

PA MALPRACTICE INSURANCE: SORTING OUT THE OPTIONS

Part 3 – RECOMMENDATIONS

Jeffrey G. Nicholson, PhD, PA-C

This is the final of three articles that 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. In the last two articles, we examined the differences, pros and cons of claims-made versus occurrence policies. This article is focused on helping PAs to decide what policy is right for them and helps to answer the question, “Do I need my own malpractice policy separate from my supervising physician or employer?”

Previously we explained that an occurrence policy 1) covers for claims even when the policy has expired, 2) covers for claims in the pre-policy period, 3) is more expensive than claims-made policies because the cost of prior acts and tail is built in and 4) is becoming less common and available. A claims-made policy is 1) the more common policy, 2) less expensive for the first 4 years as its cost is graduated as the policy ages, 3) allows for the options of retroactive dating and tail coverage.

It is clear that an occurrence policy is the better option if available. In terms of cost, the claims-made policy is only less expensive for the first several years but that savings is lost when appropriate retroactive date and tail coverage is applied. The only drawback to the occurrence policy is that its coverage limits maybe inadequate if a claim is made years down the road. For example, coverage limits on a policy in place several years ago may have been \$500,000/\$3,000,000 (per occurrence/aggregate) while the recommended limits today are \$1M/\$6M. Either a new claims-made policy with retroactive date at the higher limits or new occurrence policy at the higher limits should be purchased to ensure adequate coverage.

Whether PAs should carry their own separate malpractice insurance over and above what is provided by their employers is controversial. The AAPA recommends it, but the AAPA also benefits from the relationship it has with the insurance company it wants you to buy your insurance from. This author has reviewed and testified at hundreds of PA malpractice cases and has developed relationships with dozens of trial attorneys over the years. The attorneys are very clear in agreeing that you will be a greater target and more likely to be named in a malpractice suit if you have your own separate policy. Having your own separate policy also gives your supervising physician and employer the option of turning the full blame for an incident on you. In other words, when you and your supervising physician or employer are covered on the same policy, your legal counsel will defend you all together and equally. There is no benefit for them pointing the finger at one of their own defendants. Malpractice insurance is the bread and butter that feeds the attorneys and litigation industry, thus you would be wise to think about whether you want to feed them more. To be fair, there are instances will you will benefit from your own policy – if you are not adequately covered by your employer’s umbrella policy, if you don’t have gap coverage from a previous employer and if you do any moonlighting or clinical practice as a private contractor.

Bottom Line Recommendations

- 1) Know what kind of policy you have. Insist that your employer provide you with a copy of the declarations page of your policy. If you have a claims-made policy you need to know whether you have full tail coverage, or if your employer will agree to provide for full tail coverage in the event of your leaving. Due to long duration statutes of limitations, a five year basic tail may not be enough in some states.
- 2) Know what kind of policy you had in your previous job when applying for a new job. As you can see there are options for ensuring that you have no laps in coverage even with claims-made policies. Negotiate with your employer to help you pay for a tail of your old policy or provide a retroactive date on the new policy. This is unnecessary if they will prove an occurrence policy.
- 3) Do not insist on a separate policy for yourself distinct from your supervising physician or corporate employer malpractice policy. This can increase your chances of being named party to a suit, open up the possibility of your own colleagues pointing the finger at you and is unnecessary if you have adequate group coverage.
- 4) Purchase your own separate policy for moonlighting. Many PAs moonlight as private contractors where malpractice insurance, benefits and social security taxes are not included in your compensation. In situations like this, the so-called moonlighting policies are available at a current cost of \$1500 or less for 10 hours or less of private work per week.
- 5) Be sure you have insurance for volunteer activities, even if on a limited basis. You may enjoy volunteering at the local free-clinic a couple times per month or be a health officer a week or two every summer at a scout or youth camp. You will need malpractice insurance for these activities. Insurers will usually offer riders on supervising physician or corporate policies for short periods or limited practice. You should attempt to have the volunteer organization acquire this insurance for you.

For more information on PA malpractice insurance, two 15 minute ReachMD radio show interviews with the author are available at <http://www.aapalm.org/Education.html>