

Sorting Out Employer-Provided Professional Liability Coverage

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Disclosures

- Speaker is Chair of AAPM Insurance Subcommittee (INSUSC)
- INSUSC manages AAPM relationship with Mercer, CM&F Group, and MedPro for Professional Liability Insurance for AAPM members
- AAPM receives royalty income from premiums paid by members for these policies

Disclaimers

- Speaker is not a licensed insurance professional
- Speaker is not selling, promoting, or endorsing any insurance product or service
- Speaker is not providing legal advice

- Introductory PLI concepts and terminology have been covered in previous presentations, please see AAPM VL

Objectives

1. Determine amount and type of professional liability insurance(PLI) coverage extended by individual's employment
2. Assess existing and potential gaps in coverage due to common circumstances

Outline

- My experience: in-house
- My experience: consulting
- Career transition

What do employers provide?

- One colleague's experience:

Employer directly stated NO coverage provided by clinic or on its behalf;
HOWEVER:
Employer requires physicist to obtain own coverage and pays/reimburses the cost

My Role: Employee of UH Cleveland Medical Center

- When I started in 2011: “the 1988 letter”
- From (someone long-gone), To: (someone long-gone)
- Confirmed coverage for “physicists employed by CWRU and cross-billed back to University Hospitals”



Whom to ask?

- Inquired with Radiology Administration
- Referred to senior person in Human Resources
 - Sent an email asking for clarification
- Referred to Manager, Corporate Risk Management
- Phone call and follow-up email:
 1. All UH employees are covered
 2. UH deems its coverage sufficient and would not cover cost of AAPM policy(ies) for medical physicist employees
 3. The 1988 letter is no longer valid due to change from commercial to self-insurance by the hospital

Who/what is covered, and for how much?

- Details are available to all employees on the UH Intranet
 - IF you know where to look / what search terms to use
- Downloadable Certificate of Insurance for Professional Liability
 - Confirms coverage “applies to all employees while acting within the course and scope of their employment”
 - \$1M per incident / \$3M aggregate (1-year policy period)
 - Claims-made coverage

Aside – Certificate of Insurance

- ACORD Certificate of Insurance is a standard form
- Issued by insurer to demonstrate to a third-party that coverage exists
- Used to satisfy contractual obligations to carry coverage
- Does NOT contain all details found in policy declarations, policy forms, amendments, and endorsements
- Details at www.acord.org

My previous role: Consulting Group Employee

- Employed by consulting group 2004-2011
- Company held one policy in company name via AAPM PLI program
 - 1 owner
 - N "physicist employees" (updated periodically)
 - Claims-made coverage
- Policy documents were not typically made available to employees...
 - ...but I don't recall anyone asking
 - ...but I helped with renewals and was active with INSUSC at this time, so I was familiar with them
- Coverage was explicitly described in employment offer/agreement for all physicist employees

Career Transitions and Claims-Made Coverage

- Professional liability policies are usually *claims-made* forms of coverage
- This has special implications and may require planning when moving from one coverage to another
- As an employee, you may lack certain rights and privileges in this process if you are not the policyholder or "named insured"

Claims-Made Form

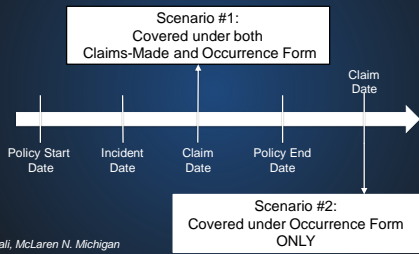
- For coverage to respond to claim, BOTH
 - The incident that triggers the claim, AND
 - The date of the claim being mademust occur DURING the policy period

Occurrence Form

- For coverage to respond to claim, ONLY
 - The incident that triggers the claimmust occur DURING the policy period

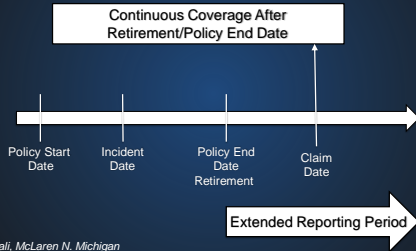
REGARDLESS of when the claim is made

Example:



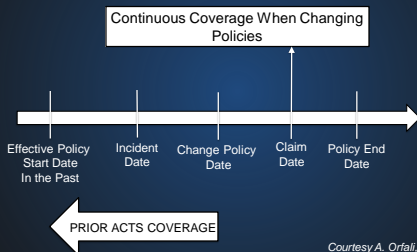
Courtesy A. Orfall, McLaren N. Michigan

Claims-Made: Extended Reporting



Courtesy A. Orfall, McLaren N. Michigan

Claims-Made: Prior Acts Coverage



Courtesy A. Orfall, McLaren N. Michigan

For my job change in 2011:

- No ability to purchase Extended Reporting for the consulting group policy to cover me after I left
 - Policy was still in force (as far as I know)
 - I was not the policyholder
 - I was not named specifically in the policy
 - Difficult to determine the status if a claim after 2011 had been made naming me
- No ability to add Prior Acts to my new hospital employer's policy to cover my work prior to 2011

Other tricky scenarios (or so we hear)

- Employers prohibiting employees from carrying coverage in own name
- Employer secrecy about details of coverage
- Employer suspicion due to inquiries by employee ("Why are you asking? What did you DO?")
- Change of company name/ownership resulting in new policies without managing ERO/prior acts for claims-made continuity
- Private groups where no owners are medical physicists

Summary

- Most employers of medical physicists probably provide adequate PLI coverage in some way
- Probably NOT safe to assume coverage is:
 - Automatic
 - Sufficient
 - Portable
- Often not clear who has the answers
- AAPM Insurance SC and PLI program are resources for *all* members regardless of their employment circumstances
