

# **DENTAL MALPRACTICE 101 FOR STUDENTS & RESIDENTS**



**THIS HANDBOOK IS DESIGNED TO**  
provide facts, insights, educational websites,  
resources, and tools that will help you  
select a dental malpractice company and an  
insurance policy.

**IT IS IMPORTANT TO REMEMBER** that selecting an insurance company and a malpractice insurance policy are personal decisions. You invest an immense amount of time and money earning your dental license; Medical Protective wants to make sure you're educated and prepared to make decisions regarding the best ways to protect your license, as well as your reputation and assets.

**TO PUT THINGS IN PERSPECTIVE,**  
let's take a look at one of your potential colleagues, Dr. Stacy.

## FROM CHILDHOOD, STACY HAD KNOWN THAT SHE WANTED TO BE A DENTIST.

She worked hard to achieve this dream and graduated with honors from dental school. Everyone agreed she was one of the best and brightest students. After graduation, Stacy had three job offers and her whole life ahead of her. Stacy joined a prestigious practice and was successful in a short period of time. She married, bought a house, and was thoroughly enjoying life.

Three years later, Stacy received notice that a lawsuit was being filed against her for services she had provided during her first year of practice. Her psyche and confidence were shaken, and she was unsure of how to proceed.

Unfortunately, Stacy had never taken the time to read her malpractice insurance policy in any detail. She really hadn't understood many of the terms, such as "claims-made coverage," "policy limits," and "consent to settle." As many young dentists do, Stacy had allowed someone else — her former office manager — to select her malpractice insurance. Now she had no way of knowing whether or not this decision left her with sufficient coverage or quality claims defense necessary to protect her during the case.

This scenario is not uncommon. A recent Medical Protective study indicates that 64% of all first-time dental malpractice insurance buyers allow others to either recommend or decide from which malpractice insurance company they should purchase their insurance.<sup>1</sup> New-to-practice dentists may be poorly informed about insurance issues; as a result, they may feel more comfortable leaving such an important decision in the hands of others. However, some later regret the choice in malpractice companies or insurance policies — usually at the time a claim is made or when the insurance company exits the market.

This handbook will outline the critical factors to consider when choosing malpractice insurance. It will also introduce you to Medical Protective and our expertise in professional liability coverage (malpractice insurance).

1. Medical Protective internal dental malpractice data, 2013

**64%**

of all first-time dental malpractice insurance buyers allow others to either recommend or decide from which malpractice insurance company they should purchase their insurance.

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**Understanding  
Dental Malpractice  
Insurance**



### WHAT IS MALPRACTICE?

Merriam-Webster defines malpractice as “a dereliction of professional duty or failure to exercise an ordinary degree of professional skill or learning by one rendering professional services which results in injury, loss, or damage.”

In more basic terms, dental malpractice refers to a deviation from the standard of care that results in patient injury or death due to negligent treatment or failure to diagnose and/or treat. If it can be proved that a dentist acted negligently to cause a patient injury, the patient may be able to recover damages through the civil litigation process to compensate for his or her harm.

### WHAT IS MALPRACTICE INSURANCE?

A malpractice (professional liability) insurance policy typically provides for both defense costs when a malpractice case is brought forward and indemnification for any damages deemed payable to the plaintiff.

### WHY DO I NEED MALPRACTICE INSURANCE?

Many dentists who have not been involved in a lawsuit think, “This won’t happen to me” or “Only bad dentists get sued.” Unfortunately, each year, about 8,500 of your future colleagues are named as defendants in malpractice lawsuits.<sup>2</sup> Although the likelihood of being involved in a lawsuit can increase or decrease based on practice location, the type of practice, and the procedures you perform, this averages to approximately one claim in a typical dentist’s career.

The National Practitioner Data Bank (NPDB) indicates that the average dental malpractice payout is about \$68,000. This number is limited to the actual indemnity payment to a plaintiff; it does not include defense costs, which can be greater than that same amount when defending a claim in a malpractice trial.

A lawsuit is not necessarily the tool that measures “good” or “bad” dentistry, but the end result of a malpractice claim can be traumatic, time-consuming, and expensive — regardless of the final verdict.



- I. How many dentists are named in a malpractice lawsuit each year?<sup>3</sup>
  - a) 1,500
  - b) 3,000
  - c) 8,500
  - d) 10,000
- II. What is the approximate average payout in dental malpractice cases?
  - a) \$10,000
  - b) \$35,000
  - c) \$50,000
  - d) \$68,000

ANSWERS: I. C 2 II. D

<sup>2</sup> National Practitioner Data Bank Public Use File, December 2012. <sup>3</sup> Estimated based on the number of reported claims to the NPDB.





## WHEN IT COMES TO MALPRACTICE INSURANCE, YOU HAVE TWO DIFFERENT COVERAGE OPTIONS: OCCURRENCE OR CLAIMS-MADE.

The major difference between the two types of coverage is whether coverage is triggered based on when an incident occurs or when an actual claim is filed.

### OCCURRENCE COVERAGE

Occurrence coverage is triggered the moment dental treatment occurs, regardless of when an eventual claim is filed.

#### Example

If a claim is filed in 2014 based on treatment rendered in 2012, the 2012 occurrence policy responds.

#### Benefits of Occurrence Coverage

- Coverage is provided for treatment rendered while the policy is in effect regardless of when the policy period is over.
- A separate set of policy limits is available every year you have occurrence coverage. This means policy limits stay in place year after year, even after the end of the policy period.
- There is no reason to purchase “tail coverage” (see below).
- When factoring the cost of tail coverage, occurrence policies are often less expensive than claims-made policies.

### CLAIMS-MADE COVERAGE

Claims-made coverage is triggered when the claim is filed. This means that a policy must be in effect when the claim is filed.

#### Example

If a claim is filed in 2014 based on treatment rendered in 2012, the 2014 claims-made policy will respond as long as the treatment occurred after the policy's retroactive date.

#### Benefits of Claims-Made Coverage

- Initially, claims-made policies are less expensive than occurrence policies.



### TAIL COVERAGE?

Because claims-made coverage is triggered when a claim is filed, these policies do not cover claims filed after the termination or cancellation of the policy. To extend coverage after termination or cancellation of a claims-made policy, you will need to secure an extended reporting endorsement (called tail coverage) or your new insurance company must cover your prior acts.

Many dentists who purchase claims-made coverage assume that they will someday qualify for free tail coverage. However, each year more than 50% of tail coverage that is issued at Medical Protective is purchased, not free.<sup>4</sup>

### COMMON CIRCUMSTANCES THAT REQUIRE THE PURCHASE OF A TAIL:

#### Board Coverage

As you approach your board exams, you will likely have coverage offered to you at no cost for your board exam. If this policy is not an occurrence policy, you will need to secure tail coverage after the termination of your board exam coverage (to cover any exposures during your board exam). Not having tail coverage means not being protected if a claim is filed after the policy period expires!

#### Externships & Moonlighting

When entering these great learning opportunities, remember that coverage type matters. After you have completed your externship or stopped moonlighting, you may need to pay for tail coverage if you've obtained a claims-made policy during this period.

#### Residency

If you decide to return to school for a residency program, you will likely be covered by the university. If so, you could cancel any coverage you have for your current practice. However, if you are insured under a claims-made policy, you will have to purchase tail coverage to cover any years spent in practice.



### TAIL COVERAGE IS GENERALLY VERY EXPENSIVE.

In fact, depending on the state, tail coverage can cost 140–220% of your current, undiscounted annual claims-made premium. Payment for tail coverage is typically due in full and must be paid within 30–60 days of policy cancellation.

SOME COMPANIES WILL OFFER TAIL COVERAGE AT NO CHARGE in the event of death, permanent disability, or, in some cases, at retirement. Look for the questions to ask regarding claims-made policies and tail coverage in the “Comparing Malpractice Insurance Companies” section on page 17.

<sup>4</sup> Medical Protective internal data, 2013.



### Leave of Absence

You may want to terminate coverage while taking a leave of absence from practice. If you are insured under a claims-made policy, it may require the purchase of tail coverage. Examples of a leave of absence include maternity leave, poor health, a sabbatical, and medical mission trips.

### Relocation

If you move to a state where your insurance company does not offer coverage or where the cost of malpractice insurance is significantly lower than the original state, you may need to purchase tail coverage from your current insurance company.

### Non-Renewal

If your insurer does not renew your policy, and if that policy was a claims-made policy, you may need to purchase a tail policy to maintain coverage for all procedures performed during the claims-made coverage.

### Mobility

An increasing number of new graduates are joining dental franchises. Statistics have shown the policies provided are often claims-made. The average length of employment with these organizations is 1.5 to 2 years. You may be required buy tail coverage when you leave the franchise, unless your new employer commits to pay for tail coverage in your employment contract or another insurance company covers your prior acts.

### Faculty

More dentists and dental specialists are deciding to work in a faculty setting prior to retirement. What if you leave private practice to work for a university? In order to ensure coverage for procedures performed during your time spent in private practice, you must purchase tail coverage if you were insured under a claims-made policy.



## KEY TAKEAWAY

If you want to eliminate the above-listed complexities involving tail coverage, you may want to purchase an occurrence policy.

### POLICY LIMITS

Policy limits are written as two numbers, such as \$1 million/\$3 million. The first number, \$1 million, reflects what the insurance company will pay per claim/occurrence. The second number, \$3 million, is the aggregate limit for the policy year.

There is no universal agreement on how much malpractice insurance coverage is sufficient, so most insurance companies currently provide a variety of policy limits ranging from \$100,000 to \$5 million per claim ("per claim limit"). Depending on your

state, you may have a required minimum limit of liability. Check with your personal attorney prior to deciding on policy limits.

### HOW DOES THE TYPE OF COVERAGE AFFECT THE POLICY LIMITS I PURCHASE EVERY YEAR?

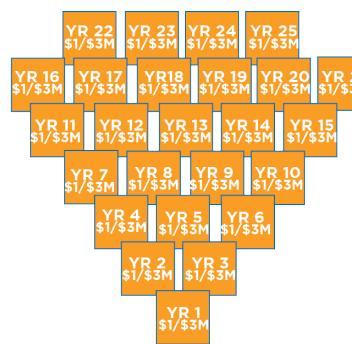
Policy limits dictate the maximum amount of money your insurance company will pay on your behalf. How a policy's limits of liability respond to claims is one of the major distinctions between occurrence and claims-made coverage. The difference between occurrence and claims-made policy limits becomes even more relevant once the claims-made coverage is terminated and tail coverage is purchased or earned.

#### Occurrence

Occurrence coverage provides a separate set of limits for each year you buy the policy, with respect to alleged errors occurring during the policy period, regardless of when a claim is made against you. Occurrence coverage doesn't end when the policy terminates; instead, the limits under the policy remain available to pay future claims based upon incidents that occurred during that policy period.

#### Claims-made

Contrast this with claims-made coverage, which only provides limits for claims made during the current policy year; so only the current set of limits is available to pay claims arising from all your previous years of practice. For a claims-made policy that offers a standard \$1 million/\$3 million policy limit, only \$1 million is available to pay any single claim, and only \$3 million total to pay all claims arising during the span of the policy period.



#### OCCURRENCE

Limits available to you after 25 years of occurrence policies. Subject to any payment of claims

25 YR  
TOTAL  
\$1/\$3M

#### CLAIMS-MADE

Limits available to you after 25 years of claims-made policies. Subject to any payment of claims

#### Example

Over the course of a 35-year career, a general dentist will treat approximately 129,000 patients, presenting 129,000 opportunities for a patient to allege



malpractice. With tail coverage, a single set of limits covers the dentist's career back to the retroactive date. This means the dentist will have only one set of limits (for example, \$1 million/\$3 million) to pay all potential malpractice claims that are made during the extended reporting period (based on all the incidents that occurred over an entire 35-year career).

In contrast, if the same dentist had purchased occurrence coverage each year for the same 35-year period, he or she would have 35 separate sets of limits over the same time span — one for each policy year.

With regard to tail coverage, limits may differ according to the policy provisions. In some instances, the tail coverage (or extended reporting period) will have limits that are reinstated and equal to those limits in effect during the most recent policy period. In other instances, the limits of liability are not reinstated for the extended reporting period; instead, the tail coverage actually shares the limits of liability from the most recent policy period.

As another example, some carriers may set the limits of liability for your extended reporting period to the lowest limits you had during any of your last five policy periods. Be sure to review your policy for the limits of liability available for tail coverage.

### WHAT IS A PATIENT'S COMPENSATION FUND, AND HOW DOES A STATE-MANDATED CAP ON DAMAGES AFFECT POLICY LIMITS?

A number of states have established a Patient's Compensation Fund (PCF), which is designed to increase availability and/or affordability of professional liability insurance. Of those states, Indiana and Louisiana have unique policy limit options for dentists participating in the PCF.

#### Indiana

In Indiana, your malpractice insurance company and the PCF work together. Dentists in Indiana are insured by a malpractice insurance company for \$250,000 per claim/occurrence and \$750,000 in the aggregate limit. If you participate in the PCF, you also receive an additional \$1 million per claim/occurrence from the PCF. Your malpractice insurance company will submit your PCF surcharge to the Indiana PCF.

#### Louisiana

In Louisiana, your malpractice insurance company and the PCF work together. Dentists in Louisiana purchase malpractice insurance with a \$100,000 per claim/occurrence limit and \$300,000 aggregate limit of liability from an insurance company. If a claim arises with damages above these amounts, the PCF will provide excess coverage up to \$400,000, plus medical expenses. Your malpractice insurance company will submit your PCF surcharge to the Louisiana PCF.

	Policy Limits	Fund Limits
Indiana	\$250,000/\$750,000	\$1 million/\$3 million
Louisiana	\$100,000/\$300,000	\$400,000

### ARE THERE ANY OTHER STATES WITH LIMIT REQUIREMENTS?

Many other states require minimum limits of liability for dentists. In some states, minimum limits are not required, but maximum damages caps are set. For example, in Virginia, the cap for malpractice damages for dentists is \$2.15 million per claim as of 2013. The cap is adjusted annually by \$50,000 until the total cap reaches \$3 million. Most dentists in Virginia select a limit of liability equal or greater than the cap of damages. Check with your personal attorney before choosing a limit of liability.

### CONSENT TO SETTLE

Your policy sets forth the rights, duties, and obligations of both the insurer and the insured with regard to settlement of a claim. This part of the policy is typically called the "consent to settle provision." You will typically find your consent to settle provision embedded in your malpractice policy's language.

Marketing material or "company philosophy" may state you have rights, but you should investigate the actual policy language to determine if you have a pure consent to settle clause. A pure consent to settle provision will require the insurance company to obtain your approval before settling any claim. There are no exceptions and no strings attached. Instead of a pure consent to settle provision, you may find exceptions that give all authority regarding settlement back to the insurance company.

### COMMON EXCEPTIONS TO CONSENT TO SETTLEMENT

#### 1 Hammer Clause

If you refuse to consent to a settlement and elect to contest or continue to contest a claim, the company'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 the company made such recommendation.

#### 2 Unreasonable

You have consent authority, unless the insurance company deems you unreasonable in withholding your consent.

#### 3 Board Approval

You have consent authority as long as the company's 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 company 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 Unavailable or Cannot Be Located**

You have consent authority unless the company cannot locate you or you are otherwise unavailable at the time of settlement or jury trial.

**7 License Suspended**

You have consent authority unless your professional license has been suspended, revoked, or surrendered at any time during the claim process.

**8 Deceased or Incompetent**

You have consent authority unless you are deceased or deemed incompetent.

Make sure you understand how your insurance company defines consent. If any of the above conditions or exceptions are present, your policy does not have a pure consent to settle provision.

**ENTITY COVERAGE (COVERING YOUR PRACTICE)**

It is important to know that, just like you, your practice can be named in a malpractice lawsuit. If you are planning on owning a practice, you should consider two important coverage options: separate limits and shared limits.

**Separate Limits Coverage**

If you own all or a portion of your practice, your practice may be eligible for an entity malpractice insurance policy with separate limits of liability. This allows defense costs and indemnity payments to be paid on behalf of your practice — separately from your individual policy limits.

**Shared Limits Coverage**

If you have a solo corporation or a single-dentist practice, own 100% of your practice, and have no employed or contracted dentists, then you may request to share your individual policy limits with your practice. This means defense costs and indemnity payments will be paid on behalf of both you and your practice under one shared set of limits.

**DID YOU KNOW**

Claims-made policies increase in price each year for the first 5 years until the rate is “mature,” after which the annual premium is very close to that of an occurrence policy.



**Understanding  
Risk Management  
& Claims Defense**



## WHY SHOULD I CARE HOW A MALPRACTICE CLAIM MADE AGAINST ME IS HANDLED?

A dentist in the United States is sued, on average, once in his or her career (more or less depending on location and scope of practice).<sup>5</sup> It is important to remember that your premium dollars are paying for the insurance company's claims defense. After all, settlement of a claim involves more than money — it can have a long-term negative effect on your reputation, your practice, your license, your mobility, and your future insurability.

## WHAT TYPES OF THINGS LEAD TO MALPRACTICE CLAIMS?

When many dentists think of malpractice, they think of the potential for a million-dollar verdict that could cripple their reputations and ruin them financially. Here are a few examples of situations that have led to large malpractice claims.

“Unnecessary” root canals

Verdict of \$35 million paid to 29 different patients<sup>6</sup>

Complications from wisdom tooth extractions resulting in death.

Verdict \$11 million

“Unnecessary” extraction of 13 teeth

Verdict \$2 million

Root canal resulting in nerve damage

Verdict \$750,000

Extensive dental restoration

Settled for \$800,000 after a \$2.2 million verdict

Failure to diagnose oral cancer

Settled for \$525,000 after a \$15 million verdict

Pediatric anesthesia resulting in death

Settled for \$1 million

There certainly is a tangible risk for these “exceptional events”; however, the most common malpractice claims come from routine procedures performed in dental offices every single day.

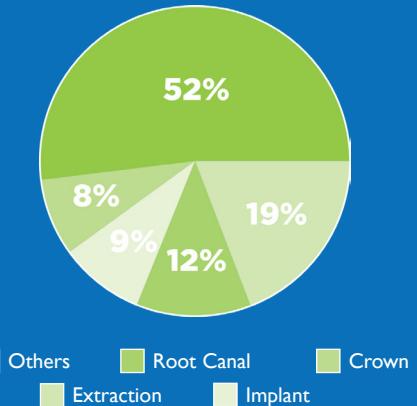


## KEY TAKEAWAY

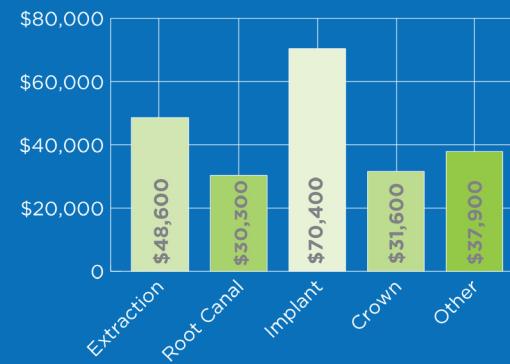
You are purchasing the insurer's promise to defend you and pay for damages should you be sued. Nothing is as important as your confidence that your insurance company will provide you with the strongest possible claims defense.

The charts below show the dental procedures that lead to the most malpractice allegations and the average indemnity associated with each (based on closed claims analysis).<sup>7</sup>

### Top allegations for dental and oral surgery



### Average indemnity of dental and oral surgery



## DO ALL INSURANCE COMPANIES HANDLE THE DEFENSE OF MALPRACTICE CLAIMS THE SAME WAY?

The short answer is no. It is extremely important to select a malpractice insurance company that has expertise in malpractice liability litigation. They should understand the venue, specific state laws, as well as clinical dentistry issues and how they apply to the laws of your state.

## THE SUCCESSFUL DEFENSE OF MALPRACTICE LAWSUITS REQUIRE A CLAIMS TEAM WITH:

- An understanding of the scope of dental malpractice as determined by professional societies and/or state licensure boards
- A grasp of technical clinical concepts
- Access to highly qualified experts
- The financial resources necessary to aid an aggressive defense
- Expert knowledge of the law



## TIP

Visit [www.medpro.com/cross-examination](http://www.medpro.com/cross-examination) to get a sense for what a malpractice trial experience is really like for a dentist.

<sup>5</sup>Medical Protective internal data. <sup>6</sup>[http://seattletimes.com/html/localnews/2021413726\\_dentistverdictxml.html](http://seattletimes.com/html/localnews/2021413726_dentistverdictxml.html) <sup>7</sup> Medical Protective Closed Claims Analysis, 2003-2012.



## WHAT IS RISK MANAGEMENT?

Risk management is a loss-prevention process, which is intended to reduce liability exposure and the likelihood of malpractice claims.

Some malpractice insurance companies have robust risk management teams available to support their dentists. Other malpractice companies outsource their risk management to a third party. Some malpractice companies have no risk management infrastructure at all.

## HOW WOULD I USE RISK MANAGEMENT?

Many times, dentists call their malpractice companies' risk management teams when an area of concern presents itself. Here are a few scenarios in which a risk management team should be able to provide you with guidance:

### Dealing With an Adverse Event

While doing a routine filling, a portion of a burr breaks off and cannot be located. How should this be handled from a risk management standpoint?

### Dental Records Management

A dentist is running out of storage space and wants to dispose of dental records for some inactive patients. Can this be done, and if so, how should it be completed?

### Child Custody and Treatment

A dentist is treating an 8-year-old child of divorced parents for several caries. The mother has been compliant with the dentist's instructions, including keeping all appointments. The father of the child has called the office and stated he does not want the child to receive any further dental treatment. May the dentist continue to treat the child?

### Referral to a Specialist

A general dentist has a patient in her fifties who has a non-vital tooth that requires endodontic treatment. The general dentist wants to refer the patient to an endodontist because of the complicated root structure, but she is insisting that he perform the procedure rather than making the referral. Should the general dentist perform the procedure?

### Disgruntled Patient

An elderly patient is dissatisfied with the appearance of a bridge constructed by the dentist, and several revisions have still not satisfied her. The dentist wants to refund her money and discharge her from the practice. How can this be accomplished?

### Noncompliance With Recommendations

A dentist has a patient who has worsening periodontal disease as a result of his poor oral hygiene and noncompliance with the dentist's recommendations. The dentist wishes to discharge this patient from the practice even though he needs continuing care. How can this be accomplished without the potential of abandoning the patient?

## WHY IS RISK MANAGEMENT IMPORTANT?

Newly graduated dentists often underestimate the importance of risk management services. When a patient is in the chair and you are faced with a serious concern, it is too late to realize the value of specialized risk management services.

Keep in mind that the strongest malpractice insurance coverage will not only provide superb defense in a lawsuit, but also arm you with tools to help prevent a lawsuit in the first place.



IT TAKES 650,000 MINUTES TO COMPLETE DENTAL SCHOOL AND AN ENTIRE CAREER TO BUILD YOUR REPUTATION.

TAKE THE TIME TO ASK THESE QUESTIONS BEFORE CHOOSING YOUR MALPRACTICE CARRIER

**Does the carrier deal exclusively in malpractice insurance?**

Malpractice insurance is a specialized line of insurance that requires dedicated professionals who are experienced, educated, and focused on malpractice. It is unlikely that an insurer who provides coverage for property, general liability, worker's compensation, or other commercial insurance will be able to provide the level of defense and risk management support you need in the highly specialized area of dental malpractice insurance.

**Is the carrier financially strong and stable?**

A long-term relationship with your malpractice insurer is important for many reasons. It often takes five or more years for claims to be resolved on incidents that happen with the patients you treat today. Some lawsuits can linger for a decade or more. You need confidence that your malpractice company will be in business not just for the term of your policy, but for many years (or decades) to come.

Over the years, many malpractice companies have failed financially, leaving dentists without coverage and/or funds to pay future claims. Ratings from independent rating agencies, such as A.M. Best, can help you determine an insurance company's financial stability.

**Does the company have the ability to offer different policy options like occurrence, claims-made, and convertible claims-made?**

If they offer occurrence, what percent of their insureds have occurrence policies?

Many companies offering claims-made coverage will advertise "free" tail coverage upon retirement. Ask the company if you are eligible for free tail coverage:

- If you retire before the age requirement in the policy
- If you decide to go back to a residency program
- At the completion of an externship
- If you take time away from your practice to raise a family or any other reason
- If you haven't been with the carrier for a certain number of years
- If you decide to join the faculty of a dental school or go into public health prior to retirement
- If you sell your practice and want to stay with the practice for a couple of years



# Selecting the Right Malpractice Carrier for You



#### SECTION 4: SELECTING THE RIGHT MALPRACTICE CARRIER FOR YOU

- If you have claims experience and are not renewed by your company

Ask about the experience level of the claims managers who will handle your claim.

How many years have the claims managers participated in the defense of dental professional liability claims? Is the claims team exclusive to dental malpractice?

Does the company provide national coverage at a competitive cost?

A malpractice carrier that is able to provide coverage in many states will make relocating easier. Make sure the company writes coverage in all 50 states and the District of Columbia.





THE FIRST SECTION OF THIS HANDBOOK PROVIDED AN OVERVIEW OF DENTAL MALPRACTICE INSURANCE. IN THIS SECTION, YOU ARE GOING TO BE INTRODUCED TO MEDICAL PROTECTIVE, THE NATION'S OLDEST AND STRONGEST MALPRACTICE INSURANCE COMPANY.

#### STABILITY SINCE 1899

Medical Protective is the leader in dental malpractice insurance and the company that was first involved when malpractice allegations were becoming prevalent more than a century ago. Medical Protective has been defending the reputations and assets of dentists since 1899, and will continue to do so for years to come.

Our unwavering commitment to the dental profession has helped us grow into the nation's largest and strongest dental malpractice company.

#### FINANCIALLY STRONG

As a member of Warren Buffett's Berkshire Hathaway, Medical Protective has earned the highest financial rating in the entire healthcare malpractice industry: A++ from A.M. Best. This means Medical Protective will be here no matter the frequency and severity of malpractice claims across the country. It also means Medical Protective has the ability to hire the best defense attorneys across the country to fight for your reputation. Ultimately, if a claim needs to be paid on your behalf, Medical Protective will be able to make sure your assets and reputation are protected.



MedPro has earned the highest financial rating in the entire healthcare malpractice industry: A++ from A.M. Best as of 2012.

#### COVERAGE OPTIONS

Our financial strength and commitment to dentists gives us the ability to offer both occurrence and claims-made policies. Ask other companies if they can provide you with an occurrence quote.

#### PURE CONSENT TO SETTLE

Medical Protective's consent to settle provision reads: "We will not compromise any claim hereunder without the consent of the insured." That's it. No insurance talk.

#### EXCEPTIONAL RISK MANAGEMENT

Medical Protective recognizes that the best claim defense is the lawsuit you never see. As such, Medical Protective offers continuing education courses and premium credit opportunities, as well as an industry-leading risk management team that is eager and able to answer your day-to-day questions or help talk you through a real-time stressful situation while a patient waits in your chair.

#### MOST PROACTIVE AND WINNING CLAIMS DEFENSE

Medical Protective decided long ago not to save pennies at the expense of providing the best defense to our insureds. The numbers speak for themselves. To give some perspective, here are a few significant numbers<sup>8</sup> with regard to our claims defense:

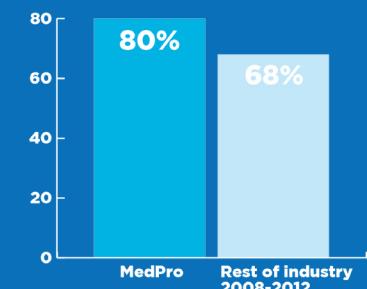
## MEDPRO'S PROACTIVE & WINNING CLAIMS DEFENSE

#### DDS PAID AVERAGES



Source: Industry data from the National Practitioner Databank

#### CLOSED WITHOUT PAYMENT



Source: MedPro claims data and PIAA data

## 25 YEARS

The average years of experience our claims managers have in the healthcare liability industry. Although Medical Protective may utilize some of the same defense attorneys as other companies, the experience of Medical Protective's claims managers is an advantage that no other company can match.

**400,000+**

The number of malpractice claims Medical Protective has managed since 1899

How often Medical Protective wins when a dental claim goes to trial  
**95%**

**99%**

The percentage of customers who indicate they are pleased with Medical Protective's claims service after being defended in a lawsuit  
**80%**

How often Medical Protective closes a claim filed against an insured for no payment

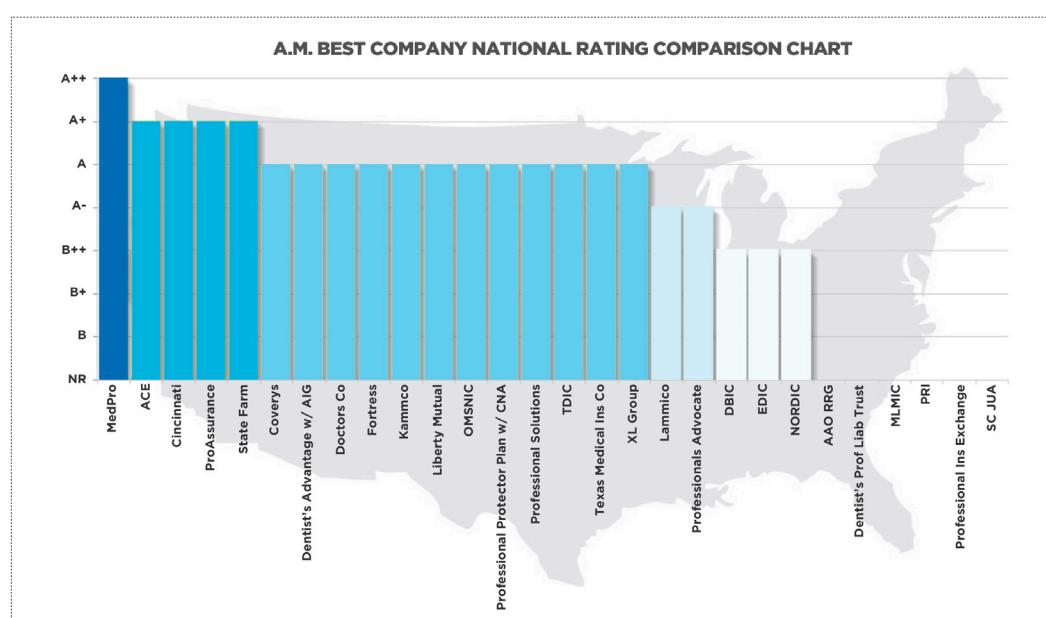


## DENTAL SPECIALTY ADVISORY BOARD

Medical Protective has brought together leading dentists, dental specialists, and oral and maxillofacial surgeons to create an expert advisory board, which continues to ensure our claims defense, risk management, and underwriting remain at the forefront of the evolving field of dentistry.

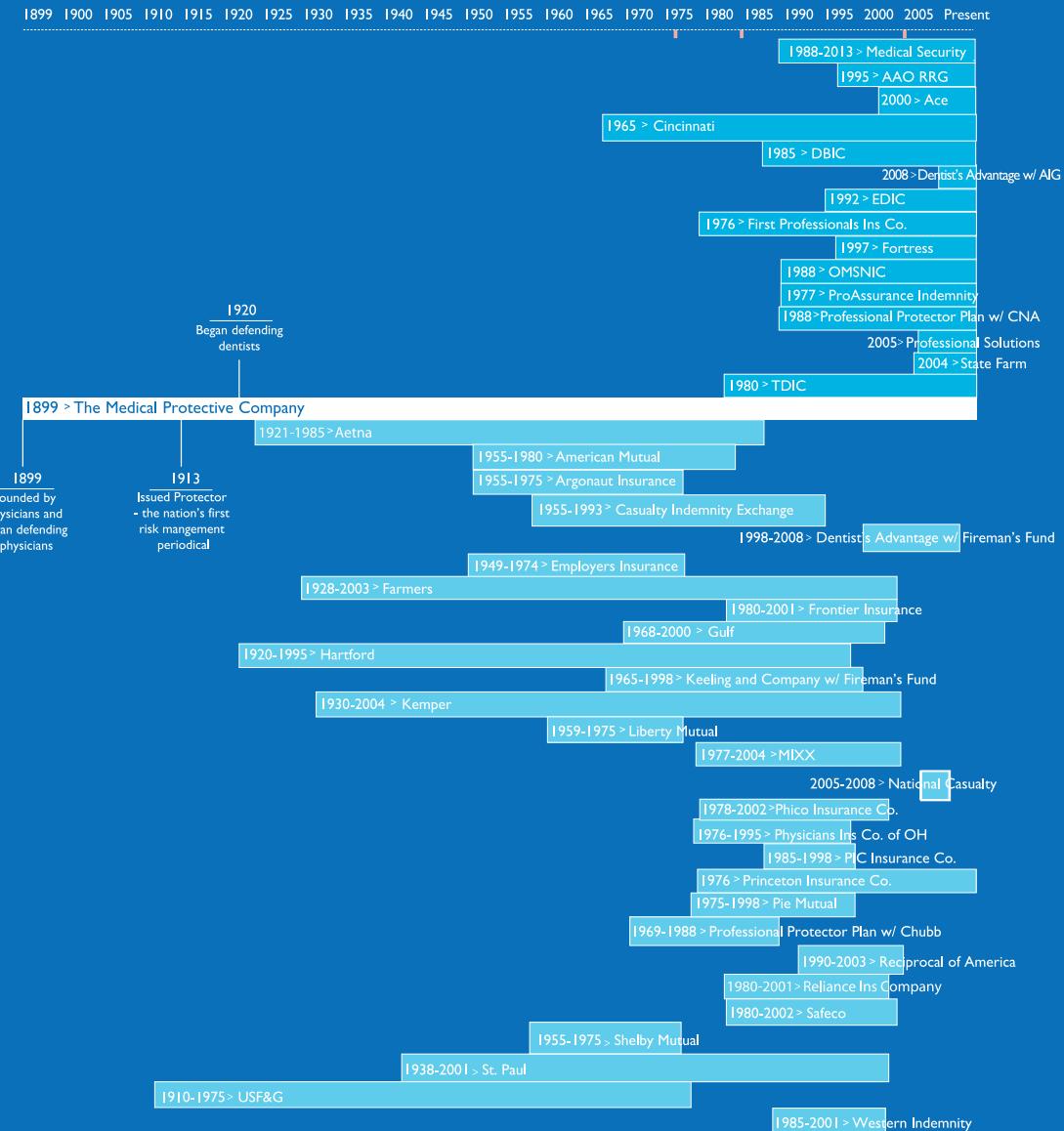
# DID YOU KNOW?

MedPro insures nearly 1 in every 4 private practice dental practitioners in the United States.<sup>9,10</sup>



Source: A.M. Best Ratings as of June 2013

# DENTAL MALPRACTICE LONGEVITY CHART



## Still writing dental malpractice insurance

No longer writing dental malpractice insurance

<sup>8</sup>Medical Protective internal dental malpractice data, 2013.<sup>9,10</sup> Data based on the American Dental Association's overall estimate of active private practitioners. Retrieved from <http://www.ada.org/1444.aspx>



## Tools & Resources

### T/F QUIZ

Do you really understand what you just read? Take this true or false quiz to find out!

1. Occurrence and claims-made malpractice policies provide the same coverage.
2. Claims-made policies are less expensive than occurrence policies.
3. Most malpractice policies provide the dentist the ability to consent to any claims settlement without any exceptions.
4. I should have the same malpractice insurance provider as my employer.
5. Odds are, I'll never be sued for malpractice.
6. It's okay that my malpractice insurance company offers coverage in only one or a few states.
7. I don't need malpractice coverage for my dental licensing board exams.
8. Many malpractice issues can be resolved even before a lawsuit is filed.

### ANSWERS TO QUIZ

1. False (see page 4). MedPro offers the choice between occurrence and claims-made coverage. Over two-thirds of MedPro's insureds select occurrence policies. 2. False (see page 10 "Did You Know?"). When factoring in the cost of tail coverage, occurrence policies are usually less expensive than claims-made policies over the life of the policy. 3. False (see page 9-10). MedPro has offered dentists pure consent to settle for more than a century. 4. False (see INTRO, read about Stacy). Make an informed decision that is right for you. Your malpractice insurance is there to protect you, your reputation, your assets,

and your license. Malpractice insurance companies differ significantly in the coverage provided, as well as defense expertise. 5. False (see page 2). 6. False (see page 15-17). 7. False (See page 5). In many cases, your school's malpractice insurance may not provide coverage for patient treatment during your dental board exams. Although testing agencies may offer coverage for your board exams, you should review and understand this coverage to ensure it is adequate for your needs. Medical Protective offers FREE comprehensive malpractice insurance for board exams. The dental board policy

is an occurrence policy with a \$1 million/\$3 million policy limit. 8. True (see page 14). Careful communication and problem-solving skills may help resolve potential malpractice situations. Before you purchase your malpractice insurance, ask about the risk management resources that will be available to you. Medical Protective offers publications, educational programs, online courses, and free phone consultations with expert risk managers. These resources are instrumental in helping to keep you out of the courtroom.



# GLOSSARY

## ADMITTED COMPANY

An insurance company licensed and authorized to do business in a particular state.

## ANNUAL AGGREGATE LIMIT

For claims-made policies, the annual aggregate limit is the maximum amount the company will pay for all covered claims made against the insured during a given policy year. For will pay for all covered claims arising from incidents that occurred during a given policy year.

## CANCELLATION

The termination of an insurance policy either by the company or the insured prior to the expiration of the current policy term. State law generally sets out the required notice and acceptable reasons for cancellation or non-renewal of malpractice policies, including non-payment of premium, mutual consent of the parties, fraud, material misrepresentation, revocation or restriction of the healthcare professional's license, or an increase in the hazard insured against.

## CLAIM

An express demand upon an insured for money or services as compensation for civil damages.

## CLAIMS-MADE POLICY

A type of policy that offers coverage for a claim arising from a healthcare event that not only occurred on or after the retroactive date (as set forth in the Declarations Page of the policy), but also was first made against an insured during the policy period. Claims-made coverage is generally inexpensive at first and gradually increases or "steps up" over time (commonly five years) to a "mature" claims-made premium.

## CONSENT TO SETTLE

A policy provision that defines an insured's rights before the company may settle a claim on behalf of the insured.

## DECLARATIONS PAGE

A document issued along with an insurance policy that states basic information about the policy, including policy period, types of insurance coverage, limits of liability, premiums due, and coverage restrictions.

## ENDORSEMENT

An amendment to policy that modifies the policy terms.

## ENTITY

A partnership, organization, or business having a legal and separate existence.

## EXTENDED REPORTING ENDORSEMENT (Tail Coverage)

Applicable to claims-made policies, this coverage allows the insured to report claims first made after a policy termination date. However, such claims must result from an event that occurred on or after the retroactive date, but prior to the policy termination date. Some companies waive the additional premium for this coverage in the event of an insured's death, disability, or permanent retirement.

## HAMMER CLAUSE

A policy provision that diminishes the value an insured receives from a consent to settle provision by reducing the available limit of liability if the insured refuses to consent to settle a claim. Under a hammer clause, the company is typically released from any exposure beyond the amount the claim could have been settled for had the insured given consent.

## MOONLIGHTING

Participating on a job separate from a residency program.

## NATIONAL PRACTITIONER DATA BANK (NPDB)

An electronic repository of all payments made on behalf of healthcare professionals in connection with malpractice settlements or judgments, as well as adverse peer review actions against licenses, clinical privileges, and professional society memberships.

## NON-RENEWAL

Termination of a policy at the expiration of a policy term by the decision of the company, with a refusal by the company to renew the coverage.

## OCCURRENCE POLICY

A type of policy that offers coverage for claims arising from an event that took place during the policy period.

## PATIENT'S COMPENSATION FUND (PCF)

A state entity that offers insurance in exchange for a surcharge to a malpractice premium. PCFs were generally established by state law and created during the malpractice crisis of 1975–1976 to ensure and help professionals in the medical industry obtain malpractice coverage. Different states provide different degrees of coverage.

## POLICY

The contract between an insurance company and its insured. The policy defines what the company agrees to cover for what period of time and describes the obligations and responsibilities of the insurer and the insured.

## POLICY TERM

The length of time for which a policy is written, beginning at the policy's inception date and ending at the policy's expiration date.

## PRIOR ACTS

Similar to an extended reporting endorsement or "tail coverage," this type of coverage allows the insured to report claims arising from events that occurred after the retroactive date but prior to the effective date of the insured's current policy. Prior acts coverage might be offered by a dentist's new insurance company when coverage is purchased for a new policy. In contrast, tail coverage is provided by the prior company and allows the reporting of claims after the expiration of coverage with that company.

## RETROACTIVE DATE

Generally listed on the declarations page of a claims-made policy, this is the date after which an event must occur to be eligible for coverage under the policy. The retroactive date is generally the inception date of the original claims-made coverage.

## RISK MANAGEMENT

A loss-prevention process that is intended to reduce liability exposure and the likelihood of malpractice claims.



## SECTION 6: TOOLS & RESOURCES

### SURPLUS LINES

Sometimes referred to as Excess and Surplus (E&S) insurance, surplus lines insurance is coverage secured through a non-admitted surplus lines insurance company. Surplus lines companies are typically not regulated and do not file rates, rules, or forms (other than for informational purposes). The coverage available through a surplus lines company is typically limited to those coverages that are not available from an admitted company and cannot be accessed merely to secure more favorable pricing.

### TAIL COVERAGE

See definition for "Extended Reporting Endorsement"

### UNDERWRITING

The process by which an insurance company evaluates policyholder risk (including the application of credits and debits) and determines if non-renewal is warranted in cases in which the risk no longer meets acceptable underwriting guidelines.



We hope that this guide has provided you with the basic knowledge to make an educated decision when it comes time to purchase your first malpractice policy. You have the right to choose the malpractice insurance company that best protects you and your individual situation. Your colleagues or business associates should not make the decision for you.

When you are ready to purchase your malpractice insurance, please contact Medical Protective, and we will provide you with options and answers to all of your questions.



[www.medpro.com/dental](http://www.medpro.com/dental)



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800-4-MEDPRO x 3536

### ADDITIONAL RESOURCES

Malpractice Minute signup

Survival kit signup

Request a MedPro team member  
for a Lunch and Learn, Student Event,  
Vendor Fair, and more!



## NOTES



## NOTES



## NOTES

KEY FACTS	MEDPRO ANSWERS	OTHER COMPANY ANSWERS
A.M. Best Rating	<b>A++</b>	
Years of malpractice experience	<b>110+</b>	
Number of states	<b>50</b>	
Exclusive to malpractice insurance	<b>Yes</b>	
Trial win percentage	<b>95%</b>	
Total number of malpractice claims MedPro has resolved nationwide	<b>-400,000+</b>	
Average experience of dental malpractice claims specialists	<b>25 years</b>	
“Rapid Response” Risk Management Hotline	<b>Yes</b>	
Number of risk management industry experts	<b>11</b>	

KEY QUESTIONS	MEDPRO ANSWERS	OTHER COMPANY ANSWERS
Does the company offer both claims-made and occurrence policies?	<b>YES</b>	
Does the company offer pure consent to settle without any exceptions, hammer clauses or binding arbitration?	<b>YES*</b>	
Does the company offer STEP into Occurrence- new graduate product that combines low rates of claims-made coverage with the benefits of occurrence coverage?	<b>YES</b>	
Does the company offer free tail coverage at retirement if insured for one year regardless of age?	<b>YES</b>	
Is risk management an independent team dedicated to education rather than a part of marketing, claims or underwriting?	<b>YES</b>	
Does the company have a proven track record for weathering difficult economic cycles, including the Great Depression and two world wars?	<b>YES</b>	
Does the company have defense expertise from insuring the entire spectrum of healthcare providers including physicians, surgeons and hospitals?	<b>YES</b>	

\*Product availability does depend on state approval. Some states do not allow such provision by law.



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