



Professional Protection Policy – Healthcare

EMPLOYED | OCCURRENCE

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SAMPLE



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CONTRACT

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 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 provided such “incident” occurs during the “policy period”.

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 under this policy and notice of any such action or proceeding is first received by you and reported by 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, 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 such “HIPAA proceeding”.

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” which occurred during the “policy period” shall be considered a single “claim” and subject to one Limit of Insurance.
- 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 on the Declarations 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 or relating to 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 effective date of the policy.

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 for 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 stating 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 stating 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” 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. 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.

E. Coverage Territory

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

F. Knowledge of Incident, Occurrence, or Circumstance

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

G. 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 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.

H. 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, summonses 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 also 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.

I. 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.

J. 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.



K. 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.

L. 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.

M. 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.

N. 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.

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.

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

E. "Good Samaritan act" means emergency first-aid rendered by you.

F. "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".



- G.** “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.
- H.** “Incident” means any act, error or omission resulting in “bodily injury”:
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.
- I.** “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”.
- J.** “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.
- K.** “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.
- L.** “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.
- M.** “Related incidents” 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.
- N.** “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”.