

Liability Protection for Your Board and Organization

Your nonprofit entity will need to be insured against adverse events that can occur during the operation of your clinic. Do not overlook this protection because it can save the organization and its Board of Directors from being financially liable in the event of a claim. While claims in the free and charitable clinic sector of any sort are relatively infrequent, circumstances may occur where a clinic must be protected from legal claims. Anyone can sue your organization for wrongdoing, almost regardless of circumstance. They may not have a case and they may not win, but proving your organization's innocence will require engaging an attorney, which can be very expensive. Your insurance company will provide the attorney to defend your clinic and protection against an adverse verdict, so paying the premium should be considered a cost of doing business for your clinic.

An important asset for any clinic is an experienced and skilled insurance broker who can manage your insurance portfolio. This insurance professional will recommend coverage for your organization and explore the marketplace for the best rates and coverage. There are multiple types of insurance needed for the clinic, including professional liability coverage. Make sure that the insurance broker is skilled in all areas of coverage or seek other opinions to ensure coverage is adequate. They can assist a clinic in understanding the difference between necessary coverage and extraneous policies. Find someone you trust and build a relationship. Interview potential brokers as you might a member of your leadership team. They can protect your organization and save you significant cost.

Types of coverage for your Board to explore include:

- Property Insurance – This will cover building and/or office equipment, computer, valuable records, etc., that the organization owns. Business personal property that needs to be covered away from the premises (i.e. laptop computer) needs an Inland Marine Floater policy that usually costs extra.
- Directors and Officers Insurance – Protects the Board members against claims alleging harm attributable to the governance or management of an

organization but excludes bodily injury and property damage. Generally, D&O policies don't list specific types of covered claims, but provide coverage for any "wrongful act." A wrongful act may be an actual or alleged act, error or omission by the organization itself, its directors, officers, employees and/or volunteers. In addition, a suit by a volunteer against a nonprofit organization might be precluded under the "insured vs. insured" exclusion that is common on D&O policies. In most cases, this exclusion is only removed with respect to employment claims. Policy wording should be reviewed carefully to determine whether coverage applies in a particular instance.

- General Liability – Covers the organization from losses due to incidental bodily injury or property damage to third parties. Third parties could be patients/clients, messengers, or anyone from the public visiting the premises or those that come in contact with an employee or representative of the organization that is carrying out their normal duties. Usually all the building premises, grounds, offices, activities, special events, publications and products sponsored by the insured are exposures appropriately charged for. Examples include a messenger or client falling down the steps or slipping on a wet floor, unintentional slander in a brochure, injury to client while participating in usual activities at the facility, consumption of bad food at refreshment time, or injury at a fundraiser or special event. This is not professional liability and does not cover losses directly resulting from any services rendered.
- Professional Liability (for the nonprofit entity) – This is protection from adverse events occurring with clients/patients. It covers the organization (entity) from losses due to improper rendering of services by the organization. If a client seems to have suffered in some way as a result of, or lack of proper services of the organization then they may sue the clinic. Even if the organization does not service the public directly, if it has any input or influence in any way (funding, training, referral) pertaining to the services rendered by another agency, it can be named in the lawsuit by an injured party. Most policies cover services donated or rendered by contract workers like counselors, doctors, and nurses as long as they have their own professional liability (malpractice coverage) for their own personal protection. Do not assume that the "Good Samaritan" or federal volunteer protections will extend to the nonprofit entity. It may not provide adequate coverage in covered instances. Note well, FTCA coverage for free clinics DOES NOT cover the entity in cases of malpractice.

- Workers Compensation – Covers employees of the organization from work related illness or injury. The state requires this coverage when there are 3 or more employees, regardless if all three are to be covered. Be advised however, that even if no workers compensation is required or purchased, an injured employee can sue the organization for the equivalent of workers compensation benefits if their injury or sickness is work-related. Some insurance companies will cover volunteers for an additional charge if the type of work they do is not high-risk.
- Commercial Vehicle – Provides liability and physical damage coverage for the vehicles owned by the organization. Insurance companies will check the driving records of drivers and review loss runs before quoting this business. Such coverage is often mandatory in specific states.
- Hires/Non-Owned Vehicle – An organization can be sued if an employee or volunteer has an accident while driving his/her personal car or rental car while conducting business on behalf of the organization. The individual can be running an errand or going to a meeting. The employee's/volunteer's personal insurance policy is primary coverage for injury or property damage to third parties or passengers, but the organization can be sued also. This coverage protects the organization only. It does not cover the employee/volunteer or their vehicle. If employees/volunteers transport clients in their personal vehicles, it needs to be brought to the attention of the insurance agent and company. Coverage for injuries to these clients is also primary under the employee's/volunteer's personal auto policy. Increasingly, insurance companies want to verify that each employee/volunteer has at least 100,000/300,000 personal auto liability limits and a good driving record before extending this coverage.
- Crime and Employee Theft – Covers the organization from embezzlement or theft of funds by a covered employee (those who handle funds or money, usually an officer, treasurer, board member, etc.). This is the insurance equivalent of a bond, commonly called a Fidelity Bond.
- Special Events – Coverage for large single special events like fairs, ball games, auctions, flea markets, art shows, or other one-time fundraising or social events is usually purchased specifically for the event.