

Standards Reduce Agent's E&O

*"It's not all about winning the court battle;
it's about avoiding it altogether."*

Presented by:

Brady Polansky, CIC

Agency Operations Director

Westfield Insurance

Agent's Malpractice

- Legal system in the United States
 - Considered - Not a matter of “IF” you will be sued, but “WHEN!”
- General rule to reduce liability
 - #1- Consistency
 - Do things the same way, every time, with everybody

Contributing Factors Introduced with Technology

- Degradation of Data Integrity
 - Different procedures for input and retrieval of data between various systems.
- Data Access Road Blocks
 - Multiple locations for records
 - Multiple file formats
- Knowledge Management
 - Different skill levels among employees
 - Training and education requirements
 - Garbage IN is garbage OUT
 - Regular random audits

Key Elements to Reduce Errors & Omissions

- Permanent unalterable transaction log.
- Immediate access to Customer accounts and policy detail.
- Standardized memos, proposals, forms and form letters.
- Security controls for data access and revision.
- Procedures and Standards Guide.
- Disaster and Emergency Response Plan.

Additional Elements to Reduce Errors & Omissions

- Single entry of data (SEMCI)
- Claims tracking system.
- Expiration lists.
- Risk and survey system.
- Binding and claims authority disclaimers.
- Regular random data audits.

Criteria Needed to be Admissible in Court

- Must be agency's primary source of information and used daily.
- Uniform Business Records as Evidence Act.
 - A record of an act, etc., shall be competent evidence if a qualified witness testifies to its identity, how it was prepared, and that it was made in the regular course of business at or near the time of the act.
- Must be entered by properly trained individuals whose job is data entry.

Criteria Needed to be Admissible in Court

- Must have personal knowledge of the recorded event, or obtained directly from person who has personal knowledge.
- Must have a consistent backup procedure
- Must have a “Written” procedure guide
 - Required by most E&O carriers
 - Must include ALL positions

Major E&O Concerns

- Quote and proposal disclaimers
 - Not a legal contract and does not bind the agency in any way.
 - Additional underwriting or inspections may be required.
 - Actual policy will prevail in inconsistencies.
 - Only valid for 30 days.

Major E&O Concerns

- Fax / e-mail and voice mail
 - Make it clear that after hours communications do not constitute an obligation on the part of the agency
 - The information is CONFIDENTIAL and should be read by the intended recipient only
- Unsecured internet transactions
 - ALL data exchange must be secure

Summary

- Legal system in the States
 - Not a matter of “IF” you will be sued, but “WHEN”
- General rule to reduce liability
 - #1- Consistency
 - Do things the same way, every time, with everybody