

Medical Liability Insurance Understanding the Difference Between Occurrence and Claims Made Policies

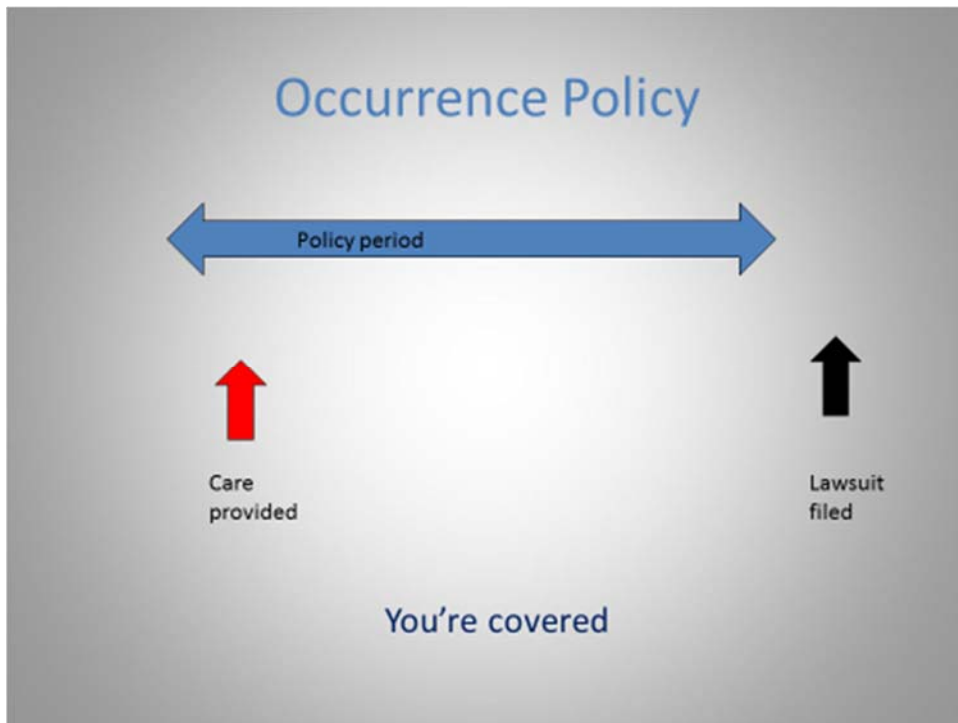
Discussions about medical liability insurance involve insurance jargon and are very complicated. It's enough to make a young pediatrician's eyes glaze over. But you've invested years and thousands of dollars to become a physician. Shouldn't you take the time and energy to find out how best to protect your careers and livelihoods?

The two most common kinds of medical liability insurance are "claims made" and "occurrence" policies. A brief explanation follows:

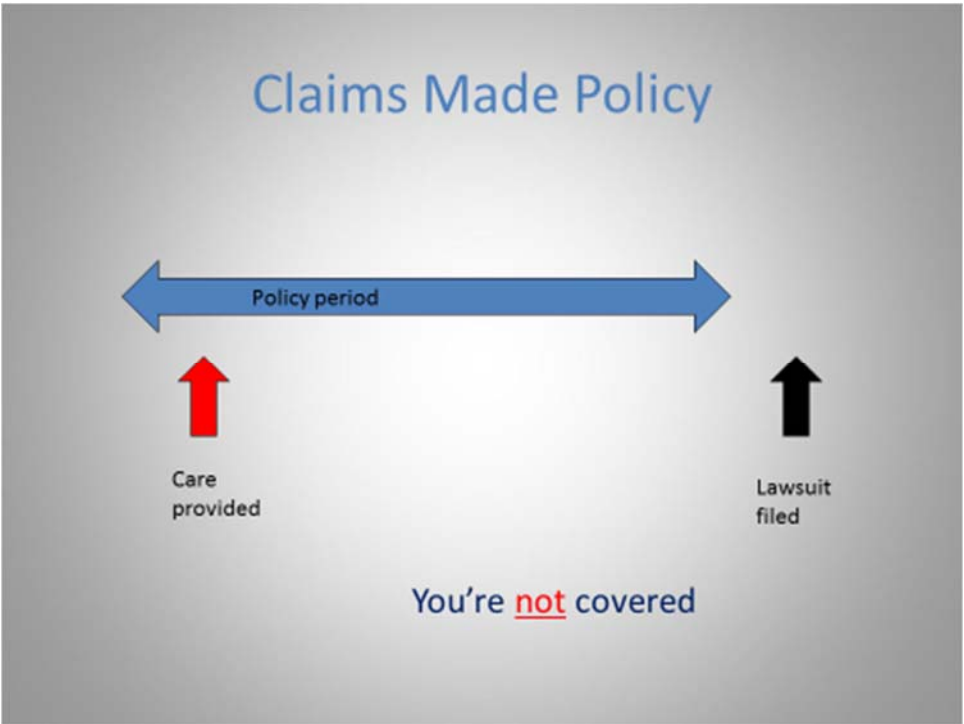
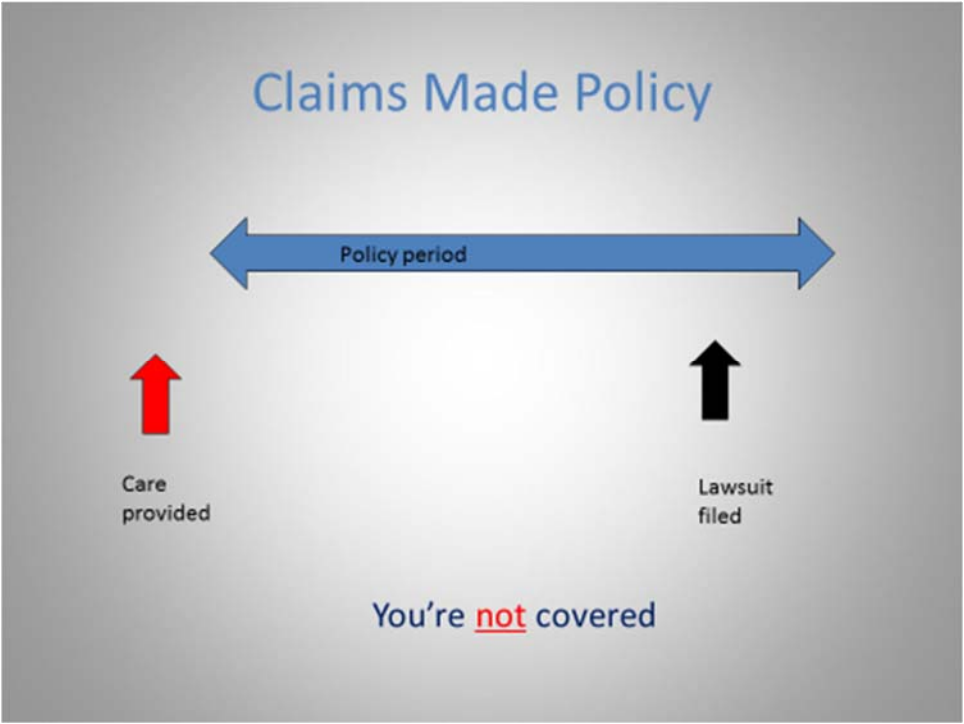
- **Occurrence:** events occurring while the pediatrician is insured and the malpractice claims can be made at any time
- **Claims made:** only malpractice claims made during the time pediatrician's policy is in force. Claims made after the policy has expired are not covered.

This is an important consideration because malpractice claims are typically filed years after the alleged incident happens. Remember pediatric patients are minors which means that the pediatrician may be liable for events that happened more than a decade previously and in some states more than 2 decades.

What does that mean? Here's a simple schematic on how an occurrence policy works:



Coverage under a claims made policy is more complicated. Here are 2 schematics showing what would and what would not be covered:





Another important consideration is that claims made policies require that you purchase “tail insurance.”

Tail insurance covers: Events occurring during claims made policy in effect, but the claims is filed later. Basically it makes up the gap between one claims made and a subsequent claims made policy.

Which is best?

Availability - All professional liability insurers offer claims made policies. Only some offer occurrence policies. Occurrence policies are harder to find.

Cost - It would seem almost intuitive that the best available medical malpractice policy is the occurrence policy and that would be true if the price is not considered. Occurrence policies are priced at a level premium year to year. Claims made policies start off at a low first-year premium and increase each year, usually until the fifth year, when they reached their “mature” level premium. The savings in premium over those five years can equal approximately 125%-170% of the mature premium so with claims made coverage, a pediatrician would get a year and a quarter or more of coverage free, compared to occurrence coverage. That holds true unless he or she gets stuck having to pay for tail insurance which can cost anywhere from about 180% to 250% of the mature fifth-year premium.

There are other considerations, such as the kind of trigger the claims made medical malpractice insurance policy has. A “demand” trigger depends on when the claim is filed. An “incident”

trigger depends on when the alleged malpractice event occurred. These are important terms to understand.

All other things being equal, the choice between claims made and occurrence coverage depends largely on whether an insured will qualify for a free tail. If a free tail is likely, claims made may be more advantageous.

Here's an example for a pediatrician with a medical liability insurer that offers both claims made and occurrence coverages. (The prices are merely illustrative as med-mal insurance costs differ widely state by state and sometimes area by area within a state.)

The following chart shows a company's annual premium for limits of \$1,000,000/\$3,000,000 for claims made (I) and occurrence (II) policies, the cumulative savings of claims made over occurrence (III), what the tail cost would be at the end of each year (IV) and the cumulative price difference if a tail is purchased at the end of that year (V). Remember, tail insurance is paid once for any number of years of claims made coverage.

| Year | I Occurrence | II Claims Made | III Cumulative Savings | IV Cost of tail this year | Extra cost if a tail is purchased |
|------|-----------------|----------------------|------------------------------|------------------------------------|---|
| 1 | \$17,645 | \$5,379 | \$12,266 | \$17,693 | \$5,427 |
| 2 | \$17,645 | \$10,084 | \$19,827 | \$26,539 | \$6,712 |
| 3 | \$17,645 | \$13,615 | \$23,857 | \$32,068 | \$8,211 |
| 4 | \$17,645 | \$15,127 | \$26,375 | \$35,386 | \$9,011 |
| 5 | \$17,645 | \$16,587 | \$27,433 | \$35,386 | \$7,953 |
| 6 | \$17,645 | \$16,587 | \$28,491 | \$35,386 | \$6,895 |
| 7 | \$17,645 | \$16,587 | \$29,549 | \$35,386 | \$5,837 |
| 8 | \$17,645 | \$16,587 | \$30,607 | \$35,386 | \$4,779 |
| 9 | \$17,645 | \$16,587 | \$31,665 | \$35,386 | \$3,721 |
| 10 | \$17,645 | \$16,587 | \$32,723 | \$35,386 | \$2,663 |

Different companies may have higher or lower first four year premiums and tail factors. A qualified Medical Malpractice Insurance Broker can do these comparisons researching various companies.

As can be seen from the chart above, in the first five years, this pediatrician would save \$27,433 on claims made premiums and, if a tail needs to be purchased, the extra cost over the claims made savings would be \$7,953. After ten years, the claims made savings is \$32,723 and, if a tail needs to be purchased, the extra cost over the claims made savings would be \$2,663. The claims made savings to this pediatrician, if a tail is not needed because of qualification for a free death, disability or retirement tail increases each year by \$1,058.

Of course, this does not take into account the additional dollars that accrue from investing the savings. Nor does it consider the shock value of having to come out of pocket at one time with a lump sum payment of as much as \$35,386, if a tail has to be purchased.

So how do pediatricians select which kind of medical malpractice policy to buy?

Pediatricians who know they are going to work at a location for a short time and will not be able to take coverage with them may be better off with an occurrence policy. Pediatricians who plan to stay at one location for a long time, and can bank the savings against unexpected needs to purchase a tail, may be better off with claims made coverage and its significant savings over occurrence coverage.

This is an individual choice. The Academy does not recommend one medical liability insurer over another nor does the Academy recommend a particular kind of insurance policy.

Employed pediatricians usually don't get to choose which form of medical liability insurance policy by which they will be covered. Typically, it is selected (and paid) by the employer. But employed pediatricians should be aware of the differences between claims made and occurrence insurance because it will matter if they ever seek new employment especially if they'll need to purchase tail insurance.

This information is provided for general educational purposes only. It is not intended as legal advice. The dollars presented are purely illustrative.