

# How Insurance Agents Can Mitigate Malpractice Risk: Do the Right Thing

By Craig S. Hudson

*PropertyCasualty360.com*

*January 26, 2016*

The wise advice “just be yourself and follow your instincts” applies to insurance agents seeking to **mitigate the risk of malpractice litigation**. In a competitive market, staying inside of your comfort zone and following a few well established “best practices” can help you avoid being sued for malpractice and, if unfortunately you are sued, help you to present a strong defense.

The starting place to avoiding a future malpractice claim is at the beginning of a client relationship. Set the tone early with new clients. Make sure the client has reasonable expectations as to what services you will be providing and, perhaps more importantly, what you will not. Once the client relationship begins, follow best practices, the ones you know you should be doing:

- **Ask questions.** Make sure you and your client are clear on what type of insurance and how much coverage your client needs.
- Clients make assumptions about types of insurance, coverage limits, deductibles, exclusions and the like. **Go through each critical element of the policy with the client.**
- **Keep notes of telephone and in-person conversations.** Write down the date and names of all participants. Document your client’s key decisions and directions.
- **Follow up each significant discussion** in which decisions are made with an e-mail that recaps the conversation. Essentially, you are putting what was discussed into electronic black-and-white. This e-mail may provide evidence should a client claim in court that you gave misleading or erroneous information.
- **Always have a policy application reviewed by the client after it is completed.** A lot of agents do business over the phone or by email because they and their clients are too busy to meet in person. Frequently you or someone in your office completes an application for your client. That practice leaves the agent — not the client — exposed to legal trouble.
- **Send the application to the client** with an e-mail or cover letter telling the client to let you know if the application or the requested coverage is inaccurate.
- **Forward to your client any written quotation** you received from a broker or insurance company and have them confirm, in writing, that they want you to bind a particular policy.
- **Immediately, upon receipt, forward to your client the insurance binder** for any policy that you placed with a specific instruction that they are to read the

binder and call you with any questions or concerns.

- When you are provided a copy of the policy from the insurance company, forward the policy to your client with an e-mail or cover letter that **reminds the client to keep a record and to read the policy.**
- Decide if it makes sense to take your client's responsibility for reporting claims to primary, excess or umbrella carriers. Typically, the insurance binder or policy includes written instructions to your client on how the insured is to report claims or circumstances. Ask yourself, "What benefit is there for taking on the insured's obligation and does my client really care?" **If at all possible, place the responsibility on notifying the insurance company where it belongs — on the policy holder.**

Beyond the above, the best advice is to stay inside your comfort zone. If you've never written a particular type of coverage before and it requires technical knowledge, you should refer the business to an insurance agent with that expertise. Second, collaborate with individuals you know best. Try to place your insurance client with companies you know. If you are placing insurance through a broker or managing general agent, seek quotes from brokers who have established track records with you.

Finally, evaluate every client once a year. Ask yourself a few questions:

- Is this company or individual worth the business that it is giving me?
- Do they always complain?
- Do they forget to provide me with information that I need to make sure they have the proper insurance in place?
- Do they wait until the last minute before making a decision?
- Do you like dealing with the client or do you cringe every time they send you an e-mail or call you?

Keep in mind that the clients who complain most or want the most from you are the same clients who will likely blame you for their decisions.

The loss of a commission will be more than outweighed by the liberation from headaches and potential liability that troublesome clients undoubtedly create. Once you have cut ties with such a client, you can redirect your energies to gaining business from companies and individuals that will be easier to manage and more profitable to serve with less legal risk. It is also a good idea to conduct this evaluation far enough in advance of policy renewal so that if you decide to end a client relationship, your client has time to find a new agent.



---

*Craig Hudson is managing attorney of the Fort Lauderdale, Fla., office of Marshall Dennehey Warner Coleman & Goggin and the supervising attorney for the firm's Professional Liability Practice Group. He can be reached at [cshudson@mdwccg.com](mailto:cshudson@mdwccg.com).*