

Spring 2013

Risk Management Corner

Tips for securing vacant buildings

- Make frequent and regular walk-through inspections of the buildings at different times during the day. Try to avoid making the visits predictable.
- Make sure the sprinkler system, burglar alarms and other detection devices are working properly.
- Protect the pipes in cold weather. Keep the temperature 40 degrees Fahrenheit or higher to prevent freezing of pipes.
- Remove any debris and/or hazardous materials from inside the building.
- Conduct regular roof inspections. Keep an eye out for water pooling or ice and/or snow loads.
- Maintain the building grounds – remove any debris, mow the grass, etc.
- Shut off water in any areas of the building where it is not needed.
- Inform location fire and police departments of the vacant building.

Save the Date

National Association of Addiction Treatment Providers (NAATP) 2013 Annual Conference

May 18-21, 2013

La Cantera Resort, San Antonio, TX

CONTACT: www.naatp.org

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Navigating Property and Casualty Insurance Trends in Behavioral Healthcare

Look for the behavioral healthcare niche — addiction treatment and mental healthcare providers — to follow general trends impacting the property and casualty insurance industry in 2013. Carriers have seen their investment returns shrink to near record low levels in recent years. This has increased pressure to produce better returns on underwriting income to meet return on capital targets. More costly catastrophes, an aging workforce, rising health care costs, and increased frequency and severity in liability claims are some of the key challenges to achieving an acceptable underwriting profit.

After almost a decade of decreases, insurance rates began to edge upward in 2012. Rates are likely to continue their upward trend in 2013 for all lines of coverage, led by worker's compensation and employment practices liability — two lines that have produced particularly poor underwriting results in recent years.

The behavioral healthcare industry is being re-engineered, along with the rest of the healthcare industry, following the 2010 passage of the Patient Protection and Affordable Care Act. The provisions of the Act follow an implementation schedule through 2020, and 2013 is a big year. Medicaid expansion, the creation of health insurance exchanges and the individual mandate will take effect by year end, straining resources with additional service demands. There are concerns about increased liability exposures arising from:

- the capability of the healthcare workforce to provide quality care with limited resources;
- the integration of behavioral healthcare and primary care services;
- changing approaches to clinical care and treatment protocols, and
- the shift to a managed care model for a patient's "whole health".

Property and casualty carriers will have to approach this uncertainty with caution and flexibility.

Ever-expanding health information technology, including the mandated shift to shared electronic health records and telemedicine is creating new concerns about data security and patient privacy. Look for behavioral healthcare providers to increase interest, and to purchase cyber and data security insurance products in order to transfer their increased risk to HIPAA violations and data breaches.

Agents and brokers working with addiction treatment providers and mental healthcare facilities will be challenged in 2013 with changing insurance market conditions and evolving risks in behavioral healthcare. Working with a niche-focused program that understands how these behavioral healthcare industry changes impact insured treatment providers and offers flexible solutions to risk transfer will be more important than ever.



Case in Point: Resident's Sexual Harassment Claim Leads to Settlement, Termination

The Situation

A 41-year-old male was admitted to ABC Treatment Center from incarceration. His addictions include alcohol, heroine and cocaine. His past issues include being molested as a child. The resident claimed inappropriate contact by a facility staff member. He ascertains that he was in the dining area standing in line when the staff member came up from behind and grabbed his buttocks, leaned into his back and kissed him on the side of the neck. The allegations were confirmed by another resident who witnessed the incident. The claimant also filed a complaint against the staff member, alleging that the employee had been communicating on a regular basis with his mother and had shared personal information. This was a violation of the resident's privacy and confidentiality.

Staff verified that the claimant had been up most of the night following this incident in the dining area, and appeared to be agitated and fearful. He reported that he had felt violated again and doubted whether it was safe for him to remain in treatment. Arrangements were made to have him see a mental health counselor. He did so and was prescribed medication to help with his anxiety and to assist in sleeping. By the time his treatment ended, he was in good spirits although he would occasionally complain of being depressed and claimed to have repetitive flashbacks of the incident.

The Solution

The investigation revealed that the staff member, a 42-year-old female program monitor, had a criminal background. It had been noted, too, that the insured had communicated other instances of inappropriate behavior, including boundaries with residents and inappropriate dress, to the staff member. The matter was resolved for \$12,500. The terms include a confidentiality agreement and a release of the subject employee.

In this situation, ABC Treatment Center got off easy. Many sexual misconduct cases settle for hundreds of thousands of dollars.

Sexual Misconduct Exposures

Sexual misconduct by mental health professionals has been a long-standing concern in medical practice. Even the Hippocratic Oath, written in 6th century BC, raises questions of the ethical nature of professional-patient sexual relations. Despite a surge in cases in the 1980s, still as many as 10 percent of psychiatrists/psychologists are accused of sexual misconduct every year.

Sexual Abuse of Patients by Health Care Professionals [www.stanford.edu/group/psylawseminar/Sex.htm], a comprehensive report by Stanford University, addresses exposure-related issues. Following is a brief overview.

Does patient-therapist sexual consent negate professional liability?

According to a Stanford Law report, "The vast majority of cases stand for the proposition that any sexual contact between a therapist and a patient during the time the therapy continues are malpractice and a breach of fiduciary duty."

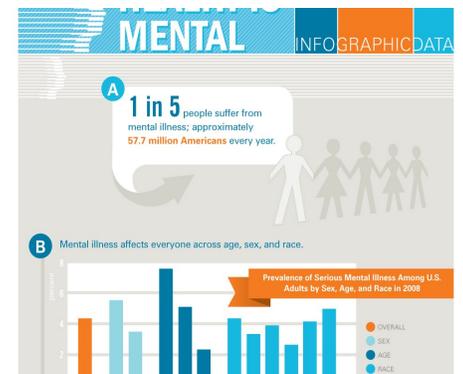
When does the clock start on the statutes of limitation in a sexual misconduct case?

While state-specific statutes of limitations are clearly defined, time limits on allegations of sexual misconduct and other malpractices are not as cut and dry. Oftentimes, the emotional and psychological state of the alleged victim determines the date when the limitation begins—not the date of the incident in question.

Does professional liability coverage protect professionals in cases of sexual misconduct?

Sexual assault is a felony; sexual malpractice is a professional liability. Medical professionals should carefully review their insurance policies to determine coverage limitations and exposures before allegations arise.

Infographics for Easy Learning



Infographics use visual appeal to further understanding and retention of complex or comprehensive information. The National Council for Community Behavioral Health offers a variety of infographics for use in print, web and social media promotions. Just click here [www.thenationalcouncil.org/cs/choose_from_this_list] to download these and other free resources.

- **Mental Health Statistics** captures the prevalence of mental illnesses in America, demographic data, the economic burden and professional data.
- **Addiction** offers a snapshot of the disease and its stages, its affect on the brain and body, and a simple assessment.