nso Risk Advisor

For Nurse Practitioners

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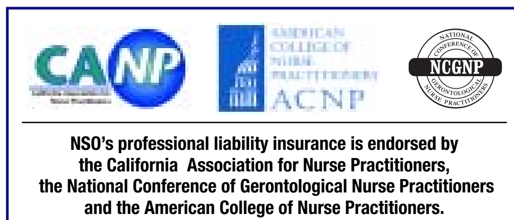
When and why you should apologize to patients

As many of us can attest, it's hard to say you're sorry. The process is vastly more complicated for healthcare professionals, including NPs, who make life-and-death decisions in a world where multimillion-dollar lawsuits are common. Despite the obvious risks of admitting guilt, the movement toward full disclosure—and finding a way to enable clinicians to empathize with patients and apologize for unfortunate outcomes—is gaining momentum. Apologizing for clinical errors even has been shown to reduce medical malpractice lawsuits.[1]

In 1999, the Institute of Medicine released *To Err is Human*, a report showing that between 44,000 and 98,000 deaths result from medical mistakes each year in the United States. The report forced the medical community to redouble its efforts to promote patient safety and reduce errors. It also launched a movement to dismantle what has historically been a deny-and-defend culture.

"The movement owes much of its momentum to at least three sources," said Sylvia Brown, JD, RN, vice president of risk management for Premier Insurance Management Services: the ethics of healthcare providers, studies supporting the effectiveness of disclosure in reducing exposure to massive court awards, and pressure from regulatory agencies.

At least 29 states have implemented "apology legislation."[2] Under most of these laws, a provider's apologetic expression of sympathy ("I'm sorry you had to go through this") cannot be used against him or her in court. In a handful of states, the apology is inadmissible in court even when it includes an admission of fault ("I'm sorry I gave you the wrong medicine").



NSO's professional liability insurance is endorsed by the California Association for Nurse Practitioners, the National Conference of Gerontological Nurse Practitioners and the American College of Nurse Practitioners.

A middle ground

The Sorry Works! Coalition, a national group of patients, practitioners, hospital administrators, insurers and others, is working to find "a middle ground solution to the medical malpractice crisis."[1] The group advocates sincerely apologizing for a clinical error, along with offering prompt and fair compensation.

In 1987, the Veterans Affairs (VA) Medical Center in Lexington, KY, implemented a full-disclosure/apology program. Any patient harmed by a medical error is immediately informed of what happened and is offered an apology by facility officials. If the risk management team determines that the hospital or a staff member is at fault, the VA offers a fair settlement. Within 10 years, the hospital slashed annual claims payments from some $1.5 million to about $180,000. Other hospitals have implemented similar disclosure policies.

Despite these initiatives, "apologizing remains controversial," said Geri Amori, PhD, senior director of the Risk Management and Patient Safety Institute in Lansing, MI. An apology must be sincere and the offender should try to make amends. For example, let's say an NP overlooked that the agent she was using to treat chronic pain was contraindicated because the patient had a seizure disor-

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When and why you should apologize to patients

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der. When the patient reported having two seizures within a brief period after two years without seizures, the NP should allay his distress and her own by admitting her error, apologizing, and prescribing another medication.

Other issues: Is an apology due even when, unlike in this example, a mistake did not result in harm? Also, apologizing forces a clinician to confront his or her fears: of being sued, embarrassed, uncomfortable, or perceived as unprofessional.

Fundamental guidelines

Experts agree that clinicians must be familiar with and work within their organization's approach to disclosure, said Brown. And, NPs who find themselves in situations with unanticipated outcomes should immediately file honest, objective incident reports and contact the facility's risk manager, California-based attorney Melanie Balestra, JD, MN, NP, noted.

Apologizing can deepen your relationship with the patient and family, safeguard the patient by acknowledging and addressing errors, and actually reduce the likelihood of a lawsuit. The key lies in knowing how to be ethical and honest, while steering clear of legal risk.

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1. www.sorryworks.net (Sept. 18, 2006).
2. Amori G. The Risk Management and Patient Safety Institute. Personal communication.

Some healthcare providers and their attorneys do not promote apologizing to patients for clinical errors. For this reason, NSO can neither support nor reject the argument for apologizing presented here. We are making this information available so our readers are aware of this new trend and can better make their own decisions with the help of their risk manager and/ or attorney.

Lessons from Court

Patient dies after NP prescribes methadone to treat heroin addiction

Was this NP negligent?

The decedent, age 35, went to a clinic seeking methadone treatment for a heroin addiction. At the clinic, the nurse practitioner performed a physical examination. She then initiated methadone treatment, in accordance with the clinic's treatment protocol. The nurse practitioner documented all her findings and actions. After four days of methadone treatment, the patient died.

The plaintiff for the decedent claimed that the nurse practitioner was negligent in failing to properly review the patient's medical and usage history within the available records. The plaintiff also claimed that the NP prescribed dosages of methadone that were too high.

A defense verdict was returned.

Staff. (2005). *Medical Malpractice Verdicts, Settlements & Experts, 21*(4), 23.

Advice from the expert:

The NP in the state where the incident occurred is authorized to write prescriptions, according to treatment protocols supplied by a physician, after performing a proper evaluation and assessment. Methadone therapy is an accepted treatment for heroin addiction.

Documentation introduced at trial corroborated the defense claim that the assessment was done properly—the patient met the criteria in the protocol for the methadone dosage prescribed, and the prescription for this patient did not deviate from the accepted standard of care.

This case shows how proper documentation can save the day—even if the plaintiff could prove, with autopsy findings, that the patient's death was caused by the methadone, the record shows that the NP was not negligent.

Gayle Sullivan, JD, RN
Sinoway, McEnery & Messey, PC
North Haven, CT

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BEWARE THE PERILS OF LOOK-ALIKE, SOUND-ALIKE DRUGS

The problem of look-alike, sound-alike drugs, which accounts for about 10% of all medication errors, has attracted the attention of stakeholders across the healthcare system—so much so that some drug companies have voluntarily changed product names. Prilosec, for example, originally was named Losec but was renamed to avoid being confused with Lasix.

For their part, hospitals are investing in computerized physician order entry (CPOE) and pharmacy information systems (PISs) that include alerts to notify providers when a drug or dosage may not be the one they intend. Institutions, as well as drug manufacturers, are adopting "tall man lettering"—use of capital letters to differentiate certain letters in words with similar spellings.

But, technology is no substitute for human care and good judgment. If a drug order is illegible or if a practitioner speaks too quickly, always ask for clarification or have the drug name spelled out. Never guess which drug or dosage the provider intended. If you are unfamiliar with a drug or proper dosage, investigate before administering it. Above all, if the drug or the dosage doesn't seem right, speak up.

No system is foolproof. But, learning more about the most common look-alike, sound-alike drugs and carefully reviewing medication orders can go a long way toward preventing errors and avoiding potential liability.

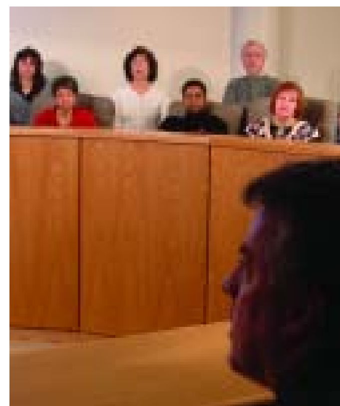
Legal Lookout

Stay up-to-date on safe practices, legal trends and more.

SERVING AS AN EXPERT WITNESS? PROTECT YOURSELF!

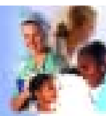
When a nurse takes the stand as an expert witness, he or she can play an important role in educating attorneys and, potentially, a judge and jury about nursing issues in a case. But not everyone is cut out to be an expert witness. Before agreeing to serve, know what will be expected. Determine if you have the necessary qualifications, which differ from state to state and may vary with the nature of the case. If you choose to serve, review everything you've said or written that may be relevant to the case and notify the attorney about your past statements, as any inconsistencies could damage your testimony. Study the medical record for the case but consult the attorney with whom you are working before doing additional research.

When you take the stand in court, avoid using jargon. Speak confidently and pause before answering questions so the attorney with whom you are working can voice an objection to the question if necessary. Stay within the bounds of your knowledge base. If you don't know the answer to a question, simply say so. Finally, make sure your professional liability insurance includes a consulting services endorsement so you are protected for any expert witness services you provide. If you need to add this endorsement to your policy, call NSO at 800-247-1500 or visit www.nso.com to fill out a request.



Employed, self-employed, or LLC—Are you underinsured?

NSO News



Keeping you informed of what we're doing.

Theoretically, the difference between working for yourself and working for someone else is huge. In reality, some circumstances blur those lines. And, being classified as employed, self-employed, or limited liability company (LLC) affects the kind of professional liability insurance you need.

If you draw a salary from an employer or leave your full-time job to practice on your own, your status seems obvious. But what if you're employed during the day and provide services elsewhere as an independent contractor in the evening? What if you incorporate yourself but are a single-person practice, are you still self-employed?

NSO has a solution to meet these different needs. If you work exclusively for a facility, you need a basic individual professional liability insurance policy for employed healthcare professionals. If you perform professional services for at least 120 hours a year as a consultant, or work as an independent contractor, you need the comprehensive coverage of a self-employed policy, which provides protection for your professional services at your employer's workplace, as well as to your own consulting clients.

Starting a new business? Even if you don't plan to hire employees, you have created a new entity, and it's important to keep you and the business separate. If you are ever sued, you and your business can be named as two individuals, so you need to make sure you are both covered with a policy designed for the small business owner.

If you practice on your own, or expect to, you may need to change your NSO policy. E-mail us at service@nso.com or call 800-247-1500. Small businesses can call 888-288-3534.

Keeping Up with Technology:

Information technology is constantly evolving. Among the most common types are electronic health records (EHRs) and computerized physician order entry systems (CPOEs). Though these and other information technologies offer advantages, they also pose new challenges and potential risks.

When properly implemented, information technology can simplify information retrieval, reduce medical errors, and improve communication, among other pluses. But information technology doesn't eliminate the need for professional judgment. "People are not infallible. Neither are computers—but we tend to think they are," said Melanie Balestra, JD, MN, NP, a California-based attorney. Always keep this warning in mind to protect your patients' health and minimize your professional liability risk.

Some potential pitfalls of EHRs

If your facility doesn't already use an EHR, eventually it will. Compared with paper records, an EHR can store more information for longer periods. Also, an EHR is accessible concurrently from many workstations and can provide medical alerts and reminders. Despite these and other advantages, an EHR can make one of your key responsibilities—documenting patient care—more difficult. "Traditional paper charting is free-form," noted Leslie Nicoll, PhD, RN, MBA, editor-in-chief of the journal *CIN: Computers, Informatics, Nursing.* "EHR charting is more structured; you're forced to choose from various options in multiple lists. You have to change your thinking about charting."

That doesn't lessen your responsibility to document thoroughly and accurately, so you must understand how the system works and use it properly. "For instance, what if you enter something into the wrong patient's chart?" asked Diane Kjervik, JD, RN, editor-in-chief, *Journal of Nursing Law.* "How do you correct that? On paper you'd line through the entry once and initial or sign it, but you can't do that in an EHR. And, if you are able to make a correction, will the system still save the mistake?"

Another potential hitch is redundant charting, Kjervik noted. If you record the information in two different places and make a mistake in one of them, you introduce a conflict. Whether you can correct charting mistakes easily or at all may depend on the safeguards built into the system.

If the EHR's limitations cause documentation problems, tell your risk manager promptly. "Later it'll be harder to prove what happened," said Balestra. Remember, if medical errors cause a patient harm and the patient later sues, inadequate documentation will come back to haunt you.

Sometimes busy nurses find risky ways to work around EHR hassles. They may take notes on paper during the day and update the EHR when their shifts end. Or rather than give temporary nurses system passwords, they have temporary nurses document on paper and a staff nurse transcribes the notes later—which is false documentation and hence represents potential liability. Both scenarios can lead to charting errors, noted Nicoll. Even worse, other healthcare providers may base patient-care decisions on outdated data.

Be cautious, too, about CPOEs

CPOEs, another up-and-coming technology, can eliminate illegible orders, check for inappropriate drugs, and prompt healthcare providers to get informed consent. But a study that evaluated systems in the United States, the Netherlands, and Australia found that they can also facilitate errors. The study revealed that a practitioner faced with endless lines of similar-looking text on a computer screen may click on the wrong line and select an inappropriate test, order the wrong drug, or enter instructions for the wrong patient.[1]

The study also found that trouble can result in emergency situations—for example, a physician tells a nurse to administer a drug immediately but enters the order into the system

later. If that nurse isn't around when the order shows up in the system, another nurse could give the patient an extra dose.

Overdependence on the system is another potential drawback. NPs, RNs, and other practitioners may accept the system's output without question. Or they may not communicate directly with the patient's other caregivers, incorrectly assuming that the system has done it for them.

As with EHRs, you need to understand the shortfalls as well as the advantages of a CPOE system and watch for trouble, especially if the system has just been introduced. Blindly following an unproven system could have lethal consequences. A case in point: According to a recent review of records at an academic tertiary-care children's hospital, the mortality rate among children admitted for specialized care rose by 3.77% instead of dropping, 18 months after the rapid implementation of a new CPOE.[2]

Don't throw out the pen and paper!

While technology has made tremendous inroads when it comes to patient records and physicians' orders, many things still are done on paper. Informed consent is one process that still uses paper, even though there may be a small electronic component: CPOE systems alert providers to get consent. Even with this electronic prompt, "the division of responsibility remains the same," said Tina Gerardi, RN, MS, CAE, deputy executive director of the New York State Nurses Association. A practitioner performing the procedure must explain the proposed treatment plan and get the patient's consent; an RN can witness a patient's signature but should not obtain the consent. Still, an RN must make sure a patient understands the PCP's explanations and instructions, and tell the provider if the patient seems confused or has questions.

Incident reporting is also still done on paper, though online reporting systems are available and may be incorporated into EHRs. Online systems can be undermined, however, if they alert practitioners about every report filed, regardless of severity. This can make practitioners complacent. That's why it's important to understand the system's ranking system—if it has one. Whether you do your incident reporting online or on paper, one thing remains clear: Your most important duty is to file reports promptly, while you still remember the details.

What records are legally valid?

Remember that reports or other documents transmitted via "low-tech" e-mail or fax can be just as legally valid as paper originals or records stored in an EHR. "They'll generally hold up in court as long as automatic date stamps or other systems are in place to prove they're authentic and weren't altered," said Balestra. A court may still require the original of a faxed document as additional backup, though. To protect yourself, keep copies of all electronic communications you send or receive.

High-tech or low, remember security

With all patient-related documents, whether paper or electronic, taking appropriate security measures to protect privacy remains a top priority. To comply with the regulations of the Health Insurance Portability and Accountability Act (HIPAA), you must do everything possible to prevent unauthorized people from viewing patients' health information. Don't leave printed documents lying around for others to see. If you input or transmit information electronically, keep the computer screen turned away from prying eyes and don't walk away from the computer without signing off first. Never share your user ID and password. If you're faxing or e-mailing information to patients, get their permission for doing so, and follow up to make sure they received it.

When it comes to information technologies, learn what these systems can and can't do and how to use them properly, so you can give patients the best possible care and minimize potential for professional liability. You must also scrupulously follow all policies and procedures outlined by your facility and ask about your potential professional liability for information-related errors. Technologic ignorance isn't a valid defense. "Nurses are ultimately responsible for the patient outcome," said Gerardi. "Using technology doesn't usurp your accountability."

"…information technology doesn't eliminate the need for professional judgment."

For an update…
on the uses, limitations, and potential liabilities associated with medical technologies, see the Web Flash in the Newsletter section of **www.nso.com/webflash2007**

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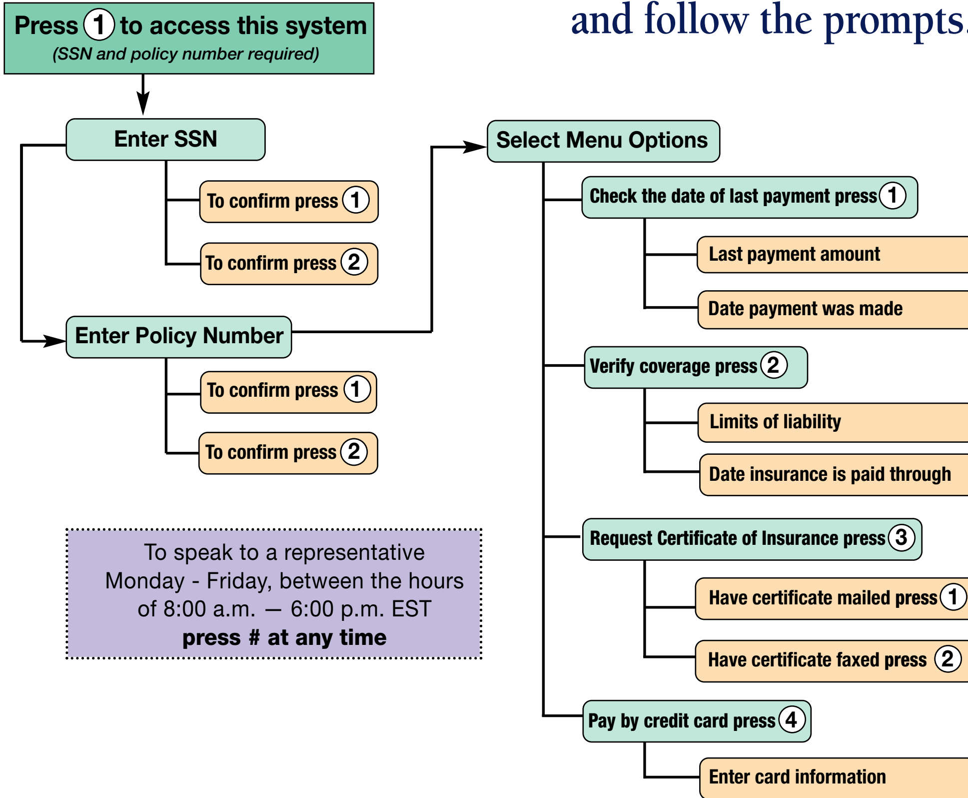


Needle and Syringe Reuse= Infection Risk

Most nursing professionals know that needles and syringes generally are *not* reusable because they can transmit bloodborne pathogens (including HIV and hepatitis), potentially endangering patients, residents, and staff. Reusing needles and syringes to administer parenteral substances on multiple patients or residents is strictly prohibited by the infection control guidelines of the Centers for Disease Control and Prevention (CDC) and the practice standards of various professional associations. Studies demonstrate that compliance problems persist, however, especially in physician offices and among anesthesiologists.

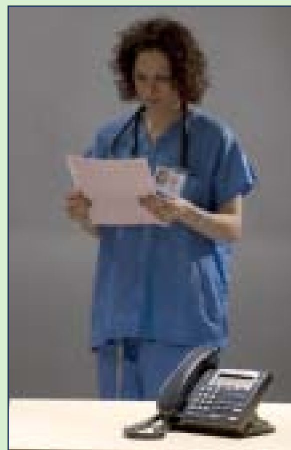
CNA, the underwriter of the professional liability insurance policy available through NSO, highlights common causes of needle/syringe reuse and multidose vial contamination and offers practical risk management strategies to enhance patient/resident safety and minimize liability in its *ALERT Bulletin*—available at www.nso.com/needles.

Facing a frivolous lawsuit

Being accused of negligence can be a devastating experience. Even if you're sure the claim is baseless you should not ignore the investigation or handle things on your own.

"Take seriously any legal action, no matter how implausible it seems," said Melanie Balestra, JD, MN, NP. "Immediately call your professional liability insurer and your employer's risk manager." Your insurer will ask for crucial information about the claim and will provide you with information that will assist you through its claims process. Response time is critical. Also, failure to meet filing deadlines can lead to a default judgment against you.

Although frivolous lawsuits may have no legal basis, they're not uncommon. Often the plaintiff hopes the defendant will settle to avoid litigation costs and a lengthy trial. A vigorous defense against such a case requires your active participation. Provide a complete factual narrative of the incident to your attorney or with your attorney's advice. Make sure he or she receives all necessary records and medical charts. And, because your conversations can be used as evidence, don't discuss the case with anyone else.



Your employer's insurance may cover you whether you are the only party or one of many named in a suit. But, to minimize the employer's liability, he may include you in a settlement without your consent or regard for your innocence and consequences to your career. Having your own professional liability insurance, however, provides you with your own defense to fight for your best interests.

You can also bolster your protection in any liability situation with a few routine measures:

- Document all professional encounters accurately and objectively, including dates and times. Write clearly in ink.
- Keep up-to-date with your education.
- If you have access to your employer's policy, read it. If you change jobs, check your coverage.
- Stay current on national and state laws, as well as your state Board of Nursing policies.
- Report concerns to a supervisor or risk manager.

Ultimately, though, a quick response and adequate preparation are your best defense against frivolous allegations.

Simple steps to help reduce medication errors

More than 100,000 medication errors are reported to US Pharmacopeia (the official public-standard setting authority for drugs) each year, but this figure may be lower than the actual number of errors because many mistakes go unreported. Since many nurse practitioners have prescriptive authority and errors may cause patient injury or death, NPs should be aware of the source of common medication errors that have surprisingly simple solutions:

- **Illegible handwriting.** Print or write the prescription carefully, or order via computer. Check your prescription form after completing it to make sure the drug and dosage are clear.
- **Look-alike, sound-alike drugs.** If you are not the prescriber and can't read the drug name on the prescription clearly, check with the prescriber and with a drug handbook to be sure the drug ordered is appropriate for the problem (see Legal Lookout on page 3).
- **Abbreviations and misplaced decimal points.** Remember, when writing a prescription, avoid abbreviations and trailing zeros to prevent incorrect dosing. Spell out any abbreviation that is similar to the abbreviation of another medication; also spell out "grams," "micrograms" and "milligrams."

Record the medication and the number of refills in the medical record. If another prescriber has used unclear abbreviations or you suspect a decimal point may be misplaced, check with the prescriber.

- **Potential drug interactions.** In your effort to avoid potential interactions, dig a little. Look beyond the patient's chart and what he or she has told you. Ask whether the patient is taking any herbal remedies or over-the-counter medications. He or she might not consider these substances drugs.

Also, be sure to advise your patient of the preferred way of taking a particular drug: what time of day and whether it should be with or without food. Also tell him or her how much fluid to drink with the medication, how long to wait between taking various drugs, and whether or not to take an accidentally missed dose at a later time and when.

To help curtail medication errors, new technology is being developed. A pilot program using bar codes on hospitalized patients' ID bracelets reduced medication errors by 74%. According to the Institute for Safe Medication Practices, hospitals increasingly are using computer ordering systems, reducing errors caused by misread handwriting.

But remember: Using technology does not guarantee accuracy. It's still the NP's responsibility to double-check all medical information and question the safety and efficacy of any drug or order if in doubt.

For more medication-related risk management recommendations, see the CNA Nurse Practitioner Claims Study available at www.nso.com/npclaimstudy or by calling CNA at 888-600-4776.

Are You Consulting, Teaching, or Training?

Your professional liability insurance policy provides coverage for medical incidents that result in injury or damage. But, losses that arise from consulting, teaching or training activities, or through expert testimony would not typically be covered by your professional liability insurance policy.

With the Consulting Services Liability Endorsement, you receive protection for using your knowledge to provide non-medical services, such as:

- Training
- Speaking at seminars or teaching
- Legal consultation
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For only $25, you can add the Consulting Services Liability Endorsement to your policy. The Endorsement provides coverage for when you use your professional skills and knowledge in settings that do not involve direct patient care. To add this coverage to your professional liability insurance policy go to www.nso.com/services to download a request form, enclose your $25 payment and mail it to NSO, 159 East County Line Road, Hatboro, PA 19040. If you have any questions, please call our Customer Service Center at 800-982-9491, Monday-Friday 8AM-6PM Eastern Time.

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Understanding the importance of an A.M. Best rating

NSO customers often wonder and ask what a rating from A.M. Best means. You often see us state that "NSO is underwritten by American Casualty Company of Reading, Pennsylvania, a CNA Company. CNA has earned an A (Excellent) rating from A.M. Best (as of 10/11/06), the nation's leading authority on the financial well-being of insurance companies." But have you thought about what it means?

First, it is important to know that an A.M. Best Rating is an independent third-party evaluation that subjects all insurers to the same criteria and provides a benchmark for comparing insurers. The rating is used as a tool that can enhance consumer confidence in an organization's stability.

Insurance companies, like CNA, depend on an A.M. Best Rating to analyze the financial strength and operation of specific insurers, to evaluate prospective reinsurance accounts, to compare company performance and financial condition, and more.

Ratings have also become an increasingly important factor for consumers so they can make educated buying decisions. Because of this, NSO knows how important it is to work with a company like CNA, one of the 10 largest commercial insurers in the United States with over $60 billion of assets, to bring you products tailored to your needs, at affordable rates.

Now that you understand what the A (Excellent) rating from A.M. Best means, you can have confidence that the policy you purchased through NSO is a wise and secure investment.

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