MEDICAL MALPRACTICE LIABILITY AND THE CHANGING MARKET

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Over the last decade or more, the healthcare industry has been in what is considered a soft market. Decreasing premiums, flexible underwriting, and an abundance of capacity have insurers looking to expand their market share by growing their book of business. Often, insurers would outbid or underprice an account to win the business. While many in the insurance industry over the last two years have seen rising rates, diminished capacity, and strict underwriting practices, especially in the property and automobile lines, the medical malpractice insurance has remained relatively unaffected by the hardening market until recently. There are signs that market conditions are firming substantially with some tough years yet to come.

In a hardening market, insurers are less concerned about the growth of their business and more focused on the overall profitability of their existing books of business. They reevaluate their appetite, examine the profitability of an account, restrict terms and conditions, and may even reduce capacity. Several factors are contributing to the changes happening in the medical malpractice liability market, specifically, including the following:

• **Severity of Claims** – Although claim frequency appears to be on the decline, the severity of claims continues to rise. The higher cost of medical care, greater patient expectations, and rise in litigation costs, including higher value verdicts and settlements, are all contributing factors. State-level tort reform has so far been ineffective at curbing claim inflation. Further, many of the high dollar severity claims are appearing in venues not historically known for these types of verdicts.

• **Industry Consolidation Among Healthcare Providers** – While the cost of claims and expenses continues to rise, the premium volume for many insurers continues to decrease due to consolidation among healthcare providers. Insurers are finding that the risk profile has changed within their book of business as larger systems absorb the smaller practices, leaving them with risks that have a higher propensity for loss.

• **Systemic Risk** – Insurers are carefully reviewing the systemic risks of their overall portfolio, including things such as abuse and molestation and the opioid crisis. They are heavily underwriting these exposures through detailed information gathering of how these risks are controlled and managed within a healthcare organization. Many insurers are pulling back the limits available for these exposures or simply electing not to write them at all by amending policy forms and adding exclusions.

• **Eroding Capacity** – The increase in claims’ severity, along with the changing risk profile and need for insurers to reduce their combined loss ratio (premiums vs. incurred losses and expenses) and
return to profitability have insurers controlling their capacity and evaluating the limits they are willing to provide. Insurers are selective about limits and the types of risks they are ready to write. Insurers are also mindful of the venue where the risk is located, taking into consideration the legal environment of certain jurisdictions. Some insurers have elected to non-renew entire books of business in venues with a propensity for large jury verdicts, leaving limited options. Other insurance carriers have recently chosen to exit medical professional liability altogether.

FUTURE CONSIDERATIONS
What can we expect looking ahead? The days of decreasing premiums appear to be gone for now. It is likely that we will see a rise in rates as carriers look to rebuild their reserves and improve their combined loss ratios that have been higher than 100% for several years. Rate increases will vary depending on the type of risk, overall risk profile, and claims experience. The underwriting process will become more stringent. There will be a few more questions to answer and extra hoops to jump through in order for an insurer to consider writing an account. Preparation is key. Here are a few things to think about:

- **Plan ahead** – Meet with your broker to develop a renewal strategy early. This will include the timeline for the return of renewal applications, what markets will be approached, and a plan for overall risk transfer strategies (e.g., taking on a higher self-insured retention or looking at alternative risk transfer methods).

- **Develop a partnership with your carrier** – Be aware of their expertise, diversity within the industry, and long-term commitment to your business. Understand the loss control services and education they can provide to your staff to reduce risk. What is their claim handling philosophy and does it align with your needs?

- **Improve your risk profile** – Understand your organization’s operations and develop a plan to address those risks. Well defined policies and procedures, addressing loss control or inspection recommendations, and root cause analysis process development are all things that carriers look upon favorably when underwriting an account and help reduce or mitigate risk.

Many brokers have simply not experienced a hardening market and do not understand the associated challenges.

Be sure you are partnered with a trusted broker who has the experience and knowledge to navigate a hardening market. Medical malpractice premiums have been on the decline for more than a decade. Many brokers have simply not experienced a hardening market and do not understand the associated challenges. Look for a broker that has the knowledge and resources to obtain the best possible outcome for your business.

Additional References

4. Navigating These 4 Medical Professional Liability Trends Is Critical For Insurers To Remain Relevant, [https://riskandinsurance.com/navigating-these-4-medical-professional-liability-trends-is-critical-for-insurers-to-remain-relevant/](https://riskandinsurance.com/navigating-these-4-medical-professional-liability-trends-is-critical-for-insurers-to-remain-relevant/)