does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained here are generalized and may not apply to all practice situations. First Professionals recommends you obtain legal advice from a qualified attorney for a more specific application to your practice. This information should be used as a reference guide only.



*By Cliff Rapp, LHRM
Vice President, Risk Management
First Professionals Insurance Company*

Frequently, physicians assume that when an otherwise medically defensible claim is settled, economy was the reason. Before making that assumption, consider that First Professionals Insurance Company does not make economical

settlements in non-meritorious cases merely to avoid the cost of a defense. Moreover, from a purely economic standpoint, the average malpractice settlement far exceeds the average cost of a defense. The fact of the matter is that there are a number of reasons why settlements are made, and sometimes necessitated, in claims which the care and treatment is perfectly acceptable.

Often the reason necessitating settlement can be traced to inadequate risk management practices that facilitate claims and undermine defensibility. Other factors that explain why medically defensible claims get settled include:

Inadequate coverage. This is best illustrated when damages exceed policy coverage limits. Can the physician afford the risk of personal financial exposure?

Factual discrepancies. Issues of law are decided by the judge; however, issues of fact are determined by a jury. Consequently, the composition of the jury is tantamount to prevailing on questions of fact.

Documentation. Does evidence in the form of medical records support the defense?

A defendant's witness potential. Essentially, will the jury like the doctor?

A plaintiff's witness potential. Is the non-physician jury more likely to identify with the patient than the doctor under the circumstances?

Supportive testimony. Will prior and subsequent treating physicians support the defense or inure to the plaintiff?

Sympathy factors. Will the nature and extent of the plaintiff's injury overwhelm the jury?

Case venue. What is the bias of the county towards defendants and in particular, physicians?

Plaintiff attorney. What is the caliber of opposing counsel? Has the attorney achieved good courtroom results in similar cases?

Applicable case law. What influence will applicable case law or previous court rulings have upon the defenses raised?

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Punitive damages. What is the likelihood of punitive damages being awarded?

Claim experience. Does the physician have a history of claims? Can the history be used against the physician?

Unfavorable rulings. Has the judge ruled unfavorably for the defense during discovery of the case? How likely will subsequent rulings during trial favor the plaintiff's case?

Publicity factors. Will a trial result in detrimental publicity or media coverage?

Impact of an adverse verdict. What impact will an adverse verdict have upon the doctor's future ability to practice medicine?

Cliff Rapp is a licensed healthcare risk manager and Vice President for Risk Management of First Professionals Insurance Company, a leading professional liability insurer. Mr. Rapp is widely published and a national speaker on loss prevention and risk management. ◀

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