

natmedIPEDIA

**NATMED'S GLOSSARY OF
MEDICAL NEGLIGENCE AND
INSURANCE TERMS**

THIRD EDITION: July 2019

**BROKERS FOR OVER 24 YEARS.
LEADERS IN MEDICAL MALPRACTICE
AND PROFESSIONAL INDEMNITY COVER.**



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Dear Reader

Welcome to the Third Edition of the Natmedipedia, Natmed's Glossary of Medical Negligence and Insurance Terms.

This is neither a legal nor a medical dictionary. It is a plain language glossary and guide to common medical negligence and insurance terms for healthcare practitioners, healthcare facility operators and medical negligence insurers and brokers. This is one of Natmed's contributions to the health and insurance industries, supporting our popular "What If?" series, our "Medical Defence Review", "Ten Takeaways" series, Natmed's Annual Survey of Medical Malpractice Judgments of 2018 and Natmed's Understanding Medical Malpractice Insurance in South Africa.

This Glossary draws on Natmed's long and distinguished history, expertise and experience in the medical negligence insurance industry.

Comments are very welcome as are suggestions for other words and phrases, for incorporation into the Natmedipedia, to legal@natmed.mobi.

Stephen Kellerman

Natmed Medical Defence Founder

July 2019



A

ACCIDENT

An event that is sudden, unusual, unplanned and unforeseen, and occurs without intention.

ACCOUCHEUR

A qualified person who assists at a birth and who is registered with the South African Nursing Council. This includes a midwife, but is a term often used to refer to a male midwife.

ADDENDUM

An addendum is an addition or attachment to the contract of insurance. It modifies the main contract by expanding or restricting the insurance cover provided. See also “endorsement”.

ADDITIONAL INSURED

Someone other than the named insured who is also protected under the policy.

ADJUSTMENT OF PREMIUM

A premium is calculated for specific risk profiles, so if your circumstances or risk profile changes, the premium may need to be recalculated and adjusted.

ADMISSION OF GUILT FINE

If a healthcare practitioner admits guilt based on a complaint made to the HPCSA, the HPCSA may impose a fine for the conduct complained of.

ADMISSION OF LIABILITY

Conduct or statements that indicate that you are responsible for damage or harm could be an admission of liability. Many insurance policies include provisions about not admitting liability, guilt or fault without consent of your insurer, as this could jeopardise your insurance cover. Read our article *“When sorry seems to be the hardest word”* for more on why healthcare practitioners need to be careful about how they convey expressions of compassion and commiseration.

ADVANCE DIRECTIVE

A written document by a patient setting out in advance how they would like their medical care (treatment and non-treatment) to be dealt with. Advance directives include living wills, powers of attorney, information regarding organ donation and other written instructions which are given in advance to cater for a time when the patient is unable to express their decision. Patients are also allowed to mandate someone else to make decisions on their behalf. Also see “Living Will” (an Advance Directive may be more comprehensive than a Living Will) and “Do Not Resuscitate Order”.

ADVERSE OR UNUSUAL EVENT

An unusual medical problem or an unexpected side-effect of medical treatment, which may give rise to a claim.



ADVOCATE

A legal representative who usually appears in court or tribunals to present cases. They specialise in court appearances and are used in combination with an attorney. They are also referred to as “counsel”.

AESTHETICIAN

A healthcare professional who provides services related to the beautification of the human body including services related to skin care, weight loss and hair removal. Cosmetic medicine (unlike cosmetic surgery) is not confined to a specific medical speciality, so for example, dermatologists, dentists, and other doctors might provide these services. Beauticians who work in salons also provide aesthetic services but they cannot, for example, administer injections with medication (such as botox) even if it is for aesthetic purposes.

Aesthetic and Anti-aging Medicine Society of South Africa (AAMSSA)

AFFIDAVIT

A sworn statement made on oath or affirmation. It is signed and confirmed as made under oath or affirmation by a commissioner of oaths.

AGE OF MAJORITY CLAIMS

A claim that is made after a person reaches the age of majority (becomes a legal adult at age 18), in a case where the claim arose when the person was still a child.

AGENT

Someone who has authority to act on another person's behalf. For example, brokers are often agents for the insured. At times, the broker may be an agent for the insurer as well. In some cases, employees may be seen as agents of their employers. See also “vicarious liability”.

AGGRAVATED DAMAGES

Normally, South African law only recognises damages that are compensatory and not punitive. This means that damages are meant to cover actual past and future loss and general damages (aggravated damages would involve an element of punishment). However, sometimes mention of punitive damages is made in South African law, for example in the Protection of Personal Information Act. Aggravated damages are different to Constitutional Damages.

AGGRAVATION (IN AGGRAVATION)

If you do something to make a bad situation worse.

AGGREGATE

All of your claims in one period (for example one year) must fall within the indemnity limit. The aggregate is the total of all of those claims and cannot exceed the indemnity limit amount.

Allergy Society of South Africa (ALLSA)

ALLIED HEALTHCARE PROFESSIONAL

People who work in professions that aim to promote health and prevent illness, and who are not regulated under the Health Professions Act, Nursing Act, Dental Technicians Act or Pharmacy Act. Allied health professions include Ayurveda, Chinese Medicine and Acupuncture, Chiropractic, Homeopathy, Naturopathy, Osteopathy, Phytotherapy, Therapeutic Aromatherapy, Therapeutic Massage Therapy, Therapeutic Reflexology and Unani-Tibb. Practitioners are regulated by the Allied Health Professions Council of South Africa.

Allied Health Professions Council of South Africa

ALTERNATIVE DISPUTE RESOLUTION

There is often more than one way to deal with a claim when it arises. This could include mediation, arbitration or court action or a combination of all of those.



APPEAL

If you dispute a decision of a court or tribunal, you may be able to take the decision on appeal, so that it can be reconsidered. You could appeal the entire judgment or just the damages award or sentence.

APPELLANT

The person or party who launches an appeal.

APPLICATION FOR DISCHARGE

In the context of an HPCSA inquiry, the respondent can apply for a complaint to be dismissed or discharged without further ado if they feel that a proper case was not made out.

APPORTIONMENT

The manner in which the loss is divided if more than one insurer covers the same loss. Defendants to a claim may also by agreement apportion liability amongst themselves, or a court may apportion liability.

ARBITRATION

Disputes do not always have to be resolved by a court, and arbitration (also known as an “alternative dispute resolution” mechanism) is another way of resolving a matter. An arbitrator, instead of a judge, makes the decision. Some agreements oblige you to arbitrate before you can approach a court. Parties can agree to arbitrate as well. Arbitration is more informal than a court process but in practice it may look and feel quite similar to a court case. An arbitration agreement governs the proceedings, and the parties are bound by the decision of the arbitrator, although appeals from these decisions are often agreed. For more information on arbitration, you can visit the website of the *Arbitration Foundation of Southern Africa (AFSA)* or *Association of Arbitrators (Southern Africa)*.

Association of Plastic, Reconstructive and Aesthetic Surgeons of Southern Africa (APRASSA)

Association of Surgeons of South Africa (ASSA)

ATTORNEY

A qualified legal representative, also known as a lawyer. Attorneys are also sometimes referred to as legal counsel (although advocates are also called “counsel”).

AUXILIARY MIDWIFE

A person educated and qualified to provide elementary health care. They carry out basic midwifery procedures and take care of patients on a less specialized level under the supervision of a registered midwife. An Auxiliary Midwife must be registered with the South African Nursing Council.

AUXILIARY NURSE

A person educated and qualified to provide elementary nursing care. They carry out basic nursing procedures and take care of patients on a less specialized level under the supervision of a registered nurse. An Auxiliary Nurse must be registered with the South African Nursing Council.

AVERAGE

If you have assets insurance and you are under-insured, an average clause means that your benefit may be reduced proportionally (by the percentage that you are underinsured).

AVOIDED

Some circumstances allow an insurer to avoid a policy, which means that it will be as if the policy never existed. For example, a material misrepresentation by the insured could lead to avoidance of a policy. Avoiding a policy is different to cancelling a policy.

Cancellation is different because the policy did exist, but is terminated, so different rights and obligations arise from cancellation.

B



BENEFITS

The payment you receive for your loss, that is covered by the insurance policy. This could include, for example, payment of damages to claimants, or legal fees incurred in defending a claim covered by your policy.

BINDER SERVICES

An intermediary who performs binder services “binds” the insurer. Depending on what type of intermediary they are, they may be able to enter into, renew or vary policies, determine policy wording, benefits and premiums and settle or reject claims on behalf of the insurer.

BROKER/BROKERAGE

An intermediary who helps to get the policy in place and is often the go-between between insurer and insured is known as a broker. The broker is often the first port of call for all questions relating to the policy. Brokers also generally assist the insured in claiming under the policy. The broker is often confused with the insurer, but they are not the same thing.

BUSINESS RESCUE

A company that is financially distressed can be put in business rescue (on application to court) in order to try to save the company from liquidation.



CANCEL

A policy can be cancelled or terminated for various reasons. If a policy is cancelled, there may still be rights and obligations that exist after the cancellation. Medical malpractice policies are usually non-cancellable.

Cardiac Arrhythmia Society of Southern Africa (CASSA)

CARE, CUSTODY AND CONTROL

Property that you do not own is in your care, custody or control, if you are safekeeping the property, are responsible for it or have power over it, for example machinery or premises that you are renting. You could be liable for loss to property (or caused by property) that is in your care, custody or control.

CASE LAW

Law based on previous decisions of high courts and appeal courts. The judgments of higher courts must generally be followed by lower courts.

CAUSE OF ACTION

A set of facts that are sufficient to enable a plaintiff to bring a claim against a defendant is known as the cause of action.

CERTIFIED COPY

A copy of an original document that is confirmed by a commissioner of oaths (stamped and signed), to be a true copy of the original. It is not a mere photocopy. The commissioner of oaths has to see the original document before he or she can certify the copy.

CHALCID (PTY) LTD

Part of the Natmed Group, Chalcid is an outsourced service provider to the insurance market and beyond and, amongst other things, provides a third-party claims handling service to insurers and insureds with regard to medical malpractice claims.

CHARGE SHEET

In the context of an HPCSA inquiry, a charge sheet sets out the complaints that are the subject of the inquiry.

CLAIMANT

The person complaining, or lodging a claim, against you.

CLAIMANT'S COSTS

A reference to the costs the claimant incurs in pursuing a claim, for example attorney's fees. Many professional liability policies provide cover for these costs, if you are found to be liable for them.



CLAIM/S

A request or demand for compensation by someone who has suffered loss is often referred to as a claim. For example, a patient may claim against a healthcare practitioner or facility for alleged medical malpractice that resulted in harm.

Claims could include written notices, demands, lawsuits and arbitration proceedings.

In an insurance context, the insured makes a claim to its insurer when a loss that is covered under the policy occurs.

CLAIMS ADMINISTRATOR / CLAIMS ADJUSTER

When a loss that is covered under an insurance policy occurs, you could make a claim to your insurer for compensation. The validity of the claim needs to be assessed before the claim can be paid. Insurers often use claims administrators to handle the claims process, instead of investigating each claim itself. A broker could act as a claims administrator, or a separate entity could be appointed as the claims administrator. See also “loss adjuster”.

CLAIMS HISTORY

An insured has to disclose all previous claims to their insurer. This history of past claims helps the insurer to assess the risk and set the premium.

CLAIMS-MADE POLICY

These types of policies cover claims first brought against you, the insured, while the policy is in force (and during any extended reporting period). See also “Occurrence-based policy”.

CLAIMS RESOLUTION MECHANISMS

There is often more than one way to deal with a claim when it arises. This could include mediation, arbitration or court action or a combination of all of those.

CLINICAL ASSOCIATE

A healthcare practitioner who has a Bachelor of Clinical Medical Practice, registered with the Health Professions Council of South Africa, and competent to provide any medical service within their scope of practice that is delegated to them by the supervising medical practitioner.

They work under the supervision of a medical doctor, and are able to assess and manage patient care, perform routine medical procedures, assist in theatre and perform routine surgical procedures. This is a fairly new category of mid-level health care provider in South Africa.

CME/CPD

CME refers to Continuing Medical Education and CPD refers to Continual Professional Development. Depending on the regulations in force at the time, healthcare professionals may be legally obligated to engage in CME and CPD to keep their skills up to date.

CO-PAYMENT

This is the first amount that you have to pay before your insurance kicks in. Also called an excess, deductible or a “first amount payable”, it is the portion of your claim that is not covered by the insurance policy. It could be a flat rate or a percentage of your cover.

COMMISSION

Brokers and other intermediaries who are involved in the insurance policy and who provide services to the insured or insurer are often paid by way of commission (a percentage of the premium). The amount of commission is regulated and must be disclosed to you.



COMMISSIONER OF OATHS

A person authorised by law to verify and “commission” affidavits, which are statements made on oath or affirmation. They can also certify that copies of a document are true copies of an original. Examples of commissioners of oaths include attorneys, bank managers and chartered accountants, as well as some personnel at police stations.

COMMUNITY SERVICE PRACTITIONER (NURSING)

A person registered with the South African Nursing Council to perform community service at a public health facility in order to qualify and register as a professional nurse.

COMPENSATORY DAMAGES

Damages are intended to compensate for actual loss. It is usually a monetary amount awarded by a court.

COMPLAINANT

Someone who lodges a complaint against a health professional or organisation. It can be a natural or juristic person, or even a professional body.

COMPLAINT

When loss or harm occurs, an aggrieved complainant could lodge a formal complaint against you. For example, a complaint against a healthcare professional could be lodged with the HPCSA. Upon conviction, the HPCSA could impose penalties and restrictions on the healthcare professional. The HPCSA cannot award compensation to a complainant.

COMPULSORY INSURANCE

Some types of insurance are legally compulsory, for example Unemployment Insurance (UIF) or insurance related to the Road Accident Fund or the Compensation for Occupational Injuries and Diseases Act (worker’s compensation). If a loss is covered under this type of insurance, it is unlikely that another voluntary insurance policy will also cover the loss.

CONFIDENTIAL

The privacy of information that is confidential is protected by laws and rules of ethics. Healthcare practitioners have a duty of confidentiality to their patients, so they must keep their patient’s information private and secure. However, sometimes they may need to disclose information if ordered to do so in terms of the law. A breach of confidential information could lead to liability.

Confidential information is not the same as “privileged information”, which is more strictly protected by law, and usually relates to information shared between attorneys and their clients.

CONSENT

Patients have the right to be informed of medical procedures that they are advised to undergo and have the right to give permission for such procedures being performed and to refuse consent. See the definition of “informed consent” for more detail.

CONSTITUTIONAL COURT

The highest court of South Africa, this court only hears cases when a constitutional principle is involved. You can approach the Constitutional Court directly in some limited cases, but usually it hears cases on appeal only.

CONSTITUTIONAL DAMAGES

Awarded in cases where the courts rule that the current law on damages does not sufficiently provide for the loss, and where there is a reason motivated by constitutional principles why this extraordinary type of damages should be awarded. Courts generally award special or general damages, and very rarely resort to awarding constitutional damages.

CONSULTANT

A healthcare practitioner, registered with the HSPCA, who is a specialist working in the public sector and is not an intern, medical officer or registrar.



CONTRACT OF INSURANCE

Often referred to as the policy, this contract sets out the legal relationship between the insured and insurer (as stated on any schedule), when and what types of claims will be paid, and what the rights and obligations of the parties are.

The contract of insurance usually consists of the insured's quotation request, the quotation feedback, quotation acceptance, any accompanying details and declarations, as well as a schedule and policy wording. The information provided to the insurer or broker by the insured, such as claims history, as well as the terms of insurance, usually form the basis of the contract of insurance.

CONTRACTUAL LIABILITY

Liability arising out of a contract or agreement, whether written or oral. See also "delict".

CONVICTION

A decision of a court declaring someone guilty of a criminal offence is known as a conviction.

COPYRIGHT

The creator of an original work usually has exclusive rights to use and distribute that work. Copyright attaches automatically and does not need to be registered. Copyright attaches to this Glossary, for example.

Cosmetic Surgery Association South Africa (CSASA)

COUNSEL

Usually refers to an advocate but could also be referring to an attorney. Either or both.

COUNCIL FOR MEDICAL SCHEMES (CMS)

The regulatory body established by the Medical Schemes Act 1998, tasked with supervising private health financing through medical schemes.

COURT SYSTEM

The court system operates on a hierarchy. This Glossary contains brief explanations of the main courts. Other specialised courts, like the Labour Courts and Land Claims Courts, do exist, but are not mentioned here.

COVER / COVERAGE

The amount and types of risks that are covered by the policy.

COVERED CLAIMS / LOSSES

A claim that is covered (and not excluded) by the insurance policy. The insurer will pay benefits under the policy for these events.

COVER NOTE

A cover note provides temporary insurance while the formal policy of insurance is being finalised.

CPD

Continuing Professional Development. See the definition at "CME/CPD".

CURRENT INSURANCE PERIOD

The insurance period relating to the insurance policy currently in force.

CRIMINAL CONDUCT

Acts or omissions that are against the law and that amount to a crime, punishable by fine or imprisonment or both.

Critical Care Society of South Africa (CCSSA)



CROSS EXAMINATION

After a witness gives evidence (known as examination-in-chief), that witness may be asked questions by the opposing side. This is known as cross examination.

CROSS LIABILITIES

If more than one party is named in the contract of insurance as the insured, the contract of insurance could apply as though each was insured separately. However, the cover provided by the insurer to all parties will usually not exceed the aggregate indemnity limit.

CYBER AND PRIVACY COVER

Insurance cover related to infringements of privacy rights, breach of confidential information stored on the internet or on computers and other electronic devices, losses incurred from computer viruses or hackers and theft of electronic data, for example. This type of cover is usually not standard and would generally be added as an extension if need be.

DAMAGE

Damage means a loss or harm or injury to a person or property. Note that “damage” is not the same as “damages”, which has a different meaning (damages refer to the monetary claim for compensation when a loss occurs).

DAMAGES

The word “damages” refers to a monetary claim for compensation for loss or injury. It is not the plural of the word “damage” which has a different meaning (damage refers to the actual loss or harm caused). For example, a person has to pay damages for the damage that they negligently caused.

DATE OF ISSUE

The date that the policy is issued by the insurer, but this is not necessarily the effective date (when cover is in place). The effective date may be stated separately.

DECLARATION

The section of the policy that contains and confirms the insured’s details such as names, addresses, policy limits and other information.



DEDUCTIBLE

The first amount that you have to pay before your insurance kicks in. Also called an excess or a “first amount payable”, it is the portion of your claim that is not covered by the insurance policy. It could be a flat rate or a percentage of your cover.

DEFAMATION

Causing intentional harm to another’s reputation is known as defamation and can attract legal liability, for example damages or the order of an apology.

DEFENDANT

In a court case, the defendant is the party defending a claim for compensation which is made by the plaintiff (the party who suffered an alleged loss and who launched the case).

DEFENCE COSTS

The costs, fees and expenses incurred in defending a claim that is covered under the policy of insurance. This usually relates to attorney’s and expert’s fees.

DEFENSIVE MEDICINE

A situation in which healthcare practitioners perform potentially unnecessary treatment and tests or avoid high risk patients in an attempt to reduce their exposure to medical malpractice law suits. See our article on this topic.

DELIBERATE CONDUCT

An intentional act or omission. Losses or harm caused by deliberate conduct are often not covered by insurance.

DELICT / DELICTUAL LIABILITY

A civil wrong, giving rise to liability, independent of contract. See also “contractual liability”.

DEMAND

A complainant can demand compensation if they have suffered an alleged loss. A demand is often made in writing and could be a precursor to further legal action if the demand is not met. You must inform your insurer if a demand is made against you.

DEPONENT

A person signing an affidavit on oath or affirmation.

Dermatology Society of South Africa (DSSA)

DETERMINATION

In the context of an HPCSA inquiry, a determination is a decision of the HPCSA or one of its sub-committees, after it has investigated a complaint and heard from the parties.

DISCOVERY

Before a trial, the parties (usually the plaintiff and the defendant) have to share all documents relevant to the case. Discovery is a formal process in which each side must provide a list of relevant documents in their control and must confirm, via affidavit, that they have “discovered” all relevant documents. Even documents that the other side is not entitled to see (for example legally privileged documents) must be listed in the discovery affidavit.

DISCRETIONARY INDEMNITY

Medical negligence indemnity provided at the discretion of the provider, that is, not based on an insurance contract, but determined solely at the discretion of the provider. See also “Mutual Society”.

DISHONEST CONDUCT

Conduct that is deceitful but falls short of the legal standards required to prove fraud.



DOCUMENT

References to documents includes paper, electronic documents or any other format used to record information. These can include photographs, X-Rays, tracings and scans.

DOCTOR/PATIENT RELATIONSHIP

A consensual relationship in which a patient seeks treatment and agrees to be treated by a specific doctor, and the doctor agrees to treat that patient. The relationship may be established by conduct between the doctor and the patient and no specific formalities are required. Increasingly patients do now sign written contracts with their doctor.

DOUBLE INSURANCE

If more than one insurer insures the same loss, you have double insurance. Each insurer might pay only a portion of the claim, depending on how much cover they have provided and depending on what the other terms of the policies are.

There is no ban to holding double insurance, but you can only be indemnified to the limit of your loss. You cannot make a profit.

DO NOT RESUSCITATE ORDER (DNR)

This is a type of Advance Directive consisting of written instructions by the doctor in charge of a patient's care, instructing the health care team not to resuscitate the patient if he or she requires CPR. The DNR order is made by the senior doctor in charge of the patient's care, in consultation with the patient and the patient's family (if appropriate), and the relevant Ethics Committee (if necessary). The DNR must usually be written into the patient's clinical notes and must state the reason for the decision (which usually relates to the futility of CPR for the patient due to their underlying illness). DNRs should be reviewed regularly, to determine whether they are still appropriate or necessary. Such orders only apply to CPR and do not affect other treatments such as pain relief, medicines or nutrition.

DUTIES AND OBLIGATIONS

Something that a person is bound to perform. In an insurance context, both insured and insurer may have various obligations and duties towards each other based on their contract of insurance. In a medical context, healthcare practitioners have various obligations towards their patients.

DUTY OF CARE

Doctors are required to act with reasonable care and skill in dealing with patients. This duty of care is a legal obligation.

DUTY TO ACT

A healthcare practitioner may be obliged to provide emergency medical services to a patient in certain circumstances (for example, an injured road accident victim that the healthcare professional comes across). Whether the duty is legally binding depends on the circumstances, because South Africa does not have formal "Good Samaritan" laws (for example, the duty may not arise if helping the victim would legitimately expose the healthcare professional to danger or harm).

Ear, Nose and Throat Institute of Johannesburg

E

EFFECTIVE DATE

The date on which cover is in place and the protection of the policy goes into effect.

EMERGENCY MEDICAL TREATMENT

Medical treatment relating to an acute medical problem that can be alleviated by providing medical assistance (as opposed to a condition that does not require immediate and urgent medical intervention). No one may be refused emergency medical treatment. The Constitutional Court defines it as “a dramatic, sudden situation or event which is of passing nature in terms of time that can be cured through medical treatment”.

EMPLOYEE

Someone who works for you or assists you in conducting your business. There are specific legal definitions of employee relating to various laws (for example laws relating to basic conditions of employment) but in an insurance context and depending on your insurance policy wording, employees could include not only people who have contracts of employment with you, but also voluntary workers, nursing or other medical staff acting under your supervision and other people working under your control on your behalf.

EMPLOYEE LIABILITY

An employer may be liable for some of the harmful conduct of their employees, depending on whether the harmful conduct occurred while in the course and scope of employment. This is also known as “vicarious liability”.

EMPLOYER'S LIABILITY

Employers may be liable for damage or harm caused to their employees while the employee is performing work in the course and scope of their employment. Insurance policies can cover this, but they would usually exclude events for which other statutory cover exists, for example events falling under the Compensation for Occupation Injuries and Diseases Act (COIDA) or other worker's compensation schemes. This may be covered under an extension to an insurance policy.

END DATE

The day on which the insurance policy ends and typically renews on the following day.

ENDORSEMENT

A change to an existing policy that is in force, and could be an addition, deletion, special condition or other alteration to the policy (for example a premium holiday). Endorsements expand or restrict the cover provided and are recorded in an addendum to the policy. Also known as a “Rider”. See “Addendum” as well.



ERRORS AND OMISSIONS

Conduct, acts or the lack of action which causes harm to another. Professional liability insurance is often referred to as an errors and omissions policy, and it covers claims arising from professional negligence. It is also sometimes called malpractice insurance.

EVIDENCE CLAUSE

Clauses in the policy requiring the insured to cooperate and assist with any investigation of the claim by the insurer. This may include providing documents and meeting with the insurer or its agents.

EX GRATIA PAYMENT

A payment for which there is no legal basis or liability under the contract, but which is paid out of goodwill.

EXCESS

The first amount that you pay before your insurance kicks in. Also called a deductible or a “first amount payable”, it is the portion of your claim that is not covered by the insurance policy. It could be a flat rate or a percentage of your cover.

EXCLUSIONS

Events, risks or liabilities that are not insured. It may also be referred to as an “exception”.

EXECUTOR / EXECUTRIX

The person in charge of winding up a deceased estate is known as the executor or the executrix of the estate.

EXPLANATION

When the HPCSA informs you of a complaint, they ask for you to respond with an explanation, which is your version of events. A failure to respond to the letter of complaint with an explanation may be seen as contempt of the council, which could lead to a penalty. If you want to exercise your right to remain silent, this must at least be communicated to the council in writing.

Explanations submitted to the HPCSA may be used in evidence against you and may be placed before the complainant by the HPCSA.

EXTENDED REPORTING PERIODS

There are specific notification periods in insurance contracts within which you must notify a claim in order to be covered. But you or your representative can apply in writing for an extended reporting period, sometimes on payment of an additional premium and subject to underwriting criteria. This may allow the extension of the reporting period to beyond the expiration of the policy and is also known as “Tail Coverage”.

EXTENSIONS

Most insurance policies cover a range of basic risks. However, many policies give various options for extended cover for specific and more unusual risks, and these are included as extensions. An extension is optional extra cover for specific additional risks, for example product liability cover in a professional liability policy. An additional premium may be payable.

Faculty of Consulting Physicians of South Africa (FCPSA)

F

FATALITY INQUIRY

An investigation into the circumstances of a person's/patient's death is known as a fatality inquiry and is also referred to as an inquest in some cases. It is governed by the Inquest Act and is usually conducted when the death is due to unnatural causes. An unnatural cause includes dying during surgery.

Federation of Infectious Diseases Societies of Southern Africa (FIDSSA)

FINANCIAL SERVICES BOARD (FSB)

The FSB was the regulator for the financial services industry, including insurers, brokers and other intermediaries. The FSB is now the *Financial Sector Conduct Authority*.

FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA)

The FSCA regulates the conduct of financial services providers including insurers, brokers and other intermediaries. The prudential authority is now the South African Reserve Bank

FINANCIAL SERVICES PROVIDER (FSP)

Provides advice or intermediary services in relation to a financial product. They are regulated by law. Insurance policies qualify as regulated financial products. Examples of FSPs include insurers and some brokers.

FINDING

A decision, usually of a tribunal or disciplinary body, is called a finding. In contrast, a decision of a court is called a judgment.

FINE OR PENALTY

A monetary sum that can be imposed by a regulator on a healthcare provider found guilty of unprofessional conduct.

FORFEITURE OF BENEFITS

Insurance policies often make provision for benefits to be given up (forfeited) if the terms of the policy are breached.

FRAUD

A form of dishonesty that extends beyond the run-of-the-mill white lie and has a specific legal definition. Fraud is an unlawful misrepresentation, where there is intention to defraud someone, and it must cause actual or potential prejudice to the other party.

FUTILE TREATMENT

Treatment that is not beneficial to the patient because it offers no reasonable hope of recovery or improvement or from which the patient is permanently unable to experience any value. If futile treatment is withdrawn, palliative care is still provided.



G

GAP COVER

Insurance that patients buy to meet any shortfall in medical expenses that their medical aid does not cover.

Gastroenterology Foundation of Sub-Saharan Africa (GFSSA)

GENERAL DAMAGES

An amount claimed or awarded as compensation for a range of losses that may not be as easily quantifiable as medical expenses or loss of earnings (which fall under the category of “special damages”). The loss cannot be easily measured or valued because it is intangible. General damages are determined by courts on a flexible approach with previous rulings being used as a guide. General damages could be claimed for losses such as pain and suffering and loss of amenities of life.

GENERAL NURSE

A person who is qualified and competent to practise general nursing, and who is registered **with the South African Nursing Council**.

General Practitioners Management Group (GPMG)

GOOD FAITH

The relationship between insurer and insured has often been referred to as one of good faith. The phrase implies that the relationship between insurer and insured is based on trust and proper disclosures. You may sometimes see the phrase “utmost good faith” floating around the insurance industry but the phrase has no meaning in law, because there are *no degrees of good faith*. You can act in good faith or less than good faith (but you cannot be more honest than honest!)

GOOD STANDING

You are in good standing with your professional regulator if you have complied with all of your professional obligations and do not have any restrictions on or suspensions of your professional licences and registration.

GRACE PERIOD

A specified period after a premium payment is due but has not yet been paid, during which cover continues as long as the insured makes payment within the specific time period.

GROUND OF JUSTIFICATION

An explanation or reason that justifies or defends doing something which would otherwise be considered unlawful. For example, in a medical context, you cannot treat a patient without the patient’s consent, but grounds of justification for proceeding with treatment without consent include emergencies (see “Emergency Medical Treatment”) or necessity.

H

HAZARD

A condition that increases the chance of a loss occurring.

HEALTH CARE PROVIDER

A person who provides healthcare services in terms of any law (including healthcare practitioners, nurses, dentists and pharmacists).

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA (HPCSA)

This body has been created in terms of the Health Professions Act and regulates the health profession. They have a range of powers and functions, for example, they can hold disciplinary hearings and impose fines and penalties. The HPCSA is not only a regulator, it has separate boards for different professions registered with it.

Hepato-Pancreatic-Biliary Association of South Africa (HPBASA)

HIGH COURTS

High Courts hear medium to large sized claims, and judgments are handed down by judges. The High Courts have an unlimited monetary jurisdiction, therefore big claims can be heard by High Courts, but they generally will not hear smaller claims that would be better dealt with by Magistrate's Courts. High Courts have specified geographical jurisdiction.

HPCSA INQUIRY

The HPCSA can conduct inquiries and preliminary inquiries, which could involve gathering evidence in written or oral form, before making a decision based on a complaint.

I

ILLEGAL CONDUCT

Acts or omissions that are against the law.

IMPERITIA CULPAE ADNUMERATUR

According to this rule, a medical practitioner who engages in treatment that requires a certain degree of skill, training, knowledge and experience, while he or she is aware of the fact that he or she does not possess such skill, training, knowledge and experience, may be liable to the patient where that lack of skill causes the patient injury. The phrase translates to mean “want of skill is considered negligence”. This maxim only applies to professionals who profess to have a skill but do not.

IMPLIED CONSENT

Where a patient’s cooperation implies their consent to treatment. An example is where a patient holds out his or her arm in order for the medical practitioner to take a blood pressure measurement or to put in an intravenous line. See also “Tacit Agreement”.

IN CAMERA

This is a Latin term that means “in private”. It is usually used with relation to hearings or giving evidence in a private forum, not open to the public.

INCEPTION DATE

The date when the insurance cover kicks in and is active. The start date of the policy.

INDEMNITY

An indemnity provides compensation for damages, losses incurred or a liability you are exposed to and often refers to professional liability insurance.

INDEMNITY COVER

Cover that provides compensation for damages or loss, often related to professional liability.

INDEMNITY LIMITS

The total amount of cover available to you or your practice, under the specific policy in force, in the event of any covered claim made against you.

The amount must satisfy your specific risk, indemnity and business needs. This means that your chosen annual indemnity should provide for, at least, expected and unexpected claims, legal fees, expenses, interest, costs and VAT.

You can usually find the specific amount in the policy schedule. It is the maximum amount of the insurer’s liability under the policy. Sub-limits are usually part of (and not in addition to) the limit of indemnity.

INDEPENDENT CONTRACTOR

Someone who works for you under contract but is not an employee. Different labour laws apply to independent contractors as opposed to employees. See also “locum”.



INFORMED CONSENT

Patients have the right to be informed of medical procedures that they are advised to undergo and have the right to give permission for such procedures being performed or to refuse treatment. Informed consent is when the patient has the required capacity and enough information to make an informed decision freely and without influence; that is, they actually understand the medical procedure and its possible risks and consequences and consent to it. Providing patients with sufficient, understandable information and not withholding any information is vital to informed consent. For detailed information on informed consent, *see our article on the subject* and section 6 of the National Health Act.

INSURABLE RISKS

A risk that is insurable because it is definable and measurable (an unlimited risk of liability, for example, may be uninsurable). You can only insure risks that occur accidentally (you cannot insure against intentional wrongdoings).

Innovative Pharmaceutical Association South Africa (IPASA)

INSURANCE

A contract between an insurer and insured in terms of which the insurer agrees to indemnify the insured for defined risks in exchange for payment of a premium.

INSURED

The person or entity covered by the insurance policy. This could include employees if they are acting in the course and scope of their employment and directors and officers of a company.

INSURER

A regulated company registered to provide insurance. They pay out when a covered claim is made under an insurance policy. They often don't deal directly with their clients (the insured person who takes out the policy of insurance) and use intermediaries, for example insurance brokers like Natmed.

INTENTIONAL CONDUCT

A deliberate act or omission. Losses or harm caused by deliberate or intentional conduct are often not covered by insurance.

INTERMEDIARY

A third party who assists the insurer and the insured in the conclusion and administration of the policy. See also "broker".

INTERMEDIARY SERVICES

An act (excluding advice) that leads to someone buying a financial product, like an insurance policy. When a broker sells a policy to a client, she is providing an intermediary service. Intermediary services also include related services like administering the insurance policy, settling claims, or collecting or administering premiums.

INQUEST

An investigation into the cause of death in unnatural circumstances.

INQUIRY

An investigation into a charge or complaint. An inquiry is usually held by a professional board or body when they receive a complaint.



J

JOINT LIABILITY

Where two or more parties are liable for loss or damages, they share the liability and are therefore jointly liable.

JOINTLY AND SEVERALLY LIABLE

If parties are jointly and severally liable, they share the liability for loss but a claimant can pursue the entire awarded claim against any one of the parties individually (severally). The party who settles the claim can in turn recover from the other parties separately.

JURISDICTION

The power to make decisions and judgments is known as jurisdiction. Certain courts and tribunals have limited jurisdiction depending on geographical area, the nature of a claim and the quantum of the damages sought.

L

LAPSED POLICY

A policy that has expired because premiums have not been paid.

LEARNER MIDWIFE

A person undergoing education or training in midwifery and registered with the South African Nursing Council as a learner midwife.

LEARNER NURSE

A person undergoing education or training in nursing and registered with the South African Nursing Council as a learner nurse.

LEGISLATION

Legislation is an Act of Parliament, also known as a statute. They are laws made by Parliament, for example the Health Professions Act.

LETTER OF COMPLAINT

A complainant (usually an aggrieved patient) submits a letter of complaint to the HPCSA, detailing the alleged harm caused by a healthcare professional. This sets in motion the HPCSA inquiry process.

LETTER OF DEMAND

A complainant will often send a letter of demand, demanding payment or compensation or an admission of liability, for an act or omission that they allege has caused them damage or harm. This is a first step before court action is pursued. If the demand is not met, the complainant may move on to more formal processes, like launching a court case or complaining to another disciplinary body or tribunal.

LIABILITY

A legal responsibility for a loss, debt or damage is a liability.

LIABILITY INSURANCE

A policy covering the policyholder's legal liability to third parties for injuries to them or loss or damage caused to their property. Liability insurance could also include liability for pure economic loss.

LIFE EXPECTANCY

The average time that a specific person is expected to live is known as life expectancy. In a claim for loss or damages, life expectancy of the claimant may affect the quantum of damages, especially future damages.

LIMIT OF LIABILITY

In an insurance context, this is the maximum amount that the insurer is liable to pay to the insured under the policy.



LITIGANTS

The parties involved in a legal action.

LITIGATION

Formal court action, which usually starts with a summons (sometimes a Notice of Motion) and ends with a court case and a judgment (if the case is not settled before judgment). Other methods of complaint resolution are often used before formal court action is pursued, because litigation is time consuming and expensive. For example, mediation, arbitration, and approaching regulatory tribunals are alternatives to litigation.

LIVING WILL

A type of advance directive by a patient declaring that they wish to refuse medical treatment in the form of being kept alive by artificial means. The directive is given in advance to cater for a time when they are unable to express their decision. A living will is not the same as a power of attorney. Living wills are currently not fully regulated in South Africa. Also see “Advance Directive”.

LOCALITY RULE

According to this rule the question can be posed whether the standard of care and skill required of a medical practitioner may be affected by the “locality” where he or she is practicing (for example a rural or urban setting). The rule is not often applied in modern day medical malpractice cases, although the specific circumstances of each case must be considered and location may be one relevant factor, although it is not decisive on its own.

LOCUM

A person who temporarily fills the position of another. Many doctors and other healthcare professionals make use of locums when they need to be away from their practice. The locum steps in and runs the practice on the doctor’s behalf. Most locums are independent contractors and not employees (but this depends on the contract between the primary healthcare professional and the locum). Whether the locum is covered under the primary healthcare professional’s liability insurance must be checked. The Latin phrase “locum tenens” means “to hold the place of”.

LOSS ADJUSTER

Insurers often appoint loss adjusters to investigate insurance claims. Loss adjusters are also (more rarely) referred to as loss assessors. The loss adjuster will investigate the facts of the claim to verify whether an insured loss has occurred and also to provide their assessment on the quantum or amount of the claim. Loss adjusters need to make a fair assessment of the claim, even if they are employed by the insurer. See also “claims administrator”.

LOSS OF DOCUMENTS

Some insurance policies provide cover for replacement or repair of unintentionally lost documents. Examples of these are documents which are destroyed, damaged, lost or mislaid and which, after diligent search or effort, cannot be found or recovered.

LOSS OF EARNINGS

If a person suffers harm or injury that results in them not being able to work, apart from claiming damages for losses relating to their actual injury (for example their medical expenses) they can also claim for their related loss of earnings, past and future, due to being unable to work. This is different from loss of earning capacity in that it is a figure that can be more readily quantified by proving actual earnings lost.



M

LOSS OF EARNING CAPACITY

If an injury results in a person's earning capacity being diminished, they can claim for loss of earning capacity. A comparison of the person's salary before the injury and after the injury could be used as a guide. Actuarial calculations can also be used to calculate this type of loss, for example in the case where a minor is injured, and their future prospects for earning and employment are limited due to the harm or damage suffered.

LOSS OF SUPPORT

A claim by a dependent of a deceased person for loss of financial support (that the deceased was actually providing to the claimant or was legally obliged to provide for the claimant). For example, if a patient dies due to medical negligence, their dependents may still claim for loss of support.

MAGISTRATE'S COURTS

A Magistrate's court is a formal court that can hear small to medium sized claims. The adjudicator is called a magistrate, and not a judge.

District Magistrate's Courts:

District Magistrate's Courts have a monetary jurisdiction of R200 000 and have a smaller geographical jurisdiction than Regional Magistrate's Courts.

Regional Magistrate's Courts:

Regional Magistrate's Courts have a monetary jurisdiction of R400 000 and have a larger geographical jurisdiction than District Magistrate's Courts.

MALICIOUS CONDUCT

Going beyond deliberate or intentional acts, malicious conduct contains an element of ill-will and malice. Losses caused by malicious conduct are not covered by insurance.

MALPRACTICE / MEDICAL MALPRACTICE

A negligent act or omission by a healthcare professional in the course and scope of their practice that causes harm to the patient is known as medical malpractice. See "negligence".



MANDATED INTERMEDIARY

Has permission from its clients to perform intermediary services. For example, a broker who is a mandated intermediary can move a book of insurance business between insurers, without first having to get permission from each policyholder. However, mandated intermediaries generally only act on behalf of the insured and not the insurer. Intermediaries are regulated by the Financial Services Conduct Authority.

MATERIAL FACTS

Material facts in relation to the insurance policy and risks must be disclosed to the insurer. This allows insurers to accurately assess risks and set premiums. A fact is material if a reasonable, prudent person would consider that the particular information should be correctly disclosed so that the insurer can form its own view as to the effect of that information on the assessment of the relevant risk. If you are in any doubt as to whether any fact is material, then you should probably disclose it.

MEDIATION

When a dispute arises, parties may choose to have the dispute mediated (or they may be obliged in terms of a contract or law to first resort to mediation) before taking other steps to resolve their issue. Mediation is a more informal process than court or arbitration proceedings and aims to create a result that is mutually agreed upon by the parties. A mediator is appointed to help the parties come to agreement to resolve the dispute.

MEDICAL DEFENCE UNION

A mutual society that provides discretionary benefits as part of a members' subscription fee. Discretionary benefits mean that the society gets to decide whether to indemnify a claim or not, without the member having recourse to a contract of insurance if a claim is rejected. It is not an insurer and is not regulated as such in South Africa

MEDICAL PROTECTION SOCIETY

Similar to a Medical Defence Union, Medical Protection Society provides discretionary benefits in respect of a medical malpractice claim and is not an insurer.

MEDICAL SCHEME / MEDICAL AID

Funds private healthcare costs for their members. They are generally non-profit organisations that are regulated by the Medical Schemes Act. They are a type of insurer.

Members' funds are pooled and used to pay for their healthcare expenses, depending on the rules of the specific medical aid and the type of plan that the member has chosen. Medical aids provide a sort of group insurance for patients, to pay for their usual medical expenses. Therefore it is different to medical malpractice insurance which healthcare practitioners and other healthcare professionals need to cover medical malpractice complaints and claims.

MIDWIFE

A person who is qualified and competent to independently practise midwifery, and who is registered **with the South African Nursing Council**. Care of patients relates to pregnancy, labour and postpartum health.

MINOR TRANSGRESSION

In the context of an HPCSA inquiry, a minor transgression is conduct that is found to be unprofessional but not serious enough to warrant the holding of a formal professional conduct inquiry.

MISREPRESENTATION

An incorrect, incomplete or false statement made in the application for insurance. Misrepresentations may cause the policy to be avoided, if the misrepresentation was material to the assessment of the risk (that is, the insurer would not have issued the policy or would have issued the policy on different terms).



N

MITIGATION

Steps taken to reduce the effects of a loss (trying to make a bad situation better) is known as mitigation of loss. For example, if damage occurs, but you take action to minimise further damage, that would be a step taken in mitigation of loss.

MUTUAL SOCIETY

A mutual society is an organisation that pools member funds to cover specified expenses. Mutual societies can pool funds to cover risks usually associated with insurance, but mutual societies are generally not insurers (insurers have to be registered under the Insurance Act and are strictly regulated). Organisations like MPS (Medical Protection Society) are mutual societies, and because MPS is not an insurer, any indemnity provided is discretionary. They are also generally non-profit societies. See also “Discretionary Indemnity”.

NATMED

Natmed Medical Defence (Pty) Ltd is a specialist insurance broker, with over 18 years of experience in the medical malpractice insurance industry. Natmed provides tailored advice and expert broking services to healthcare professionals in both private practice and government practice.

For more information about Natmed, visit www.MedicalDefence.mobi

NATMED GROUP

The Natmed Group is made up of three companies, Natmed Medical Defence (Pty) Ltd, National Medical Financial Services (Pty) Ltd and Chalcid (Pty) Ltd.

NATIONAL MEDICAL FINANCIAL SERVICES (PTY) LTD (NMFS)

Part of the Natmed Group, NMFS is a wholesale broker, providing healthcare facilities with indemnity cover, including professional indemnity (PI), public liability and employees liability cover, NMFS trades as Natmed Financial Services.

NECESSITY (AS A DEFENCE)

If a medical practitioner acts without a patient’s express consent, their actions may be justified on the basis of necessity. For example, there was an urgent need for medical intervention or some other sort of medical emergency required the medical practitioner to act in the best interest of the patient or in the best interests of society.



NEGLIGENCE

The legal test for negligence is whether a reasonable person would foresee that their actions may cause harm and would take reasonable steps to guard against that harm, but the negligent person fails to take those steps to avoid the harm. You do not have to have an intention to cause harm to be negligent – you just have to be able to foresee potential harm and do nothing to prevent it (an omission). Negligence is covered by insurance policies but intentional or malicious conduct rarely is.

Neurological Association of South Africa (NASA)

NEVER EVENTS

Medical errors that should (in theory) never occur. This could include events like surgery on the wrong side, surgical instruments being left in a patient's body, administration of the wrong blood type, serious medication errors, use of contaminated medication and artificial insemination with the wrong donor sperm or wrong egg.

NON-DISCRETIONARY COVER

Cover is determined by the terms of the contract of insurance and it is not merely within the discretion of the insurer whether to accept or reject a claim (in contrast to benefits provided at the discretion of a mutual society). The policy wording sets out how and when an insurer will accept or reject a claim.

NON-ECONOMIC DAMAGES

See definition of "General Damages".

NON-INSURABLE RISK

A risk that cannot be insured because the chance of loss is too high or because the risk cannot be measured. Also referred to as an "Uninsurable Risk".

NON-MANDATED INTERMEDIARY

If an intermediary is required to obtain permission from the insurer or insured to perform certain intermediary services, they are known as a non-mandated intermediary. A non-mandated intermediary can have a relationship with both the insured and insurer. Intermediaries acting on behalf of insurers or insureds are regulated by the Financial Services Conduct Authority.

NOTICE OF CANCELLATION

Written notice by the insurer or the insured of their intention to cancel the policy. The policy will usually contain requirements for the notice of cancellation to be valid.

NOTICE OF LOSS

Notice by the insured to the insurer that a loss has occurred. There are usually requirements for when and how such notice must be given. Policies also often require notice of potential losses (that is, before the loss has occurred but when the insured becomes aware that a loss may arise, for example, when a patient complains but has not yet lodged a formal complaint).



NOTIFICATION (REPORTING OBLIGATIONS)

You must generally notify the insurer of all facts, circumstances, incidents, or events which may give rise to a claim, when they happen, including possible future claims. Notification must be done whether you consider yourself to be at fault or not.

For example, all incidents that involve complications, are out of the ordinary or are adverse in any way, must be notified. Requests for records, letters of demand, complaints, claims, writs, summons or other legal processes received must be notified.

Possible future claims could arise from a request for medical records, a complaint, a suggestion of fault, refusal to pay an account, a difficult meeting with a patient, or anything else that suggests that an event may give rise to a claim.

Natmed offers a 24-hour online portal at www.Natmed.mobi allowing clients to register an incident or claim at any time.

Nursing Education Association (NEA)

NURSE WITH LIMITED REGISTRATION

A person registered to practice nursing under conditions imposed by the nursing council, due to the fact that they do not have all the requisite qualifications to be fully registered as a nurse. The registration is for a limited period as well, not exceeding three years.

OCCURRENCE

An event that results in an insured loss. There is often a time delay between when an occurrence happens and when a claim is made (for example the time between when a patient is injured and when the patient launches court action). This time delay is relevant to the difference between “Claims-made” policies and “Occurrence-based” policies.

OCCURRENCE-BASED POLICY

The policy covers you for events that occurred during the period of insurance irrespective of when the claim is made or filed.

OFFER

To form a contract, one party needs to make an offer that the other party accepts. In an insurance context, it is usually the insurer who makes the offer to the insured by providing a quotation for insurance which can then be accepted by the insured.

OFFICE OF HEALTH STANDARDS (OHSC) COMPLAINT

A complaint made in terms of the National Health Act to the Office of Health Standards, which is a regulatory body monitoring compliance with health standards by healthcare service providers and facilities.



OMBUDSMAN

Someone officially appointed to investigate complaints. The HPCSA can refer matters to an ombudsman for investigation, if the transgression complained of is minor. The ombud must first try to mediate the matter, or refer cases that can't be resolved for preliminary investigation to the HPCSA.

ONCE AND FOR ALL RULE

A person who claims for damages sustained as a result of injuries negligently caused by someone else has a single, indivisible cause of action and must sue for all damages in one claim. They must sue "once and for all" and cannot bring separate, piecemeal claims.

OPERATIVE CLAUSE

The clause in the policy setting out the insurer's obligations and under what circumstances they will make payment.

Ophthalmological Society of South Africa (OSSA)

OUTSOURCE AGREEMENT

An insurer may outsource some of its functions to a third party, and it will enter into an outsource agreement to do this. Outsource agreements do not deal with binder services (like selling policies) but other functions, for example IT services.

OUTSTANDING PREMIUMS

Premiums due but not yet received. See also "Grace Period".

Paediatric and Adolescent Endocrinology and Diabetes Society (Paeds-SA)

Paediatric Management Group (PMG)

Paediatric Neurology and Development Association of Southern Africa (PANDA SA)

Pain South Africa

Pan-African Society of Cardiology (PASCAR)



P

PARAMEDIC

Paramedics provide pre-hospital emergency care and treatment and specialised transport for patients with medical emergencies. They also deal with non-emergency tasks on occasion. There are various types of qualifications, including Basic Ambulance Assistants, Ambulance Emergency Assistants (who have an Intermediate Life Support certification), Emergency Care Technician, Critical Care Assistants and Emergency Care Practitioners, which is the highest qualification.

PATIENT ABANDONMENT

A patient is abandoned when a doctor ceases treatment before the patient has recovered or where the patient has not terminated his or her contract with the doctor, and the doctor does not refer the patient to another practitioner or institution that can continue such treatment.

PATIENT CONSENT FORMS / PROCEDURAL CONSENT FORMS

Patients have the right to be informed of medical procedures that they are advised to undergo and have the right to consent to such procedures being performed. Consent or refusal for medical procedures is often documented in writing, as part of good practice.

PERFORMANCE ASSESSMENT

In the context of an HPCSA inquiry, clinical or related performance of a healthcare professional is assessed by a committee if they are charged with poor performance.

PERILS

A specific risk which is insured against.

PERIOD OF INSURANCE

The time frame for which the insured is covered.

PERIOPERATIVE NURSE SPECIALIST

A professional nurse and midwife who has obtained a postgraduate diploma in the perioperative field, and who is registered with the South African Nursing Council. They provide care during pre-, intra- and post-operative periods.

PHYSICIAN

Healthcare practitioners who are doctors of internal medicine. They are sometimes called “healthcare practitioner’s healthcare practitioners” because patients are often referred to them from other healthcare practitioners.

PLAINTIFF

A person who initiates litigation is referred to as a plaintiff in the summons. They are usually the party pursuing a claim for damages in court.



PLEA

In court action a plea is a reply to the summons, and it sets out what the defendant admits or denies. It is the defendant's version of events. In an HPCSA hearing, a plea will include whether the respondent pleads "guilty" or "not guilty".

PLEADING

A formal court document filed by one of the parties to a court action setting out their allegations. It includes documents such as the summons and the plea.

POLICY

This is the same as the contract of insurance.

POLICYHOLDER

The person covered by the policy of insurance, also known as the insured or policy owner.

POLICY ENDORSEMENT

See definition of "endorsement".

POOR PERFORMANCE

Negligence or other conduct falling short of generally acceptable norms and healthcare standards. Poor performance could arise from negligence or be due to lack of skills.

PRACTICE RESTRICTIONS

As part of their regulatory powers, the HPCSA can impose restrictions on a healthcare practitioner and the types of work that they may or may not do. The decision to impose restrictions may arise out of an inquiry relating to a complaint.

PRE-INQUIRY CONFERENCE

This is a meeting held before a formal inquiry, to determine the issues in dispute, and limit the issues if possible, to try to make the formal inquiry more efficient. Admissions can be made. Summaries of expert opinions as well as other relevant documents are exchanged.

PRELIMINARY COMMITTEE OF INQUIRY

The committee tasked with performing preliminary inquiries and investigations of complaints under the HPCSA

PRELIMINARY INQUIRY

In the context of an HPCSA inquiry, a preliminary inquiry is held to consider a complaint and to decide on the appropriate manner of dealing with the complaint.

PREMIUM

The payment made in exchange for insurance cover is called the premium. The amount could be paid annually or periodically (usually monthly), depending on the policy.

The premium for each person, practice or institution is calculated on a case-by-case basis, because each policyholder is unique, with their own needs and risks. This ensures that they get the correct amount of insurance, neither too much nor too little. A number of risk factors are used to calculate the most appropriate premium for each policyholder.

PREMIUM HOLIDAYS

If a healthcare professional is going to be out of practice for a while, some policies allow the insured professional to ask for a premium holiday. For example, if you will be on maternity leave, you could get a premium holiday for those months. However, any conduct that results in a potential claim during the premium holiday period, will probably not be covered by the policy.



PRESCRIPTION

A person who has suffered damage or loss usually has three years from the date of the loss or damage arising to initiate court proceedings, usually by way of a summons in order to get compensation.

If the deadline is missed, the claim “prescribes” and they are out of time to successfully launch a court case.

There are exceptions to the three-year rule, for example, formally admitting liability interrupts the running of prescription, as does minority, or mental incapacity.

PRIVILEGED / LEGALLY PRIVILEGED

Information that is legally privileged is legally protected from disclosure and must be kept confidential. Privilege is a stronger protection than confidentiality. It usually applies to information between attorneys and their clients.

PRIMA FACIE (EVIDENCE)

Evidence that has not been formally proven yet, but “on the face of it” is enough to make out a claim.

PROFESSIONAL NURSE

A person who is qualified and competent to independently practise comprehensive nursing, and who is registered with the South African Nursing Council. Professional nurses generally refer to nurses who have experience in a specialised area of nursing, such as psychiatric nursing, or nursing for sick children.

PRO-FORMA COMPLAINANT

In the context of an HPCSA inquiry, this is the person appointed by the registrar to represent the complainant to a professional conduct committee. This is usually a legal services officer of the HPCSA.

PROCESS (LEGAL PROCESS)

The proceedings in a civil or criminal court case are sometimes referred to as legal process.

PROFESSIONAL CONDUCT COMMITTEE

In the context of an HPCSA inquiry, this committee is tasked with conducting investigations and inquiries into professional conduct of healthcare practitioners and related complaints. If the professional conduct committee finds evidence of poor clinical or related performance, or of a pattern of such performance, they can order that the healthcare practitioner undergo a “performance assessment”.

PROFESSIONAL INDEMNITY INSURANCE

This type of insurance generally covers claims arising from breach of professional duties relating to your scope of practice, and may include other breaches such as breach of implied warranty of authority or of trust.

PROFESSIONAL LIABILITY

Liability for loss or damage arising from breach of professional duties in the scope of practice. This is different to public liability, which occurs for losses arising outside the scope of professional practice such as a slip and trip on your premises.

PROPOSING FOR INSURANCE / PROPOSER

The person who asks for the insurance.

PROPOSAL

Information supplied by the insured, or on their behalf. It usually includes a proposal form, application form, submission and questionnaire and other relevant information provided to the insurer.



Q

PRODUCT LIABILITY AND PRODUCT RECALLS

Liability arising from harm caused by defective products or products that need to be recalled from the market. Liability could arise for the manufacturer, seller or distributor of a product that causes injury or damage. You do not have to be the maker of the product to incur product liability for a product that you sell or provide. Professional indemnity insurance policies usually only include this type of cover by extension and not as part of the general policy of insurance.

Prostate Cancer Foundation of South Africa

PUNITIVE DAMAGES

Normally, South African law only recognises damages that are compensatory and not punitive. This means that damages are meant to cover actual past and future loss. Punitive or aggravated damages are more than ordinary damages and involve an element of punishment. Sometimes mention of punitive damages is made in South African law, for example in the Protection of Personal Information Act.

PUBLIC LIABILITY & NON-MEDICAL MALPRACTICE CIRCUMSTANCE

This usually relates to third parties who suffer loss (for example bodily injury or damage to property) while they are on the insured's premises. The loss happens outside of the scope of medical practice. For example, in the case of a healthcare practitioner, loss relating to someone who trips, falls and is injured while delivering something to the healthcare practitioner's office may be covered. However, public liability would not relate to the treatment of patients.

QUANTUM

The word quantum is usually used in the context of calculating the amount of damages to be paid when a loss occurs.

Radiological Society of South Africa (RSSA)

R

RATE MATURATION

In the first few years of a claims-made policy, premium rates rise annually until they are considered mature. Increasing the premium is necessary because the longer the healthcare professional is insured, the greater the potential for a claim. This is due to the delay between incidents occurring and patients filing claims from those past incidents.

RATED POLICY

A policy issued at a higher than usual premium due to the extra risk involved relating, for example, to the insured's hazardous occupation. It is sometimes referred to as an "extra risk" policy.

RATING

The statistical method in which pricing for basic classes of insurance is done.

REASONABLE PERSON

In law, the reasonable person is a fictional person against which reasonable conduct is judged. The reasonable person is an average person, neither overcautious nor reckless. However, when an expert's conduct is judged against the standard of the reasonable person (for example a healthcare practitioner) then the standard becomes one of the reasonable expert in that field (i.e. the reasonable healthcare practitioner and not the reasonable layperson).

REASONABLE PRECAUTIONS / REASONABLE CARE

Insurance policies often include clauses requiring the insured to take all reasonable precautions or to exercise reasonable care in order to avoid loss or harm. If reasonable precautions are not taken, cover may be excluded. This phrase generally means that the insured must not act recklessly (negligence is often still covered, except with regard to limited exclusions which are expressly stated in the policy).

RECKLESS

If you conduct yourself heedless of danger, carelessly, impulsively or without regard to consequences, that conduct may be termed reckless. Harm or loss caused by reckless action is often not covered by insurance.

RECORD

A record of proceedings is a written or auditory recording that can be used for reference or as evidence.

REFUSAL OF TREATMENT/ TRANSPORTATION

When a patient, against medical advice, decides that he or she does not want medical treatment or does not want to be transported to a hospital.



REGISTERED MEDICAL PRACTITIONER

A healthcare professional who is licenced and maintains the relevant medical registration with the appropriate professional body in South Africa (for example with the HPCSA).

REGISTRAR

A registrar is a qualified healthcare practitioner registered as a specialist intern, pursuing a specialist qualification.

REGULATIONS

Regulations are detailed rules and sub-laws that help to flesh out legislation (which is often quite broad). Regulations are the nitty gritty details that affect specific industries and helps to practically implement legislation. For example the powers of the HPCSA are derived from the Health Professions Act.

REGULATORS / REGULATORY BODY

Lawmakers and administrators in specific fields (for example in the medical field) who set standards for and control the industry are known as the regulators. They are empowered by legislation which sets out not only their powers, but also their duties. The HPCSA is an example of a regulatory body, and it is one of the bodies tasked with monitoring and regulating the health professions industry.

REINSURANCE

Insurers carry the risk of an insured event happening. If a legitimate claim is lodged, they need to pay out to make good on the claim. However, insurers have their own insurers, known as reinsurers, to provide a back-up layer of protection, and this helps to spread and manage risks better.

REINSTATEMENT

If the indemnity limit is reduced in whole or in part because the insurer has paid one or more claims, the indemnity limit can be reinstated if the policy provides for reinstatement (usually on payment of a reinstatement premium). However, the total liability of the insurer is usually still limited.

REJECTED (CLAIM)

If you make a claim under an insurance policy for a loss that is not covered by the insurance, the claim may be rejected by the insurer. You are permitted to approach the local regulators to challenge a rejection..

Renal Care Society of South Africa (RCSSA)

RENEWAL DATE

The date on which the insurance cover renews, automatically or on renegotiation of the terms of the contract, depending on the terms of the policy.

REPRESENTATIONS AND ARGUMENTS

Written or oral representations and arguments are presented in favour or against a claim, to help an adjudicator or judge make a decision relating to the claim or case.

REQUEST FOR FURTHER PARTICULARS

In a court case, when more information is asked for, this is formally known as a request for further particulars.



REQUEST FOR RECORDS

Records can be requested by parties wishing to make a claim against you. For example, a patient may request their medical records from a healthcare practitioner. Sometimes records may be provided voluntarily, although your insurance policy must be checked to determine whether there are any restrictions in the policy relating to the provision of records, and notification obligations. Some records can be requested via legal processes like records requested under the Promotion of Access to Information Act, or via subpoena.

RESPONDENT

The person responding to a claim or appeal made by an applicant, claimant or appellant is known as the respondent.

RETROACTIVE COVER

Usually the insured is covered for losses arising from the time the policy inceptioned. However, provision can be made for retroactive cover, which covers claims and losses that occurred before the policy started.

RETROACTIVE DATE

The date from which retroactive cover begins. Losses or claims occurring before this date are not covered as per any policy terms and exclusions.

RIDER

See definition of “endorsement”.

RISK

The potential for damage, loss or liability is known as risk. Specified risks are covered by insurance policies.

RISK MANAGEMENT

A process by which risks are limited by, for example, putting in place procedures that mitigate risks and minimize the likelihood of a claim. This could be put in place before claims arise, as part of practice management. It could also be done after a claim arises, to minimise the harm or loss.

RUN-OFF COVER

Insurance that covers claims after the claims-made policy has expired. This would arise in the case of incidents that occurred prior to expiry of the policy, but that have not yet been reported. For example, a doctor that ceases to practice may need run-off cover in case a claim is made only after he or she retires.



S

SCHEDULE

The document that usually sets out the specific details of the policy. It includes the name and address of the insured, the premium and other variables to the standard policy and is incorporated in the policy.

SCOPE OF PRACTICE

A person's scope of practice sets out the parameters of the medical services a practitioner is allowed to provide and could include advice given, services rendered, or duties performed in the course of that person's profession. It must be in line with your HSPCA registration.

SERVICE LEVEL AGREEMENTS

An agreement with a service provider, detailing the standard of service that must be met. These are often entered into with service providers who you have outsourced to, for example IT companies or cleaning companies.

SERVICE OF DOCUMENTS

Some court and other legal documents must be "served" or delivered in a specific way. Proper service of documents (for example a summons) happens when a sheriff formally delivers the papers to you. Depending on the situation, sometimes service can happen in another accepted way, for example by registered post.

SETTLEMENT

Parties to a dispute, for example a court case, may settle the claim, with or without admission of liability. The respondent or defendant can pay a sum in settlement of the claim and the case will fall away.

SHORT-TERM INSURANCE

Insurance related to medical malpractice and professional liability are forms of short-term insurance (as opposed to long-term insurance which relates to things like life insurance).

SMALL CLAIMS COURT

These courts hear cases up to a monetary limit of R20 000 and the process is usually quite informal. Think Judge Judy, where parties represent themselves and speak directly to the court. Small claims court commissioners hear these cases and hand down judgments.

Society for Endocrinology, Metabolism and Diabetes of South Africa (SEMDSA)

South African Academy of Family Physicians (SAAFP)

South African Addiction Medicine Society (SAAMS)

South African Association of Audiologists (SAAA)

South African Children's Cancer Study Group (SACCSG)

South African Cochlear Implant Group (SACIG)

South African Colorectal Society (SACRS)



South African Council for Social Service Professions (SACSSP)

South African Dental Association (SADA)

South African Dental Technicians Council (SADTC)

South African Gastroenterology Society (SAGES)

South African Gastrointestinal Nurses Society (SAGINS)

South African Head and Neck Oncology Society (SAHNOS)

South African Medical Association (SAMA)

South African Melanoma Advisory Board (SAMAB)

South African Optometric Association (SAOA)

South African Paediatric Association

South African Pharmacy Council (SAPC)

South African Private Practitioners Forum (SAPPF)

South African Rheumatism and Arthritis Association (SARAA)

South African Society for Dermatologic Surgery (SASDS)

South African Society for Surgery of the Hand (SASSH)

South African Society for Ultrasound in Obstetrics and Gynaecology (SASUOG)

South African Society of Anaesthesiologists (SASA)

South African Society of Cardiovascular Intervention (SASCI)

South African Society of Clinical and Radiation Oncology (SASCRO)

South African Society of Gynaecologic Oncology (SASGO)

South African Society of Medical Oncology (SASMO)

South African Society of Obstetricians and Gynaecologists (SASOG)

South African Society of Occupational Health Nursing Practitioners (SASOHN)

South African Society of Occupational Medicine (SASOM)

South African Society of Otorhinolaryngology Head

and Neck Surgery (SASOHNS)

South African Society of Physiotherapy (SAPhysio)

South African Society of Psychiatrists (SASOP)

South African Society of Surgeons in Training (SASSiT)

South African Speech-Language-Hearing Association (SASLHA)

South African Urological Association (SAUA)

South African Urogynaecology Association (SAUGA)

South African Vitreoretinal Society (SAVRS)

Southern African Society for Reproductive medicine and Gynaecological Endoscopy (SASREG)

Surgical Management Company (Surgicom)

Surgical Research Society of Southern Africa (SRSSA)

SPECIALIST

There are different types of specialist healthcare practitioners, and the term could be used to refer to physicians, consultants and registrars, for example.

SPECIAL DAMAGES

This usually relates to patrimonial (economic) losses, for example past and future medical expenses. Special damages are more easily quantifiable in monetary terms compared to general damages (which covers things such as pain and suffering, which is more subjective).

STAFF NURSE

A person educated and qualified to practice basic nursing and who is registered with the South African Nursing Council.

STATUTE

An Act of Parliament, also known as legislation. These set out laws made by Parliament; for example the Health Professions Act.



STATUTORY BODY

Regulatory bodies are also referred to as statutory bodies.

STATUTORY OR REGULATORY INQUIRY

An inquiry conducted in terms of the provisions of a statute or regulation.

STATUTORY LEGAL DEFENCE COSTS

Defence costs related to the breach of a statute in the course of rendering healthcare services may be covered by a professional liability policy, if the breach was not intentional.

STRICT LIABILITY

Liability for damages where fault (such as negligence) does not have to be proved. For example, in cases of vicarious liability, where an employer is liable for negligent acts of the employee, negligence on the part of the employer does not have to be proved. There is strict liability for the employer.

SUBMISSION MATERIALS / INFORMATION

Any proposals for insurance and other information provided by the insured (whether at the insurer's request or not) forms part of the submission materials which may form part of the policy of insurance.

The information could include the quotation request and quote acceptance and other documents, declarations and information supplied by the insured or on the insured's behalf. This could also include information obtainable from regulatory bodies like the HPCSA.

SUB-LIMITS

Indemnity limits may include sub-limits relating to specific types of claims or risks. The sub-limits will generally not exceed the indemnity limit (it is a limit within the main limit).

SUBPOENA

A subpoena is not a summons or a claim. A subpoena compels a witness to provide a court with information or documents on a specific date, time and location. It is issued by an officer of the court (for example the registrar of the court) and is usually served (formally delivered) by the sheriff of the court. Complying with a properly issued subpoena is a legal obligation. The receipt of a subpoena is usually something that must be notified to an insurer, in case any aspects of the policy are triggered by the subpoena.

For more on subpoenas see Natmed's "What If" series.

SUBROGATION

Once an insurer has indemnified an insured in full, the insurer can pursue in the insured's name any benefit, claim for damages, indemnity or other relief from a third party, but at the insurer's cost.

SUM INSURED

The amount insured for each risk.

SUMMONS

A summons initiates formal court proceedings. It is the legal document submitted to court and to the defendant explaining the plaintiff's claim and asking the court for relief, which is usually a request for damages (often a monetary payment). It sets out the plaintiff's cause of action.

SUPREME COURT OF APPEAL

This is the court of final appeal in all cases that do not have a constitutional issue to be decided. This court does not hear cases directly; it only hears appeals from lower courts.



T

TACIT AGREEMENT

Similar to implied consent, a tacit understanding or agreement between a medical practitioner and a patient is demonstrated by the fact that no contradiction is raised and no objection is made in relation to the actions of the medical practitioner. A tacit agreement is inferred from the circumstances but may be difficult to prove, especially due to informed consent being a requirement for medical treatment. See also “Implied Consent” and “Informed Consent”.

TAIL COVERAGE

Insurance covering incidents that occurred while the policy was active but where the related claims were only made after the policy expired (for example after the doctor retired). See also “Extended Reporting Period”.

TERMINATE

A policy can be terminated for various reasons, for example a breach of the policy conditions. If a policy is terminated, there may still be rights and obligations that exist after the termination. Medical malpractice policies are usually non-cancellable. See also “cancel”.

TERRITORIAL AND JURISDICTIONAL LIMITS

Insurance policies and related claims are often limited to the borders of South Africa (territorial limits) and to the powers of South African courts (jurisdictional limits). Claims occurring outside of the geographical or jurisdictional limits may not be covered, depending on the policy and the regulatory regime.

THERAPEUTIC PRIVILEGE

If it is clear that disclosure of certain information (for example a diagnosis) will harm a patient or be detrimental to the patient’s recovery, not informing the patient may in very limited circumstances be used as a defence to inadequate disclosure and lack of informed consent being obtained for any subsequent treatment. Therapeutic privilege must be used with extreme caution since informed consent and the right to make decisions about one’s own body and medical treatment are such important principles in South African law.

THIRD PARTY NOTICE

If, during a court case, a defendant claims an indemnification or a contribution from a co-defendant or from a third party, the defendant will serve a third-party notice on that third party. For example, a defendant might allege that their insurer is liable for all or part of the claim against them by the plaintiff; in this case, they would serve a third party notice on the insurer.

U

TIME LIMITATION

Claims usually prescribe (expire) within three years of a loss occurring. Therefore, a claim must be made within that time frame or else the claim lapses (see the definition of “prescription”). However, the contract of insurance may provide its own shorter time limitation within which a claim must be made.

TOP-UP COVER

Insurance that provides extra cover if one policy does not cover your full loss.

UNAUTHORIZED ADMINISTRATION (NEGOTIORUM GESTIO)

If in an emergency situation a medical practitioner cannot obtain consent to intervene, they can rely on the legal principle known as *negotiorum gestio* (which means management of another’s business, or unauthorised administration of someone else’s affairs). This is a useful ground of justification in an emergency setting where, for example, a patient is unconscious and it is impossible to obtain consent, and medical intervention must be performed immediately in order to save the patient’s life or preserve his or her health. In those cases, the defence of *negotiorum gestio* will render the medical treatment lawful. There must be an emergency situation in which the patient is incapable of giving consent, the act must be in the patient’s best interests and must not go against the patient’s express wishes.

UNDERINSURED

If the amount insured is less than the actual value of the risk, the risk is underinsured. If a loss occurs, the insured may be liable for a portion of the loss depending on the wording of the policy (usually the proportion by which the risk is underinsured). See also “average”.

UNDERWRITER

An insurer is often called an underwriter.



UNDERWRITING CRITERIA

These are guidelines that the insurer uses to assess risks and determine whether or not to take on the risk, and for what sum.

UNDERWRITING MANAGER

An underwriting manager is an intermediary who acts for the insurer in administering some aspects of the insurance policy, for example determining premiums and policy wording (some “binder services”) but they do not, and cannot, sell policies directly to the insured.

UNDER OATH OR ON AFFIRMATION

Taking an oath or affirmation is binding on one’s conscience and may also be legally binding. Providing information under oath or affirmation is a representation that the information is true.

UNINSURABLE RISK

A risk that cannot be insured because the chance of loss is too high or because the risk cannot be measured. Also referred to as a “Non-insurable Risk”.

UNINTENTIONAL

Not done on purpose. Conduct that is unintentional and not malicious can still attract liability if it is negligent.

United South African Neonatal Association (USANA)

Vascular Society of Southern Africa (VASSA)

VICARIOUS LIABILITY

An employer may be liable for some of the harmful conduct of their employees, depending on whether the harmful conduct occurred while in the course and scope of employment. This is also known as “employee liability”.

VIS MAJOR

An accident or event for which no one is responsible. It is also sometimes referred to as an “Act of God”.

VOID

A policy will be void if it cannot be enforced by law, for example if it contains terms that are illegal. Sometimes, a specific term may be void, while the rest of the contract remains in place. An insurer may also be able to “void a policy” in certain circumstances.

VOIDING A POLICY

An insurer may have grounds to void a policy from inception under certain limited circumstances, for example if they find out that there was a material misrepresentation or non-disclosure by the insured inducing the contract, or certain of its terms. This would have the effect of it being as if the policy never existed and is different to cancellation of a policy.

W

WAIVER

A right or a claim that is relinquished or given up is “waived”. Insurance policies often instruct the insured not to waive any rights of recourse they may have against any party without prior consent of the insurer.

WARRANTY

A guarantee or promise that certain facts or circumstances are true.

WITNESS

A person who has relevant information about an event. Witnesses may be called to provide oral evidence or hand in documents or other physical evidence.

WRIT

A written command from a court or other legal body to do or not do something.

WRITTEN COMPLAINT

A complaint in writing, usually made to the HPCSA or other tribunal or regulatory body (not to a court).

WRONGFUL CONDUCT

An act or an omission can be legally wrongful and may then attract liability. Failing to comply with legislation is often automatically seen as wrongful. Other conduct can be classified as wrongful if the person who committed the act or omission had a legal duty to act to avert harm. Whether such a duty exists is determined by the legal convictions of the community and this is a legal test (the standard is not merely whether one thinks the conduct is morally wrongful).

WRONGFUL LIFE CLAIM

A claim by the child (or made on behalf of the child) against a healthcare provider for negligently failing to advise the parents that the child might be born with a congenital disability or a severe health condition and includes a claim for damages for past and future medical expenses and general damages for disability and loss of amenities of life. This type of claim has not been thoroughly tested in South African law yet, but the possibility for such claims to succeed has been acknowledged by the courts.

WRONGFUL BIRTH CLAIM

A claim by a parent against a healthcare provider for negligently failing to advise them that their child might be born with a congenital disability or a severe health condition. The financial claim is by the parent and relates to the additional financial burden he or she has to endure as a result of caring for a child with a disability. This type of claim is recognised in South African law.



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