

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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OCHDL CREATES NEW HEALTH CARE LAW BLOG

Welcome to the first edition of the O’Neil, Cannon, Hollman, DeJong and Laing Health Care Law Advisor. We have created this blog as an informational and educational resource for our clients and contacts. The health care industry changes often and quickly, and we seek to help keep you apprised of important legal developments in the health care field.

Over the past few months, we have spent significant time advising clients on issues relating to the COVID-19 pandemic. We include in this inaugural blog post links to some of our recent writings regarding COVID-19 issues, including links of two cover stories in *The Wisconsin Lawyer* magazine. *The Wisconsin Lawyer* is the monthly publication of the State Bar of Wisconsin and addresses issues of interest throughout the state and country.

Christa Wittenberg and Grant Killoran authored the cover article in the April, 2020 edition of *The Wisconsin Lawyer* entitled “Due Process in the Time of the Coronavirus.” Their article analyzes legal concepts governing the measures utilized by public health officials to combat an outbreak of contagious disease, focusing on COVID-19. Their article can be found [here](#).

Grant Killoran, Joe Newbold and Erica Reib authored the cover article in the June, 2020 edition of *The Wisconsin Lawyer* magazine entitled “The New Wave of Litigation: An Early Report on COVID-19 Claims.” Their article analyzes the types of claims being made related to the COVID-19 pandemic. Their article can be found [here](#).

We also include a link to a recent article on our firm’s Employment LawScene blog related to the COVID-19 pandemic entitled [IRS Says Reduced-Cost or Free COVID-19 Testing or Treatment Won’t Prevent Individuals from Making or Receiving HSA Contributions](#).

Lastly, in conjunction with last week’s start of the Major League Baseball season, we include a link to an article recently posted in our newsroom by Attorney Pete Faust entitled [COVID-19 Raises Privacy Issues for Major-League Baseball](#). The article discusses not only the current state of privacy policy in the baseball world, but also reviews the obligations of other businesses under the ADA, FMLA, CARES Act, GINA, and HIPAA.

We hope you enjoy this blog. If you have any questions about any of the articles or issues discussed in it, please feel free to contact the authors.