

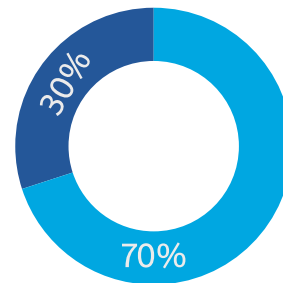
Malpractice Policy Types

Claims-Made:

- Provides protection for any covered incident while the policy is in force regardless of when the incident occurred
- Does not cover incidents after the policy has lapsed or been canceled (-) requires tail
- Tail coverage is not necessary if a subsequent claims-made policy is also purchased unless a claims-made policy is switched to occurrence
- Generally, the savings by maintaining this type of policy for 5 years covers the cost of tail coverage (-) becomes (+)
- Coverage limits are determined when the incident was reported, not when it occurred (+)
- Less expensive (+)
- Ideal for stable practice employment
- Purchase the policy yourself perhaps with an employer subsidy (allowance) that you can take with you if employment ends
- About 70% of insureds have this coverage

Occurrence:

- Provides protection for any covered incident that occurred when the policy was in force forever
- No tail coverage is required (+)
- Coverage limits are determined when the incident occurred, not when reported (-)
- More expensive (-)
- May be the better option with uncertain or short-term employment
- About 30% of insureds have this coverage



Current Insureds Coverage by Type

- Claims-Made
- Occurrence

When Shopping for a Policy:

- Compare mature premiums!
- Ask if defense costs are paid outside the limits of coverage
- Ask who reviews the claims: orthodontists, general dentists, or claims adjusters?
- Most common limits of coverage: \$1,000,000/\$3,000,000 (over 80% of insureds)
- You should have coverage not only for yourself as an individual but also for the corporate entity
- Shared or separate limits are available; most have shared limits

Standard of Care

- Standard of Care is a legal term that is determined by expert witnesses, judges, and juries; therefore, it varies in different jurisdictions
- The Standard of Care is also recognized as acceptable and appropriate by a reasonable health care professional practicing in your area under similar circumstances
- Negligence is providing or failing to provide care that a reasonable health professional practicing in your area would provide under similar circumstances
- Negligence is considered any practice below the Standard of Care

Additional Safeguards

- Always obtain informed consent, and the doctor is the ideal individual (legally and educationally) to obtain it
- Informed consent is doctor specific
- All treating doctors must have informed consent
- Use supplemental informed consent when conditions elevate the risk of a lawsuit
- Coverage typically includes your employees, provided that they are practicing within the parameters of the state dental practice act but not a general dentist you employ
- Read your policy carefully to understand what orthodontic incidents are covered and who is covered
- Don't ever allow a parent to assume first-phase treatment will not require a second phase
- Read your radiographs
- Patients should always wear eye protection
- Clearance should be obtained from the general dentist or a periodontist before beginning treatment, especially with adults (periodontal disease)
- Braces don't cause white spot lesions, but it's a battle we never win in court; document and discontinue treatment if necessary

- Progress radiographs are the only way to determine root resorption; 9- to 12- month intervals are usually appropriate, but ectopic teeth may warrant a shorter interval
- If teeth are ectopic, especially maxillary canines, be proactive and discuss potential root resorption and surgical exposure before treatment begins
- Information before treatment is knowledge; afterwards, it is an excuse
- CBCTs offer an enormous amount of information; you may want a maxillofacial radiologist to review
- Notify the insurance company at the first sign of an issue
- Pre-treatment records are for the patient's benefit (diagnosis/treatment planning); post-treatment records are for the doctor's benefit/protection
- Follow the AAO's Clinical Practice Guidelines—a good plaintiff's attorney will know you should!

AAO Clinical Practice Guidelines

- Medical and dental histories, including chief complaint
- Clinical exam
- Diagnostic records: cephalometric/panoramic radiographs or CBCTs, photos or images, dental casts or digital models
- Diagnosis and well-documented treatment plan
- Treatment consultation and informed consent (signed by both doctor and parent/patient)
- Progress notes: treatment procedures, any changes in treatment plan, patient compliance, treatment difficulties, and other important aspects of treatment (legible)
- Progress panoramic radiographs (especially important with root resorption)
- Post treatment records: cephalometric/panoramic radiographs, photos or images, dental casts or digital models