

Healthcare D&O Claim Scenarios

Please consider these claim scenarios in your healthcare organization. While they may seem extreme, claims such as these are a reality. Healthcare D&O coverage* offered by OneBeacon Management Liability® can protect your organization from a wide range of D&O exposures.

Anticompetitive/Business Interference Claim (From Doctor or Competitor)

Defense and Settlement: \$1.8 million

A physician opened his own practice in a small town to provide much needed cardiology coverage at the hospital-run medical group. After the hospital encouraged and agreed to support the expansion of the physician's practice, he invested substantial sums in buying equipment, property and hiring other cardiologists. Shortly after, the hospital-run medical group went behind his back, took his cardiologists, drastically cut his on-call schedule and directed the coverage to its newly established hospital-run cardiologist group. The physician then filed suit for interference with prospective economic advantage, intentional interference with contractual relations, as well as violations of antitrust and unfair business practices.

Physician Credentialing/Practice Privileges Claim

Defense Costs: \$200,000

A specially formed committee found the doctor violated the hospital's code of conduct, thereby requiring him to attend an anger management program. After refusal, for over a year, to attend anger management training, the doctor's medical staff privileges were suspended by the hospital for 14 days. The doctor filed a complaint alleging the hospital had improperly suspended his privileges in violation of the hospital's Peer Review Policy and the Medical Staff Bylaws.

Fraud/Deceptive Trade Practices/Consumer Credit Protection Act

Defense Costs through Trial: \$200,000

After state residents sought copies of their medical records from the hospital, they were charged \$.40 "per page" as though paper copies were being produced, even though electronic copying was available and more reasonable in cost or such electronic copies were requested and provided on disc. A certified class-action lawsuit was brought by state residents against the insured hospital arising from processed requests for copies of patient medical records. The complaint alleged that the insured hospitals engaged in fraud, deceptive trade practices and violation of the consumer credit protection act. The complaint seeks reimbursement of overpayment for medical records, attorney's fees and damages for each class member.

HIPAA Claim

Defense Costs through Trial: \$200,000

A detainee was under curfew-only house arrest after pleading guilty to receiving stolen property. The corrections officer appeared at the hospital after the GPS monitoring device showed the detainee was at the hospital. Upon the officer's questioning, the hospital disclosed that the detainee had undergone treatment for excessive alcohol use. Since the detainee violated the terms of his probation, his home confinement was revoked and he was placed in the county jail. Subsequently, the detainee filed a complaint alleging that the information disclosed was protected health information pursuant to state and federal law and regulation, including HIPAA.

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MANAGEMENT LIABILITY

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Criminal

Defense Costs: \$100,000

A nurse used restraints on a patient who was combative and struck out at health care employees in an attempt to bathe and perform the necessary hygiene care. A hospital investigation ensued as a result of a nurse overhearing another nurse state that she had restrained the patient. The investigation concluded that the patient was restrained against his will after being threatened with restraint use. Ultimately, the hospital decided that the suspected patient abuse was not reportable since the patient was not restrained by definition as restraints were permitted by policy for the purpose of treatment. In this case, the patient's bathing was necessary for maintenance of his health. A criminal complaint was filed against the hospital's CEO and CMO by the Attorney General's office alleging (1) Failure to Report Elder Abuse; and (2) Inhibiting Another from Reporting Elder Abuse.

False Claims Act/Regulatory Claim-defense Only Claim

Damages Alleged: Excess of \$1 million

Qui Tam complaint was brought by relators on behalf of United States against a provider of wound care services and multiple hospitals throughout the United States for potential violations of federal law, specifically the False Claims Act. The United States is investigating billing irregularities including up-coding of debridements and unnecessary use of hyperbaric oxygen treatments.

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