

# Medical Malpractice Insurance Basics

Harvard Medical School

March 20, 2014

Kathleen Finnerty-Schroth CIC, President, PIAM

# What Is the Purpose of Medical Malpractice Insurance?

- Malpractice Insurance covers costs related to allegations, claims, suits alleging deviation from standard of care resulting in harm to patient.
- Pays for attorney representation, investigation and other costs (experts) associated with your defense
- Pays for judgment, settlement, award up to limit of liability
- Defense Costs – Inside or Outside the Limit?
- Legally required in most states

# Common Malpractice Policy Limits

\$1Million\ \$3Million

\$2Million\ \$6Million

\$5Million\ \$10Million

- 1st Amount: Maximum Amount per Claim
- 2<sup>nd</sup> Amount: Maximum Amount for All Claims During Policy Year (Aggregate)

# Claims Made vs. Occurrence Coverage

- All policies have a policy period - starting date and ending date. What happens after the policy ends?
- The key difference –Occurrence vs Claims Made – Policy in effect THEN (incident) versus Policy in effect NOW (claim)
- What triggers a claim? Incident, Report or Suit?

# Which Policy Responds?

Incident Occurred 7/4/12

Claim filed 10/31/14

Occurrence Form



Claims Made Form



# Claims Made Coverage

- Most common type of coverage in the US
- Premium is tiered, generally over first 5 years.
- Pays claims if an incident occurs after the retroactive date and claim is made during the policy period.
- If incident occurs during the policy period & claim is made after policy ends:

No Coverage...Unless You Purchased a “Tail”

- Extended Reporting Period Endorsement, aka “Tail,” continues coverage after the policy ends.

# *Modified* Claims Made

- Tail is “built in” - no need to purchase extended reporting endorsement when policy cancelled
- Level Premium beginning Year 1
- Most common with the institutional/academic malpractice programs but also available with traditional indemnity companies

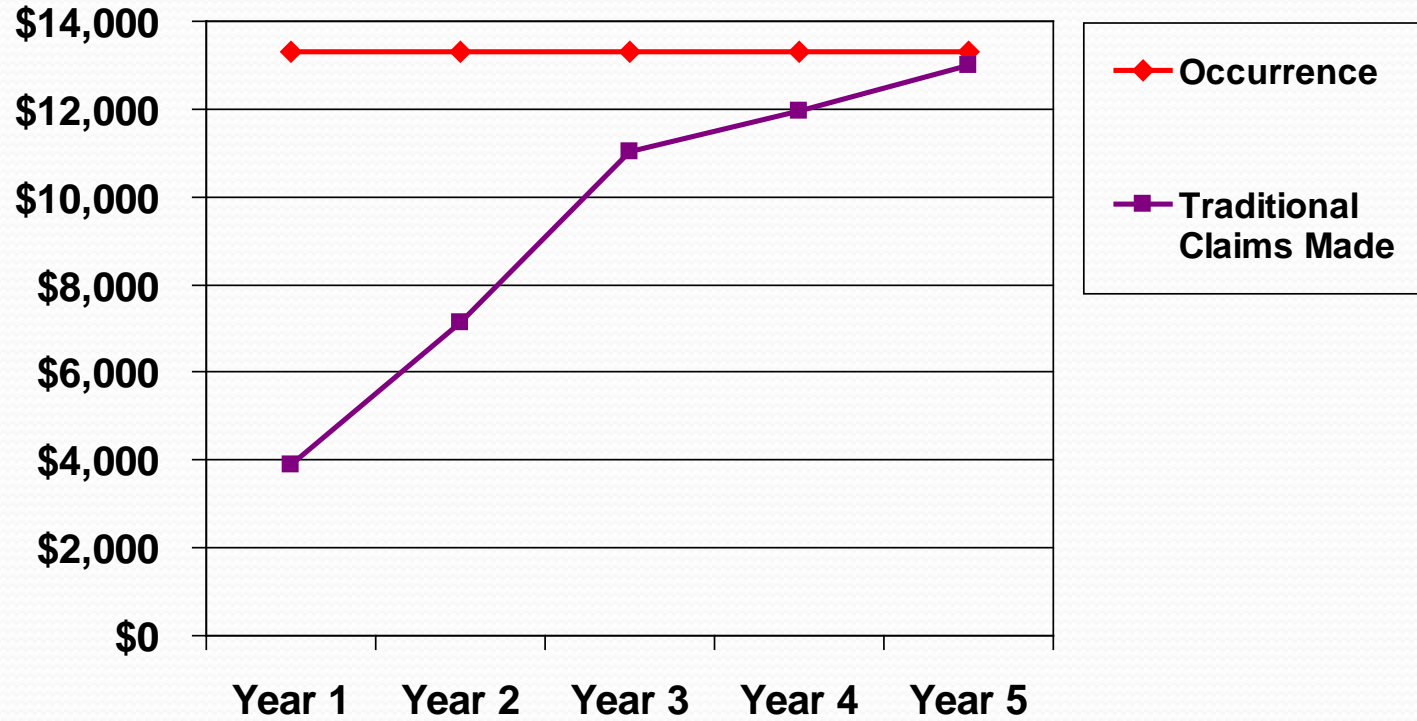
# Occurrence Coverage

- Less common except in the Northeast
- Occurrence costs more, as it builds in the Tail cost
- Occurrence responds via the policy that was in effect when the incident occurred
- With Occurrence, no need to buy a Tail when the policy ends – policy will continue to respond to incidents that transpired under its coverage period.



# Costs: Claims Made vs. Occurrence

## Internal Medicine: \$1M/3M Base Premiums



# Possible Policy Enhancements:

- Defense of Sexual Misconduct allegations
- Consent to Settle Clause
- Defense of Professional Licensing Issues
- Locum Tenens provisions
- Billing Fraud & Abuse
- Data Breach - Personal or Healthcare-Related Information
- Civil Rights Violations
- Vicarious Liability

# Applying for a New Position?

## Ask These Malpractice Questions:

- Who is paying for my medical malpractice insurance?
- Will there be a malpractice “Tail” needed when I leave?
- If so, who pays for the Tail?
- I am coming from a claims made policy -Will this new company “pick up my retro date”?



# Questions?