

Going up the chain of command

As patient advocates, nurses are responsible for passing along information about a patient's condition to the primary care practitioner (PCP). Getting a PCP to take appropriate action in a timely way,

"they fear they'll be blamed" for the situation, noted Melanie Balestra, JD, MN, NP, who recommends that students rely heavily on their supervisors and preceptors for guidance.

Although going up the chain of com-

effective nursing care," said Mary Anne Hilliard, JD, BSN, CPHRM, chief risk counsel for Children's National Medical Center in Washington, DC. "It's just as important as giving the right medications."

Hospitals should include information about chain-of-command policies and procedures in their orientation programs. If they don't, student nurses should ask their supervisor or preceptor about how to draw attention to a patient problem—in other words, how to "escalate" the problem.

For students, the first step is to alert their supervisors or the nurse with whom they are working. Even this step can be a challenge. "If you have a supervisor who is blocking you, then you have to go around her," Hilliard counsels students. "You have to make decisions in the best interest of the patient. It is important to learn this as a student so you are not intimidated when you become a licensed nurse and are faced with this issue."

Moving up the chain calls for tact, persistence, and assiduous documentation, noted Balestra. When reporting an issue to someone higher up, nurses need to have patient information at their fingertips, including vital signs and other assessments, and they need to present that information clearly. Likewise, they need to document the time and content of every conversation, so they can present that as well.

But, documentation is not a panacea. "Nurses need to know that failure to

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however, can be challenging sometimes. When this happens, nurses must invoke their hospital's chain of command. Students need to keep this in mind as part of their training.

Chain of command refers to moving up the administrative ladder to ensure that a patient's needs are met. For nurses who may be timid, new to their jobs, or reticent to call a PCP in the middle of the night, that may seem like a tall order. Students may be particularly leery of moving up the chain because

mand can be challenging and a little uncomfortable, it's essential. "I don't know that they emphasize it enough in nursing school, but being an effective nurse means being able to get from point A to point B. The ability to 'escalate' a patient problem is critical to



National Student Nurses' Association

endorses NSO's professional liability insurance

Going up the chain of command

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escalate can cause them liability," said Hilliard. "A common mistake for someone having trouble escalating a problem is to respond by overdocumenting how sick the patient was and how hard they tried to reach a doctor. They think if they do that, they're covered." They're not. Failing to invoke the chain of command can put a nurse at risk of losing his or her job or license and may result in a lawsuit.

To help students navigate the complex hierarchies within a hospital, Hilliard advises them to build relationships within the organization so they can tap the expertise of more seasoned professionals. She also reminds them that risk managers are on call 24/7. "If you get stuck, call risk management and they can send you in the right direction," she said. Hospitals recognize the challenges nurses may encounter when they try to draw increased attention to a situation. Many facilities have introduced rapid response teams, which enable

nurses to pull a team of professionals to a patient's bedside for an immediate consultation. Other institutions are training nurses to give better, more effective reports using SBAR—situation/background/assessment/recommendation, a mechanism for framing conversations, especially when immediate attention and action are necessary.^{1,2}

Such measures are likely to help, Hilliard thinks. In the meantime, if you find yourself in a position where it is necessary to escalate a problem, you can take solace in knowing that doggedly taking things up the chain of command can protect you and the hospital from liability and, most important, can ensure that your patients receive the care they need.

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Lessons from Court

Fatal overdose of anti-seizure medication

Was the label ambiguous, the nurse negligent, or both?

A 6-year-old had a skull fracture after falling through the bleachers at an ice hockey game. When the child had a slight seizure in the emergency room, the ER physician ordered 300 mg of Cerebyx, an anti-seizure medication. The largest print on the label of the Cerebyx vial, other than the brand name, said "fifty mg PE (phenytoin equivalent)/mL." A notation at the bottom of the vial said "10 mL." Assuming that the vial contained 50 mg of Cerebyx, a nurse administered six vials, a 3,000 mg dose 10 times what had been ordered. The child died.

Plaintiff sued the nurse for negligent administration of the drug as well as the municipality for allowing gaps in the bleachers, the hospital, and the manufacturer, for faulty labeling. The action was settled for a confidential amount, said to be the largest in the history of the state for the wrongful death of a child.

Staff. (2002). *Medical Malpractice Verdicts, Settlements & Experts*, 18(10), 26.

Advice from the expert:

The nurse who administered the drug was negligent, although the other defendants in the case contributed to the child's death.

The nurse's actions did not meet the standard of care for administering medication, which requires reading all the print on the label, never making assumptions, and double-checking orders. This procedure is particularly crucial when the patient is a child, as children are more vulnerable to an overdose than adults, and when the nurse is not completely familiar with the medication and how it is supplied. A dose of six vials of medication is highly unusual and should have been a red flag in itself.

The nurse could have avoided the dosage error if she had checked with the hospital pharmacist or looked up the drug on the Internet or on her PDA. This case is an ideal illustration of a fundamental risk management rule of thumb: Never be complacent.

Melanie L. Balestra, JD, MN, NP
Irvine, CA

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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?

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 incor-

porate 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 con-

sulting 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.

NSO News

Keeping you informed of what we're doing.



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 repre-



sents 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

Your Risks and Responsibilities

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."

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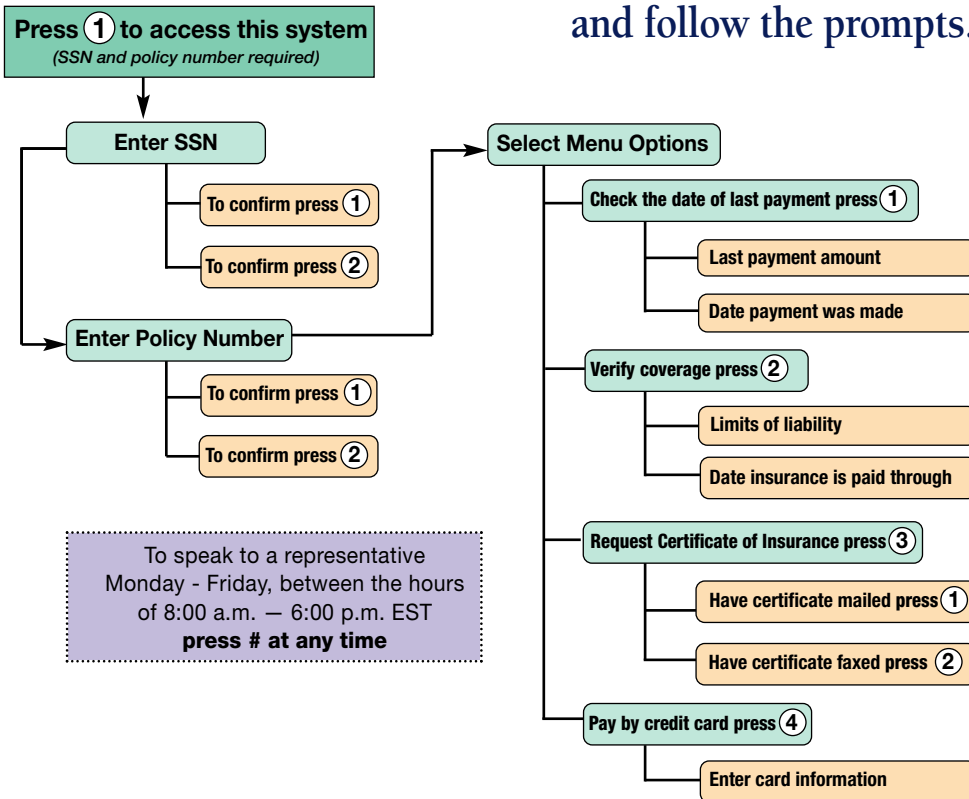
For an update...

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

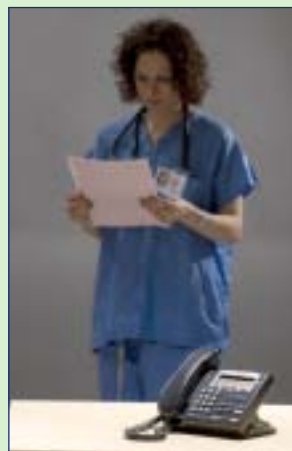
conversations can be used as evidence, don't discuss the case with anyone else.

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.



How to avoid professional negligence

Consider this scenario: A female patient has signed a living will, but her brother does not want the hospital to honor her wishes. What is your responsibility and what procedure should you follow to avoid being accused of professional negligence and facing a charge of medical malpractice?

As you may already know, to prevail in a professional negligence lawsuit against a nurse, the plaintiff must prove four elements: The nurse owed the patient a duty of reasonable care; the nurse breached that duty; the patient incurred an injury, loss or harm; and the nurse's acts or omissions caused the patient's injury, loss or harm.

Most nursing schools teach students about professional negligence indirectly, by emphasizing proper clinical procedures. Because of an increase in practice-related disciplinary actions being brought against nurses, however, several universities have begun to incorporate negligence prevention directly into the curriculum, according to Gloria

Donnelly, PhD, RN, dean of Drexel University's College of Nursing and Health Professions.

For example, by role playing real-life situations like the one above, students in Drexel University's nursing school learn the best ways to avoid liability. Students work with actors, who take the role of patients, in filmed scenarios featuring a variety of ethical dilemmas and are then asked to assess the nurse's responsibility and the proper procedure to follow. This process allows students to apply what they're learning to situations they're likely to face when they enter the workforce. Students are tested on the thoroughness and appropriateness of their answers to patients' (actors') questions. The program, "Standardized Patient Experience," evaluates undergraduate nursing and nurse practitioner students at various stages in the educational process and includes a practical exam they must pass to graduate.

To be sure you have a firm understanding of what constitutes

negligence, you should ask your professors about the possible ramifications of neglecting to follow proper procedures in various situations. Consider, for example, emergency room nurses in Texas who were charged with negligence when they did not insist on prompt medical evaluation of a patient who came to the emergency department with a headache and right-arm weakness and then developed further symptoms. A computed tomography scan, performed more than six hours after the patient presented, showed a massive brain hemorrhage. The patient died in a hospice some days later. The court determined that the death could have been avoided if the nurses had not departed from the standard of care by failing to call a physician promptly when the patient underwent neurologic changes and his blood pressure became elevated.

Asking questions now will not only enhance your education, but will go a long way toward helping to protect your patients down the road.

STUDENT ALERT!

Keeping your coverage current after you graduate is easy, and important.

Your new employer may provide professional liability coverage for you, but the policy may not cover you in all cases. That's why it is important for you to continue your coverage after graduation so that you have sufficient protection if you are named in a lawsuit or complaint from the licensing board or ethics committee.

If you are about to renew your policy, you can request to have it changed to professional status, making you eligible for the first-year graduate discount. If you are in the middle of your policy period, we can add what's called a student-to-professional endorsement, which covers you for license protection. Once your policy comes up for renewal, you will have the opportunity

to update your coverage to full professional status. And, you may be eligible to receive up to a 50% first-year graduate discount on your premium. Your renewal statement provides an option to continue to pay the student rate if it still applies, or the new professional rate with the discount already calculated for you. If you pay the new discounted professional rate, your policy will be updated to professional status once payment is received. Your policy number will remain the same.

By continuing your coverage as a professional, you can feel comfortable knowing that if something happens on or off the job, 24/7, you can rely on your own policy to protect you against allegations of professional malpractice.

MOVING?

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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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NEW GRAD DISCOUNT!

If you just graduated or are about to, don’t forget to change your professional liability insurance policy from student to professional status. Once you do, your policy will cover you for license protection now that you carry one. Also, you may be eligible to receive our first-year graduate discount—that’s a 50% savings off our full-time professional rate! To learn how to receive this discount, read the Student Alert on page 7.