PA MALPRACTICE INSURANCE:
SORTING OUT THE OPTIONS.
Part 1 – Claims-Made Policies
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This is the first of three articles that will cover in order Part 1) Claims-made policies, Part 2) Occurrence Policies and Part 3) Recommendations for PA coverage.

Not all medical malpractice policies are the same. Understanding the difference between a "claims–made" policy and an "occurrence" policy may be difficult and there may be significant differences in coverage.

What is a "claims-made" policy? A claims-made policy covers claims made against you only while the policy is in effect. Coverage will respond to incidents arising on or after the policy active date or retroactive date and which are reported during the term of the policy only. The premiums are based on the actual time of exposure to risk which means that premiums should be lowest for the first year of the policy and then gradually increase as the time of coverage increases. The policy may be endorsed to respond to incidents which occurred before the policy start date, also referred to as policy retroactive date. If a policy has a retroactive date, expect the initial premium to be higher.

Advantages of a Claims-made Policy
Claims-made policies are more common, easier to obtain and initially less expensive than occurrence policies.

Unlike an occurrence policy that can become outdated, you can be sure that you have limits that reflect the current liability risk so there is less likelihood of being underinsured. An occurrence policy may cover you indefinitely, but its limits may not keep up with the increasing liability risk of the present versus when the policy was written or keep up with the increasing liability risk of the future.

You can purchase a claims-made policy with a retroactive date to cover you for a previous employment.

You can ensure that previous inadequate occurrence policy limits can be topped up retroactively.

You can ensure that previous inadequate coverage or more restrictive terms exceptions and conditions can be broadened out retroactively. These advantages can be made to apply whether the insured was previously on either occurrence or claims-made policies.

Disadvantages of a Claims-made Policy
A disadvantage is that the policy must be continued indefinitely to assure coverage for claims filed in the future for actions that occurred in the past. In other words, once the policy expires, you have no coverage at all if a claim is made even if the incident occurred during the policy period. Purchasing "tail" coverage allows you extended reporting for claims-made after policy expiration for incidents occurring during the policy period. In other words, tail coverage responds

to cover incidents that have not been reported to the company during the policy term. Some insurance companies will offer a free tail at retirement, subject to certain conditions.

Most PAs think that claims-made policies are less desirable than occurrence policies which will be covered in the next issue. While this is generally true, claims-made policies can be set up with a retroactive date so that you are covered for lawsuits that may arise on a previous job that had a claims-made only policy. Tail coverage can also be purchased when a claims-made policy expires. Let's take an example. PA Joe has a claims-made policy in his current job and wants to leave for a different job. He now has two options. 1) He may request that his new employer place a retroactive date on his new claims-made policy that will cover him for any number of years of service at his old job. Each state has a different statute of limitations on when claims can be made, so you want t be sure to cover as many years as the statute allows. 2) His other option is to purchase (or convince his current employer to purchase) a tail policy to cover him when he leaves his current job and his current claims-made policy expires. It is more likely that he would be able to have his new employer place a retroactive date on his new policy. If the new employer is unwilling to place a retroactive date for prior acts coverage and his old employer is unwilling to pay for a tail policy, then Joe must pony up and pay for that tail policy on his own.

Tail policies are not cheap – a basic five year tail generally will cost at least a full year premium at mature policy pricing. A full tail that keeps the liability limits in place for many years into the future will cost at least double an annual premium. When accepting a new job, you can see that it would be wise for PAs to negotiate that a tail policy be provided if and when they leave if a claims-made policy is provided. Additionally, if the job they are leaving had a claims-made policy, it is also reasonable to negotiate with the new employer that a retroactive date be placed on the new policy.

Claims-made and occurrence policies are priced differently. Claims-made premiums tend to be lower at policy inception, and generally increase each year at renewal, reaching a premium level similar to that of an occurrence policy after approximately four years. Occurrence premiums are higher at policy inception than claims-made coverage this is because occurrence coverage estimates claims for many years into the future while claims-made coverage only addresses claims expected on a year-to-year basis.

For example, assume an insured is expected to have $1000 in losses per year over a five year period. Given a 5% rate of inflation, premium pricing would be structured like so:

	Claims–Made	Occurrence Pricing
Year 1	$450.00	$1000.00
Year 2	$720.25	$1050.00
Year 3	$900.86	$1100.00
Year 4	$1050.40	$1150.00
Year 5	$1150.67	$1210.00
Tail	$1440.58	

You can see that it takes approximately four years for the cost of a claims-made policy to reach that of the initial cost of an occurrence policy.

In the next issue we will examine in depth the "occurrence" policy option, which is becoming more difficult to obtain. For more information on PA malpractice insurance, two 15 minute

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