

AN AIDE-MEMOIRE FOR POLICYHOLDERS

MEDICAL MALPRACTICE LIABILITY INSURANCE FOR PRACTITIONERS

Introduction

This document has been written as a helpful aide-memoire for our policyholders. However, it is important to note that it does not form part of the contract of insurance between the Underwriters and the Insured. For contract terms, conditions, limitations and exclusions of the Corvelia policy please refer to the live policy schedule, policy wording and all policy endorsements attaching to the policy.

The policy has been underwritten by Corvelia on behalf of its Lloyd's Syndicate capacity. Corvelia is a Lloyd's approved coverholder and operates under a delegated underwriting authority provided by its Lloyd's capacity. For full details of this capacity, please refer to the policy schedule. For further information about Lloyd's of London, please refer to www.lloyds.com.

The policy is governed by the law of England and Wales, Scots Law or the Law of Northern Ireland depending on the primary location of the policyholder. Of particular relevance is the UK Insurance Act 2015. One aspect of this Act is that the Insured must make to the Underwriters a fair presentation of the risk. This means disclosure of everything material which the Insured knows or ought to know, or failing that, disclosure which gives the Underwriters sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material matters. This disclosure needs to be in a manner which would be reasonably clear and accessible to a prudent insurer, and in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith. For any clarification of these requirements, we would advise our policyholders to discuss with their insurance broker.

Insuring Clauses

This policy is a broad professional liability insurance product, and provides clinical negligence insurance as the most obvious area of cover. However, cover is not restricted to just matters involving bodily injury arising out of such negligence. The cover is broader than a traditional medical malpractice insurance policy, with cover extending to financial losses where bodily injury is not necessarily the primary trigger for a claim. The policy also covers public liability arising from bodily injury or damage. This policy covers the professional activities disclosed by the Insured to Corvelia. The cover provided can be summarised as follows:-

1. Claims made under the following headings:-

Professional negligence or breach of professional duty, public liability, libel, slander, infringement of copyright, breach of confidentiality (including breach of the new European Directive General Data Protection Regulation 2016/679 - GDPR), sexual harassment (Abuse), Good Samaritan Acts (and other such breach of duty to rescue)

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and any vicarious liability of the Insured (including in respect of a non-delegable duty of care) arising out of the provision of medical services by other practitioners or entities.

Cover will extend to include legal costs and expenses reasonably incurred (with Underwriter's prior written and continuing consent) in respect of the defence of any such claims.

2. Loss of documents;
3. The investigation and defence of any regulatory, disciplinary or criminal investigation and/or proceedings brought against the Insured;
4. Coroner's inquest or inquiry costs;
5. The legal costs of applying for and enforcing an injunction where such injunction is reasonably expected to mitigate the potential for a claim. A good example of this would be where the Insured wants to remove negative or derogatory remarks published on social media by an aggrieved patient.

Extended Reporting Period

If the policyholder completely ceases professional work (usual reasons would be retirement, death or permanent disability), the policy automatically converts to a "run off" policy covering the activities undertaken up to the point of cessation of business (although the retro-active date exclusion 4.18 under the policy shall still apply). The policyholder must advise Corvelia within 30 days of such cessation of business, and this "Extended reporting Period" shall incur a specified additional premium based on the current annualised policy premium. This charge may be spread over annual instalments on a sliding scale, and the premium payment and cancellation condition 5.8 shall apply to each and every one of these instalments, so that it is imperative that the premium payments are maintained. **Although for certain Insureds, 10 years run off will automatically be available for an additional charge of 250% of the annualised premium spread in 4 annual instalments, it is important to note that this ten year run-off arrangement MAY not be available to all policyholders, and each Insured must ensure that it is fully aware of the extent (if any) of such Extended Reporting Period when purchasing cover with Corvelia. Any changes to the standard ten year arrangement will be detailed in an endorsement applying to the individual Insured's policy.**

Limit of Indemnity

The maximum amount payable by Underwriters for one Claim (or a series of Claims arising from the same originating cause, source, act, error, omission, event or transaction) is defined in item 5 of the Schedule. Additionally, the Schedule details the overall maximum limit payable by Underwriters irrespective of the number of unrelated Claims. Both these limits are important to consider by the Policyholder, and if the Policyholder has any doubt as to the sufficiency of either limit, it should discuss with its insurance broker.

The Limit of Indemnity (per claim and in the aggregate) may or may not include legal defence costs and expenses. The policyholder should review the Schedule item 6 to check which version has been purchased. If these "Defence Costs and Expenses" are "Included within the Limit of Indemnity Above", the Policyholder will need to factor this into the decision as to which limit is appropriate, as payment of such costs & expenses by Underwriters will reduce the limit available for any claimant settlement amount including any claimant legal costs or expenses awarded against the Insured. If "Defence Costs and Expenses" are "In Addition to the Limit of Indemnity Above" in item 6, the policyholder should be aware that in the event that a settlement exceeds the limit of indemnity, the amount of "Defence Costs & Expenses" payable by Underwriters will be capped proportionately to the overall legal defence costs & expenses incurred in the same ratio as the settlement amount is to the available policy limit for such claim or claims.

There are a number of specific coverage sub-limits which also apply to this policy. These are detailed in item 7 of the Schedule and any relevant policy endorsements. These sub-limits are in the aggregate and not only applicable to one individual claim, loss or request for indemnity.

Excess

As with many insurance policies, there is a policy Excess that is the contractual responsibility of the Insured for each and every claim, loss, or other indemnifiable event. Underwriters are only liable to the extent that any liability, loss or relevant costs exceeds the Excess. The Insured should note whether the excess also applies to “Defence Costs & Expenses” incurred in defending a specific claim (or in respect of a circumstance). This will be detailed in item 9 of the Schedule. Usually, there will be no excess applying to the coroner inquests and inquiries covered under insuring clause 1.5 (d) or in respect of the injunction cover under insuring clause 1.5 (e).

Exclusions

It is important that the policyholder is fully appreciative of all policy exclusions. Some exclusions are non-negotiable, but some may be amended or removed depending on whether the policyholder believes that any specific exclusion compromises cover for the activities undertaken. Please discuss this with Corvelia (via the policyholder’s insurance broker), considering the exposures involved and the policy terms set by Corvelia.

The standard wording has the following key exclusions. Underwriters shall exclude any liability directly, indirectly or in any way involving the following:-

1. **Medical Exposures** – Birthing, Clinical Trials, Unlicensed medicine or medical products (including withdrawn or under regulatory investigation);
2. **Cover More Appropriately Insured Elsewhere** – Directors & Officers Liability (including Partners or Trustees), Dishonesty, Employers’ Liability (including obligations to a Registered Medical Practitioner), Computer/Cyber (or IT System Failure), Transmission of Computer Virus, Ownership (including Maintenance and Use) of Buildings (including Land & Vehicles) unless specific to the provision of medical treatment or services, Terrorism (including War, Nuclear and Nerve Agent risks) unless specific to the provision of medical treatment or services, work within the NHS (which would be covered by NHS Indemnity, and in particular the Clinical Negligence Scheme For Trusts (CNST));
3. **Fines, Penalties & Insured’s own trading losses** – These are all excluded;
4. **Territorial Limitations** – Unless amended by endorsement, activities undertaken outside the UK, Channel Islands, Isle of Man and/or the EU will be excluded (apart from Good Samaritan Acts);
5. **Jurisdiction Limitations** – Unless amended by endorsement, legal proceedings undertaken outside the UK, Channel Islands, Isle of Man and/or the EU will be excluded (apart from Good Samaritan Acts unless proceedings are brought in the USA);
6. **Known Matters** – Any Claim known (or ought reasonably to be known) by the Insured prior to the policy period is excluded. There is similar language for a known Circumstance with certain “innocent non-disclosure” benefits applying for renewal policyholders of Corvelia for Circumstances known within the last policy period with Corvelia. Exclusions for prior awareness or prior issues to this insurance policy with

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regard to Loss of Documents, regulatory, disciplinary and criminal investigations and/or proceedings, coroner's inquests and inquiries and applications (and enforcements) regarding court injunctions shall all also be excluded under the 4.11 Known Matters Exclusion. This Exclusion 4.11 is a key exclusion to refer to and should be understood well by the Insured as part of the wider understanding of our requirements of claim notification under this policy;

7. **Pollution, Contamination & Asbestos** – This exclusion is a market standard wording but provides cover for medical treatment or services relevant to the policyholder;
8. **Other Registered Medical Practitioners** – There is no cover hereunder in respect of work undertaken by a separate Registered Medical Practitioner, apart from vicarious exposures of our policyholder covered under Insuring Clause 1.4 (even if such individual is an Employee). If this is an issue for our policyholders, we would suggest that the policy is underwritten using our corporate “entity” insurance policy product;
9. **Intoxicants & Narcotics** – There is no cover for any activity undertaken by the Insured or by any Employee under the influence of a narcotic, intoxicant or other such substance;
10. **Related Companies** – There is no cover hereunder for “in-house” claims involving the Insured, or by its employees. There is also no cover if a claim is made by an Employer company of the Insured (unless the claim emanates from a wholly independent third party claimant). Claims by independent contractors or practitioners working for the Insured are also excluded unless the claim emanates from a wholly independent third party claimant;
11. **Retroactive Date** - Any activities or events undertaken or occurring prior to the Retroactive date detailed in item 10 of the Schedule are excluded;
12. **Sanctions Exclusion** – The standard market exclusion relating to EU, UK and USA sanctions applies to this policy;
13. **Onerous Contract Terms** – As is standard within the professional liability market, performance warranties, guarantees and contractual penalty clauses are excluded unless the liability of the Insured would have existed to the same extent in the absence of such contractual terms and conditions.

Conditions

There are important conditions of cover that the Insured must adhere to, to ensure that cover is not compromised. Conditions 5.1 – 5.3 regarding Claims Notification, Duty to Co-operate and not admitting liability will be addressed under the specific Claims section of this Aide-Memoire detailed on pages 6-10.

Other Conditions are:-

1. **Maintenance of Records** – For a period of 10 years for an adult or once a patient reached 18 (unless relating to birthing or mental health related records where there is no limit). This does not dilute the policyholder's wider regulatory or contractual obligation to maintain records for a longer period than our policy stipulation;
2. **Subrogation** – Rights are vested in the Underwriters to seek subrogation under this policy. There is protection for employees (apart from any Registered Medical Practitioner who should have separate protection elsewhere) against such subrogation unless in the event of dishonesty, malicious or criminal acts.

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There is also a requirement that the Insured provides assistance to the Underwriters without charge for any subrogation actions that the Underwriters decide to take;

3. **Fraudulent Claims** – This condition allows Underwriters to avoid paying a claim or to cancel the policy completely if the Insured makes a fraudulent claim under the policy;
4. **Licensing** – The Insured and all Statutorily Regulated Health Care Professionals working for and on behalf of the Insured (including any employee) must have a valid practising licence – **This is a condition precedent to cover applying**;
5. **Premium Payment** – Corvelia requires the premium to be paid within 60 days of inception of the policy (or within 60 days of any mid-term adjustment or Extended Reporting Period instalment). – **This is a condition precedent to cover applying**.

Any instalment date has the same condition. Corvelia can cancel the policy if the premium payment condition is not met. Mid-term adjustment additional premiums and Extended Reporting Period instalments will also be subject to a similar payment condition;

6. **Data Protection** – The Insured should familiarise itself with the new Data Protection Notice contained within the Schedule of the policy, with particular regard to consent of personal data, and the use by Corvelia and its Underwriters of this sensitive data;
7. **Reasonable Precautions** – The Insured shall take reasonable precautions to prevent accidents and to prevent or cease activity that would be reasonably be expected to give rise to a legal liability. Local authority laws also need to be complied with;
8. **Notice of Retirement, Death, Illness or Disability** – To comply with any cover provided under Insuring Clause 1.6 (Extended Reporting Period), the Insured must advise Corvelia within 30 days of ceasing trading (including advice being provided by the estate or by an heir in the event of the death of the policyholder).
9. **Confidentiality of this Policy** – The existence of and the terms, conditions, limitations and exclusions of this policy are confidential unless the Insured needs to advise an employer firm, regulator, contracted party such as a private healthcare provider, NHS Trust or CCG or employee. If in doubt, the policyholder should discuss with Corvelia the rules behind such disclosure;
10. **Cooling Off Period** – There is a 14 day window after incepting cover for the Insured to cancel this policy. This cancellation request must be notified to Underwriters (via the policyholder's Broker) in writing within this period (14 days from policy inception).
11. **Parental or Guardian's Consent** – Treatment for children under 16 years of age must be undertaken only after the Insured obtains consent from the appropriate parent or guardian.

As a general point, some of these conditions are “condition precedent to cover being provided” (subject to the UK Insurance Act 2015 provisions) and the policyholder is urged to review the policy wording section 5 “Conditions” in its entirety. Please also refer to the main preamble at the start of the wording itself and any specific endorsements attaching to the policy with Condition Precedent language.

Claims Notification, Duty to Co-Operate & No Admission of Liability

The claims related conditions under our policy, Notification 5.1 and No Admission of Liability 5.3 (c) are all conditions precedent to the right to be indemnified. Duty to Co-operate 5.2 is also a very important condition. It is therefore extremely important that our policyholders understand how this aspect of our policy works to ensure that the conditions are met. The following is a practical guide to assist with this understanding. We appreciate there are going to be times when a policyholder is not sure whether the insurance policy is triggered in respect of a Claim, Circumstance or other indemnifiable matter, but hopefully this section of the Aide-Memoire will be of great benefit. If, policyholders are in any doubt, they should contact their insurance broker to obtain some further guidance.

When to notify?

A “Claim” is defined under Section 9:-

- 9.4 **“CLAIM”** means any financial demand, or assertion of a financial right or entitlement against the **Insured**, which is communicated to the **Insured**.

Additionally, Underwriters also require the same rule of notification for a Circumstance. This is equally important.

A “Circumstance” is defined under Section 9:-

- 9.3 **“CIRCUMSTANCE”** means any situation, incident or event which could reasonably be expected to give rise to a **Claim**.

“Reasonably expected to” language is used as the test of whether a matter is a notifiable Circumstance. This test could be legally judged, and our policyholders are always urged to err on the side of caution if they are unsure whether the matter is a Circumstance, and notify us accordingly.

The policy is underwritten on a “Claims Made & Notified” basis. Any Claim needs to be notified to Corvelia as more specifically detailed under Claims Condition 5.1 as soon as “practicable” and within the Policy Period. This is vitally important and the policyholder must be fully aware of the responsibilities surrounding notification. However, the policy covers all insurable activities undertaken back to the retro-active date under the policy shown in item 10 of the Schedule. This policy form is different to traditional Mutual Indemnifier arrangements (such as protection provided by the MDU, MDDUS or MPS) where cover would often be described as “Claims Occurring” (i.e. the protection covers activities undertaken during the Membership period).

Condition 5.1 specifies when to notify. Any Circumstance, Claim (or loss or other indemnifiable event covered under any of the insuring clauses) must be notified to Corvelia as soon as practicable and within the Policy Period. To avoid a debate as to what is practicable, we urge policyholders as soon as they become aware of a matter to notify Corvelia **immediately**, with as much detail as possible using the Corvelia (or equivalent broker) Notification Form. Further details can always be provided once investigation has taken place. We normally expect the policyholder to use their insurance broker to make the notification but with the caveat that the policyholder chases the broker for confirmation that the notification has been made in a timely manner (as using the broker does not dilute the notification condition). The notification should be directed to:-

The Claims Department, using claims@corvelia.com

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It is important to note that failing to notify a Claim, Circumstance (or loss or other indemnifiable event covered under any of the insuring clauses) within the Policy Period will lead to a rejection of the notification (as it falls outside the Policy Period). There is a small 14 day window of leeway to notify matters after the expiry date of the policy, but this “extended reporting period” is only there if a notification is not achievable before the expiry date for practical reasons and Underwriters have the right to charge an appropriate additional premium if such notification is deemed material to the underwriting of the renewal of the risk.. The key to notifying matters is to do it immediately to avoid any late notice issues.

Additionally, and importantly, if a matter is not notified as soon as practicable and the notification “misses” the Policy Period, Corvelia’s renewal policy (as will be the same for other insurance policies), will exclude such matter under the Known Matters exclusion 4.11 of the renewal policy. This exclusion applies to any Claim(s) (and also losses and other indemnifiable matters) known or ought reasonably to have been known by the Insured prior to the Policy Period. There is an “innocent non-disclosure” benefit for our renewal policyholders, but this only relates to Circumstances known or ought reasonably to have been known by the Insured prior to the Policy Period which was innocently not notified on time, if known for the first time within the previous insurance period with Corvelia. Exclusion 4.11 (Known Matters) should be studied to understand how this works. All our Insureds should have a robust internal system to check awareness of all staff (including all employees) of a Claim or Circumstance to avoid matters being disclosed late.

What is deemed a notifiable claim or circumstance?

When deciding whether to make a notification, it is helpful to view the matter from the Claimant’s (which in most cases will be the Patient’s or their estate’s) perspective. Our policyholder’s own opinions and findings may assist in responding to a complaint or Claim, and we value these significantly. Unfortunately, a defiant or strong view by a policyholder that nothing has been done wrong will not necessarily determine the likelihood of a Claim being pursued. It certainly should not stop the policyholder making the notification.

1. Circumstances

A Circumstance would include any verbal or written complaint expressing dissatisfaction and/or alleged negligence regarding the treatment received. This extends to solicitor’s medical records requests indicating that a Claim against the Insured (or against a medical practitioner working for or on behalf of the Insured, irrespective of whether an employee or self-employed practitioner) is being considered, serious incidents, accidents or events as defined under the HSE’s equivalent of the NHS serious incident framework and/or an unexpected patient death.

Examples:

- GP realises the Patient’s blood tests were incorrectly marked as normal and therefore the Patient did not receive any medication to help them manage their glucose levels and that this resulted in (or reasonably expected to have resulted in) an adverse outcome for the Patient;
- Patient attended a Walk-In Centre with pain in the ankle and the patient was diagnosed as suffering with a sprain. A few months later, a complaint is made by the Patient who has now undergone an X-ray which confirmed that the ankle was in fact fractured. The patient complains of misdiagnosis and wants answers but no financial demand has been made at that time;

- During surgery, the surgeon's scalpel slips and accidentally tears through the Patient's muscle. The surgeon manages to repair the damage during the same surgery but this accident is likely to cause the patient additional discomfort and pain for a period of time;
- Patient raised concerns that one eye looks bigger than the other following blepharoplasty surgery. It is not a noticeable size difference but the Patient is unhappy and expresses her concerns that she expected a better outcome;
- Patient was seen at the Practice for severe headaches a week before unexpectedly passing away and upon review of the relevant consultation(s), the Practice consider they may have breached their duty of care to the Patient;
- A letter from the coroner requesting medical records and statements from the Insured;
- An accusation of sexual harassment from a patient, directed against the Insured;
- Alleged breach of patient confidentiality due to a loss of patient information or accidental disclosure to a third party.

However, service complaints, such as poor employee attitude and waiting times for appointments, are unlikely to be notifiable, as these would not be reasonably expected to lead to a financial demand for compensation.

The examples above are for general guidance only and this is not an exhaustive list and if there is any doubt regarding whether an incident is reportable, then the policyholder should discuss with its insurance broker for guidance.

2. Claims

A Claim would include Pre-action Protocol Letters, any requests for compensation or Legal Proceedings (e.g. a Writ or Claim Form/Particulars of Claim).

Examples:

- Patient complaint that the GP was rude and never properly acted upon their concerns with regard to persistent headaches. Having seen another GP, the Patient was referred for tests which confirmed Patient had a brain tumour. Patient demands compensation for the failure to treat and refer for tests earlier;
- A Letter of Claim from solicitors acting on behalf of a Patient alleging misuse of personal data;
- A Letter of Claim is received alleging negligence and demanding compensation for a Patient in respect of the performance of breast augmentation surgery.

The examples above are for general guidance only and this is not an exhaustive list and if there is any doubt regarding whether an incident is reportable, then the policyholder should discuss with its insurance broker for guidance.

3. Regulatory Investigations / Coroner's Inquests and Inquiries

Regulatory Investigations and Inquests and Inquiries – There is also cover for the investigation/defence of regulatory, disciplinary or criminal investigations and/or proceedings under the policy (and separately with regard to Coroner's Inquests and Inquiries), and the same rules of notification apply to these. For example, complaints from the GMC resulting in a formal investigation into the practices of the Insured. Once on notice of any Regulatory Investigation, the policyholder should notify Corvelia as soon as practicable and within the Policy Period. The same view regarding immediate notice applies as described for Claims and Circumstances.

4. Loss of Documents

Loss of Documents – The policy provides cover for the repair, replacement or reconstitution of unintentional loss of documents. Following realisation that documents have been destroyed, damaged or lost, the policyholder should notify Corvelia as soon as practicable and within the Policy Period. The same view regarding immediate notice applies as described for Claims and Circumstances.

5. Court Injunction Cover

Court Injunction Costs Cover - The Policyholder has the benefit of cover for applying for and enforcing a court injunction against a person or firm. One reason for this cover would be to remove potentially damaging remarks by a patient on social media. It is important that as soon as a policyholder becomes aware of such an event or potential issue, the policyholder discusses this with Corvelia so that our Claims Department can assess whether an injunction would reasonably expect to mitigate a potential Claim or Circumstance under the policy.

No Admission of Liability

The duty of candour is the statutory obligation that any healthcare providers owe patients. It includes being open and honest with patients when the patient has suffered harm, and having a clear procedure to follow in the event of an incident. However, whilst it is appropriate to express sympathy or regret, it is vitally important that the apology to the situation should not include any admission of liability as this is not only at odds with the Act, but breaches policy condition 5.3 (c). This condition is precedent to liability being considered under the policy. The policyholder shall not, without our prior written consent, admit liability for, compromise, settle, or make any offer or payment in respect of any Claim or Circumstance. Breaching this condition may impact on our ability to raise valid defences to any Claim and may result in cover being declined. In certain situations Corvelia will support an admittance of liability or an offer of payment but we must be consulted in the first instance.

Other Key Conditions

Under Condition 5.2 the policyholder must:

- Promptly provide Corvelia with all information that we may reasonably require.
- Promptly provide all such co-operation as Corvelia or our representatives, legal advisors and/or agents require.
- Ensure that accurate and descriptive records of all consultations and procedures relating to the Insured's Business are maintained, preserved and not in any way destroyed or otherwise disposed of for;
- Ensure that all Documents relevant to any Claim and any Circumstance(s) are preserved in their entirety and not in any way destroyed or otherwise disposed of or passed on to any third party without the prior written consent of Underwriters.
- Take all reasonable steps to preserve Underwriters rights and remedies of subrogation and shall also co-operate with Underwriters and shall give all reasonable assistance in effecting any recovery following the payment by Underwriters under the policy.

We require policyholder co-operation and assistance to enable us to provide the best defence possible to any Claim and ensuring records are maintained means that an initial assessment of the facts surrounding any Claim can be undertaken without reliance on the records from the Patient and their representatives.

How we support our policyholders?

Mitigation. A well written response and apology can be instrumental in preventing a Circumstance turning into a Claim. We will review draft responses to ensure they comply with the NHS complaints guidance and the policyholder's Duty of Candour obligations. We can also provide specialist support and guidance where required. When a Claim is made we will (subject to policy terms and conditions) arrange for one of our specialist panel law firms to provide the best possible defence.

Legal Advice Line

Corvelia has an arrangement with RPC LLP to provide policyholders with a legal advice line. The specifics of this benefit are laid out towards the back of our policy wording.

Complaints & Financial Services Compensation Scheme

The back of our policy wordings provides clear instructions for our policyholders in the event that a complaint needs to be made (or potential recourse under the FSCS).