

ALERT

# Chiropractor's Failure to Warn Against Sexual Assault Not "Professional Services"

March 15, 2013

Applying Oklahoma law, the United States District Court for the Western District of Oklahoma has determined that a claim against a chiropractor for alleged failure to warn against the chiropractor's spouse's propensity to sexual assault of minors did not constitute an act, error or omission committed within the providing of professional services. *Hanover Am. Ins. Co. v. Saul*, 2013 WL 812353 (W.D. Okla. Mar. 5, 2013).

The policy afforded coverage only for acts, errors or omissions in the providing of professional services, defined as "services which are within the scope of practice of a chiropractor in the state or states in which the chiropractor is licensed." The underlying claimant asserted that the insured failed to warn the claimant about the insured's spouse, who allegedly had a history and propensity to sexual molestation and permitted the spouse unfettered access to the insured's clinic. The court reasoned that the alleged failures to warn did not fall within the scope of a "professional act or service," defined in case law "as one arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill, and the labor or skill involved is predominantly mental or intellectual rather than physical or mental." In reaching this conclusion, the court rejected the insured's argument that it should refrain from determining the scope of her professional duties until findings were made in the underlying litigation, reasoning that the insurer's duty to defend was independent of the outcome of the underlying action. Further, the court concluded that the underlying claimant's label of the claim as "medical malpractice" was of no import; the claimant could not "turn a premises liability or another type of negligence claim into one for medical malpractice by

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mislabeling it."

The opinion is available here.