

Individual nurse liability insurance

Understand your options

By Sharon P. O'Neill, DNP, JD, FNP-BC, PPCNP-BC, PMHNP-BC

INDIVIDUAL professional liability insurance protects nurses in legal actions brought against them by a patient, a patient's personal representative, or the state board of nursing (SBON). Although physicians receive the brunt of lawsuits, nurses also get sued on a regular basis. Nurses in all practice settings provide most of the hands-on patient care, placing them at risk for civil, regulatory, and in some cases criminal actions. Under the legal doctrine of *respondere superior* (let the master answer), employers re-

Litigation goals include compensating individuals injured by intentional and unintentional negligent acts, deterring unsafe practices, and exacting corrective justice. (See *Why nurses get sued*.) Actions against nurses that result in a verdict or judgment in a civil action, a settlement, a criminal conviction, or a sanction by the SBON become a permanent part of the nurse's SBON record, which is publicly accessible.

Before purchasing individual insurance coverage, investigate your options, understand what's covered by your employer, and learn about coverage limitations, so you can make an informed decision about which coverage to choose.

Types of liability coverage

Professional liability policies—claims-made and occurrence-based—provide different types of coverage.

Claims-made insurance coverage

Claims-made policies cover an incident and a claim as long as they both occur during the policy period. For example, imagine you have a policy with a period that runs from January 1, 2021, at 12:00 AM to December 31, 2021, at 11:59 PM. Your patient develops a nerve palsy as a result of an intramuscular injection you administer on January 10, 2021, and the patient's attorney files a claim on November 10, 2021. Because the alleged incident and claim occurred during the policy period, the policy provides coverage. If the attorney filed the action on January 2, 2022 (2 days after the policy term ended), the policy wouldn't cover you. For some healthcare settings, the cost savings of a claims-made policy outweighs the potential risk of a claim beyond the policy period,

main responsible for acts employees perform within the scope of their employment, and nurses can become involved in a legal action, even when they follow the standard of care. To manage risks and minimize liability, many nurses purchase their own malpractice insurance without first understanding liability coverage and its intricacies.



particularly when a practice or hospital obtains continued coverage year after year, extending the policy period.

Initially, claims-made policies provide cost savings. During the first year, the premium is as low as 10% to 30% of the maximum rate (mature rate). The premium then increases year after year for 3 to 5 years when the premium reaches the mature rate. Nurses, particularly those in advanced practice roles, should be aware of claims-made coverage when negotiating employment and leaving a practice. Frequently, practices and healthcare organizations fail to consider the rise in the claims-made insurance premium and the eventual need to obtain other coverage (tail insurance) when the policy ends.

Tail insurance, which extends coverage beyond the policy period, provides sufficient coverage through the statute of limitations period, after which a patient can no longer file a complaint. In most states, the statute of limitations for suits is 3 to 5 years, with the exception of minors whose parents can sue on behalf of the child until they turn 18. At that time, the child can sue on their own behalf until age 21.

Insurance carriers charge a one-time fee to extend the coverage, which can cost as much as 1.5 to 2.0 times the annual policy premium of the final year of coverage. For example, if the annual practice premium costs \$10,000 during the last year of coverage, the tail coverage could cost \$15,000 to \$20,000.

When nurses leave a position or the practice setting switches to a new insurance carrier, the nurse and the practice continue to be exposed to potential legal actions for acts that occurred during the policy period. Without tail insurance, you're not covered for events that occurred during the policy period if the claim is made after the policy ends.

Occurrence-based insurance coverage

Occurrence-based coverage provides lifetime coverage for activities that occurred during the policy period, even if the claim occurs after the policy ends. For example, if your patient with nerve palsy files a legal action in December 2022 in response to an injection given during the policy period (which ended on December 31, 2021), your occurrence-based insurance covers you. Occurrence-based policies cost more per year than claims-made policies, but



Why nurses get sued

Nurses can get sued for many reasons, including

- medication errors
- failure to follow orders
- practicing outside one's scope of practice
- failure to recognize an order error
- failure to adequately monitor and assess patients
- failure to communicate, report, or notify and provide pertinent information about a patient in a timely and proper manner
- wrongful delegation of a nursing function.

they provide the best coverage and don't require tail insurance when the policy ends. (See *Coverage amounts*.)

Individual coverage

Many experts weigh in on different sides of the individual malpractice insurance debate. However, keep in mind that economic issues drive malpractice actions; the presence or absence of insurance doesn't change this fact.

In most cases, the employer will answer to allegations against you and other providers. For example, hospitals and large health systems carry millions of dollars of coverage, including excess liability coverage for situations where litigation results in an awarded amount outside of the policy limits. When an employer provides excess liability coverage, payment by the nurse's individual policy occurs only when the payout exceeds the employer's combined liability and excess insurance policy coverage limits.

Many nurses report being told by hospital risk managers that obtaining an individual professional liability policy increases the potential sources of money for a claim settlement or jury award at trial. However, most at-



Coverage amounts

Insurance policy limits set the amount paid for a single incident (occurrence/claim) and a maximum amount (aggregate) for other possible claims during the policy period. Although no database offers guidance on what constitutes “enough coverage,” current insurance should cover the expense of litigation and damage awards or settlement payouts.

Policy limits

Typical malpractice liability policies set limits of \$1,000,000 (claim)/\$3,000,000 to \$6,000,000 (aggregate) with \$10,000 per claim/\$25,000 aggregate to cover disciplinary actions by regulatory boards such as the state board of nursing. A policy with these limits pays out up to \$1,000,000 on a single claim and up to a total of \$3,000,000 to \$6,000,000 on a combination of separate claims during a policy period, depending on the coverage purchased.

Fees

Attorney and litigation fees may or may not be included in these amounts. If they’re included, legal costs are deducted before any money is used to pay the verdict or the settlement cost. Legal fees must be calculated into the negotiations of a settlement because defendants remain liable for amounts paid above the policy limits.

If you decide to purchase individual liability insurance, purchase as much as you can afford and ask if attorney fees and litigation costs are separate or included in the limits of liability for the policy.

torneys decide who to sue based on the facts of the case, not whether someone has an individual policy. Also, the plaintiff’s attorney won’t know if a nurse has a policy until the nurse is named as a defendant and discloses that fact during the discovery process.

Telling nurses to forgo individual coverage ignores other reasons why nurses get individual coverage in the first place. For example, employer coverage usually doesn’t cover actions brought by the plaintiff with the SBON, information privacy actions, sexual misconduct,

property damage, or assault (including workplace violence).

Impact of an individual liability policy

Individual liability coverage offers many advantages, and nurses should understand its impact on litigation and litigation strategy. Litigators go after money in policies, not the personal assets of the defendant. Nurses who might otherwise be released from litigation may stay in because their individual policy creates another source of money. However, information about the nurse’s policy is shared with the plaintiff’s attorney only if the nurse is named as an individual defendant. A unified defense is the best option for outcomes that favor defendants, and it places the nurse’s policy secondary to the employer’s.

It should be noted that, although some suggest that employers may sue nurses with personal liability insurance to recover large payouts, the literature does not support this practice.

Coverage for SBON actions

The plaintiff’s counsel may file an action with the SBON, as a litigation strategy, to determine whether the nurse failed to follow the requirements of the Nurse Practice Act. A result favoring the plaintiff in an SBON action strengthens the case when it goes through the civil process. In most cases, employers don’t provide legal counsel for nurses in an SBON proceeding unless they believe that a bad outcome will impact the resolution of the matter in court or substantially increase the amount of an eventual settlement. If a patient or peer files a complaint with the SBON, your employer may be mandated by law to notify the SBON of irregularities in your practice. Likewise, criminal activity (such as driving while intoxicated) that results in a misdemeanor or felony conviction is automatically reported to the SBON. As mandated by individual state practice acts and codified regulations, SBONs must respond to every complaint, even if the complaint appears frivolous or retaliatory. Most individual nurse liability policies provide a maximum of \$10,000 for attorney and legal fees in administrative proceedings.

Many nurses without legal representation in SBON matters agree to restrictions on their license without fully understanding the implications to current and future employment. A decision to enter into an agreement with the

Continued on page 58

SBON should be based on facts not emotions or a desire to end the stress resulting from the process. The wrong decision impacts the nurse for years to come, affecting current and future income and employability and can result in wage garnishment or fines.

Individual policy limitations

Individual policies don't provide primary coverage unless no other coverage exists. Most healthcare organizations see an individual policy as secondary, and your representation in a case will be controlled by your employer, not by the attorney hired by your policy. In this situation, the attorney retained under your policy can't file documents with the court or appear in court on your behalf. In addition, your employer or the court may decide that you need your own legal counsel to represent your best interests. This attorney would be hired under your employer's policy not yours.

Activities outside of your scope of practice may not be covered under your employer's policy. Also, individual nurse liability policies may or may not cover actions involving intentional or unintentional defamation of a patient's character, assault (putting a patient in fear of imminent physical harm), and battery (actual harm to the patient), Health Insurance Portability and Accounting Act violations, or property damage.

Cost and other considerations

The cost of insurance and insurability depends on past history of legal action and risk associated with certain areas of practice. For example, if you work in an emergency department, intensive care, pediatrics, or labor and delivery, you'll pay higher premiums because of increased litigation risk.

As long as you maintain your nursing license, even in retirement or when off duty or on vacation, an aggrieved party can file a complaint with the board of nursing. Also keep in mind that employer coverage covers you only when you perform duties on behalf of your employer. Volunteer activities outside of your employment are your own responsibility. When volunteering for employer-sponsored community healthcare events, obtain written assurances that your employer's liability policy covers your actions related to performance at the activity.

Understand your options

Your decision to obtain an individual nurse lia-

bility policy will depend on many factors. As an agent of a hospital, you require an aggressive defense to protect the hospital's best interests. If you're following hospital procedures and policies in accordance with your job description and scope of practice, you shouldn't be worried about coverage under the hospital policy. In most cases, even if your actions fall outside of your scope of practice, you'll continue to be covered by your employer's policy, and your employer remains liable for your actions and will defend you.

However, it's important to remember that your employer's insurance won't cover you for actions related to SBON proceedings. In addition, certain activities and circumstances (giving advice to friends and neighbors, acting as a nurse in a volunteer activity such as a blood pressure screening event, personal wealth) typically necessitates purchasing a separate policy. Before making the purchase, carefully review the coverage to ensure you understand what it provides.

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The information in this article does not constitute legal advice.

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References

- Bookman K, Zane RD. Surviving a medical malpractice lawsuit. *Emerg Med Clin North Am.* 2020;38(2):539-48. doi:10.1016/j.emc.2020.01.006
- Brous E. Reciprocal enforcement and other collateral issues with licensure discipline. *J Nurse Pract.* 2017;13(2):118-22. doi:10.1016/j.nurpra.2016.08.016
- Butler S. Do all nurses need malpractice insurance? *J Radiol Nurs.* 2019;38(3):148-9. doi:10.1016/j.jradnu.2019.05.018
- Leander E. Do you need malpractice tail coverage? *Medical Economics.* May 10, 2016. medicaleconomics.com/view/do-you-need-malpractice-tail-coverage
- National Practitioner Data Bank Legislation & regulations. tinyurl.com/y359ysph
- Pohlman KJ. Why you need your own malpractice insurance. *Am Nurse Today.* 2015;10(11):28-30.
- Russell K. Reporting of nurse discipline to the National Practitioner Data Bank. *J Nurs Regul.* 2018;9(2):31-40. doi:10.1016/S2155-8256(18)30115-7
- Smalls HT. What happens when the board of nursing comes calling: Investigation and disciplinary actions. *Neonatal Netw.* 2014;33(2):106-8. doi:10.1891/0730-0832.33.2.106
- Wilhite CL. Do I need my own malpractice insurance? *Plast Surg Nurs.* 2011;31(4):185-7. doi:10.1097/PSN.0b013e31823c422f