Liability Insurance for Moonlighting by Family Practice Residents

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Background. Moonlighting is a widespread practice among residents in family practice programs. It is thought that many residents fail to appreciate the problems that moonlighting may pose with respect to liability insurance.

Methods. A survey regarding liability insurance instruction and moonlighting insurance was sent to the chief resident of each family practice residency program (380) in the United States. An overall response rate of 78.7% was achieved.

Results. Chief residents appear to have limited knowledge about liability insurance, believe that education about liability insurance in the residency program is inadequate, and are not well informed regarding liability insurance issues related to moonlighting.

Conclusions. Information regarding professional liability insurance and its implications for the resident who chooses to moonlight should be a part of the practice management curriculum of every residency program.

Key words. Moonlighting, insurance, liability; internship and residency. *J Fam Pract 1991; 33:387-389.*

Moonlighting by residents is a widespread practice. It is estimated that 30% to 60% of all residents moonlight sometime during their residency career.[1] Moonlighting typically takes place in the second and third year of residency because that is when most residents acquire their license to practice medicine. Most often, the motivating factor behind resident moonlighting is economic indebtedness.[2] Many residents are faced with an educational debt that exceeds $20,500.[3] The higher the level of indebtedness, the more likely a resident is to moonlight.[2] Other factors that contribute to motivating a resident to moonlight are monthly loan payments and the number of dependents that he or she has.[3]

Many residents, however, may fail to appreciate problems moonlighting may pose with respect to liability insurance. All family practice residency programs have a curriculum in practice management. Often included in these practice management programs is information regarding professional liability insurance. The type of insurance, if any, that is provided to residents as participants of their residency programs or as moonlighting physicians, and the implications thereof, are essential information for residents to acquire.

There are three basic type of professional liability coverage provided for the medical profession:

1. *Occurrence coverage:* An occurrence policy obligates the carrier to provide lifetime protection to the physician for any incident occurring during the effective term of the policy, even if the claim was filed after the policy terminates. The escalation of claims and the dramatic increase in jury awards during the mid-1970s, along with investment losses, caused many commercial carriers to withdraw from the occurrence market.[4] Therefore, occurrence insurance was more common in the past than it is today.[5]

2. *Claims-made coverage:* A policy that provides claims-made coverage obligates the carrier only for claims filed during the effective term of the policy. If such a policy is renewed annually, it continues to cover claims filed for any incident that took place during prior years in which the coverage was in effect. While occurrence coverage offers lifetime protection to physicians, claims-made policies necessitate the purchase of "extended reporting endorsement" or "tail coverage" in the event that a physician changes carriers or ceases to practice. Such tail coverage protects against claims filed in the future resulting from incidents that took place during the years in which the claims-made policy was in force.[4] The cost of

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tail coverage is typically 150% to 200% of a claims-made policy's yearly premium.

3. *Institutional self-insurance:* Large institutions such as hospitals associated with universities and large community hospitals are now frequently establishing self-insurance. When an institution is self-insured, funds are set aside in a reserve account. These funds are specifically designated to pay any financial judgment or settlement resulting from a professional liability claim.[6] Physicians insured through their institutional self-insurance program, in most circumstances, are not required to purchase tail coverage.

In an effort to assess the breadth of knowledge by residents regarding liability insurance in general and moonlighting and liability coverage specifically, a survey was sent to chief residents in all family practice residency programs. The survey not only questioned residents about moonlighting activity and professional liability coverage provided for such activities, but also questioned them regarding their residency's educational programs about liability insurance in general.

Methods

A 2-page questionnaire was mailed to the chief residents of all 380 family practice programs in February 1990. After a second mailing to nonrespondents in April 1990, an overall response rate of 78.7% was achieved.

Results

Of the 299 respondents, 86.0% indicated that their residency programs did provide, at no cost, professional liability insurance to residents while they were engaged in the capacity of a resident in the program; 12.7% reported that their residency programs did not provide free professional liability insurance; and 1.3% did not respond to the question.

Of the 257 chief residents who indicated that the residency program did provide professional liability insurance at no cost, 28.4% indicated that the insurance was occurrence, 19.1% indicated that the insurance was claims-made, 37.4% indicated that the institution was self-insured, 7.8% specified another alternative, and 7.4% did not respond to the question.

Most residency programs did not provide formal instruction to residents about malpractice insurance. Only 34.8% of respondents indicated that such instruction existed in their residency programs, compared with 63.9% who indicated that this instruction was not provided. Of those who indicated that their residencies provided formal instruction on this topic, 34.8% reported that the treatment of these issues was not adequate for the residents' needs.

Nearly two thirds of all chief residents indicated that their residency programs permitted residents to moonlight at the parent hospitals (64.2%). Of the 192 chief residents who indicated that moonlighting was permitted at the parent hospitals, 23.4% indicated that the hospitals did not provide residents with professional liability insurance while moonlighting; 71.4% indicated that the parent hospitals did provide this type of coverage. Of the 137 residents who indicated that such coverage was provided by the parent hospitals, 30.7% reported that the coverage was occurrence, 19.7% indicated that the coverage was claims-made, and 41.6% reported that their institutions were self-insured. Approximately 68.6% of the 137 chief residents indicated that their institutions paid the "tail" for residents after they completed the residency programs, and 11.7% indicated that the residency did not provide for tail coverage; 19.7% did not respond.

Nearly 90% of all chief residents indicated that their residency programs did permit residents to moonlight at hospitals other than the parent hospitals of the residency programs. Approximately 34% believed that these other institutions paid for tail coverage for residents after completing the moonlighting experience; 31.5% indicated that the institutions did not; and 35.0% did not respond to the question.

Approximately 44.1% of the chief residents believed that their residents were aware that a "tail" should be obtained after they completed their residency program to cover their experience while they were residents and for their moonlighting experiences. Thirty-eight percent believed that their residents were not familiar with this tail coverage, and 17.1% did not respond.

Discussion

The results of this survey suggest that chief residents of family practice residencies are inadequately informed about the types of professional liability insurance and the need to know what type of coverage they have when moonlighting. Only one third of the residency programs offer workshops or other didactic sessions on professional liability insurance, and many of the residents surveyed did not believe that this training was adequate.

Most of the residents believed that they knew what type of insurance the institution that employed them provided. The survey results suggest, however, that many residents do not know what type of insurance is provided by the institutions for which they moonlight. If residents do not know what type of coverage, if any, is provided by the moonlighting institution, they will not know whether tail coverage has been provided. This is important because there have been anecdotal reports of residents who, on graduating from a residency program and concluding their moonlighting career, were presented with a bill for tail coverage for their moonlighting activities. Often these reported tail premiums were greater than the amount of money the residents earned during their moonlighting careers.

If residents moonlight and are covered by claims-made insurance provided by the moonlighting entity, and the residents are to be protected against the payment of liability claims, they must either purchase a tail or have one provided by the institution. If they are unaware of the type of coverage provided by the moonlighting institution, they may also be unaware of the need to purchase tail coverage. The offer to purchase tail coverage usually must be accepted within a certain time, typically 60 or 90 days after termination, after which it may be impossible to obtain the needed coverage at any price. The type of medical liability coverage provided by the moonlighting institution as well as whether the entity will provide tail coverage should be ascertained before residents embark on a moonlighting career. If residents are unaware of the tail requirement and do not purchase or are not provided with this coverage, they are individually responsible for all financial judgments or settlements resulting from claims arising from moonlighting activities.

More important, residents who do not attempt to learn what type of liability coverage, if any, is provided by the institution at which they moonlight may find out later that they had no professional liability coverage at all. This may have disastrous consequences and may be an even more onerous financial burden to the residents than the purchase of tail coverage. The covered residents may find out about their exposure only after a lawsuit has been filed, often years after their moonlighting career has concluded. If residents were not covered by liability insurance at the time of the incident that formed the basis of the lawsuit, they are in the same type of situation as that of not possessing tail coverage, that is, they will be, as individuals, solely liable for any money damages determined to be attributable to their conduct while moonlighting.

It is important for residents also to ascertain what type of coverage is provided for them by their residency programs. The same issue of who pays for the "tail" may arise if residents are covered by claims-made insurance. Generally, programs provide coverage for individual slots in the residency program and not for individual residents. Thus, on leaving the program, residents do not have to worry about tail coverage. In addition, more and more residencies are insured by the institution's self-insurance program. If the institution is self-insured, residents do not need to be concerned with tail coverage.

This study is limited in that the survey was sent only to chief residents of family practice residency programs rather than to all residents. Therefore, the conclusions are drawn from information provided by only a portion of family practice residents. The conclusions are based on the assumption that chief residents are representative of all family practice residents, and that chief residents are more knowledgeable regarding moonlighting and insurance because they are most likely to moonlight. The questionnaire did not contain an item to determine the percentage of the responding chief residents who moonlight. In addition, the questionnaire did not include questions about moonlighting at nonparent institutions other than hospitals, such as at urgent care clinics.

This survey suggests that residency programs should be sure to incorporate workshops or other didactic sessions on the topic of professional liability insurance, so that residents will be informed of the different types of coverage available and the possible implications that insurance may have on their decision to moonlight and on their future practice decisions.

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