

Managing Increasing Sexual Misconduct Liability Claims in Healthcare

In the medical professional marketplace, carriers are increasingly reducing or removing coverage for Sexual Misconduct Liability (SML). What was once a straightforward sublimit within a professional liability tower—or even a separate tower—now requires additional underwriting scrutiny for limits above \$100,000.

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Claims involving healthcare professionals

Historically, SML claims involving healthcare professionals have been relatively rare. However, the true prevalence of abuse is difficult to assess, as researchers estimate only 5% to 10% of victims report such incidents. This **underreporting** is likely due to feelings of shame or the inherent power imbalance between healthcare providers and patients. Recently, though, public awareness and outrage over the lasting harm to victims has led to significant societal and legal changes aimed at addressing this gap.

In the past few years, several states have removed barriers to reporting abuse by extending or eliminating statutes of limitations. The resulting nuclear verdicts have been severe, and these cases are expected to increase. Currently:

- **Only 5 states** retain a criminal statute of limitations for such cases
- 19 states have eliminated statutes of limitations for civil claims
- 30 states have enacted Revival/Window Laws, allowing victims to revive claims of sexual abuse

Claims involving healthcare institutions

The financial impact of SML claims on healthcare institutions is also substantial, as these high-severity, high-profile cases place significant risk on insureds' balance sheets. Some recent examples include:

- **2021** in New York: \$71.5 million settlement. Seventy-nine women accused former Columbia University gynecologist Robert Hadden of sexual assault.
- **2021** in California: \$1.1 billion settlement. Over 700 women accused former USC gynecologist George Tyndall of sexual misconduct.
- **2023**, in Montana: Ongoing case. An emergency medicine doctor in Missoula pled guilty to multiple counts of criminal sexual assault of patients under his care.

Abuse often occurs when offenders have access, privacy and control—factors that make the healthcare setting particularly vulnerable to claims. The doctor-patient relationship, built on trust, can be irreparably damaged when that trust is violated, leading to psychological trauma.



A new approach to underwriting

There are several factors that go into determining abuse payouts such as the severity of the abuse, impact on the victim, length of time of the abuse, victim's age, jurisdiction and evidence. Carriers are taking a different approach to underwriting this risk due to these factors:



Gathering more underwriting data for better risk assessment



Setting smaller sublimits



Considering jurisdictional challenges



Heightening scrutiny for policies covering young patients



Requiring increased limits on SML only excess policies



Adding exclusions for all trafficking allegations



Changing retention and limit application to apply per victim or perpetrator



Helping clients manage SML risk

As brokers, it is necessary to understand our underwriters' viewpoint and help our clients navigate this new mindset. Below are some ways to assist clients in managing SML risk:

- **Start conversations early:** Inform clients about the changes in the SML market and help them develop a proactive approach to coverage.
- **Evaluate and mitigate SML risks:** Ensure that clients have taken appropriate risk-reduction measures, such as:
 - Screening protocols – are they performing appropriate background checks?
 - Training requirements – are all staff required to be trained in SML prevention?
 - Supervision practices – are there appropriate supervisory procedures in place to mitigate the opportunity for SML events to happen?
 - Response procedures – are all stakeholders aware of their roles if a claim should arise? Are all staff aware of their reporting requirements?
- **Review Pediatric Exposure Policies:** Ensure that clients with a significant exposure to pediatric patients are hyper aware of all protocols and that they have proper training in place for all employees.
- **Consider higher retentions:** Evaluate the client's ability to participate in their risk through higher retention levels.
- **Engage with risk management specialists:** Direct clients to expert resources that can help refine their protocols if needed.

Preparing for the future

Many healthcare professional/GL markets are paying meaningful abuse claims and are evaluating how much of this risk they want to maintain within their books of business. As a result, we could see them reduce sublimits even further or remove the coverage all together. For this reason, we recommend you work with your wholesale partner to help ensure that clients have the limits and risk management services they require, even if it needs to come from a standalone abuse product.

We're seeing new markets entering the space for standalone abuse coverage, offering additional options for clients. It's important for brokers to understand that most SML products currently exclude physical abuse; knowing the distinctions in forms and offerings will be key when guiding clients through their coverage choices.

SML claims are serious, and as public awareness of their impact grows, nuclear verdicts are likely to increase. Brokers will need to advocate for increased capacity and guide clients on managing rising costs and safeguarding themselves effectively.

Insight provided by:

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