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 ≠ 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).
  - Physicist 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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References:


M Davis & J Masten. “Point/Counterpoint: Medical physicists need professional malpractice insurance.”

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