



## Two Cheap and Simple Fixes to Two Big Practice Liabilities

By Ike Devji, J.D. | March 22, 2011

As we discussed in my previous article on [employee lawsuit exposure](#), employment-related lawsuits are one of the biggest threats facing all employers today, including medical practices. In fact, the average small business in America is five times more likely to face a lawsuit by an employee than for any other reason!

The liability here is steep and onerous, as employers often forget that they are responsible for their own interactions with employees (employment practices), the employees' interactions with each other (work environment) and the vicarious actions of employees as they affect the public (respondeat superior).

A second universal, yet commonly overlooked, exposure is patient records and information based or "cyber liability." By now you've been inundated with ads, articles and warnings on this topic, but what most of those updates that focus on the technical precautions and statutory liability issues have not addressed is what you can do protect your practice against such a breach when it actually occurs.

Fortunately, in addition to all the work and thought you've put into addressing these issues proactively with tools like employment manuals, dispute-resolution policies, and IT security protocols, there is a backup plan that can help avoid financial disaster when the unimaginable actually happens: Employment Practices Liability and Cyber Liability Insurance policies. I turned to liability insurance expert Aaron Stauss at Gilbert Insurance group in Arizona for more details on what exactly is missing or inadequately covered in most policies.

### Employment Practices Liability

As the number and severity of employee practices claims rise, business with employees should have in place an employment practices liability (EPLI) policy with adequate coverage limits to protect the business against costly litigation and lawsuit awards.

"More and more carriers are packaging in the EPLI coverage with the general liability in the business owners policy, but in those cases the limits are nowhere near adequate, maybe \$100K, not reasonable or adequate for a medical practice," says Stauss. "One major national carrier, Hartford, as one example, adds EPLI to their General liability, but for only \$5,000."

This is barely an adequate defense retainer in the event of a lawsuit.

According to the Equal Employment Opportunity Commission (EEOC), an average of 80,000 EPLI cases are filed each year with an average payout of approximately \$180,000. This insurance coverage is the essential back-up plan to well-drafted HR policies, employment policy manuals, and dispute resolution agreements. An effective EPLI policy will provide coverage against a potential lawsuit by an employee for issues including discrimination (racial, religious, gender, age); sexual harassment (six-figure verdicts are common); wrongful termination; failure to promote; retaliation; employee-related libel; slander; and defamation; mental anguish; emotional distress; invasion of privacy; and other common claims favored by plaintiffs' employment law attorneys that may have your practice in their sights.

### Cyber Liability Insurance

Remember, even if the technical side of your HIPAA and other protected information record keeping has been addressed by a top IT team you still face the simple exposures of human error, loss or theft of a computer, hard drive or even flash drive (digital assets coverage), not to mention cyber extortion and intentional employee misconduct, or misuse of the records (unauthorized access coverage). Recent headline grabbing cases have featured fines in the millions of dollars to healthcare organizations that had such issues. Malicious code that shuts down or corrupts your whole system can be a nightmare as well, one recent exposure created a seven figure loss for the business that incurred defense, repair and lost business issues when they were literally shut down for several days. The good news? Policies with as high as \$5million in coverage are available for your practice.

As always, failing to plan is planning to fail, hope for the best but assume that an exposure on one of these issues is just a matter of time. With the right insurance coverage in place to back up your proactive due diligence, data management and HR policies you'll have taken the best precautions available.

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