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## NOTES ON THE NATURE OF 'CLAIMS-MADE COVER'



*This note provides important details on:*

1. *The nature of claims' made cover and how this could affect a claim that is made under the medical malpractice/professional indemnity insurance policy that you have in place through your professional association/society or medical malpractice indemnity insurance administrator ("The Policy").*

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### **Explanation of 'claims'-made' cover**

1. Cover under The Policy is provided on what is known as the 'claims'-made' basis of cover.
2. This means that it is the policy that is in place at the time that the claim is made (or at the time that you become aware of an incident or circumstances that may lead to a claim being made against you and report it to your insurers/brokers) which is expected to respond to cover the claim.
3. This will not necessarily be the policy that is in place at the time that you render the services which give rise to the claim. It is well known that claims sometimes only arise months or even years after the service has been rendered.
4. This means that in order to be covered, you will need to have cover in place:
  - a. At the time that you render the services which give rise to the claim; and
  - b. At the time that you first become aware of the circumstances or incident which could give rise to a claim and notify it through to us in writing; and
  - c. Between 4a. and 4b. above, i.e. cover should be continuous and there should be no 'gaps' in your cover.
5. If you allow the cover to lapse, eg. you do not renew your membership with your Association/Society or medical malpractice indemnity insurance administrator on an option which includes cover under The Policy, you will not have any cover in place for any claims or potential claims that you become aware of after the date that your cover was lapsed, regardless of the fact that you may have had the cover in place at the time that you rendered the service which has given rise to the claim. Although, please see the policy wording with regard to the extended reporting period of 5 years that we have arranged for those practitioners who permanently cease to practice in RSA or retire and who were paid-up members in good standing prior to retiring or permanently ceasing to practice.

6. Further, should you not renew your cover and allow it to lapse- please be aware that you will lose all your retroactive cover that you may have been entitled to- because you now have a 'gap' in your cover which invalidates all previous retroactive cover that you were entitled to.
7. If you subsequently take out the cover again and there will be a 'gap' in your cover, and you cannot purchase retroactive cover under The Policy whereas if you had not allowed your policy to lapse you would have been automatically entitled to the retroactive cover you enjoyed under your lapsed policy.
8. Even if you will be 'taking a break' for maternity leave or a sabbatical or any other reason- you should still maintain the cover in place because a claim/complaint could still arise from services that you rendered prior to 'taking a break' and if you have not renewed your cover- then there will be no policy in place to respond to the claim and it will not be covered (regardless of the fact that you may have had cover in place when you rendered the service which has given rise to the claim).
9. You will not be able to simply pay for cover if you become aware of a potential claim or complaint against you. This practice is strongly discouraged by Insurers and would not assist you because the cover is 'claims-made' i.e. you need a policy in place at the time that the claim or complaint is made against you (or at the time that you become aware of and report a potential claim/incident or circumstance which could give rise to claim, to us in writing) in order to be covered.
10. The first thing that we do when you report a potential claim or HPCSA/AHPCSA/Other regulatory body complaint to us is to establish from your Association Association/*Society or medical malpractice indemnity insurance administrator* whether you are a member on an option which includes cover under The Policy. If it is established that you only applied or paid for cover after you became aware of a potential or actual claim or complaint against you, the insurers will reject that claim and refuse to assist you on the basis that you were not a paid-up member entitled to cover under The Policy, when you became aware of the potential claim or complaint against you.
11. If you report a potential claim/complaint in writing whilst you have cover in place, then the claim is deemed to have been made at that point in time and the limit of indemnity under the cover that you have at that point in time will apply to any claim which may subsequently arise.
12. If you have already reported a potential claim or complaint in writing to your insurers prior to your policy lapsing (and they accepted your notification at the time) then you will be covered for any claim that might subsequently arise regardless of whether or not you still have cover in place – because the claim will be deemed to have been made at the time that you reported it.

13. Aside from the fact that it is a **condition of your cover**, this highlights the importance of reporting all **circumstances and incidents that you become aware of which may lead to a claim or a complaint being made against you to your Council- as soon as you become aware of them** and not waiting for an actual claim or complaint to eventuate.
14. For the same reasons as outlined above, you should not take out cover only for the duration of any occasional locum work you may do, as you have no guarantees that a claim or Council complaint arising from the services rendered during that period will not arise months or years after you have completed your locum work (when you no longer have cover in place).
15. It is also for this reason- that we are unable to assist with requests to provide cover for shorter periods, e.g. one month.
16. We have been approached in the past by people who may be emigrating and only want cover for a month or 2 before they leave.
17. Given the claims'-made nature of cover, we cannot assist anyone who wants cover for a shorter period of time than one year- because if a claim/complaint arises after that shorter period of time has lapsed- it would not be covered because cover ceases as soon as the policy ceases.
18. Even though you may only practice for 2 months in a year- you cannot guarantee that no claims or complaints will arise after the 2 months have ended. Claims or complaints could still be made months or even years later and with no cover in place at that date- there would be no cover for that claim or complaint- due to the nature of claims'-made cover.
19. If you go outside your *Association/Society or medical malpractice indemnity insurance administrator* to try to find cover for a shorter period, e.g. if you will be going on maternity leave and you don't want to pay your *Association/Society or medical malpractice indemnity insurance administrator's* membership fees, then you will lose all your retroactive cover because no insurer who provides cover for a few months only, is going to be willing to pick up all the retroactive cover you are entitled to.
20. We urge you to rather approach your *Association/Society or medical malpractice indemnity insurance administrator* for a discount on their annual membership fees if you will not require membership for the whole year.
21. You would still have to pay the premium due for the full year in order to enjoy cover under The Policy- given the claim's-made nature of the cover.

You are welcome to contact Kristy Carr ([kristy@cfpbrokers.co.za](mailto:kristy@cfpbrokers.co.za)) or Noleen Podrouzek ([noleen@cfpbrokers.co.za](mailto:noleen@cfpbrokers.co.za)) if you require clarification on any of the content above or if you have any queries and need assistance.