



**Risk Management for ODs:
Protect Yourself**

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Overview

- ▶ Types of professional forms – occurrence versus claims-made
- ▶ Professional liability
- ▶ Procedures
- ▶ Documentation of records
- ▶ Communication
- ▶ Business package exposures
- ▶ Employment practices liability
- ▶ Cyber risk

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Purchasing Professional Liability

- ▶ Occurrence versus claims-made:
 - Occurrence form covers you for work performed while insured, regardless of when the claim is submitted. When you retire, there are no endorsements to purchase.
 - Claims-made form only covers you for claims made during the policy period. When you retire or cancel policy, you need to purchase an extended reporting period endorsement.
- ▶ Coverage for your corporation or partnership and technicians (included at no additional charge and with separate limits of insurance)
- ▶ Professional liability claims should **not** be settled without your consent (look out for hammer or arbitration clause)

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Occurrence Coverage Form Benefits

- ▶ Claims reporting – You could be unaware for several months or years that a professional procedure performed today allegedly caused harm or injury to a client. The occurrence policy pays for a covered professional incident that occurred during the policy period, regardless of when the claim is reported. By comparison, a claims-made policy covers only those claims reported during the policy period. And, if you change carriers or retire, you would need to purchase an Extended Reporting Period endorsement to protect yourself from claims arising from incidents that may have taken place during the term of the claims-made policy, but were not reported prior to the termination of the policy.

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Occurrence Coverage Form Benefits

- ▶ Cost Savings – You will not have to purchase extended reporting period coverage. Charges for ERP coverage are generally negotiated when a claims-made policy is terminating. The ERP is an important – and expensive – coverage option on a claims-made form. In certain situations, such as changing carriers or retiring from your practice, you have little choice but to purchase ERP coverage to avoid coverage gaps.

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Occurrence Coverage Form Benefits

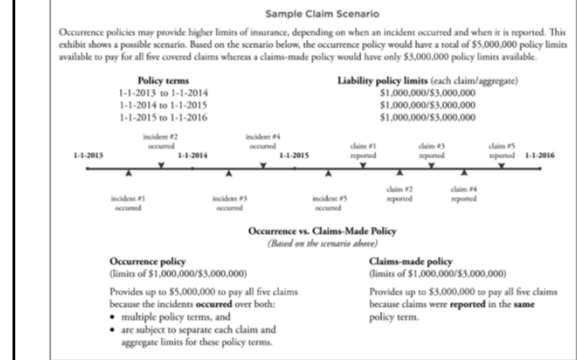
- ▶ Flexibility – If you choose to change insurers, going from one occurrence policy to another is easy to do. There are no hidden ERP premiums to pay and a prior acts or tail endorsement isn't necessary.
- ▶ Possibility of higher limits – Depending on when a professional incident occurred and when it is reported, you may have higher limits available with occurrence policies.

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Occurrence Coverage Form Benefits

- ▶ Continuity of coverage terms and conditions – A claims-made policy is a 12-month contract that may change year to year, altering, reducing or deleting important coverage terms and conditions. These changes become retroactive all the way back to the first date you started on a claims-made policy, potentially reducing your coverage. With an occurrence policy, the coverage terms and conditions can never retroactively change, providing you additional peace of mind about the coverage you have today.

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Professional Liability

- ▶ Leading reason for litigation: failure to refer in a timely manner
- ▶ Consider this scenario:
 - Patient was in hospital for unrelated condition. Soon after, eye turned red and experienced pain. OD prescribed Zylet® drops and told patient to come back in a month.
 - Was later determined to be cellulitis.
- ▶ Patient now blind in one eye:
 - Not recorded whether OD dilated eye prior to exam
 - Phone calls from patient, who spoke with receptionist or other staff, was not documented and OD wasn't informed by staff
 - Claim alleges patient wasn't referred to ophthalmologist soon enough
 - Symptoms – flashing lights, floaters, migraines and waving line in vision – turned out to be retinal hemorrhage

This claim scenario example is provided for educational purposes only. Every claim is adjusted according to its own specific set of facts. Whether or not insurance coverage would apply to any claim is dependent on the facts and circumstances of each individual claim and the language of the insurance policy.

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Professional Liability

- ▶ OD, hospital, physicians all sued. Patient had brain tumor that wasn't diagnosed for several years. The OD being sued for not referring to an ophthalmologist or specialist. Tumor was size of a grapefruit when discovered. Patient now blind in one eye, reduced vision in the other as well as several other ailments. (not saying the OD did anything wrong, just example of types of claims)

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Professional Liability

Are these excluded from your coverage?

- ▶ Punctal plug insertion
- ▶ Epilation
- ▶ Removal of foreign objects
- ▶ There are 15 surgical optometry codes

If your policy doesn't say you are covered for any procedures within your license, you could perform a procedure or procedures for which you would have no coverage.

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Documentation of Patient Records

- ▶ Document conversations
- ▶ Document files personally; however, if your technician does, then you should sign off on them after making sure they are correct
- ▶ Do **not** add or remove comments after a claim is filed
- ▶ Keep electronic records

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Patient Rapport

- ▶ Communicate with your patients
- ▶ Take time for small talk with patients – doctors who do are more likely to amicably resolve issues if something goes wrong
- ▶ Be congenial – if your patients like you, they are usually more willing to work with you to resolve problems
- ▶ Patients respond well when you demonstrate genuine, appropriate personal interest in them
- ▶ Stronger relationships increase trust



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Communication

Practice these basics in your interactions to ensure that you're doing your part:

- ▶ **Listen carefully** without interrupting
- ▶ **Ask questions** if you don't understand something your patient has shared
- ▶ **Respond appropriately**, verifying requests to eliminate misunderstandings
- ▶ **Be respectful** of your patients' thoughts, beliefs and concerns

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Lawsuits

You just received a letter from an attorney advising that you are being sued...

Q R WLI \ # \ R X U # D J H Q W #
IP P H G ID WHO \

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Other Risk Management Concerns

- ▶ Business income
- ▶ Employee dishonesty
- ▶ Hired/non-owned auto
- ▶ Water, sewer, sump pump backup
- ▶ Fire, explosion and water damage legal liability
- ▶ Business Personal Property

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Employment Practices Liability

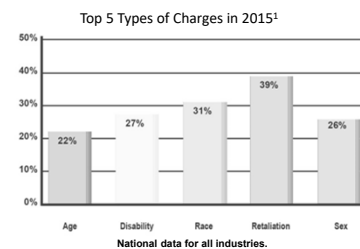
- ▶ Employers face an additional source of potential claims – your own employees
- ▶ Employees file thousands of charges with the Equal Employment Opportunity Commission every year – in addition, there are many state, local and common law claims each year
- ▶ Every employer must have a sexual harassment policy
- ▶ If fewer than 15 employees, you are not subject to Title VII of the Civil Rights Act of 1964; **however**, you are still subject to state court, which has no number of employee limitation

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Jury Verdicts – Employment Practices

A typical case that goes to verdict lasts two years and incurs legal fees of approximately \$100,000.



¹Equal Employment Opportunity Commission, www.eeoc.com.

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Employment Practices Liability Insurance

Even though you are an honest and fair employer, one accusation of unfair employment practices could cost you thousands of dollars.



Answering a groundless complaint filed with the EEOC can cost \$7,500 to \$15,000; taking a claim to trial can cost many times more.



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Why Buy EPLI?

Your EPLI coverage should cover charges made against you for:

- ▶ Wrongful termination
- ▶ Breach of any verbal or written contract
- ▶ Employment-related misrepresentation
- ▶ Violation of any federal, state or local law that concerns employment discrimination, including sexual harassment
- ▶ Wrongful/failure to employ or promote
- ▶ Wrongful discipline

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Why Buy EPLI?

Your EPLI coverage should cover charges made against you for:

- ▶ Negligent evaluation
- ▶ Employment-related personal injury, including libel or slander and violations of right of privacy
- ▶ Employment-related wrongful infliction of emotional distress
- ▶ Violation of the Family and Medical Leave Act
- ▶ Assault, battery, loss of consortium, negligent hiring, supervision, promotion or retention in connection with charges listed above

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It Can Happen

Someone in your organization may:

- ▶ Act without full understanding of complex employment law
- ▶ Make a mistake
- ▶ Be alleged to have made a mistake

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Cyber Risk Loss Scenarios

- ▶ Doctor's office computer hacked and software held for ransom. Insured does not have access to client files.
- ▶ A burglar stole external data backup media storing patients' personal data from an insured doctor's office.
Results: The doctor paid for assistance sending letters to the patients involved to notify them of the theft and recommend that they set up fraud alerts with credit bureaus and monitor their bank accounts and credit report.
- ▶ A criminal used stolen personal information to open unauthorized accounts in the insured doctor's name, and then used those funds to open lines of credit and pay some rental expenses.
Results: The insured engaged a case manager to place fraud alerts and hired a lawyer to address the fraudulent accounts and help resolve some of the identity theft-related issues.

These claims scenario examples are provided for educational purposes only. Every claim is adjusted according to its own specific set of facts. Whether or not insurance coverage would apply to any claim is dependent on the facts and circumstances of each individual claim and the language of the insurance policy.

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Cyber Risk Loss Scenarios

- ▶ An insured dentist received a summons to appear in court for a case about dental equipment collection and repossession.
Results: An investigator determined that a former employer fraudulently used the insured's personal information to acquire the equipment using personal data without the insured knowing about or giving permission for the acquisition.
- ▶ An employee at an insured business clicked a link in an email that appeared to come from a known contact. Unfortunately, clicking through to the site launched hidden spyware that replicated onto the company's file server.
Results: Someone exploited that spyware to hack into the insured's system, gain access to private client information and then post some of it on a public website. The client whose information was compromised sued the insured for breach of private business information.

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Key Cyber Coverages

- ▶ Legal review to determine your notification requirements
- ▶ Professional information technology assistance to identify everyone affected by the breach and how to notify them
- ▶ Preparation of notification letters
- ▶ Services for individuals affected by the breach:
 - toll-free help line support
 - credit monitoring
 - case management for identity theft victims
- ▶ Public relations services
- ▶ Payment card industry fines and penalties

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Key Cyber Coverages

- ▶ Regulatory fines and penalties
- ▶ Investigation, defense and appeal expenses
- ▶ Damages, judgements or settlements to affected individuals
- ▶ Legal expenses for which you are held responsible
- ▶ Pre- and post-judgement interest for which you are held responsible
- ▶ Data restoration services to help you replace lost or corrupted data from electronic sources

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Key Cyber Coverages

- ▶ Data re-creation services to research, recreate and replace lost or corrupted data from non-electronic sources
- ▶ System restoration services to replace or reinstall software, remove malicious code and correct the configuration in order to restore your computer system to its pre-attack level of functionality
- ▶ Business income you lose and extra expenses you incur while your system and data recovery activities take place
- ▶ Public relations services to assist with communications about the computer attack and your response

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Thank You

Our loss control service is advisory only. We assume no responsibility for management or control of customer loss control activities or for implementation of recommended corrective measures. These materials were gathered from trade services and public information. We have not tried to identify all exposures. We do not warrant that this information is consistent with the underwriting guidelines of The Cincinnati Insurance Company and its subsidiaries or with any federal, state or local law, regulation or ordinance.

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