

Liability Risk Management for Practicing Medical Physicists

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Disclosures

- Speaker chairs AAPM Insurance Subcommittee, which administers the AAPM-sponsored Professional Liability Insurance program through Marsh U.S. Consumer
- AAPM receives royalty income from the purchase of PLI policies by members

Disclaimers

- Speaker is not a licensed insurance professional.
- Speaker is not selling or promoting any insurance product or service.

Objectives

- Identify risks and liabilities arising from practice of medical physics
- Explain the role of professional liability insurance in risk management
- Determine amounts and types of coverage needed

IDENTIFYING RISKS

Injury to Patients

- May arise as normal consequence of treatment
 - Bad result \neq negligence
- May arise due to error
- Error & injury may or may not result in damage

Property Damage

- Damage to equipment or facilities
 - Hardware
 - Software
- Repair or Replacement Cost
- Loss of Use
 - Lost revenue due to downtime
 - Opportunity cost

Regulatory Penalties

- Civil vs. Criminal Penalties
- Sanctions
- Monetary Penalties / Fines

Shared Liability

- Physicians
- Employer
- Employees
- Subordinates
- Students, Trainees

Claims vs. Lawsuits

- Suit: legal action
 - Plaintiff describes injury, liability
 - Asks court to rule, take action against defendant
- Claim: insurance action
 - Liability is determined (via court or settlement)
 - Insurance policy terms take effect

HOW LIABILITY INSURANCE WORKS

(or, How To Read A Policy)

Terms and Definitions

- Exclusions
- Declarations & Endorsements
- Subrogation
- Policy Form: Occurrence vs. Claims-Made
- Insureds
- Agent
- Broker

Terms and Definitions

- Exclusions
 - Specific “carve outs” for things that are not covered
 - Only needed for situations otherwise included in general description

Terms and Definitions

- Declarations - basic explanation of:
 - Who is covered, for what
 - Under what conditions
 - When and for how long
- Endorsements – used to modify coverage: *Expand, Explain, or Restrict*
 - Total loss to a rented Ferrari?

Terms and Definitions

- Subrogation
 - Insurer's right to recover its expenditures made on *your* behalf, *from* someone who has liability to *you*
 - Multi-car pile-up accident

Policy Forms

- Occurrence Form
 - Coverage applies to claims resulting from incidents occurring during the effective term of the policy
 - Examples: Auto, Homeowners

Policy Forms

- Claims-Made Form
 - Coverage applies if policy effective at time of incident AND time of claim
 - Examples: AAPM PLI (current)
 - Extended Reporting
 - Prior Acts

Regulation of Insurance

- Regulation of carriers and agents state by state
- Filed Forms – policy language, application forms subject to review and approval
- Advertising and marketing also regulated

Underwriting

- Detailed examination of policy applicant
 - Do they fit the qualifications?
 - Are there unusual risk factors?
- Licensed professional employees of insurance carrier
- Decision whether applicant may be covered

Life Cycle of a Claim

- Physicist becomes aware of allegation (usually via a lawsuit)
- Must notify the insurance company
- Insurance company gathers information, appoints defense counsel

Life Cycle of a Claim

- Physicist has the right to obtain own lawyer to assist (“associate counsel”)
- Legal process unfolds
 - (see previous lecture!)

Life Cycle of a Claim

- Possible outcome #1:
 - Defendant not liable
- No obligation to defendant.
- There is **no claim**.
- Insurer might attempt to recover legal costs from plaintiff (subrogation).
- Physician not obligated to pay for defense provided by insurer (if any).

Life Cycle of a Claim

- Possible outcome #2:
 - Settlement
- Parties agree without court decision.
- Any financial obligation of the physicist defendant becomes a **claim**.
- Insurer pays money owed by defendant under terms of policy

Life Cycle of a Claim

- Possible outcome #3:
 - Court decision for plaintiff
- Defendant found liable by judge/jury.
- Any financial obligation of the physicist defendant becomes a **claim**.
- Insurer pays money owed by defendant under terms of policy

MANAGING RISKS WITH INSURANCE

Policy Limits

- Usually 2 limits, “incident / aggregate”
 - Multiple claims may be 1 “incident”
 - “Aggregate” is the all-time cap
- May or may not apply to defense costs
 - In AAPM PLI program, don’t count...
 - Insurer may be able to recover your defense costs (subrogation) in some cases

Asset Protection

- Personal assets
 - Cash, real estate
- Protection of future income

- Manage risks by asking 2 questions:
 - “What do I have?”
 - “How much could I realistically lose?”

Magnitude of Losses

- Actual claim:
 - \$1.6M settlement for fatal injury resulting from treatment planning error
 - Physicist liability: \$400,000
- Consider laws, legislature, regulators, and courts in your practice location
- Differences in scope/scale; diagnostic and therapy differences?

Coordination of Coverage

- Individual vs. employer-provided coverage
- Whose interests are protected?

Employer-Provided Coverage

- Terms found in employment agreements/contracts:
 - Waiver of subrogation
 - Indemnification

Review Objectives

- Identify risks and liabilities arising from practice of medical physics
- Explain the role of professional liability insurance in risk management
- Understand terms and conditions found in insurance policies
- Determine amounts and types of coverage needed

Any Questions?

Thank you for your attendance and attention!!!

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