



*The South African Society for Occupational
Health Nursing Practitioners*

Your Medical Malpractice Cover:

A Guide

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Introduction

Should you have any questions after you have looked through this presentation, please feel welcome to contact us at Glenrand MIB. You will find our contact details at the end of this presentation.

Please note that the details of your medical malpractice insurance cover should always be kept confidential and should never be disclosed to a non-SASOHN member.

Topics

- *SASOHN Covers.*
- *Deductibles explained.*
- *Limits of indemnity explained.*
- *General.*
- *What is not covered?*

Topics cont.

- *Description of covers.*
 - *Medical Malpractice.*
 - *Professional Indemnity.*
 - *Employers' Liability.*
 - *Liability following employee dishonesty.*
 - *Defamation.*
- *General.*
- *Special extensions.*
 - *Run-off Cover.*
 - *Continuing Cover.*
- *Claims Procedure.*

SASOHN COVERS

Section	Limit of Liability per claim	Limit of Liability per Policy period	Excess / Deductible
Medical Malpractice	<i>R5 Million</i>	<i>R5 Million</i>	<i>R2000</i>
Professional Indemnity	<i>R5 Million</i>	<i>R5 Million</i>	<i>R2000</i>
Liability following employee dishonesty	<i>R5 Million</i>	<i>Incl. In the professional indemnity limit above</i>	<i>R2000</i>
Employers' Liability	<i>R5 Million</i>	<i>Incl. In the professional indemnity limit above</i>	<i>R2000</i>
Defamation	<i>R5 Million</i>	<i>Incl. In the professional indemnity limit above</i>	<i>R2000</i>

DEDUCTIBLES EXPLAINED

- *For every claim that you have, there is a deductible of R2000. This is the amount that you would need to pay in yourself. Usually the Underwriters will only request you to pay this amount once they have finalised the handling of a claim.*
- *You will not have to pay a deductible merely for reporting an incident that may lead to a claim against you. It is only if your underwriters incur costs- either legal defence costs, award or settlement costs that you will be required to pay the deductible.*

LIMITS OF INDEMNITY EXPLAINED

- *Each fully paid-up SASOHN member has their own individual limits of indemnity, ie each member has R5 million cover per policy period for claims arising out of medical malpractice, professional indemnity or those covers provided under your professional indemnity limit as reflected in the cover table in slide 5 of this presentation.*
- *The limit of indemnity reflected is for the payment of awards of damages made against you as well as both your legal defence costs and the other side's legal costs if the court orders you to pay them.*
- *To the extent that the above costs/awards exceed R5 million in any one policy period, you would be uninsured.*

GENERAL

Retroactive cover date : 1 January 1999

You will not be covered for any claims arising from incidents which occurred prior to this date because this was the inception date of the policy.

Prescription : Generally 3 years, although certain exceptions e.g. minors.

In South Africa it is generally the position that a person has 3 years within which to institute legal action against you from the date that they become aware that they have suffered harm. If they do not do so then they are effectively time-barred from bringing a claim against you, ie their claim is said to have prescribed. Please note however that there are certain exceptions to this rule eg- prescription does not run against a minor.

WHAT IS NOT COVERED?

- Your lost income while you are away from your practice/business/employment etc, while defending a claim against you, e.g. your petrol to court, flights, accommodation ,etc.
- Any losses **you** may suffer e.g. if your patients/clients don't pay your bills. The policy is triggered by an allegation of negligence **against you** or of unprofessional conduct.
- Any claim which arises from an incident which occurred when you were not a paid-up SASOHN member. You also need to be a paid-up SASOHN member at the time that a claim or potential claim is made against you. It is therefore very important that you renew your SASOHN membership timeously every year. When you notify us of a claim or a potential claim against you, we will first need to establish from the SASOHN offices that you are a paid-up member before we can proceed to assist you.

WHAT IS NOT COVERED *cont?*

- *Your claim or potential claim will be rejected if it becomes apparent that you have only paid your SASOHN membership fees **after** you become aware of a claim or a potential claim against you. This would effectively be viewed in the same light as purchasing car insurance **after** you have had a car accident.*
- *Any claim which arises from an incident which occurred before the retroactive cover date.*
- *Any claim where you failed to timeously notify Underwriters of the underlying incident. Please note that once you have notified us in writing of an incident or claim we will notify the underwriters on your behalf. Please see the claims procedure toward the end of this presentation.*

WHAT IS NOT COVERED cont?

- *Any claims made against you in the USA/ Canada.*
- *Work done in USA/ Canada. Please note that you need to make special arrangements through our offices if you need cover while you are working anywhere outside of South Africa.*
- *Any claims for breach of contract (can't attach additional liability to yourself) unless you would have been legally liable for negligence in the circumstances regardless of the existence of the contract.*
- *Fines/ penalties.*
- *Claims where you have another policy in place (non-contribution clause in policy).*
- *Criminal matters.*
- ***NB: Please note that this is not an exhaustive list of exclusions. Should you wish to see the full list of exclusions applicable to this cover, please refer to the policy wording. We have highlighted here some of the exclusions which we believe are important.***

DESCRIPTION OF COVERS

MEDICAL MALPRACTICE

- *“Malpractice” shall mean any negligent act, error or omission in the professional services rendered, or which should have been rendered, by the paid-up member*
- *The Insurers will indemnify the paid-up members under this Section against claims for and/or arising out of death of, bodily or mental injury to and/or illness or disease sustained by any Patient caused or alleged to have been caused by Malpractice.*
- *Under this section you will also be covered for emergency care rendered gratuitously at the scene of any accident or medical emergency even though such care or treatment would normally fall outside the scope of occupational health care.*

DESCRIPTION OF COVERS cont.

PROFESSIONAL INDEMNITY

- *The Insurers will indemnify the Paid-Up members under this Section against claims for and/or arising out of any actual or alleged negligent act, error or omission in the performance of their professional duties (which do not fall under the scope of a medical malpractice claim, ie there has been an alleged breach of a professional duty but there is no (physically) injured patient, eg negligent breach of confidentiality).*
- *Aside from the emergency treatment exclusion mentioned in the previous slide, you will only be covered under this policy for services rendered which fall within the scope of occupational health care. We have extended your cover to include dispensing but once again any dispensing done- must fall within the scope of practice of an occupational health nursing practitioner.*

DESCRIPTION OF COVERS cont.

EMPLOYERS' LIABILITY

- *Your cover is extended to include claims arising out of injury to any of your employees where their injury has arisen in the course and scope of their employment with you (please note that we are only talking about your business employees in the scope of occupational health nursing).*
- *This extension does not provide cover where claims arise out of:*
 1. *disease or illness contributed to by prolonged exposure to substances, factors or circumstances, peculiar to the particular employment or occupation; and/or*
 2. *Asbestos or asbestos related disease; and/or*
 3. *Amounts recoverable under any workmen's compensation enactments.*

DESCRIPTION OF COVERS cont.

LIABILITY FOLLOWING EMPLOYEE DISHONESTY

- ***The indemnity granted by this policy extends to include claims arising out of any dishonest, fraudulent or malicious act or omission of any of your employees.***
- ***Once again, please note that the claims have to arise from an independent 3rd party. You will not be covered if you personally suffer a loss because of the dishonesty etc of one of your employees.***
- ***This cover is not to be confused with fidelity guarantee cover which can be obtained to protect you against the financial consequences arising from your employee's theft or fraud. Should you require this cover please let us know and we will ask a consultant to contact you to assist you.***

DESCRIPTION OF COVERS cont.

DEFAMATION

- ***The indemnity granted by this policy extends to include claims arising out of defamatory statements made by you whether verbal or written.***
- ***Once again, please note that all the covers mentioned will only be applicable if the claims which arise – arise as a result of the conduct of your business. So, eg, you will not be covered for claims of alleged defamation where you made statements in your personal life which were not made in the course and scope of your occupation.***
- ***Also, at the risk of stating the obvious, please do not take this extension of cover as a license to go out and defame! You will not enjoy any cover under this section if it is clear that you wilfully and intentionally went about defaming someone, another company, etc.***

GENERAL

In the General section which follows, we have picked out some clauses in the policy wording which we believe it is very important that you are aware of.

Naturally, this does not preclude the need for you to familiarise yourself with your entire policy wording.

GENERAL cont.

- *The Insured shall give written notice to the Insurers as soon as practicable of any claim made against the Insured (or of any specific event or circumstance which may give rise to a claim being made against the Insured). **Please note that if you fail to observe this condition of the policy and only notify us later of a claim/incident or potential claim which you become aware of – underwriters are within their rights to reject your claim on the basis of non-timeous disclosure.***
- *Every claim, writ, summons or process and all Documents relating to the claim, event or circumstance shall be forwarded to the Insurers immediately they are received by the Insured.*

GENERAL cont.

- *The Insured shall at all times maintain accurate descriptive records of all professional services which records shall be made available for inspection and use by the Insurers or their duly appointed representatives insofar as they pertain to any claim under this Policy. **We cannot stress enough the critical importance of proper record keeping. Proper records can often mean the difference between successfully defending a claim against you or not.***
- *No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the written consent of the Insurers.*

SPECIAL EXTENSIONS

Run-off Cover

- *Insurers will indemnify the Insured in respect of Run-off claims arising within 3 years from the termination of cover in terms of this Policy, out of work performed during the Period of Insurance from the Retroactive Date reflected on the Schedule to the termination date of cover (provided that there is no other cover in place at the time that the claim is made).*
- *Example: you decide to take a year's break to travel around the world. You still need malpractice insurance in place because even though you are not practicing- there is still the risk of a claim arising from services which you have rendered in the past. The fact that you have free run-off cover for three years, means that you do not have to keep paying to keep your insurance in place even though you are not actually working in the occupational health care field. But please we aware of gaps in cover and the implications thereof. Please contact us to discuss your best course of action if you are intending to stop your cover at any point for any reason.*

SPECIAL EXTENSIONS

CONTINUING COVER

If, during the period of the Policy the Insured retires and/or permanently ceases to practice or is on maternity leave (for a period not exceeding 6 consecutive months), cover will continue without any further payment of premium to the Insurer save that where at the time the Insured retires or ceases to practice he or she has been struck off the Register of the South African Nursing Council or the South African Society of Occupational Health Nursing Practitioners, cover will cease from the date of such striking off.

This extension of cover is annually renewable which means that Insurers have the right to discontinue it going forward. This would not affect the cover of someone who had retired and notified us in writing that they had done so, prior to the Insurers discontinuing this extension.

CLAIMS PROCEDURE

Please contact us immediately once you have become aware of a claim or a potential claim, so that we can assist you right from the outset and help you to protect yourself and your rights, properly.

CLAIMS PROCEDURE cont.

Even if no threat of legal action has been made and you simply want some advice about a potential situation that would be covered under this policy, please feel welcome to contact us to discuss it.

Any assistance which we render to you from our offices is free of charge.

NB: it is very important that you follow up any notification to us with a formal notification in writing so that we can notify your underwriters of the claim or potential claim timeously.

CLAIMS PROCEDURE cont.

We can take no responsibility for notifying your underwriters (even if you have phoned us) unless we have received a formal written notification from you.

We do not make use of claim forms due to the many different circumstances that may give rise to claims.

However, we have provided on the next slide a guideline in respect of the details that should be provided in any written notification of a claim and some general pointers.

CLAIMS PROCEDURE *cont.*

1. *Your full name and contact details which should wherever possible contain the following information: land-line telephone number, cell-phone number, fax number and e-mail address. We also need to know where you live so that if attorneys need to be appointed we can try to ensure that they are closeby.*
2. *The patient or client's full name.*
3. *A brief description of the incident and the date, time and location of the incident.*
4. *Details of whether your patient or client has indicated that they want to claim against you.*
5. *If the patient or client has infact already had a summons served on you or you have received a written complaint from them or a letter of demand, this needs to be forwarded to us without delay.*

CLAIMS PROCEDURE cont.

6. *This is especially important if you have received any legal documents eg a summons because there are set time periods which we will have to respond by. If we do not respond within these time periods- you face the risk of having a default judgment taken against you.*
7. *If you are forwarding us a letter of complaint, please also let us have your response to any allegations that are made against you. Please bear in mind that this policy does cover you for negligence so no attempt whatsoever should be made on your part to conceal from us if you believe that you may indeed have been negligent. Head your statement, "Prepared in contemplation of litigation".*
8. *We encourage totally honest communication as this will often lead to a speedier resolution of the matter, especially if based on the information which you provide it is determined that a settlement offer should be made to the complainant to avoid the matter being dragged out and going on to costly litigation.*

CLAIMS PROCEDURE Cont.

Please contact us immediately in the event of any of the following (our contact details can be found at the end of this presentation):

- *If you or one of your employees, partners, your company, etc, receive formal notification of a complaint.*
- *Whenever a complaint is made in writing or verbally about the client's dissatisfaction with the service delivered.*
- *If any legal person or organisation requests information or medical files from you relating to your treatment of any patient.*
- *If any formal notification of a claim is received.*
- *If any adverse events arise out of normal professional duties, ie, even if no threat of action has been made- but **you** know that something has not been done right.*
- *In any circumstances where the member believes that a claim may arise.*

PROCEDURE cont.

- *Under no circumstances is a member to admit liability when a potential claim arises. The member may not waive any accounts as this is seen as an admission of liability.*

An admission of liability will have the effect of prejudicing a member's cover.

- *While we always recommend that channels of communication should be kept open between you and your client/patient even where there is a problem, we recommend that contact should be terminated at any point where it becomes clear that there is no possibility of an amicable resolution of the situation and/or if the client/patient has become hostile and has indicated that they intend suing you or have already appointed a legal representative. At this stage we recommend that you advise your patient/client that this matter has been handed over to your indemnity brokers and that they are welcome to liaise directly with us should they chose to.*

Your comments?

We believe that as your brokers we should always be striving to find ways that we can improve the cover and the services that we are able to offer you.

In this regard, we rely to a large extent on you to let us know if there are any areas that you believe could be improved upon. We welcome you to contact us with your views, any ideas and comments in this regard.

We trust that you will have found this presentation to be of assistance to you.

CONTACT DETAILS

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In the event that Joseph is unavailable you can also contact:

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We kindly request that you contact us on our cell phone after hours, only in the event of an emergency.