

## Miscellaneous Healthcare Spotlight

### Resuscitating Coverage for Medical Transport Risks

by Evan Smith

*Far too many professional liability policies do not provide proper protection for the wide-ranging risks of the medical transport industry. They may look like professional liability insurance policies, and read like insurance policies ... but when claims occur, they do not respond as they should.*

#### Examining the Exposure

Ambulance operations can be simply defined as air, water or ground patient transport, but the healthcare professional liability risks of this class are far more diverse and complex than that description conveys. Along with the siren-blazing ambulances of city streets, insurance is needed to cover boat-borne medical personnel ferrying injured workers from offshore oil rigs, emergency medical technicians (EMTs) standing by at nuclear power plants, medivac helicopters airlifting U.S. military personnel from war zones, a university's private EMT unit, and the air ambulance retrieving a broken-legged skier from an icy slope... to name just a few.

Spanning for-profit, non-profit, and governmental entities, this class includes:

- local, town and municipal ambulance corps;
- hospitals and medical centers providing medical transport independently or in joint ventures;
- corporations making medical transport available as part of occupational health services;
- water ambulances serving remote islands;
- temporary "MASH" units providing on-the-go care to military personnel, private security forces, or government contractors and humanitarian relief workers around the globe;
- commercial enterprises specializing in air, water and/or roadway patient transit;
- staffing operations that provide EMTs and paramedics to various entities.

These are far from cookie cutter exposures: They are distinct and potentially severe. With patients already sick or in critical condition, a misstep can have catastrophic results. Family members distraught after a loved one's illness or injury can be more prone to blame and sue paramedics who tried to help.

Medical transport by air unfurls another layer of complexity. Patients and caregivers are in a confined space. They cannot stop suddenly to address unexpected contingencies or get needed supplies. Medivac helicopters and fixed-wing transports typically embark on longer journeys, cross international borders, and attempt to access patients in remote and difficult locations. They are also more likely than other transports to have physicians onboard to assist EMTs or paramedics.

#### Policy or Placebo?

When risks are this intricate, coverage design must be too. Prospective insurance buyers and their brokers should be actively involved in the underwriting process, asking the right questions to ensure that a policy will respond as it should to their particular risk. Following are some key questions we recommend raising when weighing a potential policy:

##### ***Does it articulate coverage for patient loading/unloading?***

One of the highest frequency areas of professional liability claims for this class stems from the loading and unloading of patients. A patient slips from the gurney during

unloading and suffers a broken arm. A patient with a spinal injury is jostled off the stretcher as he is hefted into an ambulance. Should the ambulance's auto liability insurer or the professional liability carrier pick up the tab on the subsequent claim? Finger pointing between carriers can go on and on, with legal fees mounting -- and no remedy for the insured in sight.

To avoid this, a policy should expressly cover negligence claims arising from patient loading and unloading. If the operation's auto insurance covers this, that can be considered in pricing the risk. The goal should be to eliminate finger pointing and ensure clear-cut coverage.

### ***Should the Insured versus Insured exclusion be carved back?***

In this class of business, the Insured versus Insured exclusion can be particularly ominous. Consider the true story of a steel mill worker who injures his arm and is rushed to the occupational health clinic set up onsite by his employer. The clinic's medical staff assures him it is just a sprain and sends him on his way. Later, barely able to move his arm, the employee consults a physician who informs him that his arm has been broken and that the bones were not properly set.

The negligence claim brought by this employee against the medical personnel at the occupational health clinic would normally be excluded from coverage, due to the standard Insured versus Insured exclusion on the employer's professional liability policy. However, such claims are typical for corporations providing occupational health services. They are precisely the type of claim for which the insured would want coverage. A carve back of the Insured versus Insured exclusion should be sought for policyholders that could encounter similar circumstances.

### ***Is coverage needed for medical directors?***

When a patient in serious condition requires transport (especially by air), a decision on whether a physician should accompany them must be made quickly. The decision should be based on what is best for the patient, not insurance issues. Yet many carriers shy away from extending coverage to physicians traveling onboard air ambulances or other transport vehicles. One should ask if a potential insurer will provide coverage for Medical Director or physician services that are provided on behalf of the named insured. If they will, patient care decisions can be made unhampered by insurance issues. The transport provider can be confident that their coverage will respond if something goes wrong, whether or not a physician is on board.

### ***Should rating reflect statutory immunity?***

In certain jurisdictions, EMTs and paramedics are protected from liability arising from their efforts by statutory immunity or sovereign immunity. These protections vary across jurisdictions. Be sure your insurer is aware and up to date on the applicable law so they know when immunity applies and can provide appropriate premium relief.

### ***Should sexual abuse risks be considered?***

The answer is yes. Vulnerable patients are being transported in confined, private spaces. The unfortunate reality is that there is an element of risk for sexual abuse when transporting patients.

### ***Will coverage respond worldwide?***

Ambulance risks often cross borders, oceans and continents. Be sure underwriters contemplate international exposures and can extend coverage around the globe.

"Illusory" coverage -- insurance that will not respond as anticipated to claims -- is a serious issue for this class of business. By asking the right questions, brokers and policyholders can ensure that the coverage they purchase is robust and responsive.



Beazley is dedicated to providing healthcare professional liability insurance for this class and customizes protection for the spectrum of medical transport risks. We tackle with equal zeal the largest of these exposures and the smallest, most unusual risks. To learn more about Beazley's solutions for Miscellaneous Healthcare Professional Liability Risks, contact Evan Smith at [evan.smith@beazley.com](mailto:evan.smith@beazley.com).

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