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Accountants' Liability Newsletter

The Role of Firm Management in Loss Prevention

The key to protecting your practice from professional liability losses requires a commitment on the part of the firm's management to develop policies and procedures which ensure that all engagements are performed in accordance with professional standards. Regardless of whether you are a sole proprietorship, partnership or professional corporation, you must have some method to identify, reduce and eliminate potential liability exposures.

The effectiveness of an accountant's office is a function of its organization. Attention to details, firmly established office procedures and adherence to those procedures by everyone in the office will help reduce malpractice claims.

Office Systems and Procedures

While many office systems and procedures contribute to the prevention of malpractice claims, two essential procedures must be in place in every office, regardless of its size or type of practice. The first procedure, designed to ensure that the accountant meets all time requirements, is commonly known as a diary system. The second procedure is designed to ensure that the accountant avoids conflicts of interest.

These two systems are critical to the operation of a professional, responsive and profitable office. Yet the fact remains that failure to meet time requirements, generally due to failure to properly record due dates, still represents a commonly asserted ground for malpractice. Allegations

of conflicts of interest are made all too often. These are two areas where, with some forethought and planning, potential claims can be avoided.

If you have workable systems in your practice, you may decide to make some adjustments. However, if these two systems are not in place, establish them immediately.

Diary Systems

An essential procedure each office must have in order to function properly and reduce its exposure to malpractice claims is a diary system, commonly referred to as a tickler list, that alerts an accountant to all time deadlines.

A diary system can promote good client relations by reminding the accountant which files need review and by providing a regular opportunity to communicate with clients. When a matter appears on the diary for a deadline, it gives the accountant an opportunity to provide the client a brief status report. Clients appreciate these reports, and they require little time to produce.

Dual-Entry Calendars

A practical and effective method to ensure that an accountant will meet all time requirements is for each individual accountant to maintain his or her own diary or calendar. In addition, a support person should maintain a central or firm calendar in which all time-sensitive requirements of the firm's account-

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AICPA Professional Liability Insurance Plan

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The Role of Firm Management ... *Continued from page 1*

tants are documented. Each accountant in the firm is responsible for input to the central or firm calendar.

He or she must furnish all pertinent diary information to the support person responsible for its maintenance. A simple slip completed by the accountant showing the name of the client, name of the responsible accountant, nature of the action required and its due date will accomplish the desired results. By doing this, the office will have established a dual-entry diary or calendar system which will help ensure that time-sensitive matters are completed within the allotted time frame.

Each Friday afternoon the support person maintaining the central diary or calendar should prepare a weekly sheet listing all time-sensitive matters due the following week as well as the accountant responsible for each matter listed. Not only will this serve as an effective reminder of things to be done, it also will ensure that the matters due to be handled by an absent accountant are covered by someone else.

In addition, each accountant should constantly check his or her own diary to determine what items are due in the near future. However, private diaries for recording deadlines are not a substitute for a firm-wide central diary. Accountants in the firm should be required to use the central diary. New accountants should be taught how to use the central diary and to develop the good habit of routinely and immediately documenting events and deadlines.

Automated Due-Date Monitoring Systems

For many firms, a manual tracking system, such as a dual-entry calendar, is too time-consuming. Offices with personal computers or word processors should use these systems to store the data. There are many deadline tracking software programs available, at relatively inexpensive prices.

An example is the File in Time program, which tracks due dates as well as providing on-screen access to the firm's entire workload, including job status and the responsible staff member.

Computer software programs allow you to sort and view data by client, service, due date or job status.

A question often asked is, "What items should be included in the diary?" Too little, and the system loses its efficiency. Too much, and it becomes burdensome and irrelevant. Each office should determine what information must be entered into their calendar system. Prudence would indicate that to err on the side of over-documentation would be the preferred alternative.

For any system to work effectively and to accomplish the task for which it is designed, it is essential that only one support person be responsible for the maintenance of the central calendar or diary.

All diary information must be directed to this person. He or she should be responsible for entering the information into the central calendar and preparing the weekly sheet by extracting the information from the central calendar applicable for the upcoming week.

Conflict of Interest Systems

In addition to an accurate and efficient diary system, every firm

should have a system to check for conflicts of interest. A well-developed index system ensures that an engagement accepted by a firm does not constitute a conflict of interest.

Prior to any new engagement being accepted by an accountant, a check for possible conflicts must be made. A good index system, while not a solution to all conflict problems, is a good start.

A simple index system that works well for most smaller firms is an alphabetical index listing the names of persons and entities for whom the firm has worked. To be effective and accomplish the purpose for which it was created, the index must be current. Once an engagement is accepted, the client's name must be entered into the index. Today, with almost universal availability of personal computers and word processors, the maintenance of an up-to-date index system becomes a relatively simple process.

In cases where the accountant practices as part of a larger firm, he or she should circulate a memorandum to all accountants within the firm concerning the acceptance of a prospective new client, requesting input from any accountant who may see conflicts of interest by such an acceptance.

Checklists

Every accountant should use checklists. Prudent accountants should review authorities in the particular area in which they are practicing to ensure that all bases have, in fact, been covered. Recognized scholars and authorities have authored exhaustive treatises on every given accounting field. Many professional societies publish practice-oriented manuals, often containing suggested checklists.

Quality Control Systems

Implementation of a comprehensive quality control system is the single most effective tool for reducing any firm's professional liability exposures. Although the specific design of the system may vary with the size and complexity of the accounting firm, certain elements are common to all quality control systems.

The AICPA's Statements on Quality Control Standards suggests the following general elements be included in all quality control systems:

- a. Policies and procedures to provide reasonable assurance that all accountants maintain independence.
- b. Policies and procedures for assigning personnel to ensure that work will be performed by persons having the required degree of technical training and proficiency.

- c. Policies and procedures for consultation to ensure that personnel will seek assistance from persons having appropriate levels of knowledge, competence, judgment and authority.
- d. Policies and procedures for the supervision of work to ensure that all work meets the firm's standards of quality.
- e. Policies and procedures for hiring to ensure that those employed possess the appropriate characteristics to enable them to perform competently.
- f. Policies and procedures for professional development to ensure that personnel will have the knowledge required to enable them to fulfill responsibilities assigned.
- g. Policies and procedures to assure those selected for advancement will have the qualifications necessary for the responsibilities they will be called on to assume.
- h. Policies and procedures for deciding whether to accept or retain a client whose management lacks integrity.
- i. Policies and procedures for inspection to ensure that other elements of the quality control system are being applied effectively.

Many accountants are familiar with the "cold review" concept used for Securities and Exchange Commission accounting and auditing engagements. However, the role of the "technical reviewer" is gaining greater acceptance as a means of improving quality for all areas of professional practice. Some accounting firms have even established their own concurrent quality review procedures to identify potential problems before the engagement is completed.

The role of the technical reviewer in controlling risks is fourfold:

- First, the reviewer can assist with engagement planning to prevent any performance failures.
- Second, the impartial review can detect judgmental errors during the engagement.
- Third, the review process also will identify any documentation failures so that problems can be corrected even after fieldwork is completed.
- Fourth, by monitoring compliance with quality control procedures, the reviewer can determine areas of weakness that can be addressed through the firm's training activities.

Ideally, every firm should have an experienced full-time quality reviewer who is heavily involved with the firm's training activities, has full knowledge of the client base, is familiar with firm personnel and is free from having to worry about billable hours. Unfortunately, most small-to-mid-sized accounting firms never will be able to provide this level of self-evaluation, and yet, these firms frequently have a greater need for a technical reviewer than larger firms.

Some firms have a senior partner act as a quality reviewer on a part-time basis. If done properly, this can provide engagement personnel with the support of a technical consultant as well as an impartial review of the work product. However, more often than not, the partner's quality review duties take a back seat to matters that generate billable hours. An alternative might be to employ a

consultant to provide technical quality reviews.

Regardless of which form of quality control system you select, the review process should be geared toward staff development. By stressing the quality of work rather than mere quantity, all personnel in your firm will be motivated to produce a technically excellent work product.

Education and Training

It's easy for small firms to believe that they can develop the knowledge necessary to perform an engagement after accepting the work, but claims data suggests otherwise. More than half of all lawsuits brought against CPAs are caused by CPAs working outside their area of expertise. To improve the quality of the product and limit liability, accounting firms must confine their practice to those areas where they are qualified by education, training or experience to undertake such engagements.

Most small accounting firms would not consider an engagement for an insurance company because they are unfamiliar with the industry's customs and regulatory schemes. However, these firms do not shy away from performing audits for other specialized industries such as construction companies or grain elevators.

Industry expertise is necessary for many engagements. Unless accountants are familiar with accounting practices unique to the business or industry, they may fail to comply with generally accepted accounting principals (GAAP) and/or generally accepted auditing standards (GAAS). One resource to familiarize accountants with industry specific standards is the AICPA Industry Audit Guide. The AICPA publishes twenty-one separate Industry Audit Guides, which illustrate industry-specific financial statements, as well as applicable Statements of Position and summaries of applicable practices.

Because of the continually changing standards, rules and regulations governing the accounting profession, most state boards of accountancy require twenty hours a year in mandatory continuing professional education (CPE) as a condition for maintaining a license. (The AICPA has even stricter guidelines, with 120 CPE hours every three years required for maintaining membership.) But even if this was not a requirement for continued licensure, it still would be necessary for accountants to keep abreast of the latest technical information by attending courses offered through the AICPA or their state's accounting society.

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Billing Procedures

Each accounting firm should have procedures which effectively communicate to clients the basis upon which fees will be accrued, as well as how and when payment is due. To assure that misunderstandings do not arise after commencement of an engagement, it is imperative that fee agreements be in writing. At a minimum, the fee agreement should include:

- Amount to be paid
- Nature and scope of services to be rendered
- Who is liable for the fees
- Terms of payment

How much you charge for your services is entirely up to you. However, the fees you charge should adequately cover the costs of providing quality services. All too often clients pressure CPAs to reduce fees or cut corners, with a promise of future work. Unfortunately, these clients are the first to complain when the imposed cost constraints result in a less than satisfactory engagement.

One way to avoid such pitfalls is to develop a formal engagement budget prior to undertaking any work. When preparing an engagement budget you should consider:

- Complexity of the engagement
- Time needed to complete the engagement
- Personnel required to handle the engagement
- Malpractice risks associated with the engagement

You also may wish to establish a minimum threshold level that must be charged for each type of engagement undertaken (i.e. audits, tax work, management advisory services, etc.). This will ensure that you do not waste valuable time screening potential clients for engagements that fail to generate adequate charges.

No engagement should be undertaken without some assurance that the client can pay for your services. The easiest method for ensuring payment is to get the money up front. Obtaining a percentage of the total estimated fee, deposited in advance, greatly reduces your risk of not being paid for work. For engagements that will entail significant time and/or expenses, it is best to bill the client at regular intervals. This will prevent a client from running up a large bill which they may find difficult to pay.

To avoid fee disputes, accountants should supply clients with a detailed breakdown of all time and charges for an engagement. Unfortunately, the only way to provide such information is to keep a daily record of activities, time and costs of all work done. This may be viewed as time-consuming, but it is often critical to successfully resolving fee disputes between CPAs and their clients. As with diary systems, there are many computer software programs available which can greatly reduce the amount of time necessary to record this information.

Regardless of whether clients are billed at regular intervals, at milestone completion points, or at the completion of the engage-

ment, the best chance of collecting a fee is immediately after the service is rendered. The bill should be sent as soon as possible, and followed by reminder statements every 30 days. If the bill is not paid promptly, a senior member of the firm should call the client to discuss the billing. If absolutely necessary, the senior partner can agree to extend payment terms upon receipt of partial payment, or can formally terminate the engagement if payments are not forthcoming.

Once accountants have fulfilled their contractual obligations they are entitled to receive the agreed upon compensation. However, collecting delinquent fees is not always easy. Collection agencies and lawyers often take from 30% to 50% of the amount recovered, and suing clients for non-payment frequently results in a countersuit for malpractice.

Documentation and Filing

There is a maxim that says, "The faintest ink is more persuasive than the clearest memory." In the event of a lawsuit, documentation in an accountant's files can be the best insurance policy or a sword in the hand of the plaintiff's attorney.

The importance of documentation to the defense of a malpractice claim cannot be overemphasized. Accountants sued for malpractice will probably have to produce, for the plaintiff's attorney, copies of all work papers and timesheets, as well as the firm's policy and procedure manuals. Ultimately, the accountant's work will be judged on what is, and sometimes more importantly, what is not documented. Without complete and accurate documentation, the accountant is left to the vagaries of his or her own memory when, in a court case years later, there is disagreement between the accountant's recollection and the client's testimony.

As a general rule, all engagement files should contain a detailed account of the work performed, any communications with the client and the reasoning behind any decisions made. According to the AICPA's Code of Professional Responsibility (Rule 201), it is important for accounting records to contain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

There is no such thing as too much documentation, but there are some entries that can compromise the defense. An off-hand remark in work papers, such as, "This looks suspicious!" or, "Is this fraudulent?," can be used to suggest that the accountant knew something but failed to investigate further. Derogatory comments about a

previous accountant's work, or the client, also have no business in the records and may come back to haunt the accountant during future malpractice litigation.

Another problem defense attorneys frequently encounter is incomplete "to do" lists. Using checklists to document completion of all necessary engagement activities is a good practice. However, if blank spaces are left, the plaintiff's attorney can infer that the accountant didn't perform those activities. The accountant may have just failed to check a box, but from a jury's perspective, "If it wasn't documented, it wasn't done."

Let's assume an accountant has just been sued for an audit he or she performed last year. After checking the records, the accountant finds that the documentation does not accurately reflect the level of care taken in performing this engagement. The natural tendency, under these circumstances, is to change the work papers to eliminate any errors, ambiguities or other deficiencies in the documentation.

Never, under any circumstances, alter or rewrite records after a claim is filed. This is a sure-fire way to make the case legally indefensible, regardless of the quality of the services rendered. The only acceptable method for correcting errors is to draw a single line through an entry. The accountant can then write the correct entry into the record, sign and date the correction, and make a notation in the margin indicating why the change was made.

The AICPA's Code of Professional Conduct (Rule 501) indicates that an accounting firm is required to return all "client records" when requested by the client. Generally, this includes assets/depreciation schedules, client ledgers and copies of tax returns. Work papers, however, belong to the accountant; the accountant usually is not required to turn over these papers to the client. Although the accountant owns the work papers, information contained therein may be confidential.

Normally, any communication between an accountant and his or her client, given during the course of the professional relationship, is made with the expectation that such information will not be disclosed to third parties. Thus, the AICPA Code of Professional Conduct (Rule 301) requires that an accountant obtain the consent of the client prior to divulging confidential information to third parties.

Neither common law nor federal law recognize any privilege for communications between an accountant and a client. However, many states have enacted statutes which provide a limited privilege to protect the confidentiality of the accountant-client relationship. Since these laws differ from state to state, accountants should become familiar with the specifics of any privileged statute existing in their state.

Record Retention

Accountants frequently ask how long they should keep their work records. The safest policy is to keep all records indefinitely. If this is unacceptable because of limited storage space, accountants should investigate off-site storage for older files.

Some accountants maintain their records only for the amount of time the law allows a plaintiff to bring a malpractice action. However, difficulties in determining which statute of limitation applies (i.e. contract or tort), when the statute begins, and possible bars to asserting the defense make this a very risky practice.

Loss of client records also can create serious liability problems. Accountants should make copies of the client's original documents and return them to the client as soon as possible. When returning documents to a client, the accountant should obtain the client's signature on a receipt listing all documents released. The same holds true if the client requests the accountant to forward records to a new accountant.

These records may be the cornerstone of a malpractice lawsuit defense.

Computerized records present their own unique set of problems. Unlike paper documents, computer records can be destroyed easily by drastic changes in temperature or electrical current, exposure to sun or dust, or even a sharp blow to the computer. Accountants should make backups of all data at regular intervals.

The administrative procedures outlined in this article provide the foundation for building an effective loss prevention program. Regardless of the organizational structure or the size of an accounting firm, there are certain systems that should be used to help accountants reduce the risk of malpractice claims. These are:

- A dual calendar diary system that alerts the firm to all time-sensitive matters
- A system to check for possible conflicts of interest
- A quality control system to ensure technical excellence and staff development

By following these simple rules, your firm can keep potential losses at a minimum.

AICPA Vehicle and Home Insurance Program

The AICPA Vehicle and Home Insurance Program, underwritten by National General Insurance Company (NGIC) of St. Louis, MO, was developed to provide AICPA members with safe-driving records high-quality, affordable vehicle and home protection.

NGIC, a General Motors Insurance Company, is committed to rewarding members of associations with the vehicle protection they need at the affordable rates they deserve. In addition to the vehicle program, a home protection package is also available to AICPA members.

If your current policy is due to expire soon, call one of the toll-free numbers below:

Vehicle Insurance: **1-800-847-2886**
Home Insurance: **1-800-847-7233**

Reporting A Claim

When the AICPA selected Continental Casualty Company, one of the CNA Insurance Companies, to underwrite the AICPA Professional Liability Insurance Plan, there were some procedural changes in how to report a claim. The following article is provided to ensure that all Plan insureds are properly informed of the current process for filing a claim.

What is a Claim?

Under the terms of your CNA* claims-made policy, a claim is defined as "the receipt of a demand for money or services, naming you and alleging a wrongful act." A wrongful act can include:

- Any negligent act, error or omission in the rendering of or failure to render professional services as an accountant or notary public
- False arrest, detention or imprisonment
- Wrongful entry or eviction or other invasion of the right of private occupancy
- Libel, slander or other disparaging materials
- Violation of an individual's right to privacy
- Malicious prosecution

When There is a Claim

A claim is considered first made when you first receive notice of the claim. The notice must be reported to CNA during the policy term. All claims arising out of the same or related wrongful acts will be considered as having been made at the time the first claim is made.

Your Duty

In the event you become aware of a wrongful act which may be the basis of a claim, or you receive a claim, you should report it immediately in writing to CNA and your agent (either Aon Insurance Services or your Plan Representative). It would be helpful if you include the following information in your written report:

- The name and address of your practice
- Your AICPA Plan policy number
- The date, time and location of the claim situation
- A brief narrative description of the allegation against you (do not address the merits or your opinion of the claim)
- The name of the person or entity making the claim
- The dollar amount of the claim, if known
- Any lawsuit papers or notice of legal proceedings
- Any other pertinent documents or correspondence, including newspaper accounts

In addition, the following items should be done if a claim is made against you:

* CNA is a registered service mark of the CNA Financial Corporation

- Notify CNA and your agent in writing immediately. Send all lawsuits and pertinent documentation of the claim.
- Once a claim has been made, do not agree to attend any conferences set up specifically for the purpose of discussing this claim without first consulting your claim specialist.
- Do not sign or accept any releases from any parties without first obtaining approval from the CNA claim specialist.
- Commit to writing the circumstances which surround the claim situation as known to all principals and staff members involved. This should be done as soon as possible since the passage of time clouds memories and obscures details.
- Assemble in chronological order all pertinent letters of agreement for services and correspondence, memoranda, etc., affecting the claim situation.
 - Accept all letters, memoranda, suit papers, etc., without comments or argument. (Do not admit liability and do not attempt to place the blame.)

What CNA Will do After Notification of a Claim:

- Upon notice of claim or incident, a file is established and is assigned to an experienced professional liability claim specialist in a local CNA claim office. The local claim specialist will contact you to begin the investigation as soon as possible after receiving notice.
- If the claim situation is of such a nature that legal counsel is needed, an experienced defense attorney will be engaged immediately by CNA to protect your interest.
- As the investigation proceeds, the CNA claims specialist directs, monitors and assesses the effect of that investigation.
- Where legal proceedings have been instituted, or where legal counsel has been engaged to advise you, counsel or CNA will maintain contact with you and report periodically to you regarding the status of the case.
- CNA will evaluate your possible liability and what alternative courses of action are available. At that time, CNA will make recommendations to you as to the

continued defense or settlement. In no event will CNA enter into a settlement without your consent. However, certain restrictions may apply if you withhold your consent. Refer to your policy for details.

When There is a Potential Claim

Insureds should also report potential claims to CNA. A local CNA claims specialist will contact you once CNA receives notice of potential claim. A circumstance or incident which may later develop into a claim must be reported immediately to CNA. A CNA claims specialist will advise you on how to proceed from there.

In some instances, the CNA claim specialist or appointed local counsel will recommend corrective actions which may be taken on your part to prevent the incident from later developing into an actual claim. Should the incident later develop into a claim, coverage would apply under the policy in which it was first reported, under your claims-made policy.

We cannot emphasize enough the importance of reporting your claim promptly and accurately. The sooner all the information is provided to Aon and CNA, the easier it will be to handle your claim.

The Twelve Commandments of Accountants Liability Loss Prevention

- I.* Choose your clients carefully. Avoid clients in financial or organizational difficulties—clients that change firms often—clients that have poor record keeping. Interview prospective clients and chat with the former accountant, if your gut feeling is to not take on the engagement, don't. You must be comfortable with your clients.
- 2.* Always use an engagement letter. The engagement letter should address the who/what/when/why questions, payment terms/schedules, dispute resolutions. Engagement letters should be reviewed annually and, if necessary, revised. If the letter is revised, the new letter must be signed by both you and your client.
- 3.* Do not sue for fees. The fee schedule and what will be done if problems arise in payments should be spelled out in the engagement letter.
- 4.* Educate your staff as to proper documentation of work papers and the extreme importance of documentation. This is a critical part of your defense, if sued, and will be brought into the courtroom—guaranteed.
- 5.* Do not accept an engagement for which your firm is not qualified. A majority of claims come from engagements where an accountant only performed an engagement on a once-a-year basis. In short, don't accept a \$5,000 fee for the potential of a \$1 million claim for malpractice.
- 6.* Keep current as to applicable accounting standards from subtle changes to local tax laws to the T.R.A. of 1986 and 1992. Keep informed of your profession.
- 7.* Document everything. It will show up in court.
- 8.* Establish a workable fee/payment schedule prior to accepting an engagement, and spell out details in the engagement letter.
- 9.* Use caution when making representations and rendering advice. Insist on adequate information to make decisions and properly research. When in doubt, consult with colleague. Never render legal advice.
- IO.* Maintain a balanced book of business. Large clients can hinder your objectivity. Never represent two sides of a transaction i.e. real estate, buy/sell transaction or divorcing husband/wife.
- II.* Meet your deadlines with an automatic docket system that advises you well in advance, not only to complete forms and file but adequate warning to gather client data.
- I2.* Practice Quality Control. One employee prepares/one employee reviews—if a sole proprietor, establish checklist and relationship with other sole proprietors.

Loss Prevention Seminars

To help AICPA members further reduce the cost of their premiums, CNA sponsors a series of Loss Prevention Seminars. CNA plans at least 60 such seminars for 1994. These seminars are designed especially for small to medium sized accounting firms. For larger firms, individualized seminars may be arranged on a case by case basis. Accounting professionals who attend the seminar can earn a credit towards their premium, and can earn up to four hours of CPE credit, depending upon state insurance department approval. The feasibility of expanding the course for additional CPE credit is being explored.

The premium discount can be as high as 7.5% a year. The discount is based on the percentage of accounting professionals in a firm that attend the seminars. For example, if three accountants in a firm of six professionals attend the seminar, the premium discount is half of the 7.5% available, or 3.75%. An individual accountant's attendance is applicable for three consecutive years towards the firm's premium credit.

The seminars increase an accountant's awareness of potential liabilities, reduce the chances of a claim, and aid an accountant in handling potential claims situations. Each seminar topic assists accountants in recognizing behaviors or conditions that may decrease the risk of a malpractice lawsuit, through a comprehensive workbook and video vignettes.

Detailed information, including dates and locations of these seminars will be mailed to AICPA Plan insureds 8 weeks prior to the seminar in their area.

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