



Policy Statement—Professional Liability Insurance and Medicolegal Education for Pediatric Residents and Fellows

abstract

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The American Academy of Pediatrics believes that pediatric residents and fellows should be fully informed of the scope and limitations of their professional liability insurance coverage while in training. The academy states that residents and fellows should be educated by their training institutions on matters relating to medical liability and the importance of maintaining adequate and continuous professional liability insurance coverage throughout their careers in medicine. *Pediatrics* 2011;128:624–629

BACKGROUND

The American Academy of Pediatrics (AAP) first developed a policy on professional liability coverage for pediatric residents in 1989.¹ The policy was updated to include fellows in training in 1993. In the 2000 iteration of the statement,² the original positions were strengthened to address changes in the professional liability insurance industry, the structure and settings of residency training, and mandated reporting to national health provider databanks of malpractice payments. The 2000 policy also emphasized the need to provide pediatricians-in-training with adequate professional liability insurance coverage. This revision of the policy statement updates the recommendations in light of the current requirements of the Accreditation Council of Graduate Medical Education (ACGME) for approved residency programs and emphasizes the need for medicolegal education for pediatric residents and fellows. Pediatric training programs are urged to voluntarily adopt the AAP recommendations.

MEDICAL LIABILITY AND RESIDENTS/FELLOWS

Because pediatric residents and fellows-in-training are closely supervised, their medical malpractice risks are theoretically less than those of other pediatricians. Under the legal doctrine of *respondeat superior*, “let the master answer,” the educational institution that conducts the residency program is responsible for the medical care provided by its residents and fellows during training. Therefore, typically, the institution is liable for defense costs, settlements, and awards for malpractice attributed to physicians-in-training.³ Their trainee status, coupled with their lack of financial assets, often precludes residents and fellows from being targeted in a malpractice suit. In those instances in which residents and fellows are named in a malpractice complaint,

COMMITTEE ON MEDICAL LIABILITY AND RISK MANAGEMENT

KEY WORDS

resident liability, graduate medical education, resident, fellow, medicolegal education, medical malpractice insurance, professional liability insurance, risk management

ABBREVIATIONS

AAP—American Academy of Pediatrics
ACGME—Accreditation Council on Graduate Medical Education
NPDB—National Practitioner Data Bank

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they are often dropped from the case early in the legal proceedings. However, they are often deposed as fact witnesses.

However, physicians-in-training are not entirely free from malpractice risks. Malpractice suits accounted for the majority of litigation involving medical residents from 1950 to 1989.⁴ This prominent malpractice risk has continued, and from 1990 to 2007, 3 in 10 pediatricians were sued for malpractice at least once during their career in medicine, and approximately 1 in 10 was party to a malpractice suit from care provided during residency.⁵ The mean number of months that elapsed between the alleged error or negligent event and the malpractice complaint being filed was 32 months in 2007, almost equivalent to the entire length of general pediatric residency training.⁵ It is possible that those pediatric residents and fellows named as codefendants in medical liability cases will have already completed their residency by the time the claim is filed.

It is also possible that former residents and fellows may not know when they have been included in a malpractice claim. Depending on the specifications of the medical malpractice insurance policy, a settlement may be reached without the consent or knowledge of the defendants. In fact, pediatricians might not find out about the settlement until after the payment is reported to the National Practitioner Data Bank (NPDB). As of its most recent report in 2004, the Health Resources and Services Administration Bureau of Health Professionals noted that the NPDB contained 1669 malpractice payments made for the benefit of residents and interns, which is 1% of all malpractice payments for physicians.^{6,7} The long-term effects of having a malpractice payment reported to the NPDB so early in a physician's career

on his or her subsequent employability and insurability have yet to be studied.

GAUGING RISK FOR PEDIATRIC RESIDENTS AND FELLOWS

Pediatricians are exceptionally vulnerable to malpractice allegations because of the long tail associated with care rendered to patients under the age of majority. The tail is the length of time established by state law from when an incident involving a minor occurs or is discovered to when a malpractice claim can be filed. Every state has established a statute of limitations to allow extra time for a malpractice complaint involving a minor to be reported. Therefore, for most physicians, this lag time is measured in years, but for pediatricians, the statute of limitations is often measured in decades. In some states, the limitation period begins when the incident occurred, but in other states, the statute of limitations begins only after the injury is discovered.

Although pediatricians are not accused of malpractice as frequently as other specialists, when they are sued, the stakes are high. The Physician Insurers Association of America, whose member companies insure 60% of all physicians in private practice in the United States, reports that pediatricians had one of the highest average payments for settlements and court awards per claim at \$395 997, behind only neurosurgeons, neurologists, obstetricians, and cardiovascular surgeons.^{8,9}

CURRENT ACGME REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURANCE

The AAP joins other responsible medical and hospital organizations in applauding the ACGME for requiring that any educational institution seeking accreditation of its residency and/or fellowship programs provide adequate professional liability insurance for its physicians-in-training. This require-

ment is specified in the ACGME *Institutional Residency Training Program Requirements* (see section II-D.4.f, effective July 1, 2007), as follows:

1. The sponsoring institution must provide residents with professional liability coverage and a summary of pertinent information regarding this coverage.
2. Liability coverage must include legal defense and protection against awards from claims reported or filed after the completion of the program(s) if the alleged acts or omissions of the residents are within the scope of the program(s).¹⁰

Despite the ACGME requirements, a large proportion of pediatric residents know little about their professional liability insurance coverage. A 1993 study of pediatric residents in Pennsylvania revealed that 90% did not know the policy limits of their liability insurance or whether a malpractice claim against them could be settled without their permission.¹¹ Deficiencies in pediatric residents' training about professional liability insurance persist. According to an AAP survey of graduating pediatric residents in 2007, only 52% reported receiving any instruction on medical liability insurance.¹² The AAP believes that pediatric residents and fellows should be fully informed of the rights and responsibilities afforded by their professional liability coverage and should be educated on important considerations applicable to maintaining adequate professional liability coverage throughout their careers in medicine.

AAP RECOMMENDATIONS

Given the severity of pediatric malpractice settlements and jury awards, the permanent nature of databank reports, and the prolonged length of the statutes of limitations for incidents that involve minors in many states, the AAP has strengthened and clarified its

recommendations on professional liability coverage for pediatric residents and fellows.

Therefore, the AAP reaffirms its recommendations that the ACGME's *Institutional Residency Training Program Requirements*¹⁰ include the following:

1. Adequate Coverage

Pediatric training programs must provide adequate professional liability coverage (or its equivalent in military/governmental institutions) for their residents and fellows to indemnify them from liability for potential medical misadventures that may occur during training activities. This coverage should last throughout the training period and continue to provide coverage for these training activities after residents and fellows leave the program. This coverage must apply to all activities considered part of the training program's related learning experiences regardless of the setting (eg, rotations in private medical office settings, community-based clinics, out-of-state and overseas program training experiences, etc).

- A. Professional liability coverage for residents and fellows must be comparable to that offered to other physicians employed by the hospital or training facility.
- B. The residents and fellows policy should cover expenses associated with legal defense and should provide loss protection against malpractice awards and/or settlements.

2. Documented Proof of Insurance

Pediatric training programs must furnish resident and fellow applicants with detailed information on the professional liability coverage provided during training, and this information should be available for the applicant before selecting a training program. On acceptance into the program, each physician-in-training should receive a

written description of his or her professional liability coverage. If the residency or fellowship program self-insures or insures its trainees under a master policy that also covers the teaching facility's professional staff, the contract that residents and fellows sign should clearly and explicitly state the provisions of the professional liability coverage applicable to physicians-in-training. Likewise, if physicians-in-training are covered under a separate policy written specifically for the program's residents and fellows, a copy of the insurance policy contract should be provided to each trainee.

3. Provisions of Professional Liability Insurance Policy

Whether covered under a master policy or a separate policy for trainees or self-insured by the institution, the resident/fellow should be provided, at a minimum, a written document that delineates the following specific provisions of the professional liability insurance policy.

- A. The name of the company or institution that serves as the insurance carrier and appropriate contact information; if the training program self-insures its physicians-in-training for professional liability, that information should be clearly noted in writing as well.
- B. The type of professional liability coverage provided for physicians-in-training (ie, occurrence, claims made, self-insured, or other); a brief explanation of the differences between various professional liability insurance products should be distinctly addressed in terms of what the variations mean to the insured resident or fellow both during training and after training is completed.
- C. An explanation of how settlements are reached; residents and fellows should receive written descriptions

of whether the policy allows the insurance carrier to settle a malpractice case without the permission and/or signature of the insured physician.

4. General Information on Liability Insurance

Residents and fellows should be educated on the following kinds of professional liability insurance policies.

- A. Self-insurance—Many academic medical centers self-insure their staff. Instead of purchasing professional liability insurance, the resources of the training program (or its related institutions) will be used to cover any losses associated with medical malpractice claims or suits against the institution, supervising physicians, and/or physicians-in-training.
- B. Occurrence—A type of professional liability insurance policy in which the insured is covered for any incident that occurs during the term of the policy regardless of when a claim arising from the incident is made. For example, if the alleged error or omission happened anytime during the residency training, it would be covered by the teaching facility's professional liability insurance, even if the claim is filed after the policy has expired. Occurrence policies are no longer commonly offered but may be available through select insurance carriers or if the program self-insures its residents and fellows.
- C. Claims-made—An insurance policy that provides coverage for claims arising from incidents that both occur and are reported to the insurance company while the policy is in force. A claims-made policy is in effect from the starting date of the initial policy period and remains in force from that date until it is re-

newed. Once terminated, future claims that arise from incidents that occurred during the policy period are not covered. Typically, claims-made policies do not cover previous acts (liability for actions that took place before the effective date of the policy). Claims-made policies are often heavily discounted in the first years, but as the policies mature (usually after 5 years), the rates often increase and become comparable in price to occurrence policies. The major drawback of claims-made policies is the lack of coverage should they be terminated for any reason (eg, premiums are not paid or the physician completes training, changes employers, and/or medical malpractice insurers, moves to another state, or retires). Unless a special policy is purchased (ie, tail coverage), a physician can end up with a gap in coverage and possibly an uninsured malpractice claim.⁹

- D. Claims-paid—A variant of claims-made insurance, this policy is a professional liability insurance that provides coverage for claims that arise from incidents that occur while the policy is in force. However, claims must be reported and paid before the policy is terminated.
- E. Tail coverage—A supplemental policy to claims-made liability insurance that provides coverage for any incident that occurs while the claims-made insurance was in effect although the claim was filed after the insurer-policyholder relationship was terminated. Sometimes referred to as an extended reporting endorsement, tail coverage is necessary whenever a physician insured under a claims-made policy changes carriers, completes training, becomes disabled, retires, or dies.¹³ Insurance carriers often have strict policies on when tail coverage can be purchased. Most com-

monly, insurance companies will offer the option to purchase the addition of tail coverage to an existing claims-made policy only before its coverage's termination, although likely at a higher price as the policy gets closer to its termination. Tail coverage, in fact, is never inexpensive. It can cost up to 3 times as much as the annual premium for a claims-made policy.¹⁴

- F. Nose coverage—Supplemental insurance to a claims-made policy that provides coverage for previous acts or incidents that may have occurred before the claims-based policy went into effect but have not yet been filed as claims. Because the physician is seeking up-front coverage before securing a relationship with the insurance carrier, it is usually comparable in price to tail coverage.

5. Extracurricular Activities/Moonlighting

The residency program should inform its residents and fellows of the institution's definition of and policies concerning moonlighting and whether these activities are included in the program's professional liability coverage provided.¹⁰ Residents and fellows should be given explicit documentation of any specific liability policy inclusion/exclusion clauses. In addition, the program should warn its trainees of the potential long-term liability exposure associated with moonlighting or other professional activities that are excluded from the program's liability insurance policy.

Pediatric training programs that are recognized by the ACGME currently are required to monitor the effects of outside activities, including moonlighting in or outside the primary hospital, to ensure that the quality of patient care, the educational experience, and duty-hour limitations are not compro-

mised.¹⁰ Accredited training programs must provide trainees with formal written policies on their participation in outside professional activities.

The AAP urges pediatric educational programs to notify physician trainees whether medical malpractice allegations that derive from such extracurricular activities are excluded from the training program's professional liability coverage for its residents and fellows. Trainees should be instructed not to assume that a nontraining extracurricular activity must be for pay or outside the primary training facility to be considered moonlighting. Some apparently benign activities may be considered external to the residency training experience and, thus, outside the scope of liability coverage provided by the training program. Pediatric residents and fellows who provide care outside of the auspices of the training program should verify that liability insurance with tail coverage is provided by the agency or health care facility at which the moonlighting activity occurs.

The program should give its physician trainees specific examples of what constitutes moonlighting to obviate potential misunderstanding. The following situations may be examples of extracurricular activities and, as such, are likely to be excluded from a training program's liability coverage for its residents and fellows: volunteering as a physician at a camp for children with special health care needs; serving as an infection-control consultant to a child care facility; providing sports physicals for a local high school; and staffing the emergency department in the primary training institution when not on official duty as a trainee.

If tail coverage is not provided and an individual tail policy to cover extracurricular activities is too costly for the resident or fellow to purchase, he or she should carefully reconsider the

potential costs, benefits, and risks of moonlighting.¹⁵ If available, the residency program should inform its trainees that they can purchase supplemental coverage for any excluded activities as an add-on to the training program's standard professional liability insurance.

6. Settlement Decisions

The residency training program should inform its residents and fellows in writing whether their professional liability policy allows the insurer to settle malpractice claims without the signature of the parties named in the malpractice claim. Because federal law requires malpractice payments made on behalf of health care providers to be permanently registered in the NPDB, physicians-in-training should be given the right to make informed decisions on whether to settle a malpractice claim or to pursue litigation.

7. Statute of Limitations for Minors

Because the length of time for which a physician may be liable for previous acts is particularly long for incidents that involve pediatric patients, residents and fellows need to understand the provisions of the statute of limitations for minors in the state in which they are being trained. The training program should provide examples of how the length of exposure risk affects the residents' and fellows' current professional liability insurance coverage and future needs.

8. Notification of Suit and Participation in Defense

Should a pediatrician be named as a party to a suit that arises from events or actions that took place during his or her training period, it should be the program's responsibility to do the following.

- A. Promptly and confidentially notify the current or former physician-in-training.
- B. Provide paid time off for current residents and fellows to testify or provide a deposition in a malpractice case in which they are named. Time spent testifying or being deposed should be considered training-related business; therefore, it should not be deducted from the resident's vacation or other personal time.
- C. Reimburse physicians-in-training for reasonable expenses incurred when required to testify or provide a deposition in a malpractice case.
- D. Reimburse former physicians-in-training for necessary reasonable expenses incurred if required to testify or be deposed in a malpractice case for an alleged error or omission that occurred as part of the residency training program's educational experience. This provision would make it possible for former residents and fellows no longer in the vicinity of the training program to participate in their own defense without undue financial hardship.
- E. Promptly and confidentially notify current or former physicians-in-training if the training program has filed a reportable action to the NPDB, the Health Integrity Protection Data Bank, or other federal or state repositories of disciplinary actions taken against physicians.

9. No Coverage Gaps

The pediatric training program should educate its residents and fellows on the importance of not allowing any gaps in professional liability coverage to occur, particularly during career changes (including, but not limited to, changing residency training programs, employers, or insurance carriers). The pediatric training program should also notify the residents and fellows of any changes in their exposure risk to malpractice claims and

suits attendant on leaving the training program.

10. Other Liability Issues

The pediatric training program should educate its residents and fellows in risk management, medical record documentation, and other strategies for improving outcomes. Residents and fellows, however, should be aware of other types of liability such as, among others, sexual harassment, intentional acts, and failure to comply with health care regulations, which are not usually covered by medical malpractice liability insurance.

11. Career Changes

Pediatricians who are seeking new employment, particularly early in their careers, should make sure that there are no gaps in their malpractice insurance coverage. If the insurance that was in force during training was a claims-made policy, the resident or fellow either should negotiate tail coverage from the residency training institution or nose coverage from the prospective employer. In addition, pediatricians considering a claims-made/claims-paid policy through a new carrier should anticipate the need for coverage for their subsequent tail. If a new employer has offered to pay the premiums for the professional liability insurance, it is reasonable to request that the employer also be financially responsible for providing the tail coverage. It is reasonable for employers, however, to specify a minimum length of employment as a condition for the provision of tail coverage.

12. Voluntary Adoption

Until the ACGME requirements for accredited residency training programs are amended to reflect the specific provisions of this policy statement in full, the AAP urges pediatric training programs to adopt these recommenda-

tions voluntarily. By so doing, resident and fellow educators can adequately equip their trainees to make informed decisions regarding liability insurance coverage, risk management, and future employment risk coverage options. More importantly, medicolegal education programs prevent the careers of future pediatricians from being jeopardized by inadequate or interrupted liability coverage during or immediately after the training period.

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13. AAP Support

The AAP will continue its partnership in educating residents and fellows as well as pediatricians beginning practice on medicolegal issues through its chapters, sections, and committees.

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