
Broker's Notes: What is not covered under the CFP Broker's medical malpractice insurance policy?

It remains your obligation to read through your policy documents and to familiarise yourself with all terms, conditions and exclusions of cover and to contact us if you require any explanations or clarifications of the content of these documents. Failure to do so could result in you unwittingly failing to do something or doing something which breaches a condition of your cover.

If you fail to observe or breach conditions of cover, this will generally result in you not being covered in the event of a claim or complaint against you. The notes below are intended to provide a summary of exclusions under the policy and are not intended to replace the policy documents or the requirement that you read them. We have highlighted some of the main exclusions in our notes below but this is not an exhaustive list.

Please be aware that these notes are intended to assist you in understanding your policy. While every effort has been made to ensure the accuracy thereof, if there is any discrepancy between our notes and the policy documents, then the policy documents will prevail.

14 December 2019

QUESTION:

What are the exclusions of cover under the CFP Broker's policy?

ANSWER:

This note and the attachments referred to form part of our statutory record of advice to you. We are required by our governing legislation, regulations and our Code of Good Conduct, to send you a record of the advice that we provided to you in connection with the insurance described above. Please read everything carefully and contact us if anything is unclear or requires clarification.

1. Please read our notes, "Incident-reporting and claims'-handling procedures 2020." This document highlights important conditions of cover. It is very important that you are aware of these conditions, because the number one reason that we see claims being rejected is



because a member has failed to comply with their policy conditions (which appear both on your policy schedule and in your policy wording).

2. Most importantly, if you do not want your claim to be rejected make sure that you:
 - a. Ensure that you pay to renew a membership option which includes cover under this policy timeously every year so that you have no gaps in cover. Being a paid-up member is a condition of the cover.
 - b. Notify us in writing, as soon as you become aware of any incident or circumstance which could give rise to a potential claim or complaint against you or your practice.
 - c. Have read and comply with the informed consent provisions reflected in the policy schedule. You will not be covered if you are unable to provide insurers with written evidence that you obtained informed consent from your patient prior to treatment or the provision of products to that patient.
 - d. Do not try to handle any matter yourself or enter into negotiations with a patient or their family where they have alleged a breach of professional duties or negligence on your part.
 - e. Do not do or say anything which could be construed as an admission of liability. For example, don't offer to write off your account or pay for medical bills, where you are accused of unethical or negligent conduct.

What is not covered under the CFP Broker's policy?

1. We need to remember that the CFP Broker's policy is a legal liability policy intended to compensate third parties for losses they allege that you have caused them to suffer. It is therefore not going to cover you for losses you might suffer (aside from your legal defence costs). So, for example the policy is not going to assist you to take legal action against a person who you feel is defaming you.
2. Claims/complaints arising out of services rendered which fall outside your scope of practice, unless such services fall under the Good Samaritan clause where you rendered services at the scene of an emergency.
3. Claims/Complaints arising out of services rendered prior to your retroactive cover date.
4. Legal assistance for medical aid audits. However, you still need to notify us as soon as you become aware of a medical aid wanting to audit your practice or questioning your billing procedures. The reason for this is because if you are subsequently reported to the A/HPCSA, then the policy does respond (subject to terms and conditions) to assist you with legal defence costs.

Please be aware that CFP Brokers can provide you with completely separate cover called BusinessLawyers which amongst its numerous benefits also includes a R30,000 annual allowance for legal assistance on medical aid audits. If you would like more information about this policy, please will you e-mail catherine@cfpbrokers.co.za so that she can send you the

brochure and application form. Please note that there is a 3-month waiting period for legal representation under the policy and it will not respond to assist you with legal representation in pre-existing matters. Access to legal advice and drafting/vetting of contracts is however available upon the inception of your policy. You would therefore need to have the cover in place before you had any knowledge of a potential audit and it would have to have been in place for at least 3 months before it would provide legal assistance for audit or any other litigation matters.

5. The policy does not provide cover for fines, penalties, punitive, vindictive or exemplary damages imposed on you or awarded against you.
6. The policy responds to cover your legal liability to compensate someone. Insurers will not pay every person who might injure themselves falling at your practice or who otherwise claims payment from you on some or other basis. Legal liability on your part has to be established before the policy will pay a third-party compensation. Your legal defence costs will be covered while your legal liability is being established or defended.
7. If it is alleged that you have overcharged a patient, the policy is not going to refund you any amounts you pay to that patient or that you agree to pay in a medical aid audit.
8. There is no cover for any allegations of sexual misconduct in the course and scope of your practice. However, if you are subsequently found not guilty or liable, then the policy will refund you your defence costs. For this reason- you should please notify us of any allegations against you or your employee of sexual misconduct.
9. Claims/Complaints arising out of services rendered when you were under the influence of drugs or alcohol.
10. Cover for any claims or complaints once your limit of indemnity has been exhausted during the policy period.
11. Claims or complaints which you were aware of in a previous policy period but failed to notify us of at the time. Although please be aware that you do have a 30-day period after the end of the policy period (31 December) to notify us of any potential claims or complaints that you became aware of prior to 31 December.
12. Your own internal or overhead expenses or the cost of your own time, when insurers are covering your legal defence costs in a matter. However, please see the cover provided under our policy for court/inquiry attendance costs (currently R2,000 per day for your costs incurred or actual disbursements when insurer's appointed counsel requires you to be in court or to attend at an inquiry).
13. Cover for claims arising out of services rendered in North America.
14. Cover for claims arising out of services rendered overseas where you had exceeded the 60-day visit period allowed under the policy or where it is established that you had emigrated or your intention was to emigrate when you were overseas and rendered the service which has given rise to the claim or complaint.

15. Claims under any section of the policy that you are not entitled to cover under, in terms of the cover option that you have selected and paid for. Under certain associations, you have the choice whether or not to pay to include cover under the public/products' liability section and under other associations, this cover is automatically provided.
16. Claims for cyber-liability, employment practices' liability, directors' and officers' liability and commercial crime.
17. Losses that you suffer as the result of your own employees stealing from you.

CFP Brokers can assist you with completely separate insurance policies which cover these risks (cyber-liability, commercial crime, theft by your own employees, directors' and officers' liability, employment practices' liability). Please let us know in writing if you need any assistance with information or quotes for your consideration for these insurance covers.

18. Claims arising out of breach of contract unless such breach also amounts to breach of a professional duty owed to a patient.
19. If you enjoy cover under the public and products' liability section of the policy, then you will not be covered for:
 - a. **Claims** arising out of the failure of a **Product**, or any part thereof, to fulfil the purpose for which it was intended, or to perform as specified, warranted, or guaranteed; but this Exception shall not apply to consequent bodily injury or loss of, or damage to, property; or
 - b. **Claims** arising out of recalling, removing, repairing, replacing, reinstating, or the cost of, or reduction in value of, any **Product**, if such liability arises from any defect therein or the harmful nature or unsuitability thereof.
20. **Claims** arising out of the ownership, possession or use by or on behalf of the **Insured** of any motor vehicle or trailer.
21. **Claims for** damage to property owned, leased or hired or under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care custody or control other than:
 - i) premises (or the contents thereof) temporarily occupied by the **Insured** for work therein, or other property temporarily in the **Insured's** possession for work thereon (but no indemnity is granted for damage to that part of the property on which the **Insured** is working and which arises out of such work);
 - ii) employees' and visitors' clothing and personal effects;
 - iii) premises tenanted by the **Insured**, but only to the extent that the **Insured** would be held liable in the absence of any specific agreement;
22. Claims for environmental impact or pollution.

23. Claims, complaints or prosecutions arising out of any allegation that you have contravened the provisions of any statutes governing the ownership or use of motor vehicles, the Labour Relations Act No.66 of 1995 or the Companies Act No. 71 of 2008.
24. Claims for the costs of replacing or restoring your own documents.
25. For claims or complaints arising out of any dishonest, criminal or malicious act or omission, or any act or omission in violation of any law or ordinance, committed by or on behalf of the **Insured**, save where such criminal or illegal conduct is negligent and not reckless or intentional.
26. For any claims or complaints arising out of your providing a performance guarantee or warranty.
27. For claims or complaints arising out of loss of or distortion of computer data due to:
 - a) the presence of magnetic flux;
 - b) defects in the data tapes or other data media;
 - c) use or processing whilst mounted in or on any machine;
 - d) wear, tear, vermin or gradual deterioration;
 - e) climatic or atmospheric conditions or extremes of temperature;
28. For claims and complaints arising out any medical and biological research as well as medical and/or clinical trials
29. For any claims or complaints arising out of a delay in performing, failing to perform or failing to complete any **Professional Services**, unless such delay or failure arises from **Breach of Duty** by the **Insured**.
30. For claims or complaints, arising out of, based upon or attributable to any act which a court, judge, arbitrator or statutory body finds or which an **Insured** admits, to a criminal or illegal conduct, dishonest or fraudulent act, and in such event, the **Insurer** shall be reimbursed for all **Loss** paid (including any VAT indemnification) in connection with such **Claim**. **This is why it is so important that you let us know when you will be attending a practice audit with a medical aid- because it is vital that you do not unwittingly sign any document where you are in fact admitting to fraud or dishonest acts- as your cover would then be compromised and insurers would be unlikely to agree to cover you if you were subsequently reported to the A/HPCSA.**
31. For claims or complaints arising out of any loss, damage, cost or expense directly or indirectly arising out of, contributed to by, or resulting from any infectious epidemic/pandemic (if classified either way by the appropriate national or international body/agency) which leads to:
 - a) the imposition of quarantine or restriction in movement of people or animals by the national or international body or agency; and/or
 - b) any travel advisory or warning being issued by a national or international body or agency



- and in respect of (a) or (b) any fear or threat thereof (whether actual or perceived);
32. For claims or complaints arising out of any condition directly or indirectly caused by or associated with Human Immune Virus "HIV" or mutant derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome "AIDS" or any syndrome or condition of a similar kind howsoever it may be named. This also applies to contraction of AIDS by needle stick injuries, blood transfusions or any other method of transfer. However, this exclusion will not apply to any liability relating to the claimant's status in regard to HIV/AIDS or any similar condition.
 33. For claims or complaints as a result of failure to effect or maintain insurance.
 34. For claims or complaints arising out of losses sustained as the result of a computer virus.

I hope that the information provided in these notes has proved useful and informative. Please do not hesitate to contact noleen@cfpbrokers.co.za or kristy@cfpbrokers.co.za (or WhatsApp on 082 330 5829), if you need any assistance or clarification of anything in your policy document or if you need assistance in notifying a potential claim or complaint against you.