

Malpractice Insurance and Liability

CoreNotes by Core Concepts Anesthesia Review, LLC

What You Must Know

1. It is necessary for all practitioners to obtain malpractice (A.K.A. Liability) insurance specific to their medical specialty, which covers all procedures performed within the scope of that practice.
2. Malpractice insurance is intended to cover the costs associated with obtaining legal defense and monetary damages or settlements in the event that a practitioner has a malpractice claim filed against him or her.
3. There are two types of malpractice Insurance policies.
 - a) Occurrence policies cover the insured for all potential claims made at any time during the policy period, even if the insured has changed jobs, insurance policies, or has retired.
 - b) Claims-made policies provide coverage only during the period of time that the insured is paying the premium to the insurer.
4. Claims-made policies require the practitioner to obtain additional coverage for the period of time after the policy coverage ends. This is known as “tail” coverage and protects the insured for a predetermined period of time after the policy has ended.

In the 1980's, there was a surge in the malpractice claims made against practitioners. As a result, all health care facilities require that a practitioner be covered by malpractice (or liability) insurance. These policies provide monies to cover singular claims and cap the amount with an aggregate sum in the event that multiple claims are made against the practitioner during the duration of coverage (i.e. \$1 million per claim/\$3 million aggregate).

Malpractice policies fall into two categories: **occurrence policies** and **claims-made policies**. Occurrence policies insure the practitioner for any claims made against them during the time that they were covered by the policy, even after it is no longer active. Because this type of insurance is extremely costly, the claims-made policy is more commonly utilized. This type of liability coverage insures the practitioner for claims made against them only during the time that the policy is or was in force. If a claim is filed after the coverage has ended, the practitioner may be personally responsible for payment of their legal fees, damages and/or settlements. Because of this, it is essential to obtain a “tail” policy for a minimum number of years (~ 5) after a claims-made policy has ended. Also, an “umbrella” policy may be obtained in addition to the tail. This coverage is useful if the damages or settlement exceed the limits of original policy coverage.

A practitioner may be denied malpractice insurance if he or she has a history of prior claims filed against them or in the event of impairment, licensing issues, or gaps in practice.

Additional Reading:

Barash, PG, Cullen, BF, Stoelting, RK, Cahalan, MK, Stock, MC, and Ortega, R. Clinical Anesthesia. Philadelphia: Lippincott Williams & Wilkins, 2013:38