



STATE BAR OF WISCONSIN

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| Issue: What is malpractice; why do I need malpractice insurance; how are malpractice insurance premiums determined; where I can I purchase malpractice insurance for Wisconsin |
| Date: July 13, 2011 |
| Type: FAQ |
| Title: Malpractice Insurance an Overview |
| Summary: This paper address the concept of malpractice and the insurance designed to protect a lawyer in the event of a malpractice claim. It also gives an overview of how premiums are determined and a partial listing of malpractice insurance providers for Wisconsin attorneys. |

So what is malpractice?

Malpractice is one of a lawyer's everyday worries. Missed statute of limitations, failure to communicate on a regular basis, missed court dates and failing to identify conflicts of interest are only a few of the malpractice dangers Wisconsin attorneys face. Malpractice insurance (also known as Professional Liability Insurance) is an insurance policy purchased by attorneys to defend against and provide coverage for malpractice claims by clients and some third parties that may have standing under case law or statute or as described in the second of the 2 definitions below, it's when a "...lawyer has screwed up..." (or so a party may claim).

malpractice

n. An act or continuing conduct of a professional which does not meet the standard of professional competence and results in provable damages to his/her client or patient. Such an error or omission may be through negligence, ignorance (when the professional should have known), or intentional wrongdoing.

www.law.com Legal Dictionary

malpractice

The delivery of substandard care or services by a lawyer, doctor, dentist, accountant or other professional. Generally, malpractice occurs when a professional fails to provide the quality of care that should reasonably be expected in the circumstances, with the result that her patient or client is harmed. In the area of legal malpractice, you need to prove two things to show that you were harmed: first, that your lawyer screwed up; and second, that if the lawyer had handled the work properly, you would have won your original case.

www.NoloPress.com Everybody's Legal Glossary

Why do I need malpractice insurance?

Malpractice insurance usually provides for defense of any claim, payment of claims up to the limit of the policy. Many malpractice insurance providers also provide resources, articles, forms and even CLE for their customers on managing malpractice risks. While malpractice insurance isn't required, Practice411 considers maintaining malpractice insurance to be a "best practice" and shows that you are serious about protecting your client's interests in the event that you make a mistake that rises to the level of malpractice that cannot otherwise be corrected.

Malpractice insurance policies are what are known as "claims made" policies: these types of policies protect you for wrongful acts which occur and are reported to your malpractice insurance provider during the time period that the malpractice policy is in continuous force, as well as any acts that first occurred during an retroactive or extended reporting period provided for in the policy itself. If your policy is in effect for 2011 with a retroactive date of June 1, 2009, if a claim is made in 2011 for a malpractice which occurred in March 2010, your current policy for 2011 will defend assuming you don't fall within one of the policy exclusions. If the claim is for malpractice that first occurred in May of 2009, your current provider will not defend you as it is outside of the retroactive or extended reporting period.

This differs from occurrence based insurance policies for commercial or personal liability and casualty policies. Under occurrence based policies, you look to the insurance provider in place at on the date of the injury i.e. if the act occurred in 2001, you would look to whichever insurance provider provided coverage for you in 2001, not 2011.

How are my premiums determined:

Our malpractice insurance premium may be based on several factors including how many attorneys are in your firm and how many of them will be insured; how many years you have been practicing law; the amount of coverage you are seeking as well as the annual deductible amount you request; do you have systems in place to minimize potential malpractice risk; and if you have had any recent claims.

The cost of malpractice increases over time: when you first start practicing there is little risk as you have had no clients from the past that could potentially discover malpractice and file suit. However, as you build your practice and gain more clients this changes. The likelihood of a claim being made at the time of representation is small; it's after the end of the representation and time passes that they increase. So, generally speaking, your insurance premium will increase each year for the first five years because of the additional potential exposure. As an example, Wisconsin Lawyers Mutual Insurance (as of July 2011) uses 5 years as the general set point for flattening out increases in its policies as each year that goes increases the risk of a claim being made. Any risk from year one is added to year 2 and then year 3, etc., etc. The more cases or files, the greater the pool of potential malpractice claims. Insurance providers may

include other factors or change their method of determining premiums so you should inquire as to this process when you are shopping for coverage.

Since it's a claims made policy, the risk of a claim not only includes the current year, but all of the prior years of your practice (subject to any retroactive date). So as time goes by, your malpractice insurance premium covers ALL of the work that you have done since the retroactive date (which is part of the policy application process). Furthermore, when a claims-made policy expires, all coverage ceases, even for work you did while the policy was in force. The increased premium in subsequent policies reflects the increased exposure because it covers more years of practice.

Where can I buy malpractice insurance for Wisconsin?

There are any number of agencies and companies that provide malpractice insurance for Wisconsin lawyers. The following partial list are from providers that Wisconsin lawyers have used or that have been advertisers/sponsors for State bar of Wisconsin programs and have State Bar of Wisconsin members as insureds.

THE STATE BAR OF WISCONSIN DOES NOT ENDORSE ANY OF THE PROVIDERS LISTED BELOW AND YOU SHOULD ALWAYS CHECK WITH MULTIPLE PROVIDERS AND COMPARE POLICY COVERAGE DETAILS AND PREMIUMS BEFORE MAKING A DECISION.

Wisconsin Lawyers Mutual Insurance Company (WILMIC)
725 Heartland Trail, Suite 300
Madison, WI 53717
800.373.3839 (Toll free)
608.824.1700
www.wilmic.com
Jane Harder jane.harder@wilmic.com

Minnesota Lawyers Mutual Insurance Company
333 South Seventh St
Suite 2200
Minneapolis, MN 55402
800.422.1370
www.mlmins.com

Den Boer & Associates, LLC
Riverwood Corporate Center I
N19 W24400 Riverwood Drive Suite 385
Waukesha, WI 53188
877.522.444

262.522.4000

www.dbains.com

Harry Stoll hstoll@dbains.com

Marsh U.S. Cosumer

333 S. 7th Street, Suite 1600

Minneapolis, MN 55402

800.328.4671

<http://usa.marsh.com/>

Pearl Insurance

1200 E. Glen Ave.

Peoria Heights, IL 61616-5348

866.679.0891 Toll Free

www.pearlinsurance.com

Greg Webb greg.webb@pearlinsurance.com



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