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Nevada Supreme Court Rejects Use of Constructive Notice for Claims Made and Reported Policy

By Andrew B. Downs

Court enforces plain language of Professional Liability Policy issued to Dentist

In a well-reasoned and lucid opinion, the Nevada Supreme Court held a professional liability insurer's knowledge that its policyholder dentist had become addicted to cocaine was insufficient to satisfy the claims made and reported requirement of the professional liability policy issued to the dentist in connection with a malpractice claim related to his use of cocaine on a patient.

Physicians Insurance Company of Wisconsin v. Williams, 128 Nev. Adv. Op. 30 (June 28, 2012) arose out of a dentist's use of street cocaine to anesthetize a patient during a root canal. A short time later, the patient and soon to be plaintiff flunked a mandatory drug test, ending his 20 year career as a union truck driver. His attorney sent the dentist a demand letter several weeks before the expiration of the dentist's professional liability policy. He filed suit the day after the policy expired. The dentist, who by then had lost his license due to his addiction, never reported the claim or the suit to his professional liability insurer.

The patient's argument was the reporting requirement in the policy was constructively satisfied because the insurer had learned before expiration of the dentist's cocaine addiction, the fact he used it on patients, and the resulting loss of his dental license. The Nevada Supreme Court disagreed, holding that the policy's reporting provisions governed.

The policy required the dentist to provide specific information when reporting a claim, including the date, time and place of the incident, a description of the services provided, a description of the incident and information regarding the patient and any witnesses. The Nevada court held that generalized knowledge of misconduct by the dentist did not satisfy this requirement. In reaching that conclusion the court, followed *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746 (7th Cir. 1989) where the court held ineffective a Trustee of a bankrupt law firm's attempt to give a blanket notice of claims before the firm's professional liability coverage expired. In this case, the Nevada Supreme Court explained:

> For a "report" of a potential demand for damages to qualify as a "claim" requires sufficient specificity to alert the insurer's claim department of the existence of a potential demand for damages arising out of an identifiable incident, involving an identified or identifiable claimant or claimants with actual or anticipated injuries.

The Nevada court also analyzed the policy language, noting that "report" and "reporting" were used repeatedly in the policy and thus they "denote more in the way of formal contact between the insurer and the insured or the reporting third party than generalized newspaper notice."

The court also noted the dentist had the opportunity to purchase an extended reporting endorsement (or a "tail" in the vernacular) that would have provided coverage for the patient's claim, but the dentist failed to spend the $2,862 necessary to buy that coverage.

Finally, the Nevada Supreme Court reaffirmed that it will not rewrite unambiguous policy provisions to increase the legal obligations of the parties "where the parties intentionally limited such obligations."

Physicians Insurance v. Williams is a reminder that bad facts do not always lead to bad law. The patient was a victim of the dentist twice, once when the dentist used cocaine on him for a root canal, and again when the dentist failed to report the claim to his insurer. The trial court found those facts sufficiently compelling to enter summary judgment for the patient. The Nevada Supreme Court chose, however, to enforce the contract as written.

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