



The FindLaw Guide to Malpractice Insurance

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Managing a law practice is a business. Like any business, the business of law is rife with risks. One risk is the prospect of a disgruntled client suing you for professional malpractice. Even if the client has no case, the reputational and economic cost of a legal malpractice action can be heavy. To insure against this risk, attorneys and law practices often get legal malpractice insurance. However, thinking about malpractice insurance coverage as a means to mitigate risk raises several important issues.

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Should I Get Coverage?

Yes. As a solo or small practitioner, the first, obvious question is whether a malpractice insurance policy is necessary for your practice. After all, there may not be a line of clients waiting outside your door for your services, and the silence of your office telephone attests to this fact. So, you may be tempted to overlook or intentionally avoid getting a malpractice insurance policy for your practice. Don't.

Beyond the obvious wisdom in having malpractice coverage, the long answer to this question depends on the jurisdiction in which you practice. Some jurisdictions have a mandatory coverage requirement, while others leave the decision up to the lawyer. A third group of jurisdictions leaves the decision up to the attorney, but requires a written disclosure informing a prospective client of the fact that the attorney does not carry coverage at the onset of an engagement. Whatever jurisdiction you find yourself in, getting a malpractice insurance policy is a smart choice.

This is especially the case nowadays. Ready access to information and popular TV shows like "Law and Order" and "Boston Legal" have enhanced clients' knowledge and awareness of legal value, leading to a greater demand for better value with a correspondingly narrower margin of error. The current economic downturn and market competition have compounded this phenomenon. Therefore, and despite best efforts, the modern client may be more likely to repudiate an attorney's final work and sue for professional malpractice.

For this reason, commonsense requires that you insure your practice and your personal assets against legitimate and sometimes frivolous malpractice claims.

Having a malpractice insurance policy in place:

- Protects you against claims of professional negligence
- Protects your staff and associates
- Provides you with the peace of mind to focus on other aspects of your practice



- Could provide your practice with a means to outsourcing risk management
- Builds client confidence in your practice, thus legitimating your practice
- May fulfill your ethical and professional obligations
- Might cover the cost of having independent legal counsel represent you in an ethical complaint.

What is the Cost?

Annual premiums for a malpractice insurance policy vary. But, in all likelihood, the outlay for malpractice coverage will not be your most significant expense. Still, and perhaps because of the obvious benefits, a legal malpractice insurance policy can be pricey, particularly for a small or solo practitioner. The cost of an annual premium will depend on several factors including the policy provider, your practice area, the number of years you've been in practice, the size of your practice, and your geographic location.

For instance, securities and real-estate lawyers may expect to pay higher premiums as these fields are considered "high-risk" areas. So too will a recent Bar admittee when compared against an attorney with decades of experience, or a practice located in a location with high malpractice claims as opposed to one situated in locale with no such reputation.

Another factor that heightens your risk profile for purposes of malpractice coverage is the size of your law practice. Generally, large firms pay less in insurance premium per insured than small or solo practices. Some providers even offer steep premium reductions for firms with a large number of attorneys.

Are There Any Deals Out There?

Yes. Despite these various determining factors, some of which may be out of the attorney's control, there are discounts to be had. Membership to various voluntary and state bar associations come with discount offers on malpractice insurance

premiums. Some of these offers can be significant. In addition, many companies offer discounts to newly admitted attorneys and are even amenable to special pricing breaks for small or solo practitioners.

However, because premiums vary from one provider to the next, the key to getting the best price and value for your money is to begin your search for a policy early and from a large pool of companies. Do not wait until your existing policy expires or is about to expire to start shopping.

Frequently Asked Questions

Here are some frequently asked questions about legal malpractice insurance.

1. Why do I need insurance?

You need insurance in order to protect yourself and your clients. As with other types of insurance, malpractice coverage can protect your personal assets against loss. In addition, as attorneys cannot limit their personal liability by agreement or entity selection, insurance provides protection against catastrophic loss.

2. Is it mandatory?

While malpractice insurance is necessary for a growing practice, many lawyers starting small firms choose to start practicing without insurance. The main reason for this is prohibitive cost. Before making this decision, check with your state bar to determine if malpractice insurance is mandatory. If it is mandatory, your bar association can offer resources and recommendations of insurers.

3. How much is insurance and what affects the price of insurance?

While factors vary in each case, the following factors generally determine price:

- Jurisdiction: Each geographical area is assigned different risks based on the malpractice



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litigation climate.

- **Practice Area:** Your practice area affects the price of your coverage. Practice areas with higher rates of malpractice claims or greater exposure are more expensive to insure. According to many studies, the personal injury (plaintiff) practice area leads to the greatest number of malpractice claims.
- **Attorney Record:** The disciplinary and malpractice record of the attorney is crucial in assessing risk.
- **Policy Terms:** The cost effect is similar to those in other types of policies. The amount of coverage and the deductible affect costs. In addition, negotiated terms, such as coverage of defense costs, can affect the price dramatically.

4. How much coverage should I buy?

The amount of coverage you should buy depends on your practice and your financial circumstances. As with any insurance policy, each party must do a risk-benefit analysis. Assess the value of your assets. Remember to also consider how much coverage you'll need to protect your client. Do not simply buy the cheapest or easiest insurance on offer.

5. Where do I go to get insurance?

The first step should be visiting your local bar association. Bar associations are invaluable, and often neutral, sources of information about insurance. The association can introduce you to different companies and give you a starting point. You can also use the internet to research options and educate yourself about insurance companies.

6. What can I do to lower the risk of malpractice claims?

Studies suggest that malpractice claims are often avoidable. The key to avoiding claims is to implement a thorough risk management program.

7. I'm a new lawyer. Can I get insurance?

All bar associations offer insurance resources to their

members. Begin your research at the local bar association. A number of insurance companies are eager to insure new lawyers in order to establish a relationship they hope will last for years.

8. What do I need to know about my insurance company?

Generally, your local bar association will be able to tell you about the reputation of a particular company. If this information is not available, you can conduct your own due diligence of the company by reviewing its rating, payment history and stability.

9. Can anyone help introduce me to different insurance options?

An insurance broker is an invaluable resource. Make sure to use an independent broker (one not affiliated with any particular company) and ask the broker to offer you multiple options and quotes. In addition, count on your network when researching options. Contact colleagues and ask them about their insurance coverage and practices.

10. What do I need to tell the insurance company?

A good broker will guide you through the application process. Once you make a decision on the insurance company, you will be asked to fill out an application. The insurance company will use this information to prepare your policy. The difficult part of insurance purchasing is the initial exploration and decision-making process. Once you have made your decision, the application process may take as little as a week.

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Disclaimer: This summary is not intended to be exhaustive, as the commentary and case law on these issues are far reaching. You should conduct your own research or consult an attorney for advice regarding your specific individual situation. Additionally, cases and statutes in this area of law can change, so it is important to conduct updated research for your case.

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