

Medical malpractice

Policy wording

The General terms and conditions and the following terms and conditions all apply to this section.

Special definitions for this section

Abuse or molestation	Physical or mental abuse, assault, battery, harassment, voyeurism, invasion of privacy, mistreatment or maltreatment, any act of a sexual nature or any act undertaken with a sexual motive.
Business activity	The activities stated in the schedule, or proposal form, or in material representations agreed by us , which you perform in the course of your business .
Communicable disease	Any communicable, infectious or contagious disease, including any related variation, strain, virus, complex or syndrome.
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you , including representation at a coroner's inquest arising out of the death of any patient of yours .
Malpractice	Any bodily injury, mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by you : a. in the performance of a business activity ; or b. in the course of a Samaritan act .
Retroactive date	The date stated as the retroactive date in the schedule.
Samaritan act	Treatment administered by you at the scene of a medical emergency, accident or disaster at which you are present either by chance or in response to a S.O.S. call following a disaster.
You/your	Also includes any person who was, is or during the period of insurance becomes your director, partner, senior manager or officer in actual control of your operations, employee, member of the ethics committee or volunteer performing activities in the course of your business .

What is covered

Claims against you	If during the period of insurance, and as a result of your business activity on or after the retroactive date within the geographical limits for clients, any party brings a claim against you for: a. malpractice; b. negligence or breach of a duty of care; c. dishonesty of any individual falling within the definition of you or any self-employed freelancers, sub-contractors or outsourcers directly contracted to you and under your supervision; d. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use; e. defamation; f. negligence or breach of a duty of care in connection with the transmission of a computer virus or a denial of service attack; g. any other civil liability unless excluded under What is not covered below, we will indemnify you against the sums you have to pay as compensation. We will also pay defence costs but we will not pay costs for any part of a claim not covered by this section.
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Avoiding a potential claim against you

If **your** client has reasonable grounds for being dissatisfied with the work **you** have done, refuses to pay for any or all of it, including amounts **you** legally owe to self-employed freelancers, sub-contractors or outsourcers at the date of the refusal, and threatens to bring a claim against **you** for more than the amount owed, it may be possible to settle the dispute with the client by **your** agreeing not to press for the disputed amount. If so, **we** will pay **you** the amount owed to **you** at that time if **we** believe that this will avoid a legitimate claim for a greater amount and **we** have given **our** prior written approval to settling in this way and for this amount.

Alternatively, if it is not possible to reach agreement with the client on this basis but **we** still believe that by not pressing for the disputed amount **you** will avoid a legitimate claim or counterclaim for a greater amount, **we** will pay the amount owed to **you** at that time. If a claim is still brought, **we** will deal with it but **our** total payment, including what **we** have already paid **you** or on **your** behalf, will not exceed the applicable limit of indemnity stated in the schedule. **You** must return the amount **we** have paid if **you** eventually recover the debt less **your** reasonable expenses.

Once **we** agree to make this payment **you** will assign to **us** such rights as **you** have in relation to the amounts owed to **you**.

We will not make any payment for any part of a claim not covered by this section.

Your own losses

Dishonesty of your employees and sub-contractors

If during the **period of insurance**, and in the performance of **your business activity** within the **geographical limits**, **you** discover a loss from the dishonesty of **your** employees, self-employed freelancers, sub-contractors or outsourcers directly contracted to **you** and under **your** supervision, where there was a clear intention to cause **you** loss or damage and to obtain a personal financial gain over and above any salary, bonus or commission, **we** will indemnify **you** against **your** direct financial loss, provided that the loss was suffered on or after the **retroactive date**.

Loss of documents

If during the **period of insurance** any document, information or data of **yours** which is necessary for the performance of **your business activity** is lost, damaged or destroyed while in **your** possession, **we** will pay the reasonable expenses **you** incur with **our** prior written consent to restore or replace it. The most **we** will pay for the total of all such expenses is the relevant amount stated in the schedule.

What is not covered

Matters specific to your business

A. **We** will not make any payment for any claim or loss directly or indirectly due to:

1. **abuse or molestation**.
2. the performance of any of **your business activities** by any individual other than specified authorised persons, if **your** schedule specifies that such **business activities** can only be performed by specified authorised persons.
3. **your** operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, or **your** breach of any legislation or regulation related to these activities.
4. **your** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
5. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
6. any computer **virus** that was not specifically targeted to **your** system.
7. **your** liability under any contract which is greater than the liability **you** would have at law without the contract, unless **our** prior written agreement has been obtained.
8. activities carried out in the name of a consortium, joint venture or profit-sharing scheme in which **you** are a party, unless our **prior** written agreement has been obtained.

Matters insurable elsewhere

9. any bodily injury, mental injury, illness, disease or death suffered by anyone, other than **malpractice**.
10. anyone's employment with or work for **you**, or any breach of an obligation owed by **you** as an employer or any kind of discrimination, harassment or unfair treatment.

	11. the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle. 12. the loss, damage or destruction of any tangible property. This does not apply to What is covered, Your own losses, Loss of documents. 13. the loss or distortion of any electronic data held by you. 14. any personal liability incurred by any individual falling within the definition of you when acting in that capacity or managing your business, or your breach of any fiduciary duty, other than when performing a business activity for a client, or any statement, representation or information concerning you or your business contained in your accounts, reports or financial statements. 15. your supply, manufacture, sale, installation or maintenance of any product. However, this does not apply to any claim arising directly from the supply, sale or application of a product by you to a client in the course of your business activity, provided that the product was not manufactured by you.
Deliberate, reckless or dishonest acts	16. any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim under the dishonesty cover in What is covered, Claims against you, but we will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty. 17. the performance of any business activity by you while you are under the influence of intoxicants or narcotics.
Pre-existing problems	18. anything, including any actual or alleged shortcoming in your work, likely to lead to a claim against you, or your own loss, which you knew or ought reasonably to have known about before we agreed to insure you.
Asbestos	19. asbestos risks.
Terrorism, war or nuclear risks	20. or contributed to by, resulting from or in connection with any of the following: a. terrorism; b. war; c. nuclear risks; or d. any action taken in controlling, preventing, suppressing or in any way relating to or responding to a. to c. above. If there is any dispute between you and us over the application of 20a. above it will be for you to show that the exclusion does not apply.
Communicable disease	21. or contributed to by, resulting from or in connection with any of the following: a. influenza A (H5N1) (also known as 'avian flu' or 'bird flu'); b. influenza A (H1N1) (also known as 'swine flu'); c. coronavirus disease (COVID-19); d. severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2); e. any variation, strain, virus, complex or syndrome that is related to anything in a. to d. above; f. any fear or threat of a. to e. above; or g. any action taken in controlling, preventing, suppressing or in any way relating to or responding to a. to f. above. However, exclusion 21c. does not apply to any special limit stated in the schedule for claims arising from coronavirus disease (COVID-19) or any related variation, strain, complex or syndrome. 22. or contributed to by, resulting from or in connection with any: a. communicable disease; b. fear or threat of any communicable disease; or c. action taken to control, prevent, suppress or in any way relating to or responding to any such communicable disease,

which has led to any:

- i. full or partial imposition of quarantine or restriction in the movement of people or animals, including any shelter in place or stay at home order or instruction; or
- ii. travel advisory, warning or restriction,

being issued or imposed by any state, national or international body, agency or other competent body or authority.

However, this exclusion does not apply to any special limit stated in the schedule for claims arising from coronavirus disease (COVID-19) or any related variation, strain, complex or syndrome.

Claims brought by a related party

B. **We** will not make any payment for:

1. any claim brought by an insured within the definition of **you** or any party with a financial, executive or managerial interest in **you**, including any parent company or any party in which **you** have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third-party directly arising out of the performance of **your business activity**.

Restricted recovery rights

2. that part of any claim where **your** right of recovery is restricted by any contract, unless **our** prior written agreement has been obtained to that contract.

Consequential loss

3. **your** lost profit, mark-up or liability for VAT or its equivalent.
4. any trading loss or trading liability including those arising from the loss of any client, account or business.

Non-compensatory payments

5. fines and contractual penalties, aggravated, punitive or exemplary damages or additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.

Claims outside the applicable courts

6. any claim, including arbitration, brought outside the countries set out in the schedule under applicable courts.

This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts.

How much we will pay

The most **we** will pay for the total of all claims, losses and **defence costs** is the single limit of indemnity stated in the schedule, irrespective of the number of claims. **You** must pay any relevant **excess** stated in the schedule.

Special limits

Coronavirus (COVID-19)

For any claim or part of a claim due to, contributed to by, resulting from or in connection with coronavirus (COVID-19) or any related variation, strain, complex or syndrome, the most **we** will pay is the amount stated in the schedule for the total of all such claims, including **defence costs**.

Dishonesty of your employees and sub-contractors

For **your** own losses arising from the dishonesty of **your** employees, self-employed freelancers, sub-contractors and outsourcers directly contracted to **you** and under **your** supervision, the most **we** will pay is the amount stated in the schedule for the total of all such losses.

Loss of documents

For **your** own losses arising from a loss of **your** documents, information or data, the most **we** will pay to restore or replace any lost, damaged or destroyed document, information or data is the amount stated in the schedule for the total of all such losses.

Paying out the limit of indemnity

At any stage of a claim **we** can pay **you** the applicable limit of indemnity or what remains after any earlier payment from that limit. **We** will pay **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for that claim or its **defence costs**.

Your obligations

If a problem arises

1. **We** will not make any payment under this section unless **you** notify **us** promptly of the

following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:

- a. **your** first awareness of anything, including any actual or alleged shortcoming in **your** work for a client which is likely to lead to a claim against **you**. This includes any criticism of **your** work even though regarded by **you** as unjustifiable.
If **we** accept **your** notification **we** will regard any subsequent claim as notified to this insurance;
 - b. any claim or threatened claim against **you**;
 - c. the receipt of notice from any person of an intention to hold **you** responsible for any **malpractice**, dishonesty or other act, error or omission;
 - d. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any individual falling within the definition of **you**, or any self-employed freelancer, sub-contractor or outsourcer has acted dishonestly;
 - e. every letter, claim, writ, summons or process against **you** for actual or alleged **malpractice**.
2. When dealing with **your** client or a third party, **you** must not admit that **you** are liable for what has happened or make any offer, deal or payment, unless **you** have **our** prior written agreement. If **you** do, **we** may reduce any payment **we** make under this section by an amount equal to the detriment that **we** have suffered as a result.
 3. **You** must at all times:

Record keeping

- a.
 - i. maintain accurate descriptive records of all professional services and equipment used in procedures which shall be available for inspection and use by **us** or **our** duly appointed representatives; and
 - ii. retain the records referred to in 3.a. i. above for a period of at least five years from the date of treatment and, in the case of a minor, for a period of at least five years after that minor attains majority;

Registration requirements

- b. ensure that all nurses performing a **business activity** maintain registration with the Nursing and Midwifery Council;
- c. ensure that all Registered Medical Practitioners performing a **business activity** maintain:
 - i. registration with the General Medical Council or Irish Medical Council; and
 - ii. membership of a Medical Defence Organisation and the category of such membership is applicable to all services offered or provided by **you**, or are otherwise fully insured for their own malpractice, professional errors, omissions and negligence;
- d. ensure that, where relevant, all other individuals performing a **business activity** maintain registration with their relevant council, governing body or other legally empowered body;

Products

- e. take reasonable steps to ensure that in respect of any third-party manufactured products **you** have supplied, sold or applied as part of **your business activities**:
 - i. such products complied with all relevant health and safety regulations and standards in the European Union, the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man or Gibraltar; and
 - ii. such products were supplied with any instructions which were necessary for the product's safe use;
 - iii. such products were fit and proper for their supplied purpose;
 - iv. such products were entirely made within the European Union, the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man or Gibraltar or **you** have sourced the product from a supplier with the European Union, the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man or Gibraltar and **you** have a written contract or proof of sale for the product; and
 - v. the supplier **you** use is reputable, solvent and has appropriate insurance in place.



We will not make any payment under this section in respect of any incident occurring while **you** are not in compliance with these conditions unless **you** can demonstrate that such non-compliance could not have increased the risk of the claim or loss occurring in the circumstances in which it occurred.

Control of defence

We have the right, but not the obligation, to take control of and conduct in **your** name, the investigation, settlement or defence of any claim. If **we** think it necessary **we** will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. **We** may appoint **your** own solicitor but on a similar-fee basis as **our** solicitor and only for work done with **our** prior written approval. Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the costs of defence.