

Insuring The Nurse's Liability: Comparing Corporate And Individual Policies

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Today's Learning Objectives

- Gain a better general understanding of insurance policies as they related to the practice of nursing
- Review some elements a general liability policy carried by a typical long term care employer
- Review some elements of an individual nursing policy
- Concluding cost benefit issues of carrying an individual type policy

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Insurance policies and nursing practice

One nurse can wear many hats in an organization. Different hats can lead to different types of claims against her:

- Officer or director (“errors and omissions”)
- Clinician (“professional liability” or “malpractice”)
- Employee (“sexual harassment”)
- Good Samaritan

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Insurance policies and nursing practice

Respondeat Superior is a key concept. It requires an employer to be responsible (liable) for the wrongful acts of an employee or agent. The employer's insurance coverage is designed with this doctrine in mind.

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Insurance policies and nursing practice

Therefore, coverage of any kind arising from an employer's policy will depend on your status under principles of employment, agency, and course and scope of your job. This is a fact specific inquiry that will look at things like your job title, duties, job description and what conduct actually gave rise to the claim.

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Insurance policies and nursing practice

COVERAGE FAILURE: One way that coverage can fail is when the actions giving rise to the claim are found to be outside the course and scope of employment. Good Samaritans.

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Insurance policies and nursing practice

Insurance coverage is provided by contract. Accordingly, coverage depends on having an enforceable contract. And, of course, payment of the premium is a requirement for an enforceable contract.

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Insurance policies and nursing practice

COVERAGE FAILURE: One way that coverage can fail is when the policy premium is not timely paid.

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Insurance policies and nursing practice

Coverage is typically provided for specific licensed locations
Mergers and acquisitions require amendment of the coverage.

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Insurance policies and nursing practice

COVERAGE FAILURE: One way that coverage can fail is when an acquisition is completed and the policy is timely amended.

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Insurance policies and nursing practice

Claims made v. occurrence policies.

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Insurance policies and nursing practice

Notice of claims v. notice of potential claims (incidents).

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Insurance policies and nursing practice

COVERAGE FAILURE: One way that coverage can fail is when the insured does not strictly comply with notice requirements, including timely notice of potential claims (incidents).

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Insurance policies and nursing practice

Tails and extended reporting periods.

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Insurance policies and nursing practice

COVERAGE FAILURE: One way that coverage can fail is when the insured switches from one insurer to another and does not purchase a tail. Claims that are deemed to have been “made” within the first insurer's reporting period may not be covered by the second insurer.

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Insurance policies and nursing practice

Named insured v. additional insured

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Insurance policies and nursing practice

Foreknowledge of incidents

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Typical employer general liability policy

Insured's duty of assistance and cooperation

- Forward documents comprising the claim
- Cooperate fully with insurer
- Refuse to settle without insurer

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Typical employer general liability policy

COVERAGE FAILURE: One way that coverage can fail is when employers action or inaction breach the duty of assistance and cooperation.

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Typical employer general liability policy

Stacking

- Personal policy can stack with the employer policy

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Typical employer general liability policy

Indemnity Limitations

- CMP
- Criminal fines
- Exemplary damages (punitive damages)
- Attorney fees

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Typical employer general liability policy

Indemnity Bonuses

- Reasonable expenses incurred by employer while assisting insurer . . . Up to \$750.00 per day for lost work time
- Contractual indemnitees (may provide coverage ancillary providers, for example)

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Typical employer general liability policy

Healthcare Services Definition

- Performed by an insured
- When insured is licensed, trained and qualified

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Typical employer general liability policy

COVERAGE FAILURE:

- Does this cover agency nurses in the facility?
- Does this cover CNAs who have been added to the abuse registry without the knowledge of the employer?
- Does this cover RNs or LPNs whose license has lapsed without the knowledge of the employer?
- Does this cover properly licensed personnel who are inadequately trained?

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Incident Definition

- An act or omission in providing professional services

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Typical employer general liability policy

Miscellaneous issues

- Hammer clause
- No HIPAA privacy coverage
- No wiretapping/invasion of privacy coverage
- No employment practices coverage
- No governmental claims coverage
- No coverage for resident rights violations
- No Dram Shop coverage (serving alcohol)

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Typical employer general liability policy

Professional discipline/NPDB issues

- 25K Limit
- Reported within 30 days
- Underlying act occurred during the policy period
- No foreknowledge

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Typical individual policy

- Professional liability 1M
- Workplace liability 1M
- License protection 25K
- Defendant expenses 1K
- Deposition representation 10K
- Assault suffered by RN 25K
- Personal property damage 10K
- HIPAA 25K
- Media 25K

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Typical individual policy

Duty to cooperate

- Very similar to duty in corporate policy
- Attend hearings, depositions, etc.
- Refuse to settle without insurer

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Typical individual policy

Stacking

- Stacks with employer policy

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Typical individual policy

Notice duties

- Notify as soon as possible
- How, when, where incident took place
- Names and addresses of injured persons and witnesses
- Nature and location of any injury or damage

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Typical individual policy

No coverage for willful violations

- Defense costs only, no indemnity

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Typical individual policy

Other limitations

- No coverage for willful violations
- No punitive damages
- No coverage if license is not in force
- No coverage if injury is reasonable expected or intended
- No coverage for sexual misconduct (defense only, no indemnity)

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Typical individual policy

License coverage

- Any state or federal agency discipline (NPDB)
- May choose attorney
- Fees limited to \$150.00 per hour
- \$500.00 for hearing attendance
- Underlying act must have occurred during the policy period

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Typical individual policy

Workplace liability

- Dram shop (alcohol)
- Fire/water up to \$150,000.00
- Personal liability at your residence
- Sexual misconduct (defense only, no indemnity)

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