

Glossary of Malpractice Insurance Terms

To help you have a better understanding of Malpractice Insurance terms, this glossary has two sections. The first section contains definitions of general malpractice terms, and the second contains insurance policy definitions from Medical Protective, MedPro.

General Terms

Admitted Insurance Company – An insurance company that has had its rates (the premiums that it charges) and its policy form (the coverages it provides) approved by the department of insurance in the states where it plans to do business. An **admitted** insurance company can only sell the policy form it was approved to sell. In addition, the **admitted** company cannot charge a higher premium than was approved, nor can it restrict or reduce the coverage of the policy it was approved to sell. In the event of insolvency, **admitted** insurance companies are provided protection by their state’s guaranty fund.

Aggregate Limit of Liability – For occurrence policies, the aggregate limit of liability refers to the maximum amount the insurance company will pay for all claims arising from incidents that occurred during a given annual policy period. For claims-made policies, the aggregate limit of liability is the maximum amount the insurance company will pay for all claims arising from incidents that occurred and were reported during a given annual policy period.

Bodily Injury – This would include bodily injury, sickness, disease, mental or emotional distress sustained by a person or death.

Claim – A written demand for money or services alleging bodily injury of a patient arising from a physician’s rendering or failure to render professional services. A claim would also include the filing of a suit or the starting of arbitration proceedings alleging bodily injury of a patient arising from a physician’s rendering or failure to render professional services.

Claims-Made Policy – A type of malpractice liability policy in which coverage is limited to those claims that arise from incidents or events that occur and are also reported to the insurance company while the policy is in force. Once the policy ends, there is no coverage for any incident that occurred during the policy but has yet to be reported. In order to have additional time in which to report claims, claims-made policyholders have the option of buying an Extended Reporting Period endorsement (also called a tail) when their claims-made policy ends.

Consent to Settle – A provision in an insurance policy that requires the insurance company to get the policyholder’s consent before any claim can be paid out against the policyholder. This provision protects the policyholder’s interest by preventing the insurance company from paying a claim out for business reasons rather than defending the policyholder and his or her reputation. Not all policies have this provision and some that do have limitations.

Extended Reporting Period Endorsement (ERP) – In order to have additional time in which to report claims after a claims-made policy has ended, policyholders have the opportunity to purchase an Extended Reporting Period endorsement. This endorsement is also referred to as an ERP or a tail. Depending on the insurance policy and the amount of the premium paid, the length of the reporting

time allowed can vary. The extended reporting period can be as little as a year or it can also be for an unlimited period of time.

Full-Time Policy - This is a policy for physicians who are working more than 1,000 patient care hours a year.

Incident - Any act, error or omission by a physician in providing or failure in providing professional services.

Insured – The individual or entity that is being provided insurance coverage by the insurance company. “Policyholder” is synonymous with insured.

Indemnity - An insurance company’s payment to a claimant in settlement or adjudication of a claim.

Limits of Liability - Every malpractice insurance policy has two primary limits of liability. There is a per occurrence limit of liability and an aggregate limit of liability. These limits represent the maximum amount of coverage agreed upon in the policy that the insurance company would pay in the event of a claim.

Non-Admitted Insurance Company – An insurance company that is generally unregulated by the state departments of insurance it does business in. **Non-admitted** insurance companies are able to charge whatever premium they want and can limit or restrict their policy form however they want. The policy forms and rates used by **non-admitted** insurers are neither reviewed nor approved by any state department of insurance. A **non-admitted** company is not held to the same stringent insurance laws and regulations as an **admitted** insurer.

The primary intended purpose of **non-admitted** insurance companies is to provide coverage for those applicants who have been declined by **admitted** insurance companies. Unlike **admitted** insurance companies, **non-admitted** insurance companies are provided no financial protection by state guaranty funds.

Occurrence Policy – A type of malpractice insurance policy in which the policyholder is covered for any incidents that occur (or that did occur) while the policy is (or was) in force, regardless of when the incident is reported or when it becomes a claim.

Per Occurrence Limit of Liability – The greatest amount of coverage an insurance company will pay out for a single claim. If a policy has a per occurrence limit of \$1 million, the most the insurance company will pay out for any one claim is \$1 million.

Policy – The contract between an insurance company and its insured. The policy defines what the company agrees to cover for which period of time and describes the obligations and responsibilities of the insured.

Policy Period – The length of time for which a policy is written. Most malpractice policies are written for a one-year period.

Premium – The amount of money a policyholder pays for insurance protection.

State Guaranty Fund – A fund administered by a state to protect policyholders of admitted insurance companies in the event that any admitted insurance company defaults on payments or becomes insolvent.

Tail – A word used to refer to an Extended Reporting Period endorsement, ERP (see definition above). Because the purchase of an ERP comes at the *end* of a claims-made policy, it is often referred to as a tail.

Underwriting – The process the insurance company goes through to determine whether or not to select an applicant, and if it does - how it calculates the premium to be charged for that applicant.

Vicarious Liability – This is the liability you have for someone who is working under your direction and/or authority. If a physician uses independent contractors as part of his or her business, he or she would have vicarious liability for the actions of those independent contractors.

Medical Protective, MedPro, Terms

A. **Additional Insured** means any person or entity listed on Item 1(b) on the Declarations page.

B. **Administrative expenses** mean any reasonable expenses incurred pursuant to an **administrative hearing** for attorney's fees for legal services rendered, including but not limited to, pre-hearing discovery and investigation costs, and charges for attorney's general services.

C. **Administrative hearing(s)** means a disciplinary proceeding against an Insured arising solely out of the performance of **your professional services** as a Healthcare Professional, and shall be limited to the following:

1. Any proceeding **initiated** by a licensing authority of an Insured's jurisdiction against the Insured for unprofessional conduct;

2. Any proceeding initiated by a State Department of Health Services or the Federal Department of Health and Human Services alleging that an Insured has performed **professional services** as a Healthcare Professional in excess of, or in violation of, guidelines for appropriate utilization of these services; or

3. Any proceeding **initiated** by a licensed or certified hospital.

D. **Anti-trust law** means those laws listed in:

1. Title 15, Section 12 of the United States Code;

2. The Federal Trade Commission Act; or

3. Any similar state law.

E. **Automobile** means a land vehicle, self-propelled or not, a trailer or a semi-trailer. This includes any machinery or apparatus attached, whether or not subject to motor vehicle registration or designed for use principally on public roads.

F. **Biomedical waste** means a biological agent or condition that includes, but is not limited to, an infectious organism or unsafe laboratory condition that may cause or result in **bodily injury** or **property damage**.

G. **Bodily injury** means bodily harm, sickness or disease, including death resulting therefrom.

H. **Claim** means an express, written demand upon an Insured for money or services as compensation for civil damages.

Claims expense means all costs and expenses incurred in connection with the investigation, adjustment, and defense of any **claim**. Such costs and expenses shall only include:

1. Attorney fees paid to the law firm selected by the **Company** to defend an Insured;
2. Court costs;
3. Expert fees;
4. Reporter fees;
5. The cost of any alternative dispute resolution ordered by a court, otherwise required by law, or pre-approved by the **Company**;
6. Post-judgment interest on that portion of the judgment that does not exceed the applicable limit of liability available under the policy; and
7. Such other costs and expenses that the **Company** has determined are reasonably related to the defense of a **claim**.

However, **claims expense** does not include:

1. Loss;
2. Attorney fees awarded to a claimant;
3. The salary of any employee of an Insured; and/or
4. The forgiveness of any amounts owed for the cost of care or services rendered by an Insured.

Criminal prosecution means any governmental enforcement of criminal laws, including offenses or convictions, which could result in imprisonment.

Discrimination means any violation of any law, whether statutory or common law, which prohibits disparate treatment, based upon, but not limited to, race, color, religion, national origin, age, handicap or disability, sex, or sexual orientation.

Event means an accident, including continuous or repeated exposure to substantially the same conditions, resulting in **bodily injury** or **property damage** unexpected and unintended from the standpoint of the Insured. **Event** does not include the rendering of, or failure to render, any **professional services**, nor does it include defamation.

First made means the date on which an Insured first received a **claim**. All **claims** arising from **loss** suffered by the same claimant(s) shall be considered as having been **first made** when the first such **claim** is received by an Insured.

HIPAA Proceeding means any federal proceeding alleging any breach of the responsibilities, obligations or duties imposed upon you under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any rules or regulations promulgated thereunder.

Initiated means the commencement of an **administrative hearing** at the time written notice is received by an Insured.

Loss

1. **Loss** means civil damages, including prejudgment interest, that an Insured becomes legally obligated to pay through adjudication or settlement.

2. **Loss** does not include:

a. any damages that are greater than any limit of liability;

b. any injunctive or other equitable relief;

c. **claims expense**;

d. attorney fees awarded to a claimant as a fine, penalty, or sanction based on an Insured’s misconduct. However, attorney fees awarded as a part of the claimant’s damages in a covered **claim** for any other purpose will be included as **loss**;

e. the salary of any employee of an Insured; or,

f. the forgiveness of any amounts owed for the cost of care or services rendered by an Insured.

R. **Patient** means an individual who is undergoing medical **treatment** and care that is directed by a licensed practitioner of the healing arts toward maintenance, improvement or protection of health or lessening of illness, disability or pain.

S. **Peer review** means the evaluation of a healthcare professional’s fitness and qualification to provide **treatment** by a professional review board or committee through formally adopted, written procedures.

T. **Personal injury** means injury, other than **bodily injury**, arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment;

2. Malicious prosecution;

3. Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, by or on behalf of its owner, landlord or lessor;

4. Oral or written publication of material that slanders or libels a person or organization or disparages a

person's or organization's goods, products or services; or

5. Oral or written publication of material that violates a person's right of privacy.

U. **Policy period** means the period commencing on the effective date shown on the Declarations. This period ends on the earlier of the expiration date or the effective date of cancellation of this Policy. If an Insured becomes an Insured under this Policy after the effective date, the **policy period** begins on the date they became an Insured.

V. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos-containing materials, lead, lead-containing materials and waste. Waste includes, but is not limited to, **biomedical waste**, nuclear waste, and materials to be recycled, reconditioned, or reclaimed.

W. **Potential Claim** means an incident which an Insured knows or reasonably should know is likely to result in a **claim**.

X. **Professional services** means **peer review** and medical **treatment** for those services listed on the Declarations or any other services listed, by endorsement, for which an Insured is licensed as required by law, trained, and qualified to perform in the Insured's capacity as a Healthcare Professional. **Professional services** include services as an educator or as a member of a formal accreditation, standards review, or similar professional board or committee, including as a director or officer of such board or committee.

Y. **Property damage** means:

1. Physical injury to, or destruction of, tangible property; or

2. Loss of use of tangible property, which has not been physically injured or destroyed.

All such **property damage** shall be deemed to occur at the time of the **event** causing said **property damage**.

Z. **Suit** means a civil proceeding in a court, and includes an arbitration proceeding.

AA. **Treatment** means:

1. The rendering of medical, surgical, dental, or nursing services to a patient;

2. The provision of medical examinations, opinions, or consultations regarding a person's medical condition within an Insured's practice as a licensed health care provider; or,

3. The furnishing of any of the following, but only as it relates to the rendering of medical, surgical, dental, or nursing services to a patient:

a. Counseling and social service,

b. Food and beverages, or

c. Medical, surgical, or dental supplies, appliances, or drugs.

BB. **Utilization review** means the review of the necessity, appropriateness, cost, type or utilization of healthcare services made without **patient** contact.

CC. **We, us,** and **our,** refer to the Company providing this insurance.

DD. **Wrongful act** means any actual or alleged negligent act, error or omission in the performance of **professional services** as a Healthcare Professional. All injuries arising from:

1. The same or related acts, errors, or omissions; or
2. The continuous or repeated exposure to substantially the same harmful conditions, will be considered one **wrongful act**. For the purposes of this definition, all injuries to a mother and fetus (or fetuses) from conception through delivery shall constitute one **wrongful act**.