

KNOW YOUR LIMITS:

Understanding Disciplinary Actions Coverage as It Relates to Telemedicine

Despite advances in medical technology and the remarkable efforts of health providers, less favorable outcomes sometimes result from the treatment of patients. Many individual factors impact whether such affected patients will seek recourse. When they do, often medical malpractice litigation will result. But sometimes—whether it be independently or in conjunction with civil litigation—some patients will commence disciplinary actions before state medical boards or regulatory agencies, aimed at censuring or suspending the licenses of treating providers.

Breaking down the coverage

A number of Medical Professional Liability policies include an element of coverage for disciplinary actions. However, this coverage is generally limited to defense costs only.

For example, a Lloyd's of London syndicate, prominent in the Telemedicine space, may utilize the following language with respect to their Medical Professional Liability policies, in endorsing certain defense coverage for disciplinary actions:

"Disciplinary Proceedings means any pending matter, including an initial inquiry, before a state or federal licensing board to investigate charges alleging a violation of any rule of professional conduct in the performance of Professional Services. Disciplinary Proceedings do not include any complaint or proceeding instituted against an insured by the US Department of Health and Human Services or its designee relative to a failure to comply with the Health Insurance Portability and Accountability Act, 'HIPAA'.¹

¹Beazley Endorsement Form # E10235, 062017 Edition



When extended by any insurer, disciplinary actions coverage:

- Is usually provided as a sublimit on most policies, with a per-occurrence limit and an annual aggregate limit.
- Generally involves limits much less than the limits provided for actual medical professional liability claims.
- Commonly involves limits of \$25,000 or \$50,000 as sublimits for disciplinary actions coverage.



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What factors cause the need for increased coverage?

Telemedicine has significantly changed the regulatory landscape and heightened a unique avenue where disciplinary actions can be pursued. Historically, physicians and other clinicians practiced in their state of residence and were generally only licensed in that single state, or perhaps also a neighboring state. However, given the need to provide patient services in all 50 states on a 24/7 basis, Telemedicine organizations have encouraged physician licensure in multiple states. It is not uncommon for a physician to be licensed in 20 or more states, so as to be able to respond to patient inquiries across many geographic boundaries.

The issue of physician licensure in multiple states creates a far larger exposure for disciplinary actions. Now, the possibility exists for a disgruntled patient to file complaints in every state where a physician may be licensed, creating a much greater costs-of-defense burden and expense.

This exposure is no longer hypothetical as there are now such claims where physicians have complaints filed in multiple states. The need of healthcare providers to potentially defend their licenses in multiple state proceedings necessitates refocusing on the sublimited defense costs provided under most policies to determine whether such limited coverage is appropriate for specific providers with the breadth of their licensures.

Telemedicine has created many new challenges relative to insurance and risk. The emerging multiple state exposure by clinicians in Telemedicine must be addressed by insurance carriers by providing higher limits on disciplinary actions coverage. A physician or other clinician will require more than the token sublimit of \$25,000 if they find themselves facing proceedings in multiple states.

To find out more, contact a member of our Telemedicine team

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