

# INSURANCE

## More Information on Tail Coverage

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Whether you buy your own malpractice insurance policy or rely on your employer's coverage, you will undoubtedly confront the concept of "tail" insurance at some point in your career. Tail coverage is necessary if you (or your employer) have the type of policy called "claims-made," terminate that policy, and do not replace it with a new policy that incorporates the tail exposure. A claims-made policy covers you for claims of malpractice made against you during the term of your policy. Because a claim can be made against you months or years after you last treated a patient, there is the chance you could be sued after the policy expires. However, that would only be covered if you attach a tail to the terminated claims-made policy.

For example, say you have a policy that runs from January 1, 2006, until January 1, 2007. You see a patient on December 1, 2006. The patient files a lawsuit against you on November 30, 2008. Since the suit was based on services rendered by you on December 1, 2006, you are not covered if you did not buy a tail. All coverage stops at 12:01 a.m. on January 1, 2007.

Incidentally, note that insurance policies run from the same date: January 1 in the previous example. That's because the effective time of coverage is 12:01 a.m., not mid-

night. If you terminate a policy on December 31, you have one day in which you are not covered: from 12:01 a.m. on December 31 until 12:01 a.m. on January 1, the next day. Sometimes, policyholders ask for an effective date of coverage, assuming it works like an accounting year: from January 1 to December 31. For example, you know that your last policy was cancelled on July 31, so you request an effective date of August 1 on a new policy. You really should ask for the new policy to be effective on July 31. Insurance providers try to avoid these one-day gaps, but they may be totally reliant on you to tell them the effective and termination dates if they were not involved in procuring your prior policy.

Back to the policy expiring on January 2007: You can cover your tail in one of two ways.

You can buy an extended reporting period endorsement. An endorsement is a written addendum that attaches to your policy documentation. You should purchase an unlimited tail. This means that the claim may be made against you anytime in the future and be covered as long as it is based on services you rendered during the term of the policy to which the endorsement is attached. Your purchase of this endorsement is the proverbial "buying a tail" or "tailing out."

Another way to cover the same exposure is to buy a policy for the period of January 1, 2007, to January 1, 2008 (assuming you still need to have a policy) and request a

"retroactive date" of January 1, 2006. This means that any claims made during the policy period for alleged malpractice during the policy term *and* before the policy term back to January 1, 2006, are covered. This is called "prior acts" coverage or "nose" coverage. Your old insurer's tail coverage is the new insurer's prior acts coverage and vice versa. They cover the same thing.

Which of the two options is preferred? From a coverage standpoint, they are the same. There is some logic in preferring that your current insurer cover any future claims by buying prior acts rather than relying on an insurer with whom you no longer have a customer relationship. But prior acts is invariably better for another reason: It's much cheaper. Prior acts coverage is based on an actuarial evaluation of what it is worth to transfer this specific risk to the new insurer. Tail coverage is based on that same evaluation, but with the addition of an "adverse risk selection" premium. In other words, many policyholders who buy the tail rather than prior acts do so because the new insurer (or maybe no insurer) will agree to provide the prior acts coverage. The old insurer is required to offer you tail coverage under the terms of the claims-made policy (and often by law), while the new insurer can simply decline to offer the coverage, take it or leave it.

Granted, many policyholders just want to "tail out" because they no longer have need

of an insurance policy, since they are going from an individual policy to an employer's policy. But because the adverse selection exposure exists for others, insurers will continue to price the tail conservatively. In effect, they do not really want to sell you the tail. Since you are leaving as a customer, they would prefer a clean break as opposed to carrying a contingent liability on the books indefinitely. That is why it is important *before* you take a job offer to confirm in writing that your employer will buy or reimburse you for professional liability insurance *including* the purchase of tail coverage with an unlimited discovery and reporting period. That way, you won't get stuck with the bill.

I often get calls seeking a third option for tail coverage: a stand-alone policy that just covers the tail exposure. Unfortunately, these do not exist. No insurer just wants to cover the tail exposure of another insurer without an ongoing policyholder relationship.

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