

Professional Liability Insurance: Some is Better than None

By Gary McCammon, AAPA Insurance Services

One of the most common questions we are asked is, "how much insurance should I buy?" Every insurance policy has a limitation on the amount of how much will be paid to a claimant. The policy designates this as the "Limits of Liability" or "limits", for short. A limit applies to each claim or incident, as defined by the particular policy. There is also a limit for the sum of all amounts paid for all claims or incidents against you during the policy term (usually one year). For example, if your limits of liability are \$1,000,000 per incident and \$3,000,000 aggregate, this means you can have three \$1,000,000 settlements paid on your behalf before the maximum (aggregate) is reached. Once the aggregate is reached, your policy is said to be exhausted, meaning there is no insurance coverage left.

Limits like the above are usually expressed as \$1,000,000/\$3,000,000. The newly endorsed AAPA plan has three limits options: \$100,000/\$300,000, \$500,000/\$1,000,000 and \$1,000,000/\$6,000,000. Although most healthcare facilities require \$1,000,000/\$3,000,000, the AAPA-endorsed plan's top option offers an additional \$3,000,000 of aggregate protection.

Many PAs carry less than the top amount. In some cases, the PA is already covered by his or her employer but wants assurance of personal protection in the event that the employer's coverage is not properly maintained or becomes exhausted at some point. The employer's failure to maintain insurance does not absolve the PA from the exposure of his or her personal assets if an uncovered lawsuit is successful. PAs should be more concerned about this than ever during the current malpractice insurance crisis as more insurers go out of business. This will leave some employers' policies with inadequate assets to pay the full policy limits.

However, some PAs carry less than the maximum out of concern for becoming a high-profile target in a lawsuit. With the supervising physician and other physicians and healthcare providers named as defendants along with the PA in a given suit, there is justifiable concern that a PA with \$1,000,000 of coverage will draw more attention from plaintiff attorneys if all the other defendants have only \$100,000 of coverage. With an increasing number of physicians dropping coverage limits (or even going bare) due to cost, this is more relevant than ever.

The AAPA-endorsed plan does not restrict eligibility to purchase higher limits based on the employer's or supervising physician's limits. If your employer only has \$100,000/\$300,000 limits, you can still obtain \$1,000,000/\$6,000,000 for your own policy. Or you can obtain \$100,000/\$300,000, matching the physician's coverage. The choice is yours.

This begs the question: how much is enough? Your insurance advisor can only tell you what options are available and at what cost. *You* must weigh the benefit of more coverage against the additional cost. Regardless, some coverage, even at \$100,000/\$300,000, is better than none at all or total reliance on your employer's insurance.

What good is only \$100,000/\$300,000 of coverage per claim in the world of multi-million dollar malpractice suits? Consider that the costs of your defense are assumed by your insurer *in addition to* the limits of liability (with a good policy). The cost of attorney fees and court costs can be well into six-figures before the case is settled or results in a verdict. Until a settlement with the plaintiff is reached or a verdict is paid to the plaintiff, your coverage for legal fees is *unlimited* as to amount.

What happens if the settlement is \$5,000,000? What good is the paltry \$100,000 of coverage? Your employer's coverage may come first, meaning that if the employer has a \$20,000,000 limit of liability (not

unusual for a hospital, for example), you contribute nothing. More likely, though, there will be a contribution by shares. All limits are pooled and the settlement is allocated among the various insurance policies covering all the co-defendants. In this example, there are total limits of \$20,100,000 between you and the employer. Your pro rata share of the \$5,000,000 settlement is $\frac{1}{2}$ of 1% or \$25,000. In spite of such a large total payout, you still would have \$75,000 more available if the claim would have settled for more and \$275,000 for future claims during the remaining policy term.

You are covered for your liability in the above example, but more importantly, you have a legal defense of your own and are not at the total mercy of the law firm appointed by your current or former employer's insurer. And if you have an occurrence policy, you will have at least some coverage even if your employer fails to maintain insurance into the future when you are finally sued. The healthcare system that employs you today may go through several mergers or maybe even go out of business. By the time you are sued, just identifying your former employer's insurer may be the greatest challenge!

What good is \$100,000 of coverage? It is infinitely better than none at all. But for less than the cost of a daily cappuccino, you can have that peace of mind.

Please note that any description of the AAPA-endorsed policy in this article is only a summary of certain terms and conditions of that policy. Refer to the actual policy for complete details of coverage and conditions. Coverage may vary depending on particular state requirements. For further information, you can reach AAPA Insurance Services at (toll-free) 877/356-2272.

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