



2022 MALPRACTICE INSURANCE

Policy Terms and Conditions

Policy Number 8934500



MALPRACTICE POLICY TERMS AND CONDITIONS

ARTICLE 1 INSURING AGREEMENT

1.1 Insurer's Obligations

The Insurer will pay all amounts in excess of the deductible amount stated in the Memorandum of Insurance applicable to each claim for which the Insured is legally liable or for which the Insured is determined to have assumed liability under contract, for compensatory damages sustained by any person arising out of malpractice, error or omission in providing or failing to provide professional services:

- (a) in the practice of Dentistry by the Insured or any person for whose acts or omissions the Insured is legally responsible, or
- (b) in the performance by the Insured or any person for whose acts or omissions the Insured is legally responsible of Dental Services in the office of or under the direction or supervision of a Dentist.

1.2 Insurer's Liability

In order for the Insurer to be liable:

- (a) a claim for damages must be made against the Insured within the Period of Insurance and reported to the Insurer in accordance with Article 7, and the act or omission giving rise to such claim must have occurred either:
 - (i) during the Period of Insurance, or
 - (ii) during a period in which the Insured was covered under a Predecessor Policy; or
- (b) the Insured must:
 - (i) have notified the Insurer during the Period of Insurance of circumstances that may reasonably be expected to give rise to a claim, and
 - (ii) not have reasonably been aware of such circumstances prior to the Period of Insurance.

The Insurer will also provide coverage for claims which arise from circumstances described in Section 7.1.

A claim or series of claims consequent upon a single negligent act, single negligent error or single negligent omission shall be deemed to be one claim regardless of the number of persons who sustain damages. All such claims shall be deemed to have been made on the date of the first claim (or on the day that the Insured first notifies the Insurer if this date precedes the date of the first claim) of the claims series.

ARTICLE 2 ELIGIBILITY FOR INSURANCE

2.1 Practicing Status Coverage

An individual is eligible for Practicing Status coverage if he or she is in one of the following categories:

- (a) a Dentist who is licensed or possesses a certificate to practice Dentistry in a province or territory of Canada (other than the Provinces of Ontario, Quebec or Alberta);
- (b) a dental hygienist, certified dental assistant or dental nurse, who is employed by, or under contract to, a Dentist who is licensed or possesses a certificate to practice Dentistry in a province or territory of Canada (other than the Province of Quebec);
or
- (c) a dental therapist who is employed by and under the direct supervision of a Dentist who is licensed or possesses a certificate to practice Dentistry in a province or territory of Canada (other than the Province of Quebec);

and has been approved by the Insurer.

2.2 Non-Practicing Status Coverage

An individual is eligible for Non-Practicing Status coverage if he or she is a Dentist described in Section 2.1(a) who, at the time of an event described in Section 2.2(a), 2.2(b), 2.2(c), 2.2(d), or 2.2(e) was insured with Practicing Status coverage and who:

- (a) voluntarily and completely retires from the practice of Dentistry and surrenders his or her license to practice Dentistry;
- (b) moves to Ontario, Quebec or Alberta and surrenders his or her license to practice Dentistry in all other provinces and territories of Canada;
- (c) moves to another country and/or surrenders his or her license to practice Dentistry in all provinces and territories of Canada;
- (d) becomes disabled as a result of sickness (including treatment for drug or alcohol abuse), injury or complications due to pregnancy and is, as a result, unable to perform the whole of the duties of the practice of Dentistry, and surrenders his or her license to practice Dentistry in all provinces and territories of Canada; or
- (e) otherwise voluntarily surrenders his or her license to practice Dentistry in all provinces and territories of Canada.

The estate of any person described in Section 2.1 who was insured with Practicing Status coverage on the date of his or her death is eligible to continue the deceased's coverage as Non-Practicing Status coverage.

If an Insured with Practicing Status coverage or his or her legal representative declares in writing to the Insurer that the Insured has satisfied one of the conditions set out in Section 2.2(a), 2.2(b), 2.2(c), 2.2(d) or 2.2(e) or that the Insured has died, the Insured will continue to be covered as an Insured with Non-Practicing Status coverage under this Policy and the limit of liability and the deductible set out in his or her Memorandum of Insurance on the date of the event described above will continue to apply until the earlier of:

- (i) the end of the event described above, and
- (ii) the date the Insurer ceases to be the insurer for malpractice liability insurance for the Program.

The Named Insured's Non-Practicing Status coverage under this Policy will only apply to acts or omissions which occur while the Named Insured is:

- (i) licensed to practice Dentistry or to perform Dental Services, and
- (ii) insured with Practicing Status coverage.

Each Memorandum of Insurance issued to an Insured who is covered by these provisions will include the words "Non-Practicing Status".

2.3 Extended Coverage

An individual qualifies for Extended Coverage if he or she satisfies all of the following conditions:

- (a) he or she is a Dentist who is currently or was formerly licensed to practice Dentistry in a Canadian province or territory other than Ontario, Quebec or Alberta;
- (b) he or she does not have Practicing Status or Non-Practicing Status coverage; and
- (c) he or she does not have any other malpractice liability insurance coverage.

ARTICLE 3
INSURED UNDER POLICY

3.1 Insured

The Insured is:

- (a) a Named Insured identified in the Memorandum of Insurance, if the Named Insured has Practicing or Non-Practicing Status coverage, or is an individual who qualifies for Extended Coverage as described in Section 2.3;
- (b) any interest owned, controlled or operated by the Named Insured or the individual described in Section 3.1(a);
- (c) any present or former partner, officer, director, employee, student, professional associate or shareholder of the Named Insured or the individual described in Section 3.1(a) with respect to acts performed, including any failure or omission to act, on behalf of the Named Insured or the individual described in Section 3.1(a), respectively;
- (d) any present or former partner of the Named Insured or the individual described in Section 3.1(a) with respect to liability arising from the partnership; and
- (e) any volunteer chairside assistant who is not an employee of the Named Insured, who is acting under the direct supervision of the Named Insured when the Named Insured is engaged in the practice of Dentistry, outside of his or her offices, for volunteer purposes.

ARTICLE 4
PERIOD OF INSURANCE

4.1 When Coverage Begins

- (a) The effective date of coverage for the initial Period of Insurance for Practicing and Non-Practicing Status Coverage is shown on the Memorandum of Insurance issued to the Named Insured.
- (b) The effective date of coverage for the initial Period of Insurance for Extended Coverage is the later of:
 - (i) January 1, 2022 at 12:01:01 A.M. Eastern Standard Time; and
 - (ii) the date on which the Insured qualifies for Extended Coverage under this Policy.

4.2 When the Period of Insurance Ends

The Period of Insurance will end on the date set out on the Memorandum of Insurance issued to the Named Insured.

ARTICLE 5 EXCLUSIONS

5.1 Exclusions

This Policy does not apply to:

(a) Criminal acts

- any criminal act committed by or at the direction of the Insured.

(b) Acts committed without a professional license and other illegal or improper acts

- injury arising out of the knowing violation of any law or ordinance, including, without limitation, any acts committed by the Insured after his or her license to practice Dentistry, or if the Insured is not a Dentist his or her professional license, has been surrendered, canceled, suspended or revoked;
- injury arising out of any acts committed by the Insured which are prohibited by restrictions placed on the Insured by his or her applicable regulatory authority.

(c) Acts committed outside the scope of practice or for other than a charitable purpose by limited licensee

- injury arising out of any act committed or omission made by an Insured whose license or certificate is limited to the practice of Dentistry for volunteer purposes, if made while rendering any treatment or procedure in consideration of any fee or compensation;
- injury arising out of any acts committed by an Insured whose license or certificate is limited to the practice of Dentistry for volunteer purposes if such acts are prohibited by his or her applicable regulatory authority through restrictions placed on the Insured or on the class of license or certificate held by the Insured.

(d) Acts committed outside the scope of practice for Dental Students

- injury arising out of any acts committed by an Insured whose license or certificate is limited to the practice of Dentistry as a student who is enrolled in an accredited Canadian school or faculty of dentistry as contemplated in Section 10.1(c)(ii) if such acts are prohibited by his or her applicable regulatory authority through restrictions placed on the Insured or on the class of license or certificate held by the Insured.

(e) **Unauthorized acts by Dental Hygienists, Dental Assistants, Dental Therapists or Dental Nurses**

- any claims arising out of malpractice, error or omission committed by a dental hygienist, dental assistant, dental therapist or dental nurse:
 - (A) while knowingly acting outside of the supervision requirements imposed by any applicable health discipline legislation, or
 - (B) while such person is not directed or supervised by a Dentist;
- any claims arising out of malpractice, error or omission committed by a dental hygienist, dental assistant, dental therapist or dental nurse while performing Dental Services other than in the office of a Dentist unless such Dental Services are performed under the direction or supervision of a Dentist.

(f) **Intoxicated Practitioner Exclusion**

- Any service performed by a person who is intoxicated or impaired by legal or illegal substances.

(g) **Abuse**

- Claims or actions arising directly or indirectly from Abuse committed or alleged to have been committed by an Insured, including the transmission of disease arising out of any act of Abuse;
- Claims or actions based on the Insured's practices of employee hiring, acceptance of volunteer workers or supervision or retention of any person alleged to have committed Abuse;
- Claims or actions alleging knowledge by an Insured of, or failure to report, the alleged Abuse to the appropriate authority(ies).

As used in this Exclusion, "**Abuse**" means any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse;

"**Claims**" or "**actions**" include those:

- based on your practices of employee hiring, acceptance of volunteer workers or supervision or retention of any person alleged to have committed abuse; and
- alleging knowledge by an Insured of, or failure to report, the alleged abuse to the appropriate authorities.

(h) **Nuclear risks**

- liability imposed by or arising under any nuclear liability act, law or statute, or any law amendatory thereof;
- Bodily Injury or Property Damage with respect to which an Insured under this Policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
- Bodily Injury or Property Damage resulting directly or indirectly from the Nuclear Energy Hazard arising from:
 - (A) the ownership, maintenance, operation or use of a Nuclear Facility by or on behalf of an Insured;
 - (B) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any Nuclear Facility;
 - (C) the possession, consumption, use, handling, disposal or transportation of Fissionable Substances or other Radioactive Material (except radioactive isotopes, away from a Nuclear Facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this Exclusion:

- (i) “**Bodily Injury**” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time;
- (ii) “**Fissionable Substance**” means any substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission;
- (iii) “**Nuclear Energy Hazard**” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- (iv) “**Nuclear Facility**” means:
 - (A) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;

- (B) any equipment or device designed or used for
 - i. separating the isotopes of plutonium, thorium and uranium or any one or more of them,
 - ii. processing or utilizing spent fuel, or
 - iii. handling, processing or packaging waste;
 - (C) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if any at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (D) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations;
- (v) **“Property Damage”** means:
- (A) Physical injury to tangible property, including all resulting loss of use of that property; or
 - (B) Loss of use of tangible property that is not physically injured;
- (vi) **“Radioactive Material”** means:
- (A) neptunium, plutonium, thorium and uranium, including their derivatives and compounds; or
 - (B) radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute or any law amending such act, law or statute as being:
 - i. prescribed substances capable of releasing atomic energy; or
 - ii. required for the application, production or use of atomic energy.

(i) **Claims of which Insured had prior knowledge**

- claims the Insured:
 - (A) had knowledge of, or
 - (B) could reasonably have foreseen would likely arise from the services provided, prior to the date of commencement of the initial Period of Insurance.

(j) **Reimbursement for fees**

- claims for reimbursement of fees paid by the Claimant to the Insured for Dentistry or Dental Services.

(k) **Cyber and Data Exclusion**

- any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
 - (A) Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident;
 - (B) loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of such Data; or
 - (C) complaint, investigation, or proceedings arising directly or indirectly from a breach or alleged breach of the *Personal Information Protection and Electronic Documents Act*, Canada's Anti-Spam Legislation, any Privacy Act, or any similar Canadian federal, provincial or territorial statute or regulation,

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

In the event any portion of this Section 5.1(k) is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

As used in this Section 5.1(k), “**Computer System**” means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party;

“Cyber Act” means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System;

“Cyber Incident” means:

(i) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or

(ii) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

“Data” means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

(l) **Terrorism**

- liability arising directly or indirectly, in whole or in part, out of Terrorism or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate Terrorism. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim.

As used in this Exclusion, **“Terrorism”** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s), or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

(m) **Asbestos**

- liability, whether actual or alleged, in respect of any loss or losses, damage, cost or expense directly or indirectly caused by, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim, loss, damage, cost or expense.

(n) **Fungi and Fungal Exclusion**

- liability for:
 - (A) any other cost, loss or expense incurred by others, arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any Fungi or Spores however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of Fungi or Spores;
 - (B) any supervision, instructions, recommendation, warnings, or advice given, or which should have been given in connection with the testing for, assessment, monitoring, removal, abatement, mitigation, treatment, detoxification or neutralization of, Fungi or Spores; or
 - (C) any obligation, whether imposed under statute or common law, to share damages with, to pay or repay someone else who must pay damages because of the claim, damage or activity referred to above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the claim, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the claim, damage, expenses or costs.

As used in this Exclusion,

- (i) “**Fungi**” includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, wet or dry rot, or bacteria whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any fungi or Spores or resultant mycotoxins, allergens, or pathogens.
- (ii) “**Spores**” includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any Fungi.

(o) **War**

- loss or damage caused by war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military power.

(p) **Services provided in Ontario, Quebec or Alberta**

- claims or liability arising out of professional services provided in the Provinces of Ontario, Quebec or Alberta, but this exclusion does not apply to dental hygienists, dental assistants, dental nurses and dental therapists in Ontario, Quebec and Alberta who have purchased this Malpractice coverage.

(q) **Services provided outside Canada**

- (i) claims or liability arising out of professional services provided anywhere in the world outside Canada where there is an applicable government statute regulating the practice of Dentistry.

ARTICLE 6
CONDITIONS OF COVERAGE

6.1 Premium

(a) **Practicing Status Coverage**

The amount payable by the Named Insured for Practicing Status coverage is set out in the invoice issued to the Named Insured. Such amount is due on or before the due date for payment set out in the invoice.

(b) **Non-Practicing Status Coverage**

If an Insured with Practicing Status coverage or his or her legal representative declares in writing to the Insurer that any of the events described in Section 2.2 has occurred, the Insurer will waive further premium charges and will refund to the Insured his or her pro rata share of the premium from the date such event occurred. Premiums will be waived until the earlier of:

- (i) the end of the event referred to above, and
- (ii) the date the Insurer ceases to be the insurer for malpractice liability insurance for the Program.

(c) **Extended Coverage**

There is no additional premium payable for the Extended Coverage.

6.2 Deductible

(a) **Practicing and Non-Practicing Status Coverage**

The amount of the deductible is set out in the Memorandum of Insurance. The deductible is not applicable to an Insured with Non-Practicing Status coverage who has voluntarily and completely retired from the practice of his or her profession or who has died.

(b) **Extended Coverage**

There is a deductible amount of \$5,000 for each claim.

(c) **General**

The deductible amount does not apply to expenses incurred by the Insurer to investigate and defend any claim. The terms of this Policy including those with respect to notice of claim and the Insurer's right to defend and make settlement of such claims apply irrespective of the application of the deductible amount.

6.3 Insurer's Limit of Liability

(a) Practicing and Non-Practicing Status Coverage

The Insurer's limit of liability for each claim and its annual aggregate limit of liability are set out in the Memorandum of Insurance issued to the Named Insured. The annual aggregate limit is the most the Insurer will pay for all claims made against the Insured in any one calendar year.

(b) Extended Coverage

The Insurer's limit of liability for each claim is \$2,000,000. The Insurer's annual aggregate limit of liability is \$2,000,000. The annual aggregate limit is the most the Insurer will pay for all claims made against the Insured in any one calendar year.

6.4 Amount of partners' limits of liability

If a claim is made against an Insured who has Practicing Status or Non-Practicing Status coverage based solely on the laws of partnership and more than one Policy provides coverage for such claim, the amount the Insurer will pay with respect to that claim under all applicable Policies will not exceed the highest per claim limit shown in any one Policy.

If a claim arises against an Insured who has Extended Coverage and also arises against a partner of the Insured who has such Extended Coverage based solely on the laws of partnership, the amount the Insurer will pay with respect to that claim will not exceed \$2,000,000.

If a claim arises against an Insured and his or her partner(s), one or more of whom has Practicing Status or Non-Practicing Status coverage and one or more of whom has Extended Coverage, and the claim against the partner(s) is based solely on the laws of partnership, the amount the Insurer will pay with respect to that claim will not exceed the highest per claim limit shown in any one applicable Policy.

6.5 Insurer's limit of liability - professional corporations

If a claim is made against a professional corporation which is an additional Named Insured under a Policy issued to a Dentist with Practicing Status or Non-Practicing Status coverage and more than one Policy provides coverage for such claim, the amount the Insurer will pay with respect to that claim under all applicable Policies will not exceed the highest per claim limit shown in any one Policy.

6.6 COVID-19 / Coronavirus conditions precedent to liability

It is a condition precedent to coverage under this Policy that the Insured's respective and applicable provincial or territorial health authority guidelines / advice / regulations, including also those of the regulatory college in the provincial or territorial jurisdiction where the applicable dental treatment or services were rendered are fully adhered to by the Insured (including sub-contractors, agency persons, and those acting at the direction of and/or on behalf of the Insured or whom constitute an Insured under this Policy) with respect to the control, restriction, isolation, treatment, assessment, management, prevention of:

- i) Coronavirus disease (COVID-19);
- ii) Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2); and
- iii) any mutation or variation of SARS-CoV-2.

6.7 Action by one Insured against another Insured

The insurance provided by this Policy applies with respect to any claim or action brought by any one Insured against another Insured in the same manner and to the same extent as if a separate Policy had been issued to each Insured. Under this Article 6, any breach under this Section by any one Insured will not affect the protection given by this Policy to any other Insured.

6.8 Territory

This Malpractice coverage applies to acts or omissions committed by the Insured:

- (a) in Canada (subject to the exclusion of professional services provided by Dentists in Ontario, Quebec and Alberta);
- (b) in Haiti arising out of volunteer practices approved by the Insurer. The Insurer will indemnify the Insured for any losses covered by this Policy and occurring in this territory; and
- (c) anywhere else in the world where there is no applicable government statute regulating the practice of Dentistry. However, the Insurer is only liable for actions first brought in Canada to recover for acts or omissions by the Insured in the course of what would be considered the practice of Dentistry if such acts or omissions took place in Canada.

ARTICLE 7
NOTICE TO INSURER OF CLAIMS

7.1 Duty to Notify Insurer

The Insured must notify the Insurer as soon as possible after:

- (a) a circumstance occurs which may reasonably be expected to give rise to a claim under this Policy, or
- (b) he or she receives a claim under this Policy, including a demand, notice, summons or other process.

If, during the Period of Insurance, the Insured becomes aware of any circumstances which may subsequently give rise to a claim against the Insured under this Policy, and the Insured notifies the Insurer of such circumstances during the Period of Insurance, any claim made against the Insured resulting from such circumstances will be deemed to be made during the Period of Insurance, regardless of when such claim is actually made.

7.2 Notice to the Insurer

The Insured must give notice of a claim or potential claim under this Policy to the Insurer or its adjusters, or to CDSPI. The notice given must contain all available information relating to the circumstances giving rise to the claim. If a claim is made against the Insured, the Insured must immediately forward to the Insurer copies of all demands, notices or pleadings received from the other party by the Insured or his or her representative.

ARTICLE 8
CONDUCT OF LEGAL PROCEEDINGS

8.1 Insurer's Duty to Defend Actions

The Insurer will defend all claims, actions or other proceedings brought against the Insured at any time demanding damages arising from any circumstances or claims covered by the terms of this Policy, even if such circumstances, claims, actions or other proceedings are groundless, false or fraudulent.

All claims arising out of the same wrongful act or inter-related wrongful act shall be deemed one claim such that only one limit is available.

The Insurer may settle such claims as it deems expedient. However, the Insurer will not admit liability on behalf of the Insured without the consent of the Insured.

The Insurer has the sole right to and shall appoint legal counsel while carrying out its duty to defend.

8.2 Payments by the Insurer

If an action is brought against the Insured seeking damages for which the Insured is covered under this Policy, except for the amount of the deductible, the Insurer will:

- (a) pay all judgments issued against the Insured and protect the Insured against any executions resulting from such judgments;
- (b) pay:
 - (i) all expenses which the Insurer incurs in investigating, negotiating and defending any such claim or proceeding;
 - (ii) all costs taxed against the Insured in any such proceeding;
 - (iii) all premiums on bonds to release attachments and appeal bonds up to the Insurer's limit of liability under the Insured's coverage, provided that the Insurer does not have any obligation to apply for or provide such bonds;
 - (iv) all interest accruing on the judgment from the date of the judgment until the date the Insurer pays its share of the judgment;
 - (v) for any expenses the Insured incurs to provide immediate medical or surgical relief to others at the time they sustain bodily injury;
 - (vi) for all reasonable expenses incurred at the Insurer's request; and

- (vii) to reimburse the Insured if the Insured is required to attend at an examination for discovery, pre-trial, trial or appeal, to a maximum of \$400 a day and \$1,600 for each claim, provided that this reimbursement will not apply to dental hygienists, certified dental assistants, dental nurses or dental therapists unless the malpractice insurance is in their own name.

The Insurer will pay the amounts described in Sections 8.2(b)(ii) and 8.2(b)(iii) in addition to its limit of liability under this Policy.

If the Insurer is prevented by law or otherwise from defending the Insured in a claim, action or other proceeding, it will reimburse the Insured for defense costs and expenses incurred with the consent of the Insurer.

8.3 Payment of Deductible

The Insurer may pay all or part of the deductible amount in order to achieve a settlement of a claim. The Insured must immediately reimburse the Insurer for such amount.

8.4 Assistance of Insured

The Insured must cooperate with the Insurer, and if the Insurer requests, assist in:

- (a) making settlements;
- (b) the conduct of actions; and
- (c) enforcing any right of contribution or indemnity of any other person who may be liable to the Insured because of any injury or damage for which coverage is provided under this Policy.

The Insured must attend hearings and trials and assist in collecting and giving evidence and obtaining the attendance of witnesses.

8.5 Assumption of liability by Insured

The Insured will not voluntarily make any payment, assume any obligation or incur any expenses other than for first aid to others at the time of accident, except at his or her own cost. By the Insured assuming liability, it is of the discretion of the Insurer if coverage will respond or if the obligations of the Insurer are void. However, any activities carried out under the authority of any provincial or local society grievance committee or in compliance with the patient care management guidelines of the Insured's provincial licensing body are permitted without prejudice to the Insured's insurance coverage.

8.6 Other insurance

(a) Practicing Status and Non-Practicing Status Coverage

If the Insured has other collectible insurance with another insurer covering a loss also covered by the Insured's Practicing Status or Non-Practicing Status coverage under this Policy, the Insured may collect under this coverage only after the limits of the other insurance have been exhausted. It is understood and agreed that coverage under this Policy is strictly excess to such other insurance.

(b) Extended Coverage

If other collectible insurance with any other insurer is available to any Insured who has Extended Coverage, such Insured has no coverage under this Policy.

8.7 Action by the Insured against the Insurer

The Insured can only bring an action against the Insurer if:

- (a) the Insured has fully complied with all the terms of this Policy;
- (b) the amount the Insured is obligated to pay has been finally determined either by:
 - (i) judgment of a court following trial, or
 - (ii) written agreement of the Insured, the claimant and the Insurer; and
- (c) such action is brought within one year of the date of such judgment or written agreement.

Nothing in this Policy gives any person or organization any right to join the Insurer as a co-defendant of the Insured in any action to determine the Insured's liability.

8.8 Actions against Insurer

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act* (for actions or proceedings governed by the laws of Alberta, British Columbia, and Manitoba), the *Limitations Act, 2002* (for actions or proceedings governed by the laws of Ontario), or other applicable legislation.

8.9 Subrogation

If the Insurer makes any payment on behalf of the Insured, it will acquire all of the Insured's rights of recovery with respect to the amount of such payment against any third party, unless the amount of settlement exceeds the aggregate of:

- (a) any amounts paid by the Insurer under the Policy; and
- (b) any other valid insurance which is collectible by the Insured.

In that case, the Insured retains all of its rights of recovery until it has received such excess amount. The Insured must execute all required documents and take all necessary actions in order to secure such rights of recovery.

ARTICLE 9 GENERAL TERMS

9.1 Inspection

The Insurer has the right to inspect the Insured's premises and operations at any reasonable time during the Period of Insurance. The Insurer does not waive any of its rights under this Policy by either inspecting or not inspecting such premises and operations.

9.2 Notification of third parties of malpractice claims

The Insurer may provide information on claims made under this Policy to CDSPI and, if requested, to the licensing body of the appropriate province or territory, except where prohibited by law.

9.3 Waiver

Terms of this Policy may only be waived by a written agreement between the Insured and the Insurer. Knowledge of or notice to any person or agent does not cause a waiver or change of any term of this Policy.

9.4 Conformity With Legislation

If any term, condition, exclusion or limitation of this Policy conflicts with applicable provincial legislation, such term, condition, exclusion or limitation is amended to conform to such legislation. All other terms, conditions, exclusions and limitations of this Policy are unchanged.

9.5 Sanctions

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

9.6 Assignment by Insured

The Insured may only assign his or her rights under this Policy if such an assignment is consented to in writing by the Insurer, unless such assignment is a change of title by succession, death or proceedings under any bankruptcy act.

9.7 Currency

All limits of insurance, premiums, deductibles and other amounts set out in this Policy and the related Memorandum of Insurance and Premium Tables are in Canadian Currency.

9.8 Bankruptcy of Insured

The Insurer remains liable for all of its obligations to the Insured under this Policy if the Insured or the Insured's estate becomes bankrupt or insolvent.

9.9 Headings

Headings are included for reference only and shall not affect the construction or interpretation of this Policy.

9.10 Changes To Policy

This Policy contains all the agreements between the Insured and the Insurer concerning the insurance provided. The Policy terms can be amended or waived only by an endorsement issued by the Insurer to form part of the Policy.

ARTICLE 10 DEFINITIONS

10.1 Definitions

The following definitions are for terms which appear with initial capitals when they are used.

- (a) “**Dental Services**” means any treatment or procedure or any other act included as part of the permitted scope of practice of a person who is licensed or certified as a dental hygienist, certified dental assistant, registered nurse or dental therapist under the provisions of the applicable provincial or territorial statute regulating the provision of such dental services in the relevant jurisdiction.
- (b) “**Dentist**” means a person who is licensed or possesses a certificate to practice Dentistry in a province or territory of Canada, and “**Dentist**” includes, if specifically permitted under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction:
 - (i) a person whose license or certificate is limited to the practice of dentistry for volunteer purposes; and
 - (ii) a student, in full time attendance at an accredited undergraduate dental educational program at a university in Canada who is participating in a program sanctioned by such university while acting under the supervision of a person who is licensed or possesses a certificate to practice Dentistry in the province or territory of Canada where the program is undertaken.
- (c) “**Dentistry**” means any treatment or procedure or any other act included as part of the permitted scope of practice of a person who is licensed or possesses a certificate to engage in the practice of dentistry as a Dentist under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction, and “**Dentistry**” includes:
 - (i) any treatment or procedure within the permitted scope of practice for charitable purposes when delivered by a person whose license or certificate is limited to the practice of dentistry for volunteer purposes if it is specifically permitted under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction; and
 - (ii) any treatment or procedure within the permitted scope of practice of a student, who is enrolled in an accredited Canadian school or faculty of dentistry and acting as further described in the definition of “**Dentistry**”.
- (d) “**Extended Coverage**” means the coverage described in Section 2.3.
- (e) “**Insured**” has the meaning set out in Section 3.1.

- (f) **“Memorandum of Insurance”** means the document setting out the details of malpractice insurance coverage issued to an Insured which forms the contract of insurance between the Insurer and the Insured
- (g) **“Named Insured”** means any Insured named on the Memorandum of Insurance.
- (h) **“Non-Practicing Status coverage”** means the coverage described in Section 2.2.
- (i) **“Period of Insurance”** for Insureds with Practicing Status or Non-Practicing Status coverage is the time during which the Policy is in force, subject to cancellation by either the Insurer or the Insured during the term of coverage. **“Period of Insurance”** for Insureds with Extended Coverage is the time during which the Insurer provides Extended Coverage under this Policy.
- (j) **“Policy”** means this malpractice insurance policy.
- (k) **“Practicing Status coverage”** means the coverage described in Section 2.1.
- (l) **“Predecessor Policy”** means a malpractice insurance policy issued by Aviva Insurance Company of Canada to the Insured pursuant to an agreement with CDSPI;
- (m) **“Program”** means Canadian Dentists’ Insurance Program.

STATUTORY CONDITIONS

[Must provide in BC, AB, SK and MB]

Property of others

1. The insurer is not liable for loss or damage to property owned by a person other than the insured unless

- (a) otherwise specifically stated in the contract, or
- (b) the interest of the insured in that property is stated in the contract.

Change of interest

2. The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

Material change in risk

3. (1) The insured must promptly give notice in writing to the insurer or its agent of a change that is

- (a) material to the risk, and
- (b) within the control and knowledge of the insured.

(2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.

(3) If an insurer or its agent is notified of a change under subparagraph (1) of this condition, the insurer may

- (a) terminate the contract in accordance with Statutory Condition 4, or
- (b) notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within 15 days after receipt of the notice, pay to the insurer an additional premium specified in the notice.

(4) If the insured fails to pay an additional premium when required to do so under subparagraph (3)(b) of this condition, the contract is terminated at that time and Statutory Condition 4 (2)(a) applies in respect of the unearned portion of the premium.

Termination of insurance

4. (1) The contract may be terminated

(a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 15 days' written notice of termination personally delivered, or

(b) by the insured at any time on request.

(2) If the contract is terminated by the insurer,

(a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract, and

(b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.

(3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time specified in the contract, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the contract.

(4) The 15 day period referred to in subparagraph (1) (a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

Notice

5. (1) Written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.

(2) Written notice to the insured may be personally delivered at, or sent by registered mail addressed to, the insured's last known address as provided to the insurer by the insured.



You can reach CDSPI Advisory Services Inc. at:

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insurance@cdspi.com

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Accessible formats and communication supports are available upon request.
Visit cdspi.com/accessibility for more information.