

ARE YOU CONTRACTING AWAY YOUR RIGHT TO BE INSURED BY TMLT?

If you are thinking about becoming employed in an Accountable Care Organization (ACO) or Non-Profit Health Organization (NPHO) aka 5.01(a),

DID YOU KNOW THAT:

1. **You may not be able to keep or choose your medical liability insurance carrier.** Consequently, you may be required to put your reputation and assets in the hands of the organization's self-insured entity rather than with the proven insurance professionals at TMLT.
2. **You may lose the right to withhold consent to settle if a claim occurs.** The captive insurance carrier provided by your employer may be making the decision whether to defend or settle your case.
3. **You may have to purchase tail coverage.** Unless your new carrier is providing prior acts coverage, you will have to purchase tail coverage. Your new employer may not cover the cost for tail coverage. Additionally, you may lose the free tail coverage that you had earned with your current carrier as well as your accrued claim-free discounts.
4. **You may lose access to a physician-focused defense.** For instance, if you are insured by a hospital's captive insurer, its attorneys will have expertise in defending hospitals, but may not have expertise in defending physicians. TMLT claim staff and defense attorneys specialize in defending physicians in lawsuits. Does the hospital's insurance company have a claims philosophy that focuses on individual physicians' risk exposures independent of the hospital's organizational interests? Who will be protecting your career in the event of a claim or lawsuit?

IN ADDITION:

5. **What if there are conflicts of interest in a lawsuit?** The potential for conflict exists in certain cases when you share a defense with your employer's appointed counsel (i.e., a joint defense). Can you be certain such conflicts will be resolved in your interest rather than that of the employer who may retain certain control over the insurance carrier? This could even lead to settlement of a defensible case.
6. **What if there are disciplinary proceedings?** Will the policy reimburse you for expenses to defend a Texas Medical Board investigation or peer review complaint? What if the hospital or employer has initiated the disciplinary proceeding against you? Who will represent you?
7. **Will you have enough coverage?** Is the aggregate limit on the employer's policy a group aggregate? If there are several significant claims filed during the policy year, will the available limits be sufficient for your claim? What happens if they are not?
8. **What about "moonlighting" coverage?** If you perform activities outside of your employment, do you have to purchase coverage for these activities at your own expense? Will you be assuming the liability of your employer under a hold-harmless and indemnification clause for these outside activities?
9. **What happens if there is a voluntary or involuntary termination?** If the contract contains a non-compete covenant, you may have to leave the area and practice elsewhere. Or, you may have to exercise the buy-out option (which could be a year's salary) in order to practice in the same area. Will tail coverage or prior acts be available and affordable at the time of separation? Will you be able to obtain a copy of your individual loss history for the period of your employment?
10. **Beware of any promises not made in writing.** The employer can change the employment contract when due for renewal. What they may offer now or agree to accommodate today could be taken away tomorrow — and if you don't like the changes or you have decided you no longer wish to be under an employment agreement, you may find it difficult to exit and still be able to practice medicine in your desired location.



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Contact John Southrey, Business Development Coordinator
john-southrey@tmlt.org • 800-580-8658 x5976 • www.tmlt.org