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HEALTH CARE LAW ADVISOR ALERT: SELLING YOUR MEDICAL PRACTICE? MAKE SURE YOU HAVE TAIL COVERAGE.

When selling a medical practice, the physician-owner must consider multiple issues. From understanding the significance of the letter of intent, to complying with medical record transfer laws, to negotiating the purchase agreement, it can feel overwhelming.

One item to not overlook is the importance of obtaining medical malpractice insurance tail coverage.

To understand what tail coverage is, it is first necessary to understand the difference between a claims-made malpractice insurance policy and an occurrence-based malpractice insurance policy. To have coverage under a claims-made policy, the claim for coverage must be made while the insurance policy is in effect. Occurrence-based insurance, on the other hand, focuses on when the incident giving rise to the claim for coverage occurred. If a covered incident occurs while the occurrence-based insurance policy is in effect, coverage may be available even if the alleged bodily injury is not discovered until years later. So, tail coverage is necessary for claims-made insurance policies, but not for occurrence-based insurance policies. Tail coverage applies to claims-made insurance policies because the "tail" extends the insurance coverage beyond the termination date of the claims-made policy. This is critical because, by obtaining tail coverage, the insured physician will continue to have malpractice coverage for incidents that happened prior to the termination date of the policy, even if the claim occurs after the termination date.

With this termination date often being the date on which the physician sells his or her medical practice, this tail coverage provides valuable peace of mind and liability protection for the selling physician. Accordingly, selling physicians with a claims-made medical malpractice insurance policy should consult their advisors, including their insurance agent, to ensure that tail coverage is in place in connection with the sale of their practice.

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