



We are your insurance brokers. Please contact us for any advice you need about this cover and also to immediately report any circumstances that you become aware of which could lead to a claim or HPCSA complaint against you. It is very important that you do NOT respond to HPCSA complaints yourself.

Hollard are your Insurers/underwriters who would be responsible for determining whether this policy should respond to cover a claim/HPCSA complaint, handling claims/HPCSA complaints, appointing attorneys to assist you, paying out claims and legal defence costs in accordance with the terms and conditions of this policy.

PROFESSIONAL INDEMNITY
MEDICAL MALPRACTICE
PUBLIC AND PRODUCTS' LIABILITY
FOR
HEALTHCARE PRACTITIONERS

This is to certify that in accordance with the authorisation granted to

The Hollard Insurance Company Limited
(The "Underwriters")
 (Reg. No.1952/003004/06 and FSP no. 17698)

Your insurers/underwriters.

In order to be covered under the Profnet policy you need to be a paid-up member in good-standing with Profnet.

and in consideration of, and conditional upon, the **prior payment of the Premium by or on behalf of the Insured** and receipt thereof by or on behalf of the **Insurers**, the **Insurers** are hereby bound to insure in accordance with the terms, **Exclusions, Conditions** and limitations contained herein or endorsed hereon.

The Policy and its **Schedule** and **Endorsements** shall be read together as one contract. It is conditional upon and will only come into effect following payment of the Premium by the **Insured** and the receipt thereof by or on behalf of the **Insurers**. Any word or expression to which a specific meaning or Definition has been given shall have such specific meaning wherever it may appear.

Please read this entire policy document very carefully. Our notes in no way affect the legal interpretation of this policy document and are provided for information/clarification purposes only.

We have high-lighted and/or commented on areas that you should please pay special attention to.

Although Profnet has arranged this insurance on your behalf, it remains your responsibility to familiarise yourself with all the terms, exclusions and conditions of this policy, so that you do not unwittingly do or fail to do something which then compromises or nullifies your cover.

The General Conditions which start on page 14 at clause 11 are the most important part of this policy document and we urge you to read them very carefully and to contact CFP Brokers if anything in them is unclear or requires clarification.

We would also urge you strongly to read CFP Broker's claims' handling procedure document. This should be on the Profnet website. If you cannot locate it you can request a copy from noleen@cfpbrokers.co.za.

1. PREAMBLE

The **Insured** having made a written proposal to **Insurers** and/or otherwise submitted particulars and statements constituting an acceptable risk profile, which proposal and/or risk profile shall form the basis of this insurance, the **Insurers** will indemnify the **Insured** in accordance with the **Schedule**, policy terms, **Exclusions**, **Conditions** and limitations contained herein or endorsed hereon. In consideration of this and subject to all the provisions of this policy, the Insurer agrees as follows:

2. DEFINITIONS

For the purpose of determining the indemnity granted:

This is the trigger for the policy to respond, ie some allegation of negligence.

2.1 **Business**
shall mean the business identified in the Schedule and conducted within the Territorial Limits.

2.2 **Breach of Duty**
shall mean any actual or alleged negligent act, error, omission, misstatement, misleading statement, breach of confidentiality or omission in the performance of or failure to perform **Professional Services**.

2.3 **Claim**
shall mean any: (i) written demand or (ii) civil or administrative proceeding that seeks Damages as a result of **Wrongful Acts**, or (iii) **Regulatory or Statutory Body complaint, such as HPCSA or SANC but not limited thereto** and subject to clause 6.4 of **Defence Costs**.

Subject to the terms and conditions of the policy being met, you are covered for HPCSA complaints.

2.4 **Damages**
shall mean any amount that an **Insured** shall be legally liable to pay to a **Third Party** in respect of judgments rendered against an **Insured** or for settlements which conform with the consent requirements set out the Conditions of this policy and subject to the limitations of **Loss**

2.5 **Deductible**
shall mean the first amount of each and every **Claim** to be borne by the **Insured**. The **Deductible** shall apply per **Claim** or series of claims arising from one originating cause or source.

For the avoidance of doubt the **Deductible** is payable by the **Insured** towards **Damages** and **Defence Costs** upon the request of the **Insurer**. It is payable regardless of the outcome of the **Claim**.

Please note that you should not appoint your own attorneys. Hollard will not reimburse you as the policy requires their prior written consent before costs are incurred.

2.6 **Defence Costs**
shall mean all costs and expenses incurred by the **Insurers** on behalf of the **Insured** or by the **Insured** with **Insurers'** prior written consent in connection with any claim which forms the subject of indemnity under this Policy. **Defence Costs** shall not mean any internal or overhead expenses of any **Insured** or cost of any **Insured's** time.

2.7 **Environmental Impairment / Pollution**
shall mean the emission, discharge, release, dispersal, disposal, seepage or escape of solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes; smoke, soot or other airborne particulates; acids, alkalis, chemicals and waste; electromagnetic waves, noise, vibrations; other emission of effluent or noxious substances into or upon the soil, the atmosphere or

Please be aware that you are liable to pay the deductible/excess regardless of the outcome of a matter, eg even if the HPCSA dismisses a complaint against you. As soon as Hollard appoints attorneys to assist you they will ask you to pay the excess.

This is the only exception to the rule that you will only be covered for services rendered which fall within the scope of practice of your qualification.

any watercourse or body of water which changes the natural state or condition of the soil, the atmosphere or any watercourse or body of water other than by a sudden, accidental and identifiable event; the depositing or storing of effluent, noxious substances, nuclear material or nuclear waste and the breach of any legislation relating to the foregoing.

2.8 **Good Samaritan Act**

shall mean treatment administered at the scene of a medical emergency, accident or disaster by the **Insured** who is present either by chance, or in response to a general call following a disaster. It is accepted by **Insurers** that such treatment may fall outside the normal scope of practice of the **Insured** and **Insurers** will nevertheless indemnify the **Insured** for Good Samaritan Acts.

2.9 **Insured**

shall mean:

You are only covered under the Profnet policy if you are in good standing with Profnet and have taken up cover through Profnet's Medical Malpractice Insurance Scheme.

- a) The **Insured** reflected on the policy schedule and all paid-up members of the **Society/Association**, **In this instance the Society/Association refers to Profnet and not to your professional association.**
- b) any present or former employee, locum, director or officer of the **Insured** in respect of those activities that are conducted within the course and scope of the **Business** of the **Insured**,
- c) any predecessors of the **Insured** but only to the extent that liability attaches to the **Insured**,
- d) any partnership, closed corporation or incorporated company that the **Insured** is a partner, member or director of, provided that in the event that any of the partners or directors are not **Insured** through this Professional Indemnity, Medical Malpractice and Liability Scheme ("the Scheme") with Hollard at the time of the incident, then **Insurers** will only be responsible for that portion of the claim, calculated pro-rata, in the same proportion that the partners or directors **Insured** through the Scheme with Hollard bear to the total number of partners, members or directors in that partnership, closed corporation or incorporated company at the time that the incident occurred. This pro-rata calculation will include previous directors, members or partners who were insured through the Scheme with Hollard at the time that the incident occurred. **Insurers'** liability in respect of any claims against a partnership, closed corporation or incorporated company will be limited to R50 Million or the cumulative total of all individual limits of indemnity in respect of the partners or directors whichever is the lesser.
- e) in the event of the death, incapacity, insolvency or bankruptcy of any person treated as the **Insured** (in respect of claims against such person) his estate, legal representatives and/or heirs.

Please carefully note the requirements for corporate cover.

Your practice/partnership/Inc. will only be partially covered unless all partners/directors of the practice are insured via the Profnet Medical Malpractice Indemnity Insurance Scheme.

Subscribers to the Profnet Medical Malpractice Indemnity Insurance Scheme have a choice of limits. You can take cover of R2,5 million or R5 million cover per year (premium obviously higher for R5 million cover). If you want a higher limit, please contact CFP Brokers to assist you as higher limits can be obtained separately to the Profnet Medical Malpractice Indemnity Insurance Scheme but still available at great rates by virtue of your Profnet membership.

Hollard is your insurer. We also refer to them as your underwriter.

Insurer

shall mean the entity specified as such in the Schedule

2.11 **Limit of Indemnity**

shall mean the amount specified as such in the Schedule

2.12 **Loss**

shall mean **Damages** and **Defence Costs**. Loss shall not mean and this policy shall not cover any (1) taxes (excluding the indemnity provided for VAT as provided for above in section 9.2), (2) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages, (3) fines or penalties, (4) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other

This policy does NOT cover HPCSA (or any other) fines.

non-monetary relief, (5) compensation, benefits or overhead of, or charges or expenses by any **Insured**, or (6) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a **Claim** is brought.

2.13 **North America**

shall mean the United States of America (being the fifty states of the union plus the District of Columbia), Canada and any territory operating under the laws of or subject to the jurisdiction of courts of the afore-mentioned territories.

2.14 **Malpractice**

shall mean any negligent act, error or omission in the **Professional Duties**.

2.15 **Patient**

shall mean any person undergoing treatment by the **Insured** in the course of the **Business**.

2.16 **Period of Insurance**

shall mean the period of time specified in the Schedule unless the policy is cancelled in which event the Period of Insurance will end of the effective date of cancellation.

2.17 **Professional Duties**

shall mean the activities and duties which would fall within the normal scope of duties and services performed by a professionally qualified paid-up member properly registered in terms of the current applicable Act/s that governs such profession and field of business, as stated in the Schedule.

It is important to note that you will not be covered for claims or HPCSA complaints which arise where you rendered services which do not fall within your recognised scope of practice except where you are treat someone as a good Samaritan act.

2.18 **Product**

shall mean any property in or after it has left the custody or control of the **Insured** which has been labelled, prescribed, designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**, but shall not mean food and drink supplied by or on behalf of the **Insured** primarily to the **Insured's** employees as a staff benefit ("Food and Drink").

2.19 **Retroactive Date**

shall mean the date that the **Society/Association** provides for each individual paid-up member when they first became a paid-up member of the **Society/Association**, provided there has been no break in the membership since that date.

Very important. Please read our notes on claims' made cover and contact us for assistance if anything is not clear.

2.20 **Society/Association**

shall mean the statutory body consisting of paid-up **Insured** members.

2.21 **Territorial Limits**

shall be Worldwide excluding North America.

You are covered for professional services/duties performed anywhere in the world excluding USA/Canada. However, you will only be covered for services rendered overseas if you render them whilst visiting- not if you have emigrated or been there for over one year.

2.22 **Third Party**

shall mean any entity or natural person, provided, however, **Third Party** does not mean (i) any **Insured**, save for provisions contained in Cross Liabilities clause 8.5; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the **Insured's Business**

2.23 **Vehicle**

shall mean any land Vehicle or trailer (including any machinery or apparatus attached thereto) whether or not subject to Vehicle regulation and whether or not self-propelled.

2.24 **Wrongful Acts**
shall mean any Breach of Duty, Defamation and Fraud/Dishonesty

3. **INSURING CLAUSES**

The indemnity granted by this Policy solely applies to all **Claims** first made against the **Insured** during the **Period of Insurance** and reported to the **Insurer** as required by this policy and in respect of which the **Insured** shall become legally liable to pay compensation, including claimants' costs fees and expenses and Defence Costs arising out of and in the course of the Business conducted within the Territorial Limits and as set out in Sections One, Two, Three and Four hereof.

This shall be in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of North America (or to any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part).

4. **SECTION ONE – PROFESSIONAL INDEMNITY**

Please note that the policy covers your legal liability. Your legal liability needs to be established to Insurer's satisfaction before they will pay a claim.

4.1 **INDEMNITY**

The **Insurers** will indemnify the **Insured** under this section against their **legal liability to pay compensation** (including claimants' costs, fees and expenses) as a result from any **Claim** for any actual or alleged negligent act, error or omission by the **Insured** in the course of the **Business** other than as provided for in Section Two – **Malpractice**.

4.2 **EXTENSION**

It is important that you read all the extensions of cover that you are entitled to under this policy- otherwise you will not know when to notify us of a potential claim and it may be too late for you to do so once you eventually establish that you were entitled to cover under the policy.

4.2.1 **LIABILITY FOLLOWING EMPLOYEE/VOLUNTEER DISHONESTY**

This policy extends to cover **Claims** arising out of any dishonest, fraudulent or malicious act or omission of any employee or volunteer (not being a director, partner or principal) of the **Insured**

4.3 **EXCLUSION**

You are not covered under this policy for breach of contract unless you would have been liable for loss/damage/injury regardless of the existence of any contract.

The **Insurers** shall not be liable to indemnify the **Insured** in respect of **Claims** arising from breach of contract unless such breach is a breach or alleged breach of **Professional Duty** by the **Insured** or any other person upon whom the **Insured** has placed reliance.

5. **SECTION TWO – MALPRACTICE**

5.1 **INDEMNITY**

The **Insurers** will indemnify the **Insured** 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** or a **Good Samaritan Act**.

The indemnity extends to any Emergency Medical Conveyance owned or used by the **Insured** in connection therewith.

This indemnity extends to any failure to diagnose a condition, delayed diagnosis or any mis-diagnosis of a condition which results in a claim or a complaint against the **Insured**.

5.2 EXCLUSION

This section does not cover liability for claims arising out of or in connection with any **Product**, but this Exclusion shall not apply to claims arising out of the incorrect prescription or use of such **Products**.

6 SECTION THREE - DEFENCE COSTS

6.1 The **Insured** shall render at their own cost all such assistance as the **Insurers** may require in order to investigate defend or settle any claim and shall arrange to be available at their own cost for such interviews as may be required by the **Insurers** or any advisers or legal representatives appointed by the **Insurers**.

6.2 The **Insurers** will pay any expenses incurred by the **Insured** (excluding such costs mentioned in 6.1) in order to assist with the investigation defence or settlement of any claim made against the **Insured** and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any **Claim** made or which might be made against the **Insured**, provided such **Claim** or **Claims** are the subject of indemnity by this policy and the **Insurers** prior written consent is obtained.

Please note that subject to all terms and conditions of the policy, this policy provides cover for legal defence costs for representation at any inquest or HPCSA inquiry.

6.3 All costs, fees and expenses incurred by the **Insurers** or at their instance in the investigation defence or settlement of any claim made against the **Insured** and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any **Claim** made or which might be made against the **Insured** shall be deemed to be costs, fees and expenses incurred by the **Insured** with the prior consent of the **Insurers**.

6.4 Notwithstanding 6.2 and 6.3 above, the **Insurers** will in addition pay all fees for representation or defence of the **Insured** with the **Insurer's** written consent at an inquest or disciplinary committee of the Health Professions Council or any other Statutory Body governing the conduct of the **Insured's** Business, regardless of the nature of the complaint and whether or not it could result in a civil or other Claim against the **Insured** which is covered under this policy.

This is possibly the most important advantage that the Profnet policy provides to you, ie cover for HPCSA complaints where no medical malpractice has been alleged, eg billing complaints. Many insurers do not provide this cover. 95% of all HPCSA complaints are billing-related. This is very NB cover!

7. SECTION FOUR- PUBLIC LIABILITY

7.1 INDEMNITY

The **Insurers** will indemnify the **Insured** under this Section against their legal liability for claims arising out of:

a) accidental death, bodily and mental injury, illness or disease of or to any person;

b) accidental loss of possession or control of or actual damage to property;

arising out of and in the course of the **Business**.

7.2 EXTENSION

7.2.1 PRODUCTS' AND DEFECTIVE WORKMANSHIP LIABILITY

The **Insurer** will indemnify the **Insured** for any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance** which is alleged to have been caused by a product.

This extension extends to include claims arising out of defective workmanship, defective packaging and labelling. **Claims** for inadequate or incorrect instructions with regard to the use of the product will be covered under the medical malpractice section of this policy.

This extension shall be subject to the following **exclusions**:

1. Efficacy

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.

2. Recall

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.

7.3 EXCLUSIONS

This Section does not cover liability for Claims arising out of:

- a) the ownership, possession or use by or on behalf of the **Insured** of any motor vehicle or trailer for which compulsory insurance is required by legislation, other than claims :
 - i) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
 - ii) arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer;
 - iii) arising out of any motor vehicle or trailer temporarily in the **Insured's** custody or control for the purpose of parking;
- b) liability for which compulsory insurance is required by legislation governing the use of any motor vehicle or trailer;
- c) the ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft or hovercraft;
- d) 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

This is what is known as a carve-back of cover as it effectively provides cover although it is under an exclusion.

You will therefore be covered if someone's vehicle is damaged in your parking lot as a result of your alleged negligence eg. your receptionist closed the gate on someone's car.

This is another carve-back because you will be covered for damage to leased practice premises where the damage has resulted from your alleged negligence.

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;

- e) **Environmental Impairment / Pollution** unless such **Environmental Impairment / Pollution** was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance and did not arise as a result of the **Insured's** failure to take reasonable precautions;
- f) or in connection with any **Product**, subject to provisions in 7.2.1 above.

8 **EXTENSIONS**

The following Extensions shall apply automatically under all sections of cover under this policy and:

- a) shall be subject to the relevant Indemnity, Limits and Excesses stated in the Schedule to apply to the Extensions;
- b) are subject otherwise to the terms, Exclusions, Conditions and limitations of the Policy;

PROVIDED ALWAYS THAT the total liability of the **Insurers** is not increased beyond that which would have applied in the absence of such Extensions.

8.1. **STATUTORY AND CRIMINAL DEFENCE COSTS**

Notwithstanding anything to the contrary contained in this Policy, the **Insurers** will indemnify the **Insured** in respect of legal and **Defence Costs** with the consent of the **Insurers** in the defence of any criminal action or criminal prosecution brought against the paid-up member or **Insured** arising from actual or alleged breach of any Statutes governing the conduct of the **Insured's Business**. This cover shall extend to include legal costs and **Defence Costs** incurred with the consent of the **Insurers** in the defence of any criminal action or charge made against the **Insured** during the **Period of Insurance** as a result of the alleged contravention of any Statute governing the conduct of the business (other than 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) and as read in conjunction with the Criminal Procedure Act No. 56 of 1955, or as amended from time to time.

PROVIDED ALWAYS THAT :

- a) no indemnity shall be granted for fines or penalties;
- b) in the case of an Appeal, the **Insurers** shall not indemnify the **Insured** unless its legal representatives (chosen by the **Insurer** in its sole discretion) shall advise that such Appeal should be likely to succeed.
- c) No indemnity is provided in respect of any costs and expenses other than the legal costs and **Defence Costs** referred to in this section.

8.2. **WRONGFUL ARREST**

Notwithstanding anything to the contrary in this Section, the **Insurers** will indemnify the **Insured** in respect of claims arising out of Wrongful Arrest (as hereinafter defined) committed or alleged (other than by the **Insured**) to have been committed by the **Insured** in the course of the **Business**

PROVIDED ALWAYS THAT :

- a) for the purposes of this Extension, the terms "Wrongful Arrest" shall mean :
 - i) assault and battery committed or alleged to have been committed at the time of making or attempting to make an arrest or in resisting an overt attempt to escape by a person under arrest before such person has been or could be placed in the custody of the police or a law enforcement officer;
 - ii) defamation, injuria, false imprisonment or malicious prosecution either committed or alleged to have been committed directly in connection with an arrest or arising out of the investigation of acts of shoplifting or theft;
 - iii) wrongful discharge of any employee.
- b) no indemnity shall be granted in respect of claims :
 - i) made against the **Insured** by any person or persons other than those being or having been or alleged have been arrested or under arrest, or their personal representatives;
 - ii) made against the **Insured** by any Director, Partner or employee of the **Insured**, or their personal representatives;
 - iii) arising out of unfair labour practice as within the meaning of the Labour Relations Act No.66 of 1995;
- c) the total liability of the **Insurers** under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the **Insured** during the Period of Insurance.

8.3. **EMPLOYERS LIABILITY**

Notwithstanding anything to the contrary contained in General Exclusion 10.a)3), the indemnity granted by this Section extends to include claims arising out of Injury to any person employed under a contract of service or apprenticeship with the **Insured** where such Injury arises out of and in the course of the execution of such contract.

PROVIDED ALWAYS THAT :

No cover is provided for :

- a) liability for claims arising from illness or disease, or contributed to by prolonged exposure to substances, factors or circumstances, peculiar to any particular employment or occupation;

- b) liability for claims arising out of asbestos or asbestos related disease of the respiratory system, but this exclusion shall not apply to claims where the proximate or contributory cause is not related to asbestos dust or fibres;
- c) amounts recoverable under any Workmen's Compensation Enactment applicable from time to time.

8.4. INDEMNITY TO OTHERS

The indemnity granted by this policy extends to:

- a) any party who enters into an agreement with the **Insured** for any purpose of the Business, but only to the extent required by such agreement to grant such indemnity and subject always to Section Four Exclusion 7.3 (d) (iii) and General Exclusion 10(a)5;
- b) officials of the **Insured** in their business capacity arising out of the performance of the **Business** or in their private capacity arising out of their temporary engagement of the **Insured's** employees;
- c) the officers, committee and members of the **Insured's** canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacities as such;
- d) the personal representatives of the estate of any person who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such person.

Provided always that such persons or parties shall observe, fulfil, and be subject to the terms, Exclusions, Conditions and limitations of this Policy as though they were the **Insured**.

8.5 CROSS LIABILITIES

Each **Insured** indemnified is separately indemnified in respect of claims made against any of them by any other, subject to the total liability of the **Insurers** not exceeding the stated Indemnity Limit.

9. LIMIT OF INDEMNITY

9.1 The total liability of the **Insurers**, in terms of the Insuring Clause:

- a) Per **Claim** or series of claims arising from one originating cause or source, including interest thereon, all claimants' costs, fees and expenses and **Defence Costs**;
 - b) in respect of all claims per **Period of Insurance**;
- shall not exceed the **Limit of Indemnity** stated in the **Schedule**.

9.2 Where applicable, the **Insurers** will indemnify the **Insured** for any Value Added Tax (VAT) obligation that may be incurred subject to and inclusive in the **Limit of Indemnity**.

This is important information only if your practice is registered as a VAT vendor. Please will you contact CFP Brokers for our notes on the VAT implications of this cover if you or your practice are registered for VAT.

Very very important! You need to notify us in writing as soon as you become aware of any potential claim/complaint against you. This policy renews on 1 January every year and this clause states that if you know about a circumstance or an incident prior to 1 January and you fail to notify CFP Brokers of this complaint in writing prior to 1 January and only notify it after 1 January then you will not be covered for any actual claim and/or HPCSA complaint arising out of that circumstance/incident as you failed to notify it through prior to the renewal date of the policy.

10 (a) **GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS**

This Policy does not cover liability:

- 1 a) arising from circumstances which may reasonably be expected to give rise to a Claim known to the **Insured** at the inception or renewal date of this Policy,
b) arising from any circumstances notified to the **Insurers** of any other policy prior to the inception date hereof;
- 2 relating to any negligent act, error or omission which was or may have been or is alleged to have been committed or omitted (as the case may be) before the **Retrospective Date**;
- 3 for any death, bodily or mental injury, disease or illness to any person employed by the **Insured** under a contract of service or apprenticeship or training which arises out of or in the course of such employment, subject to the Employer Liabilities clause 8.3;
- 4 for the costs of replacing or restoring any of the **Insured's** documents;
- 5 arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties;
- 6 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;
- 7 If at the time of any event giving rise to a **Claim** under this policy, other insurance cover exists applicable to such **Claim**, the **Insurer** shall be liable (subject at all times to the terms of this policy) to pay only a rateable proportion of the amount payable to the **Insured** in respect of such **Claim**, whether the **Insured** is paid under such other insurance or not.

If such other insurance is provided by the **Insurer** or any group company or affiliate of Hollard Insurance Company Ltd, ("Hollard"), then the maximum amount payable by Hollard under all such policies shall not exceed the Limit of Indemnity of that policy referred to above which has the highest applicable Limit of Indemnity. Nothing contained herein shall be construed to increase the **Limit of Indemnity** of this policy. To the extent that another insurance policy imposes upon an insurer a duty to defend a **Claim**, **Defence Costs** arising out of such **Claim** shall not be covered under this policy.
- 8 for contractual liability/performance guarantees arising out of, based upon, or attributable to any;
 - i) contractual liability or other obligation assumed, that goes beyond the duty to use such skill and care as is ordinarily applied to the **Professional Duties** provided;
 - ii) performance guarantee or warranty
 - iii) delay in performing, failing to perform or failing to complete any **Professional Duties**, unless such delay or failure arises from Breach of Duty by the **Insured**;
- 9 arising out of employment practices, based upon any actual or alleged employment-related practices or labour disputes;

This is very important! Please read CFP Broker's notes on the nature of claims' made cover.

This should be covered under your practice content's insurance. Please check with your broker.

This is particularly important when it comes to complaints about billing. Be very careful what documents you sign if a medical aid ever accuses you of over-charging, etc as sometimes by signing these documents, obviously depending on the content, you are effectively admitting fraud and would not be covered for any subsequent claim/HPCSA complaint under this policy.

- 10 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;
- 11 for and/or arising out of :
 - a) any award or damages granted in terms of a judgment delivered or obtained in the first instance;
 - b) costs, fees and/or expenses of litigation incurred;
 - c) the conduct of the **Business**;
in North America;
- 12 up to the amount of the **Deductible**;
- 13 for fines, penalties, punitive, vindictive or exemplary damages;
- 14 arising from the performance of the activities of the **Insured** whilst under the influence of intoxicants or narcotics excluding medication prescribed and/or administered by a properly qualified doctor as well as any over the counter drugs which are being taken at the time for recognised medical complaints or conditions.
- 15 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;
- 16 arising out of :
 - a) loss of money (including, but not limited to postal and money orders and Kruger Rands);
 - b) theft or forgery;
- 17 arising out of the insolvency of the **Insured**;
- 18 arising out any medical and biological research as well as medical and/or clinical trials
- 19 arising out of any clinical trials
- 20 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:
 - (i) the imposition of quarantine or restriction in movement of people or animals by the national or international body or agency; and/or
 - (ii) any travel advisory or warning being issued by a national or international body or agencyand in respect of (i) or (ii) any fear or threat thereof (whether actual or perceived).
- 21 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

If you require cover for cyber liability please contact CFP Brokers.

HIV/AIDS or any similar condition.

- 22 Arising out of cyber liability. However, should this exclusion be applicable to Special Extension 12.3, cover for Damages and Defence Costs will be afforded to be 10% of Sum Insured subject to the applicable Deductible;
- 23 arising out of decennial liability;
- 24 as a result of failure to effect or maintain insurance;
- 25 arising out of:
 - a) any **Environmental Impairment / Pollution** occurring during the **Period of Insurance**.
 - b) any contravention of Pollution and / or Environmental Laws.
 - c) delays in projects requiring official regulatory Environmental approval.
- 26 arising out of any advice given on North American Law

If you require cover for cyber-liability please contact CFP Brokers for quotes.

10(b) **COMPUTER VIRUS EXCLUSION**

Notwithstanding any provision of this Policy including any special Exclusion or extension or other provision not included herein which would otherwise override a general Exclusion, this Policy does not cover any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or consisting of or arising from the incapacity or failure of any computer, correctly or at all, to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any trojan horse, time or logic bomb or worm or any other destructive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the **Insured** or not.

10(c) **WAR / TERRORISM EXCLUSION**

The **Insurers** shall not be liable to indemnify the **Insured** in respect of claims directly or indirectly caused by, resulting from happening through or in connection with:

- a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power;
- b) any action taken in controlling, preventing, suppressing or in any way relating to the excluded situations in a) above, including, but not limited to, confiscation, nationalization, damage to or destruction of property by or under the control of any Government or Public or Local Authority;
- c) any act of terrorism regardless of any other cause contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion, terrorism means an act of violence or any act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

In any action suit or other proceedings where the **Insurer** alleges that by reason of this Exclusion a loss is not covered by this insurance the burden of proving that such loss is covered shall be upon the **Insured**.

10(d) NUCLEAR EXCLUSION

This Policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by or contributed to by or arising from:

- (i) ionising, radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
- (ii) nuclear material, nuclear fission or fusion, nuclear radiation;
- (iii) nuclear explosives or any nuclear weapon;
- (iv) nuclear waste in whatever form;

regardless of any other cause or event contributing concurrently or in any other sequence to the loss. For the purpose of this Exclusion only, combustion shall include any self-sustaining process of nuclear fission.

10(e) ASBESTOS EXCLUSION

Notwithstanding any provision of this Policy including any Exclusion, exception or extension or other provision which would otherwise override an Exclusion, this Policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to by, the hazardous nature of asbestos in whatever form or quantity.

11. GENERAL CONDITIONS IF YOU READ NOTHING ELSE IN THIS POLICY DOCUMENT - PLEASE READ THIS SECTION VERY CAREFULLY! IT IS THE MOST IMPORTANT SECTION OF THE POLICY.

Conditions 11.1 to 11.7 are Conditions precedent to the liability of the Insurers to provide indemnity under this Policy. THE USE OF THE WORD PRECEDENT IN THIS LINE- MEANS THAT BEFORE THERE IS ANY OBLIGATION ON THE INSURERS TO RESPOND TO A CLAIM YOU HAVE TO

11.1 Premium is payable on or before the inception date or renewal date or instalment date as the case may be. The Insurer shall not be obliged to accept premium tendered to them more than 15 days after such date but may do so upon such terms as they in their sole discretion may determine. HAVE MET THE CONDITION S OF COVER IN THIS SECTION, IE IF YOU

11.2 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) and which forms the subject of indemnity under this Policy and shall give all such additional information as the Insurers require. 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. DON'T MEET THESE CONDITION S, NO COVER!

The most NB clause in this whole policy document! Please also read CFP Broker's claims' handling procedures.

If the Insured notifies the Insurers during the Period of Insurance of any event or circumstance which the Insurers accept may give rise to a claim being made against the Insured, then such claim shall for the purpose of this Policy be treated as having been first made against the Insured during the Period of Insurance.

This policy will allow the Insured the opportunity to notify Insurers of claims made against them or circumstances that may give rise to claims being made against them as soon as practicable but not later than 30 days after expiry of this insurance provided that the Insured first became aware of the claim or circumstance prior to expiry.

11.3 The Insured shall maintain accurate descriptive records of all professional duties rendered for the period required/stipulated by legislation/regulation and/or guidelines provided by the Insured's Statutory Body, 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.

- 11.4 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** who shall be entitled if they so desire to take over and conduct the defence or settlement of any claim or to prosecute in the name of the **Insured** any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance without charge as the **Insurers** require.
- 11.5 Whilst this insurance shall remain fully operative in the event of a change in the constitution of the **Insured**, notice shall be given as soon as reasonably possible of any change in the Principals, Partners, Members or Directors or in the legal constitution of the **Insured** and the **Insured** shall supply such further information as the **Insurers** may require for reassessment of the risk.
- 11.6 The interpretation and enforcement of the terms, Conditions and Exclusions of this Policy (and any phrase or word contained herein) shall be in accordance with the law of the Republic of South Africa whose courts shall have jurisdiction to the exclusion of the courts of any other country.
- 11.7 The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear such specific meaning wherever it may appear.
- 11.8 The **Insurers** may at any time pay to the **Insured** in connection with any claim or series of claims under this Policy to which the **Limit of Indemnity** applies the amount of such limit (after deduction of any amounts already paid) or any lesser amount for which such claim or claims can be settled and upon such payment being made the **Insurers** shall relinquish the conduct and control of and be under no further liability in connection with such claim or claims notwithstanding the fact that the **Insured** has been only partially reimbursed for their loss due to the amount of any **Deductible** payable in terms hereof.
- 11.9 Where this Policy has been extended to include dishonest acts or omissions of any person treated as the **Insured**, in respect of claims arising from such dishonesty, the **Insured** shall assist **Insurers** to take all possible action to sue for and obtain reimbursement from such person and any money or other property held by the **Insured** which, but for such dishonesty, would be due to such person shall, to the extent allowable in law, be deducted from the **Insured's** loss.
- 11.10 All recoveries made in respect of any claim under this Policy shall be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:
- a) the **Insured** shall first be reimbursed for the amount by which their liability in respect of such claim exceeded the amount of indemnity provided by the Policy;
 - b) the **Insurers** shall then be reimbursed for the amount of their liability under the Policy in respect of such claim;
 - c) any remaining amount shall be applied towards the amount of the **Deductible** borne by the **Insured** in respect of such claim.

- 11.11 Where the Premium is provisionally based on the **Insured's** estimates, the **Insured** shall keep accurate records and declare and make payment for all additional and late-joining members on at the least a quarterly basis if not more frequently.
- 11.12 If indemnity is sought under this Policy by any fraudulent means :
 a) all benefit in respect of such claim shall be forfeited;
 b) **Insurers** may cancel the Policy with immediate effect by notice in writing to the last known address of the **Insured**.
- 11.13 If the Limit of Indemnity is increased during the **Period of Insurance**, the liability of the **Insurers** in respect of claims made against the **Insured** or for circumstances notified, or which should have been notified, to the **Insurers** prior to such increase, shall not exceed the **Limit of Indemnity** applicable prior to such increase.
- 11.14 Whenever this Policy provides notice to be given to the **Insurers** via the **Insured** Broker such notice shall be given to :

CFP BROKERS CC

Sweet Thorn on Beyers
 Block C, Ground Floor
 61 Bosbok Road
 Randpark Ridge
 2169
 South Africa

P.O. BOX 1964
 BROMHOF
 2154

Telephone: (011) 794-6848 / 794-7770 / 794-7768

Facsimile: 086 553 5547

E-mail: noleen@cfpbrokers.co.za or kristy@cfpbrokers.co.za

Noleen handles all claims and HPCSA complaints at CFP Brokers. Please therefore address all claim/HPCSA related enquiries/notifications to Noleen.

11.15 **PROOF OF MEMBERSHIP**

In the event of a claim, the Association/Society will provide proof that the member is a paid-up member of such Association/Society.

This will not apply where the **Insured** is acting in their official capacity or volunteers for the Association/Society.

12. **SPECIAL EXTENSIONS**

The following Extensions:

- a) apply, provide always that the total liability of the **Insurers** is not increased beyond that which would have applied in the absence of such Extensions;
- b) are subject otherwise to the terms, Exclusions, Conditions and limitations of the Policy.

12.1 **ADDITIONAL REPORTING PERIOD**

In the event of and with effect from the retirement or ceasing to practice as a Registered Healthcare Practitioner in South Africa, the **Insured**, and in the event of death of the **Insured**, the **Insured's** executor on behalf of the **Insured's** Estate, is granted an additional period of sixty (60) months (hereinafter referred to as the Additional Reporting Period) to identify circumstances in connection with work performed during the currency of this Policy that may give rise to a claim for indemnity in terms of this Policy, or any HPCSA complaints, regardless of the nature thereof, and provided that:-

- a) **the Additional Reporting Period**
- i) is not granted should the **Insured's** license or right to practice have been revoked, suspended or surrendered or should any prior breach of this Policy by the **Insured** or by the **Insured's** executor have occurred;
 - ii) is subject otherwise to all the terms, Exclusions and Conditions of this Policy;
 - iii) shall not apply to claims made against the **Insured** by reason of any indemnifiable circumstances prior to the commencement date of the Additional Reporting Period;
 - iv) shall, notwithstanding the stated sixty (60) months period, terminate immediately at the commencement date thereof should insurance be obtained by the **Insured** replacing in whole or in part the insurance afforded by this Policy. (This will not apply where The **Insured** obtains insurance in any country outside of South Africa to cover professional duties rendered in any country outside of South Africa);
- b) **the Insurer's** total liability in respect of all claims made during the final Period of Insurance and all circumstances identified during the Additional Reporting Period shall in no event exceed the Limit of Indemnity as stated in the Schedule which applied immediately prior to commencement of the Additional Reporting Period.

12.2 **DEFAMATION**

Insurers may indemnify the **Insured** in respect of claims arising out of defamation by the **Insured**. The **Insurers** may elect not to indemnify the **Insured** where the circumstances of the alleged defamation lead them to believe that the **Insured** acted with malicious intention. The onus will be upon the **Insured**, if **Insurers** elect not to indemnify the **Insured** for this reason, to prove that they did not act with malicious intention.

12.3 **BREACH OF CONFIDENTIALITY**

Insurers will indemnify the **Insured** in respect of claims first made against the **Insured** during the **Period of Insurance** arising out of:

- a) the actual or alleged breach of Protection of Personal Information Act 2013 as amended from time to time and regulations thereunder arising out of or in the course of Business provided that the **Claim** is notified to the **Insurer** during the **Period of Insurance**.
- b) Unintentional breach of trust or unintentional breach of patient confidentiality

12.4 **COURT/INQUIRY ATTENDANCE COSTS**

This policy will reimburse the **Insured** up to R2,000 per day or part thereof that the **Insured** is required by **Insurer's** legal counsel to be in attendance at court, or required to be in attendance at an inquiry of the HPCSA, limited to a maximum of R10,000 per **Insured** policy period, for reasonable costs incurred with the prior written consent of the **Insurers** necessitated by the **Insured's** and/or their employees attendance at court or an inquest or inquiry or in respect of the **Insured's** loss of income as the result of attendance at court or an inquest or an inquiry.