

# Watch for These Common Exceptions in Consent to Settle Provisions

- 1. Unreasonable.** You have consent authority...unless the carrier deems you unreasonable in withholding your consent. Ask your carrier how they define unreasonable.
- 2. “Hammer” clause.** If you refuse to consent to a settlement and elect to contest or continue to contest a claim, the carrier’s liability for loss shall not exceed the amount for which they could have settled such claim had you consented, plus claim expenses incurred prior to the time they made such recommendation. Ask your carrier whether your policy includes a hammer clause.
- 3. Board approval.** You have consent authority...as long as the carrier’s physician review panel or board agrees with you that your performance met the standard of care. If they disagree, the board assumes consent authority on your behalf.
- 4. Binding arbitration.** You have consent authority...unless the carrier disagrees, at which time they submit your refusal to consent to binding arbitration.
- 5. No longer insured by the company.** You have consent authority...unless you are no longer insured by the company at the time settlement or trial occurs.
- 6. Moved out of state.** You have consent authority...unless you have moved out of state prior to the time of settlement or trial.
- 7. You are unavailable or cannot be located.** You have consent...unless the carrier cannot locate you or you are otherwise unavailable at the time of settlement or jury trial.
- 8. License suspended.** You have consent authority...unless your professional license has been suspended, revoked or surrendered at any time during the claim process. Ask your carrier whether this would be true even if you had a valid and active license at the time healthcare service was provided.
- 9. Deceased or incompetent.** You have consent authority...unless you are deceased or deemed incompetent. Ask your carrier whether this could deprive your estate of the ability to fight the malpractice claim on your behalf, thereby potentially costing your heirs valuable inheritance they otherwise might have received.

