



Berkshire Hathaway
Specialty Insurance

Professional Protection Policy – Healthcare

EMPLOYED | CLAIMS MADE

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SAMPLE



Professional Protection Policy – Healthcare

EMPLOYED | CLAIMS MADE

CONTRACT

THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO US IN ACCORDANCE WITH THE REPORTING REQUIREMENTS OF THIS POLICY. DEFENSE COSTS ARE IN ADDITION TO THE LIMITS OF LIABILITY.

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

The words “we”, “us” and “our” refer to the Company providing this insurance.

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, and subject to the Limit of Insurance, exclusions, conditions and other terms of this policy, the parties agree as follows:

COVERAGE

INSURING AGREEMENT: PROFESSIONAL LIABILITY COVERAGE

We will pay “defense costs” and those sums that you become legally obligated to pay as “damages” as a result of a “claim” because of an “incident” to which this policy applies.

This insurance applies to “incidents” that occur or allegedly occur before the expiration of the “policy period” and after the “retroactive date” shown on the Declarations, but only if the “claim” is first made against you and reported to us during the “policy period” or “extended reporting period”, if applicable.

No other obligation or liability to pay any sums or perform any acts or services is covered by this policy unless explicitly provided for under the Coverage Extensions set forth below, and then only to the extent provided therein and pursuant to this policy.

COVERAGE EXTENSIONS

Payments made under these Coverage Extensions are in addition to and do 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 “claim” because of an “incident” for which coverage is provided under this policy.

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

B. Licensing Board Coverage

We will retain counsel and pay on your behalf reasonable and necessary costs, expenses and fees incurred to engage such counsel to represent you in connection with the investigation or defense of any action or proceeding initiated against you by any entity responsible for regulating the profession of the “named insured” shown in the Declarations; provided that such action or proceeding arises from an “incident” for which coverage is provided in the Insuring Agreement above and notice of any such action or proceeding is first received by you and reported to us during the “policy period”.

The maximum amount payable under this Coverage Extension is \$25,000 per action or proceeding.

C. Wage Loss/Deposition Expense Coverage

We will reimburse you for actual lost wages and reasonable and necessary costs and expenses incurred by you if you are requested by us to attend any deposition(s), trial(s), hearing(s), or arbitration proceedings(s) relative to the defense of a covered “claim”.

This Coverage Extension does not apply to any deposition where you are acting as a paid expert.

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

D. HIPAA Coverage

We will retain counsel and pay on your behalf reasonable and necessary costs and expenses and fees incurred to engage such counsel to represent you in connection with a “HIPAA proceeding” brought against you for a violation of any privacy rules or regulations promulgated under HIPAA in connection with the management and transmission of “protected health information”; provided such violation occurs during the “policy period” and we will pay on your behalf “HIPAA fines and penalties” which you become legally obligated to pay arising from a “HIPAA proceeding” brought against you for a violation during the “policy period” of any privacy rules or regulations promulgated under HIPAA in connection with the management and transmission of “protected health information”.

The maximum amount payable under this Coverage Extension is \$25,000 per action or proceeding.

DEFENSE AND SETTLEMENT

- A.** We shall have the right and duty to defend any “claim” against you that seeks “damages” covered by this policy, even if the “claim” is groundless, false or fraudulent; however we will not be obligated to pay any “claim” or judgment or continue to defend a “claim” after the applicable Limit of Insurance has been exhausted by payment of “damages” to which this insurance applies.
When we assume the defense of any “claim” we will select and assign defense counsel and pay covered “defense costs”.
- B.** 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”.

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

LIMITS OF INSURANCE

- A. The Limits of Insurance shown in the Declarations is the most we will pay for all “damages” under this policy regardless of the number of “claims” made.
- B. More than one “claim” involving the same “incident” or “related incident” shall be considered a single “claim” and subject to one Limit of Insurance. All such “claims” constituting a single “claim” shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such “claim” was first made; or (2) the earliest date on which any such “incident” or “related incident” was reported under this policy or any other policy providing similar coverage, regardless of whether such date is before or during the “policy period”. In no event shall a single law suit or proceeding constitute more than one “claim”.
- C. Subject to Paragraphs A and B above:
 - 1. The Each Claim Limit shown in the Declarations is the most we will pay for all “damages” arising out of any one “claim”.
 - 2. The Aggregate Limit shown in the Declarations or as shown in any Schedule of Named Insureds attached hereto is the most we will pay for all damages for the “named insured”.
- D. “Defense costs” shall be in addition to the Limits of Insurance shown in the Declarations and shall not reduce the Limits of Insurance.

EXCLUSIONS

- A. **Abuse or Sexual Misconduct**

This policy does not apply to any “claim” based upon or arising out of physical abuse, physical assault, physical molestation, mental abuse, battery, sexual assault, sexual abuse, sexual molestation, sexual harassment, or sexual misconduct (collectively “abuse”); provided, however, we will retain counsel to represent you and pay on your behalf “defense costs” for non-criminal proceedings brought against you during the “policy period” alleging such “abuse” unless or until such “abuse” has been determined to have occurred, by any judgment, final ruling or admission adverse to you in any judicial, administrative or alternative dispute resolution proceeding. Such defense will not waive any of our rights under this policy. We shall not be required to appeal any such adjudication, judgment or ruling. However, criminal proceedings are not covered by this policy regardless of the allegations made against you.
- B. **Conduct**

This policy does not apply to any “claim” based upon or arising out of any 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; however, we will retain counsel to represent you and pay on your behalf “defense costs” for non-criminal “claims” brought against you during the “policy period” alleging such act unless or until it has been determined by judgment, final ruling or admission adverse to you in any judicial proceeding, administrative or alternative dispute resolution proceeding that such act was committed. Such defense will not waive any of our rights under this policy. We shall not be required to appeal any such adjudication, judgment or ruling.



C. Contractual Liability

This policy does not apply to any “claim” based upon or arising out of:

1. Your alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. The liability of others you assume under any oral or written contract or agreement.

However, this exclusion shall not apply to: (i) your liability that exists in the absence of such contract or agreement or (ii) any “claim” against you by your client or customer, if and to the extent that the “claim” alleges a breach of contractual obligations in the rendering of or failure to render “professional services”.

D. Loading or Unloading

This policy does not apply to “bodily injury” or “damage” based upon, arising out of, directly or indirectly resulting from, in consequence of, or involving your 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 the “named insured” or which is operated for the “named insured” by its “employee”, including an auto owned by an “employee”.

E. Prior Incidents, Acts, or Injuries

This policy does not apply to any “claim” based upon or in any way arising out of any act, error or omission, including an “incident”, “Good Samaritan act” or “bodily injury” that occurred before the “retroactive date”.

F. Related Entities

This policy does not apply to any “claim” brought or maintained by or on behalf of:

1. Any “insured”, or any associated entity of an “insured”;
2. Any person who, at the time of the “incident” giving rise to the “claim”, is a family member;
3. Any entity operated or controlled by any “insured”, or any employee, partner or trustee of any “insured”; or
4. 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”.

G. Return of Fees

This policy does not apply to any “claim” seeking a return or withdrawal of any fees or charges.

H. Revoked

This policy does not apply to any liability resulting from “professional services” you provide while your license, credentials or certification to practice is suspended, revoked or no longer valid.

I. Violation of Law

This policy does not apply to any “claim” based upon or arising out of violation of any statute, regulation, ordinance or common-law that prohibits or limits the collection, recording, disclosure, transmission, communication, distribution, or failure to protect material or information in any form, (except to the extent covered under the HIPAA Coverage in the Coverage Extensions 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 your 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. Notwithstanding the foregoing, solely with respect to the defense of a “claim” this policy shall be primary and will not seek contribution from any other liability insurance available to an “insured” under this policy.

CONDITIONS

A. Assistance and Cooperation

You shall 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” covered by this policy. You shall 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, other than first aid, without our consent.

B. Cancellation, Nonrenewal and Automatic Renewal

1. Cancellation

- a. The “named insured” shown in the Declarations may cancel this policy. Such notice must indicate when the cancellation is to take effect.
- b. We may cancel this policy. If we cancel because of non-payment of premium, we must notify the “named insured” shown in the Declarations at least ten (10) days before the effective date of cancellation when the cancellation is to take effect. If we cancel for any other reason, we must notify the “named insured” shown in the Declarations at least sixty (60) days before the effective date of cancellation when the cancellation is to take effect.
- c. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if we have not made or offered any refund of unearned premium.

2. Non-renewal

If we decide not to renew this policy, we will notify the “named insured” shown in the Declarations of the nonrenewal not less than sixty (60) days before the expiration date of this policy.

3. Automatic Renewal

We shall offer automatic renewal of this policy unless:

- a. Either party has cancelled this policy for any reason permitted herein or by law;
- b. A material change in your profession, “professional services” or “business entity’s” operation as shown on the Declaration page has occurred; or
- c. You have notified us of a “claim” under this policy.

To the extent applicable, ninety (90) days in advance of the expiration of the “policy period” we will provide the “named insured” notification of an offer of automatic renewal of this policy.

Any automatic renewal will be at the same terms and conditions as this policy (except for the



inception and expiration dates of the “policy period” and at our sole and absolute discretion, the premium charged for the renewal policy) for a term of one year.

C. Changes

This policy can be changed only by a written endorsement that we make to this policy.

D. Concealment, Misrepresentation, Fraud

This policy is void in any case of fraud by you relating to it. It is also void if you intentionally conceal or misrepresent a material fact or circumstance concerning this policy.

E. Conformance to Statute

The terms of this policy which are in conflict with the statutes, laws, ordinances or regulations in any country, jurisdiction, state or province where this policy is issued are amended to conform to the minimum requirements of such statutes, laws, ordinances or regulations.

F. Coverage Territory

This policy applies to “claims” brought against you in the United States of America, including its territories or possessions.

G. Extended Reporting Periods

We will provide one or more Extended Reporting Periods as detailed below, if this policy is cancelled or not renewed for any reason other than non-payment of premium.

Any Extended Reporting Period does not extend the “policy period” shown in the Declarations or change the scope of coverage provided. Coverage for a “claim” deemed first made during the Extended Reporting Period shall only apply with respect to any “incidents” that occur or allegedly occur before the expiration of the “policy period” or the date of the policy termination, whichever is earlier and after the “retroactive date” shown on the Declarations and not previously reported to us.

Once in effect, an Extended Reporting Period may not be cancelled. Extended Reporting Periods do not apply to “claims” that are covered under any subsequent insurance you purchase or would be covered but for exhaustion of the limit of insurance applicable to such “claims”. All “claims” under Extended Reporting Periods must be reported to us as detailed in the **Conditions** section of the policy and are deemed reported on the expiration date of the policy.

1. Automatic Extended Reporting Period

- a.** An Automatic Extended Reporting Period is provided at no charge for sixty (60) days after the expiration of the “policy period” or the date of the policy termination, whichever is earlier.
- b.** The Automatic Extended Reporting Period does not reinstate or increase the Limit of Insurance.

2. Death, Disability or Retirement (DDR) Extended Reporting Period

- a.** We will issue an extended reporting period endorsement of unlimited duration at no cost to you if:
 - i.** You die;
 - ii.** Become totally and permanently disabled as a result of an accident or disease after the effective date of the policy; or
 - iii.** Retire completely from your profession after been continuously insured with us for the immediately preceding three (3) years, and have reached age 55.



b. The DDR Extended Reporting Period does not reinstate or increase the Limit of Insurance.

3. Optional Unlimited Extended Reporting Period

a. An Optional Unlimited Extended Reporting Period is available by endorsement and for an additional charge. The Optional Unlimited Extended Reporting Period commences when the Automatic Extended Reporting Period, detailed above, ends. You must provide us a written request for the endorsement within sixty (60) days after the expiration of the “policy period”, or the policy termination date, whichever is earlier. The premium for this endorsement is non-refundable.

b. The Optional Extended Reporting Period does not reinstate or increase the Limit of Insurance.

H. Knowledge of Incident, Occurrence, or Circumstance

This policy applies to a “claim” only if prior to the inception date of the policy no “insured” had any knowledge of any “incident”, occurrence or circumstance that a reasonable person might expect would result in such “claim”.

I. Legal Actions Against Us

No person or entity has a right under this policy:

1. To join us as a party or otherwise bring us into a suit asking for “damages” from you; or
 2. To sue us under this policy;
- unless all of its terms have been fully complied with.

A person or entity may sue us to recover on an agreed settlement (which is a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative) or on a final judgment against you; but we will not be liable for “damages” that are not payable under this policy or that are in excess of the applicable Limits of Insurance of this policy.

J. Notice of a Claim

You shall, as a condition precedent to your rights under this policy with respect to a “claim”, notify us as soon as practicable after you first learn of such “claim”. In addition, you must promptly send us copies of any demands, notices, summons or legal papers received in connection with the “claim”; authorize us to obtain records and other information; cooperate with us in the investigation or settlement of or defense against the “claim”; and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of “bodily injury” or “damage” to which this insurance may apply. To the extent possible, notice should include: how, when and where the “incident”, occurrence or circumstance took place; and the nature and location of any “bodily injury” or “damage” arising out of any “incident”, occurrence or circumstance.

K. 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.

L. 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.



M. Transfer of Your Rights and Duties

Your rights and duties under this policy may not be transferred 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.

N. Unintentional Failure to Disclose

Your failure to disclose all hazards existing as of the inception date of the policy will not prejudice you with respect to the coverage afforded by this policy, provided that any such failure or omission is not intentional.

O. 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

A. "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.

B. "Claim" means:

1. A written demand against you for monetary and non-monetary (including injunctive) relief due to an "incident", including a demand to engage in arbitration or mediation;
2. A civil proceeding against you seeking "damages" commenced by the service of a complaint or similar pleading upon you; or
3. A written notification of an "incident", occurrence or circumstance which may result in a "claim" under this policy.

C. "Damages" mean a monetary judgment, award or settlement, including punitive and exemplary damages (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:

1. Fines, sanctions, penalties, except for "HIPAA fines and penalties" as insured under Coverage Extension D;
2. Taxes or tax penalties;
3. Any amount which an "insured" is legally absolved from payment; or
4. Any amount not insurable under the law pursuant to which this policy shall be construed.

"Defense costs" means reasonable and necessary fees, costs and expenses in the defense or appeal of a "claim" or proceeding brought against you.

D. "HIPAA Fines and Penalties" means civil fines and penalties imposed upon you for a failure to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and amendments thereto ("HIPAA"). "HIPAA fines and penalties" do not include fines and penalties imposed on you for a knowing wrongful disclosure of any "protected health information".

E. "HIPAA Proceeding" means an administrative proceeding brought against you by the Department of Health and Human Services or its designee alleging a violation under HIPAA or any rules or regulations promulgated thereunder.



- F.** “Incident” means any act, error or omission resulting in “bodily injury” and occurring subsequent to the “retroactive date”:

 - 1.** In the rendering or failure to render “professional services” in the conduct of the profession of the “named insured” shown in the Declarations, including any such act, error or omission in connection with a “Good Samaritan act”; or
 - 2.** In the performance of services by you as a member of a formal accreditation, ethics, peer review, licensing board, standards review or similar professional board or committee of a professional organization; in the conduct of the profession of the “named insured” shown in the Declarations.
- G.** “Insured” means the “named insured” and any other person shown on the Declarations or listed in an endorsement attached to this policy designated as an “insured”.
- H.** “Policy period” means the period of time from the inception date shown in the Declarations to the earlier of the expiration date shown in the Declarations or the effective date of termination of this policy.
- I.** “Professional services” means those services for which you are licensed, certified, accredited, trained or qualified to perform within the scope of the profession of the “named insured” shown in the Declarations which are performed on behalf of the “named insured”, including any services provided as part of “clinical trials”.
“Professional services” also means your services while acting within the scope of the profession of the “named insured” shown in the Declarations as a member of a formal accreditation, standards review or similar board or committee, as well as your acting in a supervisory, teaching or proctoring role at the “named insured’s” request.
“Professional services” includes scheduling and qualifying suitable work assignments for eligible healthcare providers.
- J.** “Protected health information” means information pertaining to a patient or client that has been collected or compiled by you or provided by you to another that is subject to protection under HIPAA.
- K.** “Related incident” means any actual or alleged separate or series of “incidents” directly arising out of or related to the same or similar act, error, omission, service, transaction, event, representation, statement, practice, advice, decision or circumstances.
- L.** “Reputation threat” means an act or event that the “named insured” believes would, if disclosed in a publication, have an adverse impact on the public perception of an “insured”.
- M.** “Retroactive date” means the date shown as such in the Declarations. The “retroactive date” is the earliest date on which an “incident” can take place for which coverage will be available for a “claim” made and reported under this policy.