



What Every Physician Wished They Knew About Malpractice...

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Medical Malpractice

-noun

- Failure of a professional person, as a physician, to render proper services through reprehensible ignorance or negligence or through criminal intent, esp. when injury or loss follows.
- Any improper, negligent practice; misconduct or misuse

Agenda



- Overview of Malpractice Insurance
- Types of Malpractice Policies
- Premiums & what they're based on
- The Malpractice Marketplace
- Practical Application
- Q & A



Overview

What is Malpractice Insurance?

- Malpractice insurance provides coverage for diagnosis and treatment of patients
 - Coverage is not ‘standardized’
 - Varies from one insurance company to the next



Who is Insured?

- The physician named on the policy
- Any entity named on the policy
 - Must be named in order to be covered
- Allied Professionals
 - Mid-Levels (NP's, PA's, CRNA's etc. are not automatically covered under most policies)
 - Share the Limit of liability with the physician
- Locums
 - Be very careful about any locums provision in your policy. Locums are NOT usually covered if they are 'extra help'. However, they may be covered if they are replacing the named physician under certain circumstances



Basics of Malpractice Insurance

- Limits of Liability
 - Per claim
 - Aggregate
 - Formatting example (\$1,000,000 / \$3,000,000)
- Deductibles / Self-insured retentions
 - Usually apply on a per-claim basis
 - May help reduce the cost of malpractice
 - Be sure to weigh the cost of the deductible vs. the premium savings as there may not be enough financial advantage for you to justify adding an out-of-pocket expense in the event of a claim

What is covered?



- Indemnity
 - Sums the insured becomes legally obligated to pay as damages due to an injury arising out of a covered claim
- Defense
 - Coverage for the cost to defend a claim
 - Many insurance companies will cover the cost of defense, even if the claim is false, or groundless
 - Verify if your policy provides coverage for your defense **INSIDE or OUTSIDE** the limit of liability
 - Always to your benefit for defense to be “outside” or “in addition to” the limit of liability, leaving your liability limits available to pay indemnity

What is NOT covered?

(common policy exclusions)

- Punitive, exemplary, multiplied damages, fines or penalties
- Claims arising from providers or businesses that are not named on the policy
- Acts of discrimination, harassment or misconduct (including sexual misconduct)
- Employment-related claims
- Claims that occur while the physician is intoxicated or under the influence of drugs
- Work outside of your specialty or subspecialty:
 - Frequent exclusions for:
 - Bariatrics
 - Obstetrics
 - Clinical Trials
 - Non-FDA approved procedures or treatments



What is NOT covered?

- Excluded Coverages may need to be covered under another type of policy such as:
 - General liability
 - Employment Practices Liability
 - Directors & Officers Liability
 - Medical Billing Errors & Omissions
 - Managed Care Errors & Omissions
- Talk to your agent to make sure that you are adequately covered



Types of Malpractice Policies

Types of Malpractice Policies: Occurrence vs. Claims Made

- Occurrence
 - Policy in force at the time the claim occurred responds to the suit/claim
- Claims Made
 - Policy in force at the time the claim is made responds to the suit/claim
 - Policy must have a “retroactive date” (also called prior acts or ‘nose’ coverage) which includes the date that the claim occurred

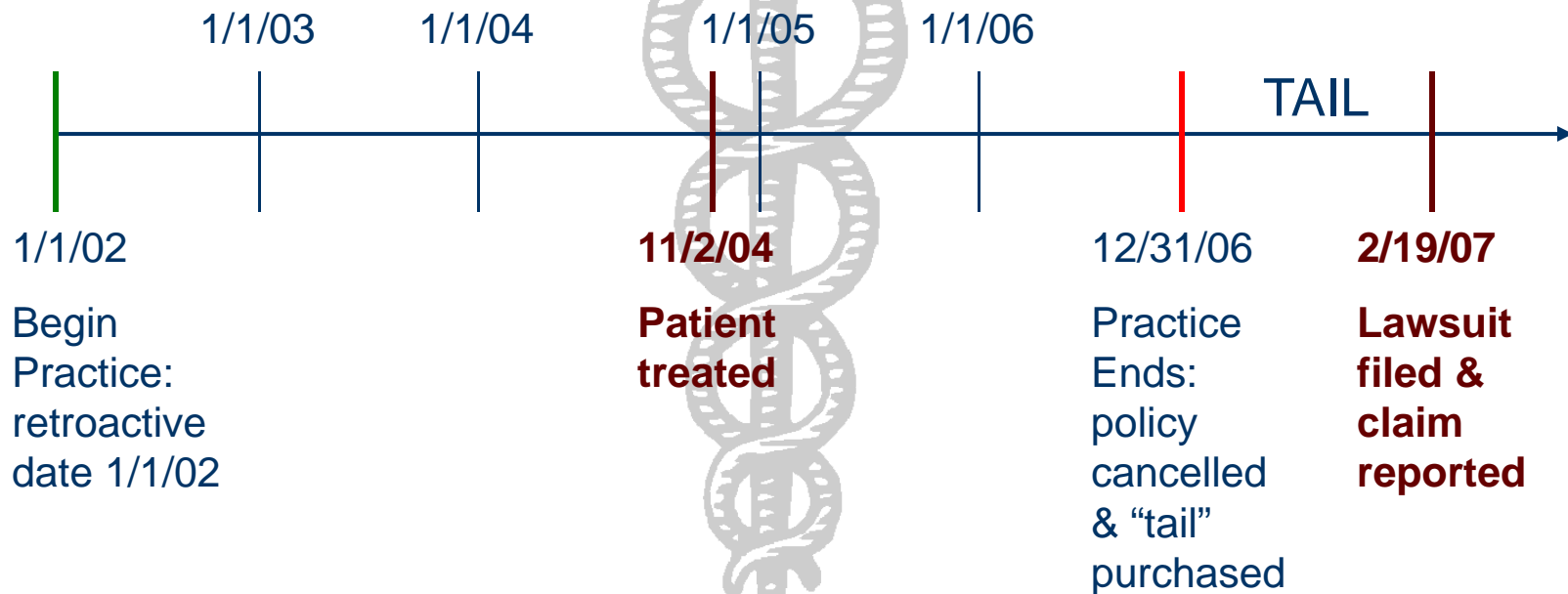
Types of Coverage Forms: Claims Made

- “Tail” endorsements (or Extended Reporting Endorsements) allow the physician to continue to report claims beyond the cancellation of the policy
 - The endorsement may have a specified time period in which claims can be reported (1, 2 or 3 years, for example) or may be unlimited
 - The premium is usually based on a percentage of the annual premium paid for the policy
 - Varies tremendously from one company to the next, but in general range from 150% to 350% of the annual policy premium

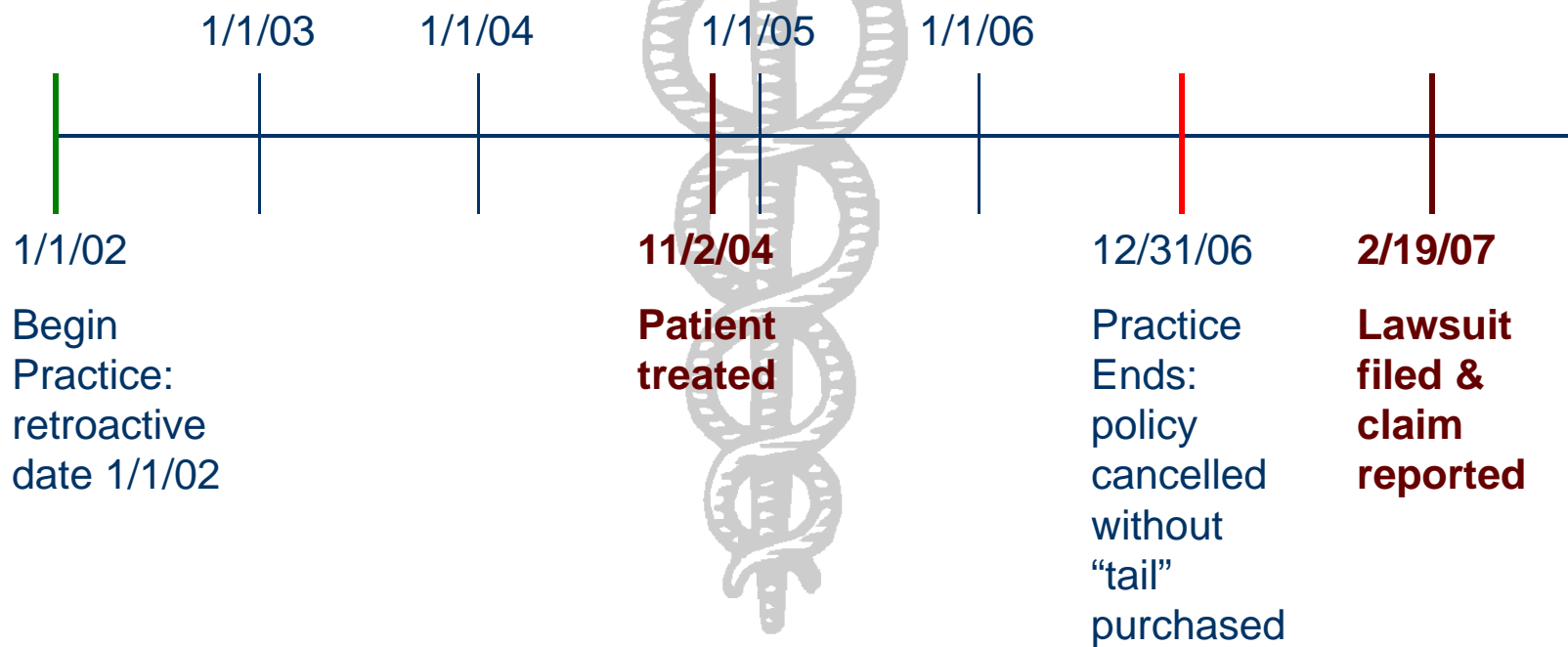
Types of Coverage Forms: Claims Made

- “Retroactive Dates” or ‘nose coverage’ allows the physician to report claims for incidents which occurred prior to the inception date of the policy
 - Insurance companies vary on their positions regarding ‘nose’ coverage.
 - Many regional insurance companies will not allow a physician to carry their “retroactive date” for work outside of the state
 - Many employers will not allow new physicians to carry over their “retroactive date” due to the fact that they may be paying premiums to cover claims for work that was done for a previous employer.

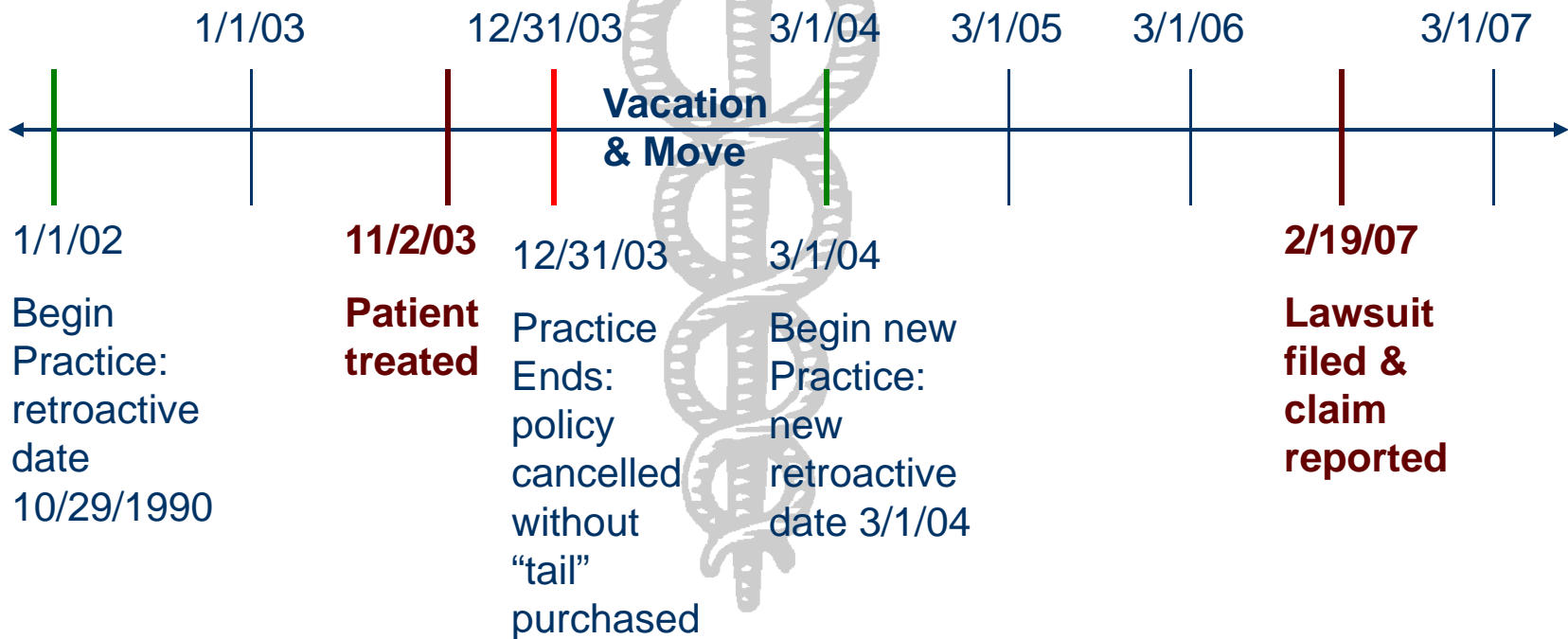
Claims Made Coverage Form Covered Claim Timeline



Claims Made Coverage Form Un-Covered Claim Timeline #1

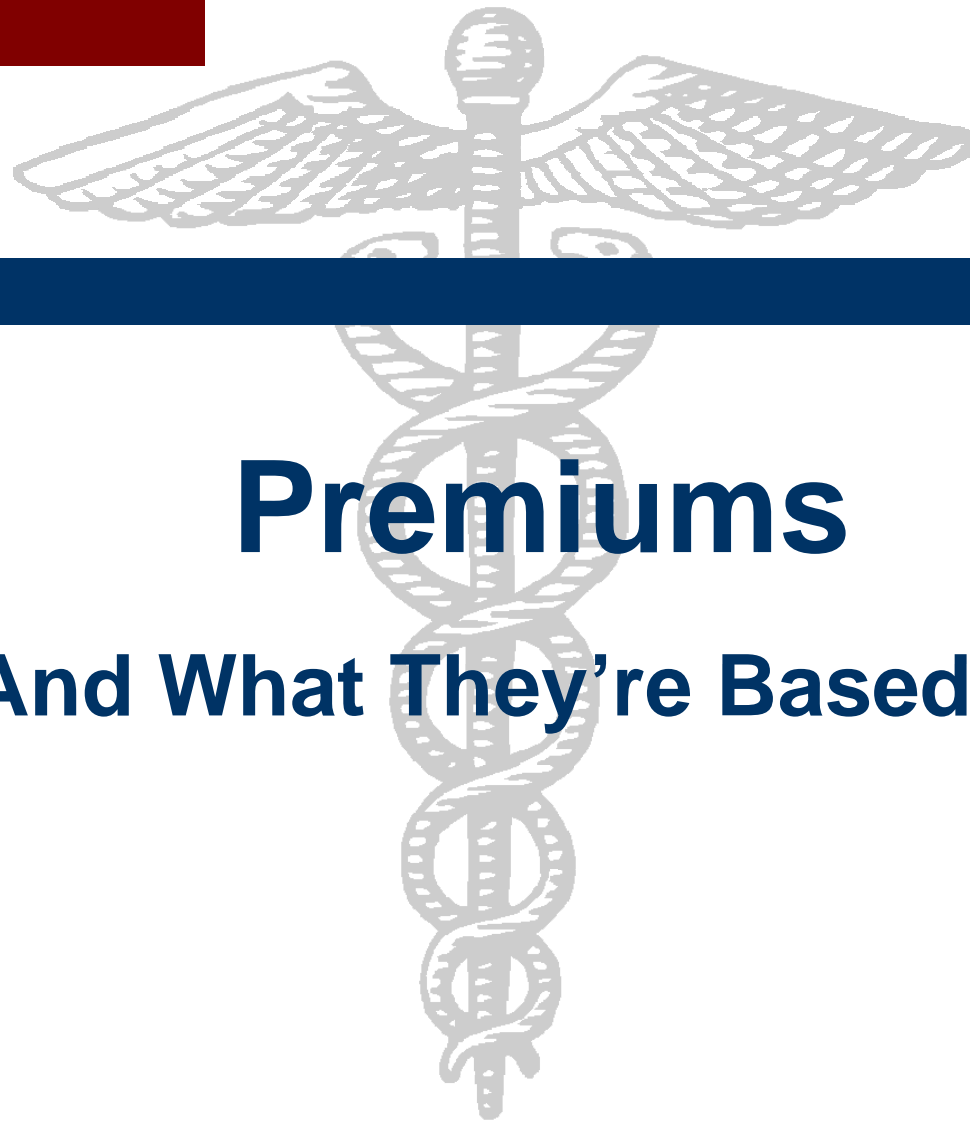


Claims Made Coverage Form Un-Covered Claim Timeline #2



Types of Coverage Forms: Claims Made

- When the need for a “Tail” endorsements should be evaluated:
 - Changing from one employer to another
 - Moving from one state to another
 - Changing insurance companies
 - Changing specialty, or changing procedures within your specialty (increase or decrease in exposure)
 - Retirement
 - Permanent Disability
 - Upon your death, to protect the assets of your estate



Premiums

And What They're Based On

Premiums

(and what they're based on)



- Classification
 - Usually determined by a ‘supplemental application’ at the time you apply for coverage with a company
- Loss History
 - Physicians with more claims, in general, pay higher premiums
- Policy limits & deductibles
 - Higher limits of liability will generally increase premiums
 - Deductibles may lower premiums
- Maturity
 - Applies only to “claims made” policies

Premiums

(and what they're based on)



- Additional Insureds
 - Premiums for Mid-level providers are frequently covered under the physician's policy
 - "Additional Help" providers may be covered under a physician's policy
- Outside Underwriting Factors
 - Case law & tort reform
 - Medical Advancements
 - New treatments & procedures can cause malpractice carriers to be reactive
 - The insurance cycle



The Malpractice Marketplace

The Malpractice Marketplace



- Cyclical Market
 - “Hard” cycles
 - Increased pricing
 - Tighter underwriting guidelines
 - Carriers that may not write physicians with ‘bare’ periods or other credentialing issues
 - Less tolerance for physicians with claims history
 - Fewer carriers willing to write malpractice insurance
 - “Soft” cycles
 - Strong competition among many carriers
 - More underwriting consideration for physicians with claims
 - Ability to negotiate policy terms to the benefit of the policyholder



The Malpractice Marketplace

- Preferred Carriers
 - Companies that are “admitted” to do business in a particular state
 - Pros:
 - Must abide by state regulatory guidelines
 - Frequently have lower rates
 - Cons
 - Less ability to deviate from filed rates
 - Less ability to change coverages or modify policy terms/conditions to meet an insured’s needs



The Malpractice Marketplace

- Non-Standard and Non-Admitted Carriers
 - Companies are NOT “admitted” to do business in a particular state
 - Pros:
 - Not subject to the state’s rate regulation
 - Can “manuscript” endorsements & coverage to meet particular needs
 - Cons:
 - Must be declined by the ‘standard market’ before coverage can be sought in the non-standard market
 - Companies are not “guaranteed” by the State – if the company goes bankrupt, the state will not continue to pay claims



Practical Application

Practical Application



- The best thing ANY physician can do with regard to their malpractice coverage is

READ

- Read everything you receive from your malpractice company
 - Don't throw away documents until you've read them as you may have a legal obligation to complete paperwork or return documentation to your malpractice carrier

Practical Application



- **DON'T SIGN ANYTHING!** (that you have not completed yourself, and read line-by-line)
 - Types of forms that you may be required to sign:
 - Your application for insurance
 - Supplemental application describing your practice, specialty or sub-specialty
 - Renewal applications or “census”
 - Risk management forms
 - CME requirements
 - Claims summaries or notices
 - Most documents that you sign for your insurance company are legally binding and may become part of your policy an/or permanent underwriting file. Accuracy is imperative.



Practical Application

- Read your policy, it's exclusions and endorsements
 - Ask your employer's malpractice liaison, your broker or your company's customer service representative for explanation if you need clarification about any policy terms
 - (it's also a great cure for insomnia!)

Practical Application



- Talk
 - Ask questions if you don't have a complete understanding of what malpractice coverage is being offered



Practical Application

- Negotiate

(Prospective Employers, please close your eyes & ears)

- Your malpractice insurance is one of the most important parts of your practice as a physician
 - “Tail” and the payment of your malpractice premiums are very important parts of your overall compensation package.
 - Don’t miss the opportunity to discuss these items with anyone you are entertaining employment
 - Make sure when you sign any employment agreement, that it clearly outlines payment of premiums and “tail” issues negotiated



Practical Application

- Keep a file
 - Keep copies of all of your important malpractice-related documents:
 - Certificates of Insurance
 - Including a certificate from any training/residency/fellowships
 - Policies & Endorsements (including “tail” endorsements)
 - Licenses
 - Proof of Residency
 - CME Certificates



Practical Application

- Certificates of Insurance
 - This is proof of your malpractice coverage
 - Should be issued by your insurance company or authorized broker
 - You have a right to have copies of certificates for any work you do for anyone
 - Ask for a copy from every place that you work (including locums work)
 - If you don't have a certificate, you may not have coverage

Practical Application



- Other Items

- Keep your CV updated with contact information for your previous employers, including insurance/credentialing contacts
- If you have privileges for outside work, keep contact information for that facility
- If you do locums work, verify who you are working for, and who is providing your insurance. Get your certificate for your permanent file, especially if your locums work is at a hospital, clinic, facility or physician pool
 - These types of work are frequently sub-contracted and harder for your credentialing coordinators to track down



Practical Application

- Be Alert & Pro-active
 - Don't depend on anyone else to verify that your malpractice policy has been issued, and that your credentialing is in place
 - Get a copy of your certificate and verify your privileges are in place **BEFORE** you start work

Summary



- There are different types of coverage forms for Physicians – know what kind of coverage you have, claims made or occurrence
- Review your policy – know what is covered & what is not
- Know what your obligations are to your employer with regard to tail & who is responsible for payment
- Remember, cheap insurance may not be the best insurance!



Where to Get More Information

- www.mica-insurance.com
- Your insurance broker
- Your employer

Questions?