

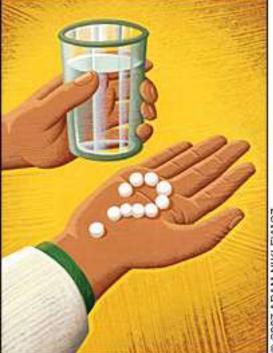
PROFESSIONAL LIABILITY INSURANCE FOR PHARMACISTS

Dr. Dahlia McDaniel Dickson May 28, 2017





- Pharmacy Errors
- Indemnity, Malfeasance, Pharmacy Malpractice, Tort Law
- Duty of Care and Pharmacist's Liability
- Examples of Pharmacist's Negligence
- Benefits of Professional Liability Insurance(PLI)
- Coverage offered by Professional Liability Insurance
- Professional Liability Insurance as a Requirement for Registration/PLI for Pharmacists in four countries
- ► The Jamaican Situation



2007 ADAM NIKLEWIC

Everybody makes mistakes, everybody has those days.

Todd Carney

QuoteAddicts

- Q Search in Jamaican Pharmac...



Dahlia McDaniel 30 Apr at 00:15 • 💷

In my preparation for an educational presentation for pharmacists I am asking if you care to share with me (Inbox me) a potentially, or actually, serious pharmacy error that you have made, how the situation was handled, and the results or consequences.

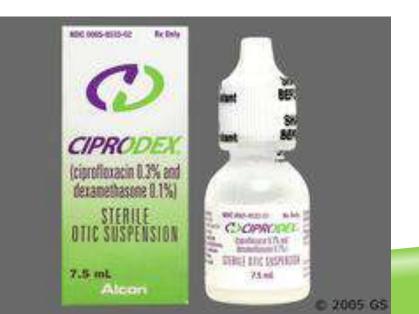
The scenario will be used ANONYMOUSLY if you do not wish for your identity to be revealed.

This may be helpful to the prospective audience as a "What not to do as pharmacists" situation. Thanks Colleagues.

1

- Prescription for Quidex® (ciprofloxacin) EYE Drops
- Ciprodex ® EAR Drops sent
- Detected Error When Filing Prescription
- Called the Patient, Apologised





- Prescription for KLARACID XL (antibiotic)
- I sent metformin XL (diabetes) Tablets
- Called the Patient, Apologised
- Good Customer Service When Filling Prescription
- Patient was Very Understanding
- Sleepless Nights for Pharmacist



- I Used Rubbing Alcohol (70% Isopropyl alcohol) to mix Antibiotic Suspension.
- Child took Two Doses, Complained of Stomach Burning.
- Parent called. Error Detected
- Alcohol Bottle was Placed Beside Water Bottle (no Label)
- To Sue or Soothe



- ► Long Day ... Constant Interruptions....
- Pharmacy Tech Mixed Wrong Antibiotic....Correct Label
- Child Had Allergic Reaction
- Mother Was Mad





- Prescription for Martindale Vistamethasone Eye Drops
- Pharmacist placed Martindale Timolol in Vistamethasone Space
- Pharmacy Technician Incorrect Box Wrong Label
- Patient got Timolol for Vistamethasone
- Patients Father (prominent Attorney) Returned with Wrong Drug



- ► Nifedipine 10mg Prescribed.
- Nifedipine 20mg Dispensed
- "Good" Error
- Patient Pregnant and had Eclampsia
- Doctor said Increased Dose Saved Her Life
- I Nearly Wet Myself



WHEN EMERGENCY CONTRACEPTION BECOMES AN EMERGENCY



DEFINITIONS : INDEMNITY

- Compensation for Loss or Damage
- Insurance Against Loss or Damage
- Exemption From Penalties Incurred Through One's Acts



DEFINITIONS ; MALFEASANCE

The Doing of a Wrongful Act, Especially by a Public Official

mal·fea·sance (măl-fe/zəns) n. Law.

Misconduct or wrongdoing, especially by a public official. [Anglo-Norman *malfaisance*, from Old French *malfaisant*, malfeasant, present participle of *malfaire*, to do evil, from Latin *malefacere*. See MALEFACTOR.] --mal·fea/sant adj. & n.

DEFINITIONS : PHARMACY MALPRACTICE

Malpractice tofessional negligence

- Pharmaceutical Malpractice
- Lawsuit for Negligence against Pharmacy ,Pharmacist, Hospital or Healthcare Provider
- Prescription Filled Incorrectly

Source: Obradovich Law (A Canadian Law Firm) http://www.obradovich.net/practice-areas/medical-malpracticelitigation/pharmacy-malpractice/

RESPONSIBILITY OF A PHARMACIST/ DUTY OF CARE

- Pharmacist Owes a Duty of Care
- Must Fill Prescription Correctly
- Inform on Medication's Purpose and How to Use
- Warn About Interactions
- Alert About Side Effects
- ► Failure = Breach of Duty of Care
- Breach of Duty of Care Means Pharmacy Malpractice Happened

Source: Obradovich Law (A Canadian Law Firm) http://www.obradovich.net/practice-areas/medical-malpracticelitigation/pharmacy-malpractice



PHARMACIST LIABILITY



- Legally Obliged, Responsible, Answerable
- Liability for Consequences of Error
- Pharmacist Liable to Compensate for Pain, Suffering, Emotional Distress, Disability, Medical Care, Losses, Expenses.

Source: Obradovich Law (A Canadian Law Firm) http://www.obradovich.net/practice-areas/medical-malpracticelitigation/pharmacy-malpractice/

EXAMPLES OF PHARMACIST NEGLIGENCE

- Wrong Medication
- Wrong Dose
- Wrong Patient
- Filling Without Clarifying Prescription with Doctor
- Wrong Instructions
- Failure to Warn About Interactions
- ► Failure to Warn About Side Effects
- Wrong Label on Container

*Source: Obradovich Law (A Canadian Law Firm) http://www.obradovich.net/practiceareas/medical-malpractice-litigation/pharmacy-malpractice/



EXPECTATION OF THE PUBLIC

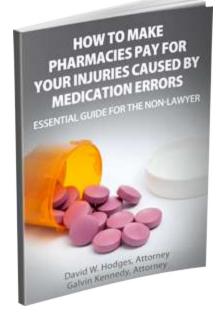
- ► If Pharmacist is Negligent, There Should Be Redress
- Proof that Pharmacists are health Care Providers? Possibility of Suit for Malpractice
- Liability Risks Increase with Patient Care Responsibilities



BW & B MEDICAL MALPRACTICE LAW FIRM, TEXAS

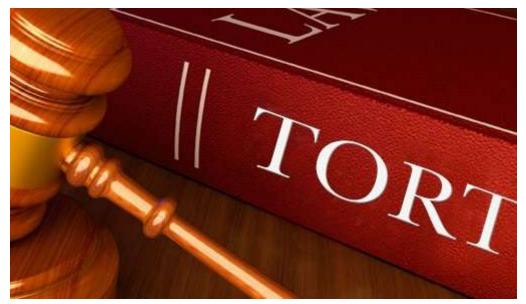
- Contact Pharmacy or Doctor (to get Help)
- Gather All Evidence to Support You
- Contact Pharmacy/Medical Malpractice Attorney (Quickly)
- Do it For Your Country





TORT LAW

- What's A Tort?
- Wrongful Act Resulting in Injury. Compensation
- Pharmacy Malpractice Falls Under Tort Law



FOUR ELEMENTS OF TORT OF NEGLIGENCE

- Duty Legally Enforceable Obligation to Conform to a Strict Standard of Conduct
- Breach of that Duty
- Injury and Causation (not necessarily Direct)
- Damages (Compensation)

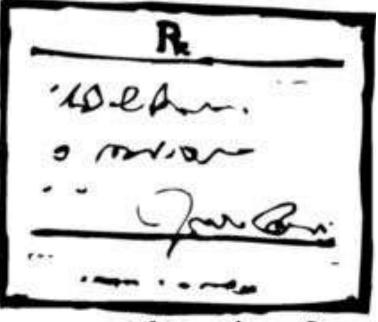
http://www.ncpanet.org/pdf/ed/06conv_insurance.pdf



MY PHARMACIST LIABILITY SITUATION

Prescription Written by Dr Jones (the one we all know)

► Tetracycline brand Latycin®



prescrpt fotosearch.com ©

MY PHARMACIST LIABILITY SITUATION

Prescription Written by Dr Jones (the one we all know)

- Rotunda Rainford
 <u>LatycinEye</u> Ointment
 Apply three times daily
- Label Tetracycline Ointment. Apply Three Times daily
- Major Coincidence

INTENTION TO SUE



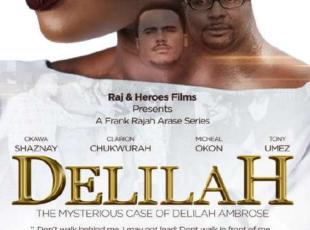


- Wrong Drug Tetracycline Skin Ointment to Client, Esmerelda Escoffery
- I was Relaxed and Cool
- Attorney Explained the Medication Error
- No Explanation re: Patient's Name

DR JONES' SITUATION

- How come Esmerelda Escoffery Suing for Rx Written and Labelled for Rotunda Rainford?
- Esmerelda was the Patient
- Esmerelda asked Dr Jones to use Rotunda's Health Insurance
- Esmerelda Sued Dr Jones
- ► Esmerelda a Delilah

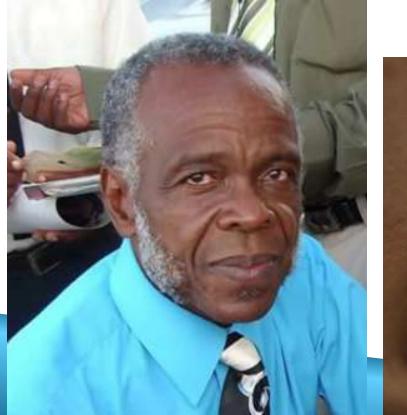




"...Don't walk behind me, I may not lead; Dont walk in front of me i may not follow, just walk beside me_you could be my friend."

OPHTHALMOLOGIST'S WORDS

"If a Person Says Eyes (Body Part) Hurting,
 No Clinician, Attorney, Pharmacist Can Say No".





MY ATTORNEY, CRAFTON MILLER

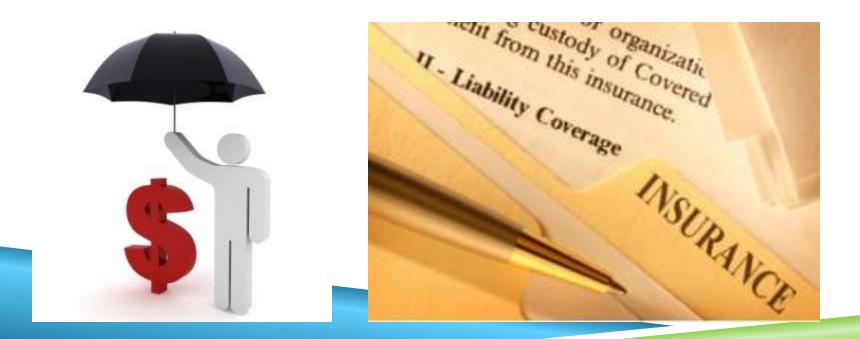
"For every evil under the sun, There is a remedy or there is none, If there's a remedy, You can find it. If there is none, Then never mind it."

► So We Did a Michael Jackson

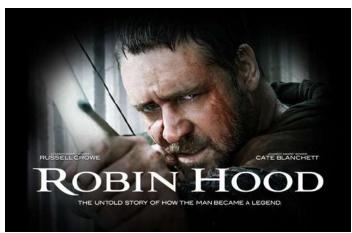


WHAT DOES PROFESSIONAL LIABILITY INSURANCE COVER?

- Defense Costs (Attorney Fees) and Compensatory Damages Awarded Lost Wages
- Legal Expense Coverage for Disciplinary hearings Held by Pharmacy Council



MALPRACTICE PON TOP A MALPRACTICE



- Break the Law to Help the Patient
- Little Old Man Needs His Glaucoma Drops
- This one? This one? This one?
- Eye Patch plus Letter from Lawyer
- "But Sir, I was only trying to help you, remember?"
- "But yuh neva have nuh right fi give mi without a prescription."
- Pharmacist's WILLFULViolation of a Pharmacy Regulation

WHAT DOES PROFESSIONAL LIABILITY INSURANCE NOT COVER?

"We" [insurance company] do not pay for "property damage" arising out of ... a willful violation of a regulation or statute relating to "pharmacy services"; or ... a violation of criminal or penal statute or a criminal act ..."

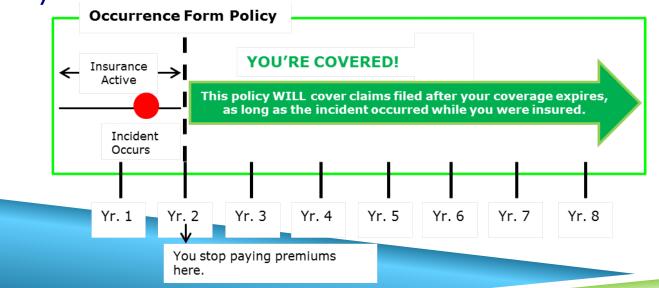
Punitive Damages (e.g Fraud, Sexual Harassment)



TWO TYPES OF PROFESSIONAL LIABILITY INSURANCE CONTRACTS



- Incident Must Occur While Insurance is Live
- Occurrence-Based Pays for Loss which "Occurred" During Term of Policy

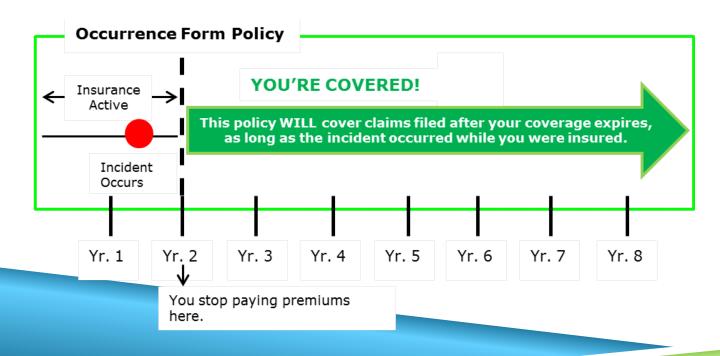


OCCURRENCE BASED INSURANCE

"Prior Events" Coverage

Covers Incidents Before Occurrence-Based Insurance

Source: https://pharmacists.ab.ca/nRegistrationLicensure/Pharmacists.aspx?id=5922#3



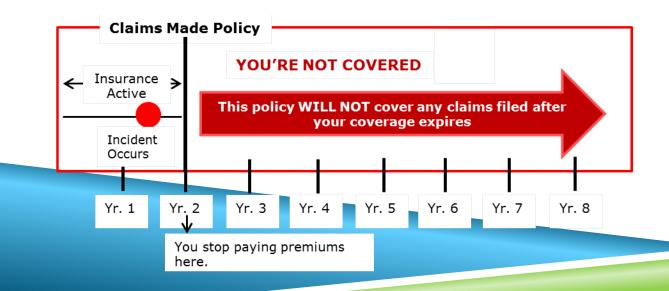
TWO TYPES OF PROFESSIONAL LIABILITY INSURANCE CONTRACTS

- Claims- Made Pays for "Claims Made" During Term of Policy
- Pays When Incident AND Claim Happen During Term of Policy
- May Pay AFTER Coverage Period ONLY IF We Buy "Tail Coverage"



CLAIMS-MADE INSURANCE COVERAGE

- May Pay AFTER coverage period IF we notify Insurer during Policy period
- ► Rx Error Patient Threatens to Sue Pharmacist in 11th Month
- Notify Insurer IN WRITING DURING policy period



THE "BRINKS" STORY







PURCHASING PROFESSIONAL LIABILITY INSURANCE FOR PHARMACISTS

- Pharmacy Policy Is Designed to Protect the Pharmacy
- Pharmacist Insurance Protects Pharmacist First
- Pharmacist Insurance Is Portable within the Country

ARE YOU COVERED?
PHARMACIST HEALTH CHECK Pharmacist Professional Liabilities Insurance (PI) Pharmacist Professional Liabilities Insurance (PI) Pharmacist Professional Liabilities Insurance (PI)

WHAT SHOULD I LOOK FOR IN A GOOD PLI POLICY?

- legally a uarantee read the poid faith terms of cervic
- Buy From Knowledgeable Agent Who Explains Policy
- "Who Is Insured?"
- "What Is Insured" (in "coverage" section)
- "How Is Coverage Provided?". The pharmacy's policy should say "Primary," (Pharmacy Policy Covers Employees first).
- PLI Policy for Individual Pharmacist should say "Secondary" or "Excess" Coverage
- Independent Contractors Not Covered by the Pharmacy's Policies -Special Coverage Needed

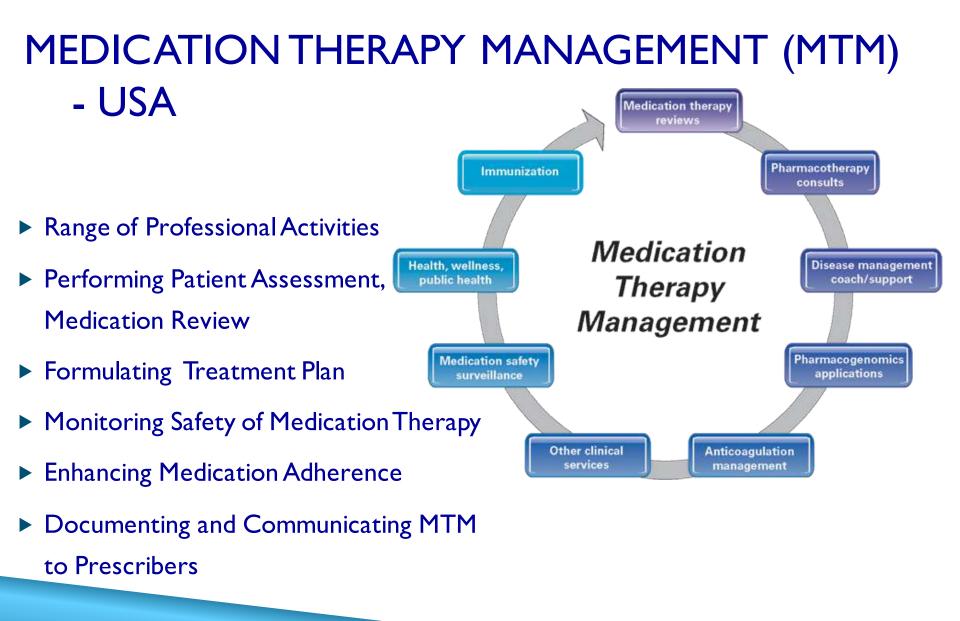
UNITED STATES OF AMERICA



- Various Forms of Malpractice Insurance
- Some States Require Proof of PLI Coverage before Registration
- Do You Supervise Technical Pharmacy Ancillary Personnel?

Higher Monkey Climb, Di More Him Expose Himself......

Do You Prepare and Dispense Risky Products? You Need PLI



PHARMACISTS IN PENNSYLVANIA, USA

- Pennsylvania State Board of Pharmacy Requires PLI only for MTM Pharmacist
- PLI Minimum USD \$1,000,000 per Occurrence or Claim Made
 - "I don't think that it is mandatory. Well I did not get any for myself so I don't think so."

I-4I2-788-9II0 Pittsburgh, Pennsylvania



PLI, UNITED STATES OF AMERICA PHARMACISTS IN BALTIMORE, USA



"PLI is recommended but not mandatory".

> 1-410-625-1971 Baltimore

"Our coverage is through our employer. We may take out our own insurance individually but we don't have to".

1-301-737-4420

Baltimore

PLI, UNITED STATES OF AMERICA PHARMACISTS IN NEW JERSEY, USA



"The insurance is optional. If you want you can get additional private insurance, but your employer insures you."

I-20I- 620-6512 Bayonne, New Jersey

PLI, UNITED STATES OF AMERICA PHARMACISTS IN CALIFORNIA, USA



"The company that you work for, gives you the insurance. You don't have to have it".

I-559-252-9518 Fresno, California

PLI, UNITED STATES OF AMERICA PHARMACISTS IN NEW YORK, USA



"The employer insures the pharmacist"

I-914-285-0690 White Plains, New York

PLI COVERAGE IN SOME STATES, USA



Assault Coverage – up to \$25,000 Annually

Victim of Violence at Work, or To or From Work

PLI COVERAGE IN SOME STATES, USA



Personal Injury Coverage

Claims arising from Allegations - Slander, Libel, Assault and Battery, and other Injuries through Performance of Duties

PLI COVERAGE IN SOME STATES, USA



Sexual Misconduct/ Abuse - Up to \$25,000 Annually To Defend you Against Allegations of Sexual Misconduct

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"Yup...as a pre-requirement for registration with the Ontario College of Pharmacists and yearly registration thereafter...you must declare on paper that you have purchased liability insurance. Based on ethics and societal norms they do NOT ask you to present proof of the Certificate of Insurance. However, the purchase of the liability insurance is "wired into" the system, precluding the registration from going forward if in fact the applicant did not purchase it. Requirement in law."

Dr. Mark Wellington, Jamaican/Canadian Pharmacist

ONTARIO COLLEGE OF PHARMACISTS,"



- The Registering and Regulating Body for **Pharmacy** Practice in **Ontario**.
- ► Article II, Section 2.2 of College By-Law:

"All members engaged in the practice of pharmacy, including Students, Interns, Pharmacists and Pharmacy Technicians, are required to maintain personal professional liability insurance coverage".

INSURANCE REQUIREMENTS FOR CERTIFICATE OF REGISTRATION, ONTARIO COLLEGE OF PHARMACISTS

- Professionals Listed in Part A* of Register Must Maintain Personal PLI * Part A
- Counsel or Dialogue with Patients Re: Medications
- Provide Information and Education re: Drug use
- Compounding or Dispensing.
- Supervise Compounding or Dispensing
- Review Prescriptions, Perform Patient Profile or Clinical Reviews.
- Administer Medications by Injection or Inhalation
- Prescribe Medications
- Perform Procedures on Tissue Below Dermis
- Develop Drug Therapy Protocols or Policies



INSURANCE REQUIREMENTS FOR CERTIFICATE OF REGISTRATION, ONTARIO COLLEGE OF PHARMACISTS

Part B

"No Patient Care"



- Pharmacist Cannot Work in Pharmacy as Pharmacist
- Pharmacist Cannot Fill-in
- Pharmacist Cannot Provide Drug Use Info
- Pharmacist Cannot be Designated Manager of Pharmacy

INSURANCE REQUIREMENTS, CANADA



- Limits of Liability Policy Must Cover Minimum of \$2,000,000 per claim or occurrence - \$4,000,000 per Year
- Definition of Insured Services Must Include All Pharmacy Services
- Retroactive Date Must Provide for Full "Prior Events" Coverage
- Extended Reporting Period "Tail Coverage" for At Least Three Years
- Personal Professional Liability Insurance- Issued in Pharmacist's Name Portable in Ontario
- Legal Defense Payments Payments to Attorney MUST NOT Erode Amount Covered for Entire Policy (\$2M per claim)

PHARMACISTS IN GRAND CAYMAN



- To Open New Health Care Facility Application MUST Provide Evidence of Medical Malpractice Insurance for ALL Health Practitioners
- Section 3(1)- c/d Health Practice Law (2005)
- Malpractice Insurance Coverage Provider Must be Licensed Company Approved by Health Practice Commission

PHARMACISTS IN GRAND CAYMAN INTERVIEWS WITH TWO JAMAICAN PHARMACISTS

PRACTISING IN GRAND CAYMAN FOR SEVERAL YEARS





"In Cayman it is compulsory for the pharmacists to have malpractice insurance. Health insurance for employees is also compulsory. The pharmacy owner usually pays for the malpractice insurance and 50% of the health insurance premium, since these are requirements for the registration of the pharmacy. However, some pharmacy owners refuse to pay the premium and the pharmacist is "forced" to pay it. However the insurance is in fact a personal insurance for the pharmacist because it has the pharmacist's name on it".

Ms. Donna Goodall, Jamaican/Caymanian Pharmacist

PHARMACISTS IN GRAND CAYMAN



DM: Considering that it is a personal professional liability insurance, can you travel from one pharmacy to another with it?

"Free-lancing is not common in Cayman, due to the limited scope for it, and the fact that many pharmacists are there on a work permit which ties them to one pharmacy. In the unlikely event that it is going to be done, the pharmacist must get permission from the substantive employer. If the pharmacist ceases to be employed by the substantive employer, the employer cannot terminate the malpractice insurance policy without the confirmation from the pharmacist. The insurance company will contact the pharmacist to ensure this. The insurance company is Medical Protection Society (MPS) a United Kingdom based organization".

PHARMACISTS IN GRAND CAYMAN



- Medical Protection Society Leading Provider of Comprehensive Professional Indemnity and Expert Advice to Doctors, Dentists and Health Professionals around the World
- Coverage Includes Clinical Negligence, Complaints, Medical Council Inquiries, Legal / Ethical Dilemmas, Disciplinary Procedures, Fatal Accident Inquiries

UNITED KINGDOM (ENGLAND, NORTHERN IRELAND, SCOTLAND AND WALES)



Four categories of Healthcare Professionals including Pharmacists in UK:

- Employed or engaged by an NHS hospital
- Work in NHS "branded" care environments, such as primary care
- Work in the independent/ private sector but are employed
- Work in the independent/ private sector but are self-employed

Source: Dept of Health/ PriceWaterhouse Coopers, 2010

UNITED KINGDOM (ENGLAND, NORTHERN IRELAND SCOTLAND AND WALES)



Royal Pharmaceutical Society of Great Britain

- Royal Pharmaceutical Society of Great Britain Cannot Confirm the existence of Insurance Coverage as part of the Registration
- But Principle 7.7 of Code of Ethics for Pharmacists and Pharmacy Technicians Requires Insurance

Source: Dept of Health/ PriceWaterhouse Coopers

UNITED KINGDOM (ENGLAND, NORTHERN IRELAND, SCOTLAND AND WALES)

Interview With a Jamaican/ British Pharmacist



"You need indemnity insurance to register with the General Pharmacy Council (GPhC) Most companies have indemnity insurance and the pharmacist is covered as an employee but the cover is basic.

Pharmacists have their own individual insurance. The cover depends on your practice in terms of the level of risk. Community Pharmacist's cover would be different from a Hospital Pharmacist and a Practice Pharmacist. Also, the type of cover will depend on if you are an independent prescriber, if you administer the flu vaccines and travel vaccines etc."

Janet Fray, Jamaican/British Pharmacist

UNITED KINGDOM (ENGLAND, NORTHERN IRELAND, SCOTLAND AND WALES)



Interview with Chemist / Owner of Tudor Pharmacy, Wooton, Northampton England

"Professional Indemnity Insurance for Chemists is not compulsory **as yet**, whether the chemist works in Hospital or Community Pharmacy. However, when you are a pharmacy owner like me, you'd be stupid not to have it. I have it."

THE JAMAICAN SITUATION

- Medical Association of Jamaica started Medical Association of Jamaica Insurance Fund (MAJIF)
- July I is Annual Start Date
- Firm Insurance Brokers for MAJIF







BENEFITS OFFERED BY MAJIF

- Professional Liability Insurance Indemnity Against Legal Fees, Costs and Damages Awarded, Out of Court Settlements, from Professional Practice
- ► JAD \$ Premiums and Payouts
- Covers Caricom Territories for 90 Days per Year (MAYBE)
- Legal Advice and Assistance (MAJIF Attorney)
- Free MAJIF Risk Management Seminars (2 CE Credits)





EXCLUSIONS FROM COVER

- ► Telemedicine
- Claims From "Off Label" Use of Medical Equipment, Supplies, Disposables
- Reuse of Disposables
- Uninsured "Free-Lancing" Personnel Working for Insured Members





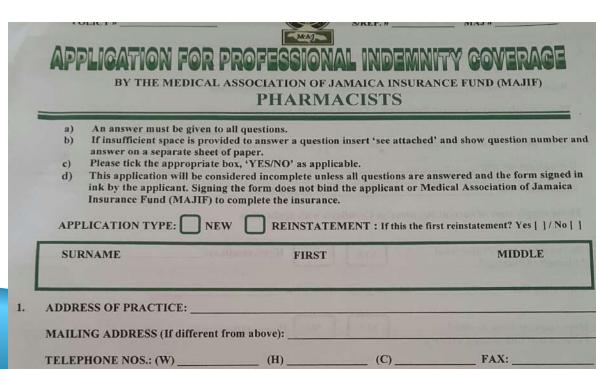
ELIGIBILITY FOR MAJIF MEMBERSHIP

- All Members of the Medical Profession
- All Dentists

SEX: MALE

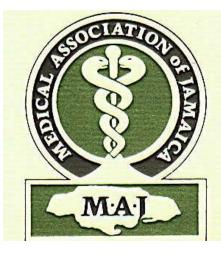
- All Defined Health Personnel (Pharmacy is included)
- Other Group Declared by MAJ

NAME & ADDRESS OF MEDICAL SCHOOL: _



FEMALE E-MAIL ADDRESS:





BASIS OF MAJIF COVER



- Adrian Smith of Firm Insurance Brokers
- "MAJIF Offers Occurrence Based Insurance"
- **DM:** Has any Pharmacist on your PLI Policy made a Claim recently?
- **A.Smith:** No. Nothing comes to mind.
- Are Most Pharmacists Uninsured and Choose the Out-of-Court-Settlement Route?

RATES FOR PHARMACIST PLI COVERAGE IN JAMAICA



- Pharmacy classified by MAJIF as Low Risk (Group 4) Category
- ► Two Packages for Pharmacists this year until June 30:
- ► Basic Rate we pay \$16,000 per year for \$5.5M cover
- Level 4 Rate we pay \$20,000 per year for \$10M cover

