Cover Me: Malpractice Insurance and Risk Management for Neurologists

BY GINA SHAW

More than half of all neurologists will be sued for malpractice at least once over the course of a 30-year career. That stark reality underscores the importance of taking malpractice insurance and risk management very seriously as you enter neurology practice, said Charles D. Cash, senior risk manager for Professional Risk Management Services, which offers AAN's medical professional liability insurance program, The Neurologists' Program.

As part of the AAN's first virtual career fair, Cash presented a Webinar that offers a detailed tour through the thicket of decisions and implications involved with buying malpractice insurance and managing risk for the newly-minted neurologist. ("Essentials of Medical Professional Liability Insurance and Clinical Risk Management for Neurology Residents" is also available online at **http://www.aan.com/careers/**.)

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HEADS OR TAILS?

There are two primary types of malpractice insurance: "claims-made" coverage, and "occurrence" coverage. "This is the most important thing to understand," said Cash.

Occurrence policies cover claims arising from *events* that occur during the policy period. Whatever incident your patient claims involved malpractice must have happened while your policy was active, but the claim itself can be made long after you no longer have that particular policy.

Claims-made coverage is very different. *Both* the event and the lawsuit/complaint have to be made during a time when the policy is active. If you buy a claims-made policy and then leave that provider for whatever reason, and a claim is made against you after the policy has been terminated, you're not covered unless you purchase something called "tail coverage."

Cash cites the case of an emergency physician — a friend — who found this out the hard way. After residency, she took a stepping-stone job for a couple of years that provided her with malpractice insurance. The policy was claims-made.

When she began looking for a new job after a couple of years and it came time to leave the practice, she found out, to her surprise, that she had to purchase tail coverage.

"No one had explained the difference to her," Cash said. "And tail coverage can be very expensive. In her case, it was more than $70,000. She had gone to this job fresh out of residency and didn't have much saved, so she had to finance the cost of her tail coverage. If only my friend had known, she could have

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TIPS FOR RISK MANAGEMENT

Ideally, of course, you want never to be sued for malpractice at all. Risk management is all about doing that — reducing the risk of a lawsuit or board complaint, or reducing its severity if it does happen.

Neurology actually ranks about in the middle of the pack among medical specialties in terms of number of claims made, according to a study by the Physician Insurers Association of America in 2009.

"Of the 28 specialty groups they follow, neurology ranks 17th in the number of closed claims. About 22 percent of neurology claims are closed with no payment, which is a little bit better than other specialties," Cash said. "But when they are paid, neurology claims are about one and half times more expensive than the overall average."

Cash outlined several key methods for reducing risk in neurology practice. "A lot of approaches are systems based — there's not a lot of science," he said. "That's because most suits against neurologists don't result from cognitive errors, but from systems-based issues."

- **FOCUS ON COMMUNICATION:** "Lapses in communication account for a large number of lawsuits," Cash said. "For example, the neurologist in a consultant role who sends a report to the primary care provider but doesn't follow up. There are a lot of standardized tools out there to help you track follow-up and patient handoffs. PRMS doesn't endorse one — just pick one and use it consistently."

  Communication also means making sure that the patient understands you. "When there's good communication, people don't sue," Cash said. "About half of the people in this country operate with basic or below basic literacy skills,and even with patients who aren't challenged, medicine is a language of its own. Slowing down and taking time to talk to a person who's not an expert can go a long way."
- **GATHER INFORMATION:** The patient history and physical are even more important in neurology than in other specialties, Cash said. Collecting patients' past treatment records and documenting your attempts to do so not only provides good patient care, but an excellent defense — expert witnesses often criticize physicians who don't do this.
- **DOCUMENT HOW YOU ADDRESS PRACTICE GUIDELINES.** If you deviate from a published practice guideline, write down the reason now in your charting. "You'll be asked five or six years later on the stand, and you may not remember the patient, much less why you didn't follow the practice guideline in a particular case," Cash said.
- **FOLLOW UP:** "The bread and butter of plaintiff attorneys aren't the head-scratcher cases. It's simple oversights, like scans that get misfiled and never read," Cash said.
- **CONSIDER YOUR AUDIENCE WHEN WRITING YOUR TREATMENT RECORD:** "Another neurologist should be able to pick up the treatment record and understand what's happened with this patient, what you've done and why," Cash said. "If it can achieve that goal, it should be able to defend you."
- **GET ADVICE FROM EXPERTS:** The neurologist shouldn't be handling all of this alone, Cash concluded. Everyone needs "sage advice" from experts they trust. He suggested that most neurologists' panel of experts should include: a colleague you respect, whom you'd trust to cover your practice, to run the tough cases by; an attorney — don't wait until a legal problem comes up to start looking through the Yellow Pages or Googling "malpractice attorneys;" an accountant or practice manager.

  "Practicing medicine is a business, and not everyone is adept at running a business," Cash said. "If this isn't your forte, you need someone to do it for you." Find a trusted insurance professional, he said, and a professional organization, like the AAN.

NEWS FROM THE RSNA ANNUAL MEETING

Heading a Soccer Ball Linked to TBI-like Brain Abnormalities

BY CHARLENE LAINO

CHICAGO—Repeatedly hitting the soccer ball with the head may lead to white matter abnormalities similar to those associated with traumatic brain injury (TBI), researchers reported here at the Radiological Society of North America annual meeting in December.

In a study of 38 amateur soccer players, those who headed the ball more than 1,320 times per year — which works out to just a few times a day — had microscopic white matter injuries consistent with TBI as detected by diffusion tensor imaging (DTI).

Young men who headed the ball less frequently did not show these abnormalities, said Michael Lipton, MD, PhD, associate director of the Gruss Magnetic Resonance Research Center at the Albert Einstein College of Medicine in Bronx, NY.

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"I'm not advocating banning heading, but we identified a threshold below which you are less likely to have [TBI-associated brain abnormalities]. Therefore there may be a safe range where you can head the ball without adverse consequences to the brain," he said.

Previous study of the same 38 soccer players showed that those who headed the ball more than 1,320 times a year scored about 20 percent worse on neuropsychological tests of verbal memory ($p< .01$) and processing speed ($p< .03$), he added.

Until more soccer players are studied for longer periods of time, however, there is insufficient evidence to state that a certain threshold of heading is either damaging or safe, Dr. Lipton continued.

His advice to patients, especially when children — whose brains are more vulnerable to injury — are involved, is to minimize heading, especially during practice drills where players often head the ball back and forth 30, 40 or more times without a break.

The cognitive consequences of

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Career Tracks

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negotiated with her employer over that issue and asked for occurrence coverage instead, or to share the cost of the tail. If nothing else, she would have at least been able to plan to save to pay for the tail herself."

(Tail coverage extends the period for *reporting* a claim only. The incident itself must still have occurred during the primary coverage period. Sometimes, it can be called "nose" coverage — if you cancel a policy and move to a new carrier, the new company will sell you retroactive coverage for claims that might be made based on incidents that occurred during your prior coverage period.)

So why does anyone buy claims-made coverage rather than occurrence coverage? There's a substantial cost difference. [See a sample table Cash provided showing yearly policy premiums (for a made-up policy) to give an idea of the relative difference in costs.]

"The best analogy is that claims-made coverage is like leasing a car. It's the least expensive way to get into the car and start driving, but somewhere down the road you have the potential for a balloon payment," he said.

INSURANCE CONTRACT: A MAP

Cash provided a step-by-step look at what a typical malpractice insurance policy looks like, including its five components:

- **Declaration:** this page states basic information like the name and address of the insured, the amount of coverage, the policy period, and the premiums.
- **The Insuring Agreement:** the actual insurance contract. Insurance is a highly regulated industry and agreements are very cumbersome to change, so the actual contract in the form of the insuring agreement is filed and approved with the state insurance commission, and then routine changes are made on the declarations page.
- **Conditions:** the things that you as the insured must do to keep your policy active — for example paying your premium, cooperating in your defense, and giving the insurer notice of any potential claims.
- **Exclusions:** these tend to read like a laundry list, Cash said, because the assumption in insurance law is that if something isn't specifically excluded, it's covered. So the exclusion section may indicate that your coverage does not apply to things like undue familiarity, intentional acts of misconduct, forensic practice, managerial duties, and a host of other things.
- **Endorsements:** how the insurer notifies you of changes to the policy. If you've ever owned a car, you've probably received endorsements from your car insurance company in the mail.

REVIEW YOUR POLICY

There are many things to look at when you review a potential policy, explained Cash. One of the first is your limit of liability. That number is usually presented in two figures, a smaller dollar amount on top and a larger figure on the bottom — such as "$1 million/$3 million coverage." The top figure is the per-incident limit, and the bottom figure is the aggregate limit. "A $1 million/$3 million policy means that you have $1 million in coverage for any one incident, and $3 million in total coverage for any suits you might face," Cash said.

But some things can pare down that coverage. For example, look at your policy and see if the costs of mounting a defense against a malpractice claim are "inside" or "outside" the policy limits. "Especially if you're a neurologist, this is a very important factor to consider, because neurology claims are some of the most expensive to defend," Cash said. "Often, defense costs get subtracted from the per-incident limit. If you have $1 million in coverage and it costs $150,000 to defend you, if that cost is 'inside' the limit, then you only have $850,000 to pay any claim against you."

Also look at your loss of earnings coverage. "If you are the subject of even a frivolous lawsuit and have to spend three days in depositions and a couple of days talking to counsel, even without the case going to trial, that can be very expensive," Cash said. "A policy that helps offset some of those costs can be very helpful."

What about an administrative defense? "Filing a malpractice suit isn't the only avenue that people have to complain against you," Cash noted. "Filing a licensing board complaint is another option. You want a policy that will help support you with licensing board complaints.

Don't forget to review the consent to settlement. This sets out how much say you have as to whether a claim against you is settled or not. "That's an important ability to have, because whether a lawsuit is settled affects your future insurability and sometimes your ability to get a job or privileges," Cash said.

Policies usually give you either unlimited power to consent or not, limited consent with arbitration — there's a scheme for making decisions if you and the insurer disagree — or "limited with a hammer clause." This is important to watch for because the hammer clause means that if the other side offers to settle but you refuse, and you later lose the suit, you're responsible out of pocket for the ultimate difference between the offered settlement and the final judgment. In other words, if they want to settle for $100,000, you say no, and you later lose at trial and the verdict is $250,000, you're on the hook for $150,000.

When evaluating policies, Cash said, make sure you're comparing apples to apples. "If you're looking at three or four that cost about the same, and then someone comes in and offers you a policy that's one-third the cost, you need to know why that is." •

SAMPLE YEARLY POLICY PREMIUMS

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	TOTAL
Occurrence	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$60,000
Claims-Made	$3000	$6500	$7500	$8500	$9000	$9500	$44,000
Difference	$7000	$3500	$2500	$1500	$1000	$500	$16,000