

## **Offsetting the other expenses of a medical liability case**

By Thomas J. Grogan, MD

### **A new type of insurance helps replace lost revenue and other costs**

Dealing with a medical liability claim is a financial burden, if not a nightmare for physicians, regardless of the outcome. Insurance certainly helps financially, but currently it only pays the lawyers and the plaintiffs.

Responding to a medical liability claim, however, can have several other financial consequences. You can't treat patients when you're giving a deposition or sitting in the courtroom. Some insurance companies have recognized this issue and have added a per diem to compensate for lost revenue due to interruption of the practice. But these payments do not even consider other costs.

Recently, a new type of insurance product—transurance—has arisen to address these needs.

### **What is transurance?**

Transurance is an insurance policy purchased as a complement to another insurance policy such as a medical liability or a commercial property and casualty policy. Transurance works differently than a conventional insurance policy because it is designed to pay a pre-agreed upon percentage of the defense loss paid by the referenced insurance policy.

This supplemental insurance is designed to offset those intangible losses that occur when a surgeon is faced with a medical liability claim. The proceeds from the transurance policy are paid directly to the surgeon and may be used in any way without restriction.

The proceeds of a transurance policy are designed to offset those inevitable costs that occur as a result of time lost from the practice while defending yourself, such as the time you spend meeting with attorneys, giving or attending depositions, and appearing at arbitrations or trials.

Payments under the transurance policy are made after the medical liability claim is settled. The policyholder—the surgeon—must simply demonstrate that the referenced medical liability insurer made a payment on a claim. The cost of the transurance coverage is based on the premium paid for the underlying malpractice policy, so the cost and the benefit are easily determined.

As you might expect, the issue of insurance falling short of paying for all losses is not limited to

medical liability situations. It is a phenomenon of every type of property and casualty insurance, and has recently been addressed by the transurance policies offered by Berkshire Hathaway and several other notable insurance companies.

### **Why transurance counts**

To gain an appreciation of the value of transurance as an adjunct to your current medical liability coverage, suppose you have a medical liability policy with a \$1 million/\$3 million limit and you pay a \$25,000 annual premium. A transurance policy typically costs 10 percent of the base policy premium, in this case \$2,500 per year. The payout on the transurance policy would be 20 percent of whatever your primary medical liability insurer paid for your defense costs as a result of a claim.

For example, if you were named in a medical liability suit, and your insurance company paid \$50,000 in legal fees to defend the claim, the transurance company would pay you \$10,000 (20 percent of the \$50,000 in defense costs). If the case drags on and the defense costs increased to \$100,000, the payout would be \$20,000. This money is paid by the transurance carrier (such as Berkshire Hathaway) directly to you.

Medical liability insurance is necessary in today's litigious world. But with the introduction of transurance coverage, you can at least be compensated for the time spent defending yourself against that claim. When viewed from that perspective, a transurance policy may make sense to the modern practice of orthopaedic surgery.

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