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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

The thrust of this report is to discuss employment contracts you may have entered into with staff members and their relationship to malpractice issues.

The standard arrangements concerning compensation, work assignments, vacations and the like are easily handled. Questions about malpractice insurance and, more importantly, insurance responsibilities following end of employment are not so simply handled.

We must assume that your new employ will have claims-made coverage. Let us further assume for the moment that the employment period will end and the physician will longer be part of your office. The question of tail coverage now arises and we look to the employment contract to ascertain what it states. Have you addressed the question at all or has a boiler plate provision be used which mentions occurrence coverage? If so language regarding occurrence coverage in today's world is probably meaningless.

Is your employee responsible for purchasing the tail? Is it you? Has your contract addressed the question at all? We urge that this is an issue that should be addressed at the initial hiring moment.

As an employer you are responsible for the actions of your employees when delivering care and you must make certain that claims-made coverage is protecting both the – and you. The window of liability remains open, of course, following employment under the applicable Statue of Limitations – hence the need for tail coverage.

If your contract is silent on the matter the problem arises at the worst possible moment – namely, the end of employment! If the agreement states the employee must purchase the tail should also provide that this will take place prior to the financial conclusion of your relationship.

You should inquire whether your insurer offers “slotting” coverage which, in essence, provides continuing coverage if one employee replaces another with no time gap between the two and thus eliminates the need for a tail with the first departure from the practice. If no substitute employee is utilized the need for tail coverage is very much alive. This is a complicated issue and you must have a clear understanding with your carrier to eliminate future problems.

Respectfully submitted,

Schaum Law Offices