

Professional Protection Policy – Healthcare Coverage Part

OCCURRENCE

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SAMPLE

Professional Protection Policy – Healthcare Coverage Part OCCURRENCE

THIS IS AN OCCURRENCE POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. DEFENSE COSTS ARE IN ADDITION TO THE LIMITS OF INSURANCE.

Throughout this policy the words “you” and “your” refer to the “named insured” shown in the Declarations and any other person or organization qualifying as an “insured” under this policy.

The words “we”, “us” and “our” refer to the Company providing this insurance. Headings are provided solely for convenience and do not confer coverage.

In consideration of the payment of the premium and subject to the statements in the Declarations and in the application submitted to us for this policy together with any written materials attached thereto and submitted to us, the parties agree as follows:

COVERAGE AGREEMENTS

PROFESSIONAL LIABILITY COVERAGE

We will pay “defense costs” and “damages” resulting from a “claim” against you because of a “Medical Malpractice Incident” caused by your performance of “professional services” or a “Good Samaritan Act”; provided that:

- The “Medical Malpractice Incident” first occurs during the “policy period”;
- You report the “claim”, whenever made, to us in accordance with the Reporting of Claims section of the policy;
- Prior to the inception of the “policy period”, no “insured”:
 - knew or had a basis to know of any “medical malpractice incident”, “related incident” or any other circumstance that could reasonably be expected to give rise to the “claim” hereunder; or
 - had given notice to any insurer of any “related claim” or circumstance underlying such “claim” or “related claim”; and
- The “claim” is made within the United States but may arise from a “medical malpractice incident” occurring anywhere in the world.

Payment of “damages” will be subject to the applicable Limit of Insurance. All “defense costs” are paid in addition to, and will not reduce, the Limit of Insurance.

COVERAGE EXTENSIONS

Payments made under these Coverage Extensions are in addition to, and will not reduce, the Limits of Insurance shown in the Declarations.

A. Reputation Protection Coverage

We will retain a public relations consultant or crisis management consultant on your behalf and pay reasonable and necessary costs, expenses and fees incurred to engage such consultant to respond to a “reputation threat” in connection with any otherwise covered “claim”.

The maximum amount payable under this Coverage Extension is \$50,000 per “claim”.

B. Board Action Defense Coverage

We will pay on your behalf all reasonable and necessary costs, expenses and fees to retain counsel to represent you in connection with the investigation or defense of a “board action” initiated against you in connection with your conduct within the profession stated in the Declarations, provided that:

- The alleged conduct giving rise to the “board action” first occurs during the “policy period”;
- The “board action” is reported to us as soon as you receive notice of such action; and
- Prior to the inception of the policy, no “insured” had any knowledge of any circumstances that could reasonably be expected to give rise to such action.

The maximum amount payable under this Coverage Extension is \$25,000 per “policy period”. No “damages”, fines, penalties or other amounts are covered under this extension.

C. Wage Loss/Deposition Expense Coverage

We will reimburse you for actual lost wages and reasonable and necessary costs and expenses incurred by you to attend any deposition, trial, hearing, or arbitration proceedings at our request in connection with the defense of a covered “claim” against you.

The maximum amount payable under this Coverage Extension is \$1,000 per day.

D. HIPAA Violation Coverage

We will pay “defense costs” and those sums that you become legally obligated to pay as “HIPAA fines and penalties” resulting from a “HIPAA proceeding” initiated against you in connection with your “professional services”.

This insurance applies only if:

- The alleged violation giving rise to the “HIPAA proceeding” first occurs during the “policy period”;
- The “HIPAA proceeding” is reported to us as soon as you receive notice of the proceeding; and
- Prior to the inception of the policy, no “insured” had any knowledge of any circumstances that could reasonably be expected to give rise to such proceeding.

The maximum amount payable under this Coverage Extension is \$25,000 per “policy period”.

DEFENSE AND SETTLEMENT

We have the right and duty to defend, investigate, and settle any “claim,” even if the “claim” is groundless, false or fraudulent. We will retain counsel to represent you in connection with such “claim.”

We may negotiate and settle any “claim” as we deem expedient; however, we will not commit to any settlement without the written consent of the “named insured”. If the “named insured” refuses to consent to any settlement acceptable to the claimant that we recommend, then, subject to the Limits of Insurance shown in the Declarations, our liability for such “claim” will not exceed the amount for which such “claim” could have been settled plus “defense costs” up to the date the “named insured” refused to settle such “claim”.



Our obligation to defend and to pay “defense costs” or “damages” in connection with any “claim” or other amounts under this policy ends once the applicable Limit of Insurance has been exhausted.

We have the right but not the duty to appeal any judgment.

LIMITS OF INSURANCE

- The Aggregate Limit of Insurance shown in the Declarations is the most we will pay for all “damages” under this policy listed regardless of the number of “claims” made. This Limit of Insurance shall apply separately to each “named insured”.
- Subject to the applicable Aggregate Limits of Insurance, the Each Claim Limit of Insurance shown in the Declarations is the most we will pay for all “damages” under the policy for one “claim” or all “related claims.”
- “Defense costs” will be paid in addition to the Limits of Insurance shown in the Declarations and will not reduce the Limits of Insurance.

REPORTING OF CLAIMS

Reporting a Claim

You must, as a condition precedent to your rights under this policy with respect to a “claim”, notify us as soon as practicable after you first receive notice of such “claim”. To the extent possible, notice should include: how, when and where the incident or conduct giving rise to “claim” took place and the names of any persons or entities involved in the facts underlying the “claim.”

EXCLUSIONS

This policy does not apply to any “claim”, action, or proceeding:

Abuse or Sexual Misconduct

based upon or arising from any actual or alleged physical or mental forms of abuse, including, for example, physical assault or battery, molestation, mental abuse, sexual assault or inappropriate contact, and sexual or other harassment. This exclusion will not apply unless or until such conduct has been determined by judgment, final ruling, or admission in any judicial proceeding, administrative or alternative dispute resolution proceeding. Providing a defense until the conduct is adjudicated does not mean we waive any of our rights under this policy. We are not required to appeal any such adjudication, judgment or ruling.

Confidential or Personal Information Disclosure and Electronic Data Exclusion

based upon or arising from any unauthorized access to, use or disclosure of, or the failure to protect non-public, confidential, corporate or personal information in any form, including any type of electronic data, or to which any cyber insurance coverage applies, including coverage for network security and data breach response. This exclusion does not apply to an otherwise covered “HIPAA proceeding.”

Contractual Liability

based upon or arising from any actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; however, this exclusion shall not apply to your liability that exists in the absence of such contract or agreement.

Cosmetic Procedures

based upon or arising from any “cosmetic procedures”.

Employment Matters

based upon or arising from any actual or alleged employment obligations, decisions, practices, or policies as an employer.

Intentional Wrongdoing

based upon or arising from any actual or alleged dishonest, fraudulent, criminal, malicious or intentional act committed by or at the direction of any "insured", including, but not limited to, the willful or reckless violation of any statute, regulation, or other law. This exclusion will not apply unless or until such conduct has been determined by judgment, final ruling, or admission in any judicial proceeding, administrative or alternative dispute resolution proceeding. Providing a defense until the conduct is adjudicated does not mean we waive any of our rights under this policy. We are not required to appeal any such adjudication, judgment or ruling.

ERISA, Workers' Compensation and Similar Laws

based upon or arising out of any of the following:

- The Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), or any amendment or revision thereto;
- Any workers' compensation, disability benefits or unemployment compensation law; or
- Any other statute, regulation, or law similar to those stated above.

Loading or Unloading

based upon or arising from the ownership, use, care of, operation of, lease or rental, the loading or unloading of patients or property from, the transportation of patients in, or the entrustment to others in an auto, mobile equipment, watercraft or aircraft, including an auto, mobile equipment, watercraft or aircraft which is loaned to or operated for the "named insured" by its "employee", including an auto owned by an "employee".

Licensing

based upon or arising from any actual or alleged any "professional services" you provide without a valid and active license, credentials, certification, or other form of authorization to the extent required by applicable state, federal or local law, rule or regulation.

Related Entities Claims

brought or maintained by or on behalf of:

- any "insured" or associated entity of an "insured";
- any person who, at the time of the "medical malpractice incident" giving rise to the "claim", is a family member;
- any entity operated or controlled by any "insured";
- any "employee", partner or trustee of any "insured"; or
- any person or entity in which any "insured" has a direct or indirect financial interest or is advised or induced by the "insured" to invest in or lend money to any person, firm, company or entity referred to above or to the "insured".

Return of Fees and Reperformance

for the return or withdrawal of any fees or charges or seeking reperformance or correction of any services.

Unauthorized Collection or Communication

based upon or arising from the unauthorized or unlawful collection or recording of material, data, or information in any form, or unauthorized communication to third parties by an “insured”. This exclusion does not apply to an otherwise covered “HIPAA proceeding.”

CONDITIONS

Assignment

Your rights and duties under this policy may not be transferred or assigned without our written consent. If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative.

Assistance and Cooperation

You must cooperate with us and provide us all information which we reasonably request, including, but not limited to, attending hearings, depositions, and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any “claim” or other proceeding covered by this policy. You must do nothing that may prejudice our position.

No “insured” will, except at that “insured’s” own cost, voluntarily make a payment, assume any obligation, or incur any expense in connection with a “claim” except at our request or prior consent.

Authorization; Changes to Policy

The “named insured” that is listed first on the Declarations is authorized to act on behalf of all other “insureds” with respect to the giving and receiving of any notice provide for in this policy, including notice of cancellation or nonrenewal, the payment of premiums, the receipt of any return premiums, and the agreement to and acceptance of changes to the policy.

By acceptance of this policy, the “insureds” and we agree that this policy (including the Declarations and application) and any written endorsements attached hereto constitute the entire agreement between the parties. This policy can be changed only by endorsement to the policy.

Cancellation and Renewal

1. Cancellation

- a. The “named insured” that is listed first on the Declarations may cancel this policy by sending us notice of cancellation at the address on the Declarations. Such notice must indicate the effective date of cancellation.
- b. We may cancel this policy for any reason allowable by state law. If we cancel, we will provide notice of cancellation to the “named insured” at the address stated on the Declarations. If we cancel because of non-payment of premium, we will notify the “named insured” at least ten days before the effective date of cancellation when the cancellation is to take effect. If we cancel for any other reason, we will notify the “named insured” at least 60 days before the effective date of cancellation when the cancellation is to take effect.
- c. We will send the “named insured” any applicable refund of premium at the address shown on the Declarations as soon as practicable thereafter. Cancellation will be effective even if no premium refund is available.

2. Non-Renewal

If we decide not to renew this policy, we will notify the “named insured” of our decision at least 60 days prior to the effective date of renewal. If notice is mailed, proof of mailing will be sufficient proof of notice.

Change in Operations or Profession

In the event of a merger, acquisition, or change in ownership involving the “named insured” or if the nature of your operations or “professional services” materially changes, you must notify us of such change as soon as practicable. There will be no coverage under this policy for any such change until we have approved the change in writing, and any additional premium adjustment is satisfied.

Legal Actions Against Us

No person or entity has a right under this policy to join us as a party or otherwise bring us into a suit asking for “damages” from you or to sue us under this policy unless all its terms have been fully complied with. A person or entity may sue us to recover on an agreed settlement or on a final judgment against you, but we will not be liable for “damages” that are not payable under this policy or that exceed the applicable Limits of Insurance of this policy.

Other Insurance

All amounts payable under this policy will be specifically excess of, and will not contribute with, any other valid and collectible professional liability insurance, including any employer provided professional liability insurance; and any other valid and collectible liability insurance; or any self-insured retention, fund or trust established by your employer for the purposes of paying losses or damages.

Representations

By accepting this policy, you agree that the statements in the Declarations and application and any written materials attached thereto are accurate and complete, those statements are based upon representations you made to us, and we have issued this policy in reliance upon your representations.

This policy is void in any case of fraud or misrepresentation or concealment of a material fact relating to your application or to a “claim”. We also reserve the right to decline coverage for any “claim” or proceeding involving any material facts that were misrepresented by you, whether at the time of notice of such “claim” or in your application to us for this insurance.

Separation of Insureds

Except with respect to rights or duties specifically assigned to the first “named insured” shown in the Declarations and the Limits of Insurance, this policy applies as if each “named insured” were the only “named insured;” and separately to each “insured” against whom a “claim” is made.

Severability

As respects the representations made in the application for this policy, and in determining an “insured’s” knowledge or conduct throughout the policy:

- the conduct or knowledge of a natural person “insured” will not be imputed to any other natural person “insured”;
- however, the conduct or knowledge of a natural person “insured” who is an owner, principal, or partner of an “insured” organization, or who is the person who signed the application for this insurance, will be imputed to the organization.

Subrogation and Transfer of Rights of Recovery

If we make any payment under this policy, we shall be subrogated to all of your rights against any person or entity, including the right to participate with you in the exercise of all of your rights of recovery. You shall deliver instruments and papers to us and do whatever else is necessary to secure such rights.

Violation of Economic or Trade Sanctions

If any coverage provided under this policy would be in violation of any applicable economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), then that coverage shall be null and void.

DEFINITIONS

"Board action" means a hearing or review maintained by any state, federal, or other administrative authority responsible for setting professional standards and regulating your professional conduct. Multiple "board actions" involving the same conduct, or logically or causally related conduct, will be deemed to be a single "board action".

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death, mental anguish, mental injury, shock or humiliation resulting from any of these at any time.

"Claim" means:

- a written demand against an "insured" for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations, or to engage in arbitration or mediation; or
- a civil proceeding against an "insured" for monetary or non-monetary (including injunctive) relief which shall be deemed first made upon the service of a complaint or similar pleading upon the "insured"; or
- any form of notice of an act, error or omission in your performance of "professional services" for which you reasonably believe another party intends to hold you legally liable.

Criminal proceedings are not covered.

"Cosmetic procedures" means any service or treatment primarily intended to improve, alter, or enhance a person's appearance.

"Damages" mean a monetary judgment, award or settlement, including punitive and exemplary damages, that an "insured" becomes legally obligated to pay because of a "claim" (but only to the extent insurable by law).

"Damages" includes pre-judgment and post-judgment interest awarded against you on that part of the judgment we pay. "Damages" does not include:

- fines, taxes, or penalties;
- claimant attorney fees, costs or expenses;
- amounts the "insured" is legally absolved from payment; or
- any amount not insurable under applicable state law.

"Defense costs" means those reasonable and necessary fees, costs and expenses incurred by us or by the "insured" at our request in the defense or investigation of any "claim", including the costs of an appeal bond, attachment bond or similar bond (although we are not obligated to apply for or furnish such bond). "Defense costs" do not include any salaries, wages, overhead, benefits, benefit expenses or internal charges associated with any "insured", or any fees, costs or expenses incurred by an "insured" prior to the time the "claim" is reported to us.

“Employee” means a person who is hired by you or on your behalf to perform work under your direction to support your performance of “professional services.” “Employee” includes a temporary worker or volunteer.

“Good Samaritan Act” means emergency first-aid medical services rendered by you to another person without expectation of remuneration or compensation.

“HIPAA Fines and Penalties” means civil fines and penalties you become legally obligated to pay because of a “HIPAA proceeding”.

“HIPAA proceeding” means an administrative proceeding or series of logically or causally related administrative proceedings brought against you by the Department of Health and Human Services or its designee alleging a violation under Health Insurance Portability and Accountability Act of 1996 and amendments thereto (“HIPAA”) or any rules or regulations promulgated thereunder with respect to information pertaining to a patient or client that has been collected, compiled, or provided by you to another.

“Insured” means the “named insured”. In the event of the death, disability, bankruptcy, or financial insolvency of the “named insured,” “insured” will also include such “named insured’s” heirs, executors, administrators, trustees in bankruptcy, assignees or legal representatives, legal spouse or legal domestic partner if a “claim” is made against any of the foregoing persons or entities in their capacity as such.

“Medical Malpractice Incident” means any act, error or omission committed by you resulting in “bodily injury”.

“Named insured” means the person or organization designated as such on the Declarations.

“Policy period” means the period of time from the inception date shown in the Declarations to the effective date of termination of this policy, whether by expiration or cancellation.

“Professional services” means those services the “named insured” performs for others that is within the scope of such insured’s profession shown in the Declarations, and for which the insured is licensed, certified, accredited, trained or qualified to perform, and also means:

- any medical services you provide as part of clinical trials;
- advisory services provided while acting as a member of a formal accreditation, standards review, or similar board or committee related to your profession;
- teaching or proctoring of educational courses to students within your profession;
- healthcare services you provide as a student within your profession’s educational requirements; and
- scheduling and qualifying suitable work assignments for other healthcare providers.

“Related claim” means any “claim” that is based upon or arises from the same “medical malpractice incident” or “related incidents.” All “related claims” will be deemed a single “claim”.

“Related incidents” means all “medical malpractice incidents” logically or causally connected by any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

“Reputation threat” means a “medical malpractice incident” or underlying fact or circumstance that the “named insured” reasonably believes would, if disclosed in a publication, have an adverse impact on the “insured’s” professional reputation.

ABSOLUTE ABUSE AND SEXUAL MISCONDUCT EXCLUSION

It is agreed that:

1. The exclusion for **Abuse or Sexual Misconduct** is deleted and replaced by the following;

Abuse or Sexual Misconduct

based upon or arising from any actual or alleged physical or mental forms of abuse, including, for example, physical assault or battery, molestation, mental abuse, sexual assault or inappropriate contact, and sexual or other harassment.

2. The exclusion for **Intentional Wrongdoing** is amended to add the following at the end thereof:

Notwithstanding the foregoing we will not provide a defense for any conduct that is otherwise excluded by the **Abuse or Sexual Misconduct** exclusion.

All other terms and conditions remain unchanged.