

MENTAL HEALTH PRACTITIONER'S PROFESSIONAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGE

MENTAL HEALTH PRACTITIONER'S PROFESSIONAL LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any "wrongful act", "bodily injury" or "property damage" to which this insurance applies. But, the amount we will pay for damages is limited as described in Section III – Limits Of Insurance.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Defense, Investigation And Settlement Obligations And Supplementary Payments.

b. This insurance applies to a "wrongful act" only if:

(1) The "wrongful act" arises solely out of the performance of professional services for others in the insured's profession as a "mental health practitioner", including professional services as a member of a formal accreditation or professional review board of a hospital, professional society, or professional licensing board;

(2) The "wrongful act" is committed during the policy period and in the "coverage territory"; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no employee authorized by you to give or receive notice of a "wrongful act" or "claim", knew that the "wrongful act" had been

committed, in whole or in part. If such a listed insured or authorized employee knew, prior to the policy period, that the "wrongful act" had been committed, then any continuation, change or resumption of such "wrongful act" during or after the policy period will be deemed to have been known prior to the policy period.

c. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period and on the premises used principally in your practice as a "mental health practitioner"; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no employee authorized by you to give or receive notice of an "occurrence" or "claim", knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized employee knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

d. A "wrongful act" that is committed during the policy period, and was not, prior to the policy period, known to have been committed by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any employee authorized by you to give or receive notice of a "wrongful act" or "claim", includes any continuation, change or resumption of that "wrongful act" after the end of the policy period.

e. "Bodily injury" or "property damage" that occurs during the policy period, and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any employee authorized by you to give or receive notice of an "occurrence" or "claim", includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

f. (1) A "wrongful act" will be deemed to have been known to have been committed; and

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(2) "Bodily injury" or "property damage" will be deemed to have been known to have occurred,

at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any employee authorized by you to give or receive notice of a "wrongful act", "occurrence" or "claim":

(1) Reports all, or any part, of the "wrongful act", "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or "claim" for damages because of the "wrongful act", "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "wrongful act" has been committed or has begun to be committed, or that the "bodily injury" or "property damage" has occurred or has begun to occur.

g. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Dishonest, Fraudulent, Criminal Or Malicious Act

Damages arising out of any dishonest, criminal, fraudulent, or malicious act, error or omission. This exclusion does not apply to any damages arising out of an insured's unintentional act, error or omission.

b. Medical Facility Or Other Profession

Liability of an insured:

(1) As a proprietor or owner of any clinic with bed and board facilities, hospital, sanitarium, nursing home, or laboratory; or

(2) For any act, error, or omission arising out of or in the course of any trade, business, employment, or profession, other than that of a "mental health practitioner".

c. Medical Services, Drugs Or Other Supplies

Any "claim" arising out of medical, surgical, dental, x-ray, nursing services, or treatment; the furnishing of food or beverages in connection therewith; or the furnishing or dispensing of drugs, or medical, dental, or surgical supplies or appliances.

Medical service or treatment as used in this exclusion does not include such service performed by an insured at the direction of a physician, or the customary furnishing or use of biofeedback equipment in the insured's practice as a "mental health practitioner".

d. Fee Disputes

Any "claim" arising out of disputes concerning fees charged by an insured, including but not limited to third party reimbursements sought or received by the insured.

e. Discrimination

Any "claim" arising out of "discrimination".

f. Managerial Acts, Errors Or Omissions

Any "wrongful act" of a managerial or administrative nature. This exclusion does not apply to any "wrongful act" of an insured as a member of a:

(1) Formal accreditation or professional review board of a hospital or professional society; or

(2) Professional licensing board.

g. Insured Against Insured Claims

Any "claim" brought by an insured against another insured.

h. Auto, Aircraft Or Watercraft

(1) Any "bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use, entrustment to others or "loading or unloading" of any "auto", aircraft, or watercraft; or

(2) Any "claim" against an insured alleging negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" that caused the "bodily injury" or "property damage" involved the ownership, maintenance, operation, use, entrustment to others or "loading or unloading" of any "auto", aircraft, or watercraft.

i. Injury To Employees And Other Workers

"Bodily injury" or any other injury or harm to any employee of an insured, or to any "leased worker", or to an employee of an independent contractor working for an insured, or to any obligation of an insured to indemnify another because of damages arising out of such "bodily injury" or other injury or harm.

j. Infringement Of Copyright, Patent, Trademark Or Trade Secret

Any "claim" arising out of actual or alleged infringement of copyright, patent, trademark, trade secret, or other intellectual property.

k. Workers' Compensation And Similar Laws

Any obligation of the insured under any workers' compensation, unemployment compensation, or disability benefits law, or under any similar law.

l. Damage To Property

"Property damage" to:

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- (1) Property owned, used or occupied by, or rented to, an insured;
- (2) Property loaned to an insured, or in the care, custody or control of an insured; or
- (3) Premises sold, given away or abandoned by an insured, if the "property damage" arises out of any part of those premises.

This exclusion also applies to any costs or expenses incurred by an insured, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property or premises for any reason, including prevention of injury to a person or damage to another's property.

m. Business Relation With Patient Or Client

Any "claim" arising out of any business relationship or venture with any prior or current patient or client of an insured.

n. False Material, Prior Material Or Criminal Acts

"Defamation":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral or written publication of material if the first instance of such "defamation" took place before the beginning of the policy period; or
- (3) Arising out of a criminal act committed by or at the direction of the insured;

o. Expected Or Intended Acts, Injury Or Damage

Any "wrongful act", "bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

p. Fines, Penalties Or Punitive Damages

Fines, penalties, punitive, exemplary or multiplied damages.

q. Drugs Or Intoxication

Any "wrongful act" committed while an insured was under the influence of a drug or intoxicant.

r. War

Any "claim" caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, or destruction, or seizure of property for a military purpose.

s. Other Professional Services

Any "claim" arising from any "wrongful act" in the performance of any professional services other than those provided as a "mental health practitioner".

t. Restraint Of Trade

Any "claim" based upon or arising out of restraint of trade, price fixing, or violation of any anti-trust law.

u. Employment Related Practices

Any "claim" that:

- (1) Is brought by or on behalf of any person who was or is employed by an insured at any time, or sought employment with an insured at any time; and
- (2) Alleges any act, error, omission, injury or damage by an insured with respect to:
 - (a) the hiring of, or refusal to hire, any person;
 - (b) termination or compensation of any person;,
 - (c) tenure, or term, conditions, benefits, privileges of employment; or
 - (d) other employment related practices or policies.

v. Proper Licenses And Qualifications

Any "claim" based on or arising out of the practice of an insured's professional occupation, unless such insured is properly licensed, registered, supervised, exempted or certified by the laws of the state(s) in which the insured practices, or is otherwise qualified to practice the insured's professional occupation in the absence of such laws;

w. Physician's And Other Related Malpractice

Any "claim" arising out of services performed by an insured as a physician, surgeon, physician's assistant, or surgeon's assistant;

x. Pollution

- (1) Any "claim" arising out of actual, alleged, or threatened, discharge, dispersal, seepage, release, or escape of "pollutants" at any time

This exclusion does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire" unless that "hostile fire" occurred or originated:

- (a) At any premises which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste; or

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(b) At any premises on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

DEFENSE, INVESTIGATION AND SETTLEMENT OBLIGATIONS AND SUPPLEMENTARY PAYMENTS

1. We will have the right and duty to defend the insured against any "suit" seeking damages for a "wrongful act", "bodily injury" or "property damage" to which this insurance applies. However, we will have no duty to defend the insured against any "suit" seeking damages for any "wrongful act", "bodily injury" or "property damage" to which this insurance does not apply.

2. We may, at our discretion, investigate any "wrongful act" or "occurrence", and, with the insured's written consent, settle any "claim" or "suit" as we deem expedient. If the insured refuses to consent to our settlement recommendation:

- a. We shall have no further duty to defend the insured; and
- b. Our liability for damages, subject to the applicable limit of insurance, shall not exceed the amount for which such "claim" or "suit" could have been settled if the insured had accepted our settlement recommendation.

3. Any right and duty we may have to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

4. We will pay, with respect to any "claim" we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Premiums on appeal bonds required in any "suit" to which this insurance applies and the cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

c. All reasonable expenses, other than loss of earnings, incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit".

d. All costs taxed against the insured in the "suit".

e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

g. Actual loss of earnings up to \$300 per day, subject to a maximum amount payable of \$5,000 as respects each "suit", if an insured's practice is suspended due to the insured's attendance at hearings or trials, at our request, as a defendant to a covered "claim".

5. We will also pay to each insured, up to the Regulatory Defense Amount shown in the Declarations, for reasonable costs incurred by the insured during the policy period for fees that:

- a. Are charged by an attorney representing a "mental health practitioner" who is an insured; and
- b. Arise from an investigation or defense of a proceeding before a state licensing board or regulatory body, provided the investigation or proceeding is directly related to an event, which could result in a "claim" covered by this insurance.

These payments will not reduce the Limits of Insurance.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you are an insured.
- b. A partnership or joint venture, you are an insured. Your partners are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your owners, "executive officers" and directors are insureds, but only with respect to their duties as your owners, "executive officers" or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

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2. Each of the following is also an insured:

- a. Your employees, but only:
 - (1) While acting as an employee on your behalf and within the scope of duties as your employee; or
 - (2) For acts an employee performs as a Good Samaritan or unpaid volunteer during the time employed by you.
- b. The lessor of premises leased to you, but only with respect to the lessor's liability as a result of only the operation or management of the premises used in your business as a. "mental health practitioner".
- c. Any person, but only while acting as a volunteer on your behalf and within the scope of duties as your volunteer.
- d. Any person or organization who is shown on the Declarations as an Additional Insured, but only for damages for which you are also liable and for which insurance is afforded you under this Coverage Part.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. "Claims" made or "suits" brought; or
 - c. Persons or organizations making "claims" or bringing "suits".
2. The Aggregate Limit is the most we will pay for all damages under this Coverage Part.
3. Subject to 2. above, the Each Wrongful Act Limit is the most we will pay for all damages because of any one "wrongful act".
4. Subject to 2. above, the Each Occurrence Limit – Premises Liability is the most we will pay for all damages because of any one "occurrence".
5. Notwithstanding 2., 3. and 4. above, the Sexual Misconduct Aggregate Limit is the most we will pay for all damages under this Coverage Part arising out of "sexual misconduct".

SECTION IV – MENTAL HEALTH PRACTITIONER'S PROFESSIONAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Wrongful Act, Claim, Suit Or Regulatory Authority Notice

- a. You must see to it that our authorized representative or we are given written notice as soon as practicable of an "occurrence", a "wrongful act" which may result in a "claim" or complaint from any regulatory authority. Such notice must include the fullest information obtainable, and, to the extent possible, should include:
 - (1) How, when and where the "occurrence" or "wrongful act" took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any "wrongful act", or injury or damage arising out of the "occurrence".
- b. If a "claim" is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit" or notice of any complaint from any authority;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit";
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of damages with respect to which this insurance may also apply; and
- (5) Attend hearings and trials and assist in securing and giving evidence and in obtaining the attendance of witnesses.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid as a result of "bodily injury" by accident, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Excess Insurance

This insurance is excess over any of the other insurance, whether or not such insurance is stated to be primary, excess, catastrophe, umbrella, contingent or on any other basis.

When this insurance is excess over other insurance:

- (1) We will have no duty to defend any "claim" or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers; and
- (2) We will pay only our share of the amount of the loss, if any, that exceeds the sum of:
 - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

6. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

7. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

8. Endorsements To This Coverage Part

Reference to Commercial General Liability Coverage Part in any endorsement that is attached to or made a part of this Coverage Part shall be understood to mean this Coverage Part.

SECTION V – DEFINITIONS

1. "Auto" means a land motor vehicle, trailer or semi-trailer, whether or not self-propelled, subject to motor vehicle registration or designed for use on public roads. "Auto" includes any attached machinery or equipment.
2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
3. "Claim" means an oral or written notice from any party of their intent to hold an insured responsible for any "wrongful act", "bodily injury", or "property damage".
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada; or
 - b. All parts of the world, if the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Defamation" means:
 - a. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - b. Oral or written publication, in any manner, of material that violates a person's right of privacy;

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6. "Discrimination" means unfair treatment or denial of services to any individual based on that individual's race, age, national origin, religion, disability of any kind, sex, or sexual orientation.
7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
8. "Hostile fire" means one that becomes uncontrollable or breaks out from where it was intended to be.
9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a person furnished to you to substitute for a permanent employee on leave, or permanent "leased worker" on leave, or to meet seasonal or short-term workload conditions.
10. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
11. "Mental health practitioner" means a mental health counselor, social worker, psychologist, psychoanalyst, psychotherapist, or other mental health discipline approved by us.
12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
13. "Pollutants" mean any solid, liquid, gaseous, or thermal irritant, contaminant or radioactive matter, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
14. "Property damage" means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
15. "Sexual misconduct" means any:
 - a. Action or behavior; or
 - b. Physical contact or touching;that is intended to lead to or which culminates in any sexual act, arising out of the professional treatment and care of any client, patient, or any other person whose care has been entrusted to an insured. "Sexual misconduct" includes such action, behavior, physical contact or touching whether it is committed by, caused by, or contributed to by an insured or any other person for whom an insured may be legally liable.
16. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or a "wrongful act" to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
17. "Wrongful act" means any actual or alleged negligent act, error, or omission, or any actual or alleged "defamation". "Wrongful act" includes any continuous, repeated, or related "wrongful acts".