Insurance Times: Medical malpractice market seen facing limited capacity and growth
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Plagued by insolvencies, rating downgrades and diminished reserves, the medical liability market today faces limited capacity and slow growth, according to panelists who spoke at the recent PLUS Medical Professional Liability Symposium.

The medical malpractice marketplace has changed dramatically over the years, according to Paul Longman, CPCU, ARe, Vice president/underwriting leader, Employers Reinsurance Corp., Overland Park, Kan.

"In the 1970s, an availability and affordability crisis prompted a lot of tort reform activity and companies started to focus on risk management," he said. By the 1980's, facilities themselves focused on risk management, and medical malpractice became a profitable line of business.

According to Longman, the '90s experienced a prolonged soft market. Today, he observed, "Major players are faltering, reorganizing or withdrawing. Capacity is shrinking and there is a lack of progress in terms of staff requirements on the facility side."

In addition, Longman noted that there is a managed care backlash. "There is long term care litigation. Providers are in less of a position today to pay claims and are hard-pressed to stretch their revenue dollars," he said, adding, "Risk management services have been downsized and outsourced by the carriers."

Looking at litigation in the medical malpractice area, Beth Levene, assistant vice president and claims manager with Transatlantic Reinsurance Company, New York, noted that while post-trial motions are reducing compensation, eight-figure settlements are not uncommon. "In addition to Texas and Florida seeing large verdicts, New York also has a large suit pending that has not been resolved," she said.

One reason for the high settlements is that severity is up, according to Levene.

"Labor and delivery claims don't get better over time," she said. "By the time the case reaches jury, the infant is now a toddler or pre-schooler and the jury is very sympathetic. They're changing the standard of what the doctor owes."

Levene said that more claims are being made against improper medical treatment. For example, psychiatric malpractice claims used to be looked at unfavorably, she said. "Today, everyone knows someone whose been depressed, so the jury doesn't come in with that bias. Psychiatry used to be diminished in value, not any more."

In addition, she said that a lot of verdicts are driven by falsified documents or failure to follow procedures.

"Years ago doctors never went against doctors or against nurses," she said. "Today, there is a lot of finger-pointing, which escalates the plaintiff's case."

Other areas of concern are Internet exposure where there is an open client/patient relationship on line and managed care, said Levene.

"With the Internet, there is no physical exam, no record, just what they have advised on the web site. In the area of managed care, companies are going to be held liable for the doctor's decision. If the HMO becomes liable, they will then be in the practice of medicine, which means they are going to have a lot to say, not just authorization," Levene warned. "Doctors may be helping to build their own gallows."

Higher Standard

Levene noted that in the future, medical providers will be held to higher standards as a result of HMO liability.

"There will be real tort reform in some states and an exit of carriers that have underpriced the business."

Looking at the London market, Janet Helson, an underwriter at Lloyd's, noted that markets such as Lloyd's, which specialize in medical liability, are reasonably worried.

"We need to get some profit back into these rates," she said.

Helson noted that the London market is looking for relationships to align with in the future to stave off further deterioration. "There is significant movement in combined ratios and rating downgrades," she said, adding, "It's bad in London, maybe even worse than the U.S."

Sabrina Hart, senior vice president, Zurich US, New York, noted that Lloyd's has $16.6 billion in capacity and that there is confidence that its underwriters will be responsible. She noted that in the past 10 years customers have changed and the industry has changed. "It is a highly regarded industry," she said. "Customers are facing financial pressures with failure to diagnose and neglect. There is also a natural distrust of the health care system."

Hart, who serves as Profit Center Executive for Zurich's Institutional Healthcare Practice, noted that there are new players in the field and there have been a few market exits.
There have been retrenchment strategies in recent years," she said. "Companies are getting back to their core business where they have had profit."

Hart noted that there has also been little consolidation and M&A activity in 2000, but a little activity in 2001. "A reduction in ceding commissions has had an immediate impact on carriers, resulting in rising reinsurance costs. Combined ratios of medical malpractice in 2001 is estimated at 139% - that's pretty severe," she said.

Hart said that the industry needs the financial strength to weather the storm through product diversity. "Customers will demand more; talented people are critical. We need the courage to take the appropriate underwriting tactics and techniques," she said. "The marketplace has a jagged edge. To serve us or cut us, depending on whether we grab the handle or the blade."

The panel was moderated by Matthew Dolan, CPCU, vice president of the healthcare unit for Chubb Executive Risk.