

Why you need your own malpractice insurance

By Katherine J. Pohlman, MS, RN, JD

MANY MYTHS surround professional liability insurance for nurses, also known as nursing malpractice insurance. Here are a few:

- Only physicians get sued for malpractice.
- If you have your own insurance, you're more likely to get sued.
- You can be sued only if you make a mistake.
- You don't need your own insurance because your employer's policy covers you.

This article debunks these myths, discusses the benefits of having your own liability insurance policy, describes the types of policies available, and explains policy benefits, exclusions, and limits.



MYTH: Only physicians get sued for malpractice.

Although physicians get sued more often than nurses, that trend has shifted lately. Healthcare organizations increasingly are recognizing the individual contributions of all team members, not just physicians. With that recognition comes individual accountability on the part of nurses, including the possibility of being sued for malpractice based on their own acts and omissions.

When the going gets rough, relying on your employer's policy can be a costly mistake.



MYTH: If you have your own insurance, you're more likely to get sued.

Sometimes a plaintiff's attorney names multiple defendants in a lawsuit in an attempt to access additional sets of insurance limits and increase the chance for a higher settlement. But that doesn't mean having insurance increases your chance of getting sued, because insurance status isn't public information. Whether a defendant has insurance can be discovered only *after* a lawsuit is filed. The likelihood of the plaintiff dismissing you after learning you don't have insurance depends on various factors, such as the significance of your role in the incident and whether you have assets to satisfy a potential judgment (such as savings, a home, or a vacation property).

MYTH: You can be sued only if you make a mistake.

You can be sued if someone believes you're responsible for a certain patient outcome, even if that belief is incorrect. Also, you can be sued by a patient who hasn't suffered damages but hopes to win a settlement, even though the lawsuit is frivolous. Regardless of whether a lawsuit has merit, you'll incur expenses as you attempt to get dismissed from the suit. An individual malpractice insurance policy provides peace of mind and protects against the financial ruin that can result from being sued.

MYTH: You don't need your own insurance because your employer's policy covers you.

Most nurses who rely on employer coverage alone have never seen the policy or asked about the scope of coverage. They're often surprised to learn such insurance has gaps and doesn't adequately cover all of their risks. For instance, if the incident that led to a lawsuit is outside the scope of your job description or falls within a policy exclusion, your employer may refuse to defend you. If the claim is filed after you re-



signed or were terminated, the employer's policy may not cover you.

If the facts involved are unclear when the lawsuit is filed, your employer's insurer may defend you subject to a reservation of rights; that reservation of rights enables the insurer to investigate further without waiving its right to deny coverage later. If your employer believes you're responsible for the liability it faces, it may even bring a counterclaim against you. In short, you could easily find yourself without coverage if you rely on your employer's policy alone.

What's more, if you're covered only under your employer's policy, you probably won't have a choice about who represents you. A claims adjuster from your employer's insurance company will assign an attorney, who may represent you along with all other defendants covered under the employer's policy. The policy exists primarily to protect your employer from liability it faces from employee actions. When a conflict of interest arises between employer and employee, the employer's interest takes priority.

Also, your employer's policy protects you only when you're at work. If you provide nursing services outside of your job, even if it's as a volunteer or a favor to your neighbor, you need to have an individual policy to be covered. Good Samaritan laws protect you only in emergency situations.

Why you should have your own policy

When you have your own malpractice insurance, the company provides an attorney to represent your specific interests. Some policies even allow you to choose your own attorney. When you're covered by both your own and your employer's policies, the two insurance companies coordinate representation, benefits, and allocation of claim costs and any indemnity or settlement payments.

An individual policy also provides other benefits not usually included in employer policies, such as coverage for assault, first-aid expenses, violations of the Health Insurance Portability and Accountability Act, libel or slander, depositions, property damage, and license protection benefits. (See *License protection benefits*.)

In addition, most companies that provide individual policies offer risk-management services, including continuing education credits, information about claim trends, assessment forms, newsletters, and other valuable tools. You can compare those services and obtain quotes for coverage online from a variety of companies.

License protection benefits

Individual malpractice insurance policies offer the added benefit of license protection—something few employer policies offer. License protection benefits cover your attorney fees and expenses when you face an investigation or disciplinary charges by your licensing board. For example, if you're disciplined for inappropriate use of social media, your own policy would pay for your legal representation.

License protection limits may vary from one policy to the next, but many policies provide up to \$25,000 in benefits during each policy year. For many nurses, the likelihood of facing disciplinary charges is much greater than the likelihood of being sued for malpractice. Given that your license enables you to practice your profession, the reasonable cost of the premium is a good investment in protecting your livelihood and ability to earn a living.

Policy limits and forms

Each professional liability insurance policy limits the liability it covers. For example, many policies cover up to \$1 million in liability for each claim and up to \$6 million total (called in the aggregate) for all claims reported during a given policy period. With an individual policy, those limits are available to cover your liability. (In contrast, with an employer policy, all named defendants commonly share the liability limits.)

If the defense costs paid on your behalf, including attorney's fees and other expenses, are *inside the limits*, those costs reduce the amount of money available to pay an actual judgment or settlement. On the other hand, if the defense costs are *outside the limits*, you have the full amount of the policy limits available for judgment or settlement.

Types of policies

Professional liability insurance comes in two types—occurrence based and claims based.

- An *occurrence-based* policy covers incidents occurring during the policy period, regardless of when the claim is reported. Each policy year, the limits are restored, meaning you have a full set of limits available for claims covered during that period.
- A *claims-based* policy covers incidents that occur during the policy period only if the claim is also reported during that period. Unlike an occurrence-based policy, it has only one set of limits during the life of a claims-made policy. Patients commonly file lawsuits several years after an incident happens, just before the legally defined deadline (statute of limitations). For this reason, claims are much more likely to be made in the first year than in later years. Consequently, the premium increases year by year in steps until it levels off and is considered mature.

Nursing malpractice insurance commonly is occurrence based. You need to understand which type of policy you have, especially when you change from one company to another. If you've been cov-

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ered by an occurrence-based policy and switch to a claims-made policy, no gap in coverage occurs. But if you switch from a claims-based policy to an occurrence-based policy, you won't be covered for incidents that occurred but weren't reported when the claims-based policy was in force. To cover risks associated with that gap period, you must buy (from either the former or new company) what's called tail or prior-acts coverage.

Act now

When you buy a home, you can't get a mortgage without purchasing homeowners insurance. By law, you must carry automobile insurance on your vehicle. Both homeowners and automobile insurance cover you for damage to property and liability you may face from an incident involving that property.

Some argue that nurses and other healthcare professionals also should be required by law to carry

their own malpractice insurance. Where personal assets are insufficient to cover damages, insurance becomes necessary. Also, nurses should be accountable and responsible for their own practice.

If you don't already have your own malpractice insurance, I hope this article has convinced you to take action. Usually, the annual premium for a registered nurse or a licensed practical

nurse is less than \$100—a small price to pay for peace of mind. Coverage for advanced practice registered nurses varies according to the risks associated with the subspecialty and setting. ★

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Selected reference

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