



2006 Web
Seminar Series

Professional Liability Insurance

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Public Entity Risk Institute



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Overview

- Does your nonprofit need professional liability insurance?
- What is a “professional”? What are “professional services”?
- Lessons from the Scenarios
- Professional Liability coverage under the GL and D&O policies
- Professional Liability Formats
- Recommendations to Consider



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What are Professional Services?

- **Scenario #1 – Patient Dies During Counseling Session**
- A patient at a substance abuse treatment program became agitated during a counseling session, got into a brief scuffle with his counselor, tripped, hit his head on a corner of a table, and sustained serious head injuries, which resulted in his death. The patient's family brought a wrongful death suit against the counselor and the nonprofit.



- **Scenario #2 – Elderly Patient Injured in Fall from Bed**
- A nurse at an assisted living facility neglected to raise the bed railings of an elderly patient's bed, resulting in the patient falling from the bed and sustaining serious injuries. A lawsuit was brought against the nurse and the assisted living facility. Again, different carriers covered general and professional liability, and both argued that the other was responsible for the claim. In this case the court ruled that the injury did arise out of professional liability, and the professional liability carrier was ordered to cover the claim.

Lessons from the Scenarios

- Look at the “act”, versus the title or character of the party performing the act
 - *Anyone with any professional credentials has a potential professional liability exposure if providing services to patients, clients or students.*
- Individual professional liability policies rarely cover anyone but the individual professional.
 - The nonprofit (employer) will almost always be named in a suit alleging negligence in the delivery of professional services. Managers, supervisors, administrative personnel, and board members can also be named in these suits.
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Lessons from the Scenarios

- The potential benefit of purchasing general liability and professional liability insurance from the same carrier/insurer.
 - Why?





Bottom Line (PL and D&O)

- Nonprofit D&O coverage is for *wrongful acts* subject to policy exclusions, so the policy will provide professional liability coverage to the extent it is not excluded.
 - Incidental professional liability provided under a D&O policy will be limited to pure financial loss.
 - Claims for emotional distress or mental anguish, which commonly arise from counseling or social work, will usually not be covered because most nonprofit D&O policies exclude emotional distress and mental anguish as part of their bodily injury and property damage exclusion.

Professional Liability Formats

- The scope of the coverage depends on which of the four professional liability policy formats coverage is written.
 - Profession-Specific Professional Liability,
 - Miscellaneous Professional Liability,
 - Allied Health Care Professional Liability, and
 - Social Services Professional Liability.



Social Services Professional Liability

- First developed in the 1980s. Typically only nonprofits will be eligible.
 - Example of a coverage definition for a social services professional liability policy:
 - *any act, error or omission arising out of the actual rendering of or failure to render professional services to others, including counseling services, in your capacity as a social service organization. Professional services include the furnishing of food, beverages, medications or appliances in connection therewith.*

Evaluating Your PL Coverage

1. identifying your potential professional liability exposures; and
2. comparing those exposures with the incidental professional coverage which may be provided by your CGL and D&O policies, and the definition of coverage and exclusions on your professional liability policy.

Recommendations to Consider

- Professional liability is written on both *claims-made* and *occurrence* liability forms. When available, *occurrence* is almost always the better coverage option.
- Most nonprofits are best served by either the profession-specific or social services policy formats.

Recommendations to Consider

- Nonprofits employing social workers or mental health counselors need professional policies that do not exclude bodily injury.
- If possible, purchase commercial general liability and professional liability coverage from the same insurance company.

Challenges in Purchasing Professional Liability Insurance

- *For some nonprofits it is unclear whether there is a need for professional liability coverage.* For example, does a foster care placement program need professional liability? A paratransit program? A nonprofit school? A community-based visual arts theater?
- *New exposures may be created when nonprofits expand their services.* If a women's shelter retains a volunteer attorney, does the shelter need lawyers' professional liability coverage? Does an addiction treatment center need additional coverage if it hires an acupuncturist?
- *Sufficiency is a hard row to hoe.* Since there is no standard for comparison and quite a bit of variation between professional liability policies, how can a nonprofit know if it has purchased sufficient coverage?

Thank You!

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- Registration for our 2007 Web Seminars
begins today!