Medical Protection | Dental Protection

Republic of South Africa and / or Namibia membership for individuals

Statement of benefits

Company Medical Protection / Dental Protection
Product Occurrence-based medical / dental malpractice indemnity

The Medical Protection Society Limited ("MPS") is a company limited by guarantee registered in England with company number 00036142 and with its principal place of business at Victoria House, 2 Victoria Place, Leeds LS11 5AE. MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association. MPS®, Dental Protection® and Medical Protection® are registered trademarks. For information on MPS's use of your personal data and your rights, please see our Privacy Notice on the website.

This document contains a summary of the key features and limitations of occurrence-based discretionary membership with Medical / Dental Protection. Your membership documents will detail the benefits available to you, and you should check these for any endorsements that change the scope of protection provided.

Why do I need indemnity?

South African and Namibian healthcare practitioners are not legally compelled to hold medical or dental professional indemnity. However, the Health Professions Council of South Africa (HPCSA) and Health Professions Council of Namibia (HPCNA) advise practitioners to maintain appropriate indemnity / insurance arrangements that cover the full scope of practice without gaps. In addition, many employers, private hospitals and funders require proof of adequate protection as a condition of employment, admitting rights or network participation. Appropriate arrangements should respond to civil claims, regulatory (HPCSA / HPCNA) matters, inquests and related legal support arising from your clinical work. This is to ensure patients will be adequately compensated if they suffer harm due to clinical negligence when seeking legal recourse. In turn, medical / dental indemnity or insurance protects you as a registered professional.

Many healthcare practitioners have indemnity arrangements through their place of work which cover some of their clinical negligence liabilities and regulatory matters. Some independent healthcare providers may also offer indemnity for their employees as part of their employment contract.

Typically, any protection you may benefit from through employer or state indemnity only covers clinical negligence claims and vicarious liabilities arising from public work (excluding Good Samaritan acts that are not considered part of the healthcare practitioner's work for the employing body). However, these indemnity arrangements usually do not offer protection for any private or independent practice you carry out.

It is advisable to have insurance or indemnity arrangements in place covering the full scope of your clinical practice, so you should consider arranging separate clinical negligence indemnity or insurance for any gaps which may include assistance with complaints, personal regulatory and medicolegal / dentolegal support / advice.

What does Medical / Dental Protection offer?

Medical / Dental Protection offers discretionary indemnity and not insurance. We offer two types of professional protection: occurrence-based and claims-made depending on your practice, as described below.

- **Occurrence-based indemnity** protects you for incidents that occur during your period of membership, even if a claim related to the incident is not made until years after. Providing you were in membership and paying the correct subscription at the time of an incident that's given rise to a case or claim, we can protect you even if you're retired or no longer in membership. That means you are protected for future claims arising from any year in which you were a member.
- **Claims-made indemnity** is what insurance policies are usually based on. This type of indemnity means that to request assistance for an adverse incident you must be in a period of active membership, both at the time the incident occurred and at the time we are notified of it. As such, it is important to report adverse incidents or possible adverse incidents to us as soon as practically possible. An adverse incident is any event or circumstance that might give rise to a claim of clinical negligence against you.

While most members in the Republic of South Africa and / or Namibia are protected by occurrence-based indemnity, some Medical members hold claims-made protection.

This Statement of Benefits is for **occurrence-based indemnity**. Students and corporate entities have different membership options. For the full range of membership types we offer, including claims-made indemnity, please refer to the relevant Statement of Benefits available at medicalprotection.org/southafrica or dentalprotection.org/southafrica.

What does 'discretionary' indemnity mean for you?

We are dedicated to treating members fairly and placing them at the heart of everything we do.

All the benefits of membership are discretionary, as set out in our Memorandum and Articles of Association (available on request and at medicalprotection.org/southafrica or dentalprotection.org/southafrica). Among these benefits is the right to ask for assistance with a range of medicolegal / dentolegal issues, including indemnity for clinical negligence claims. As a mutual society we are owned by our members, so our starting point is always to see how we can help.

When determining whether or not to provide a member with assistance, or the scope of any assistance that can be offered, we ensure that the circumstances of the member's case are considered on an individual basis by appropriately qualified advisers, who are trained in medicolegal / dentolegal matters. These advisers will exercise their good judgment, on the basis of their experience and knowledge of modern practice, and in line with our established procedures to ensure due process is followed, to decide whether or not we should assist in each particular circumstance. We will never exercise our discretion in an arbitrary or irrational way.

What does Medical / Dental Protection indemnity provide?

Membership benefits differ depending on whether work is private or independent practice or carried out in public healthcare institutions. All requests for assistance are considered on their individual circumstances, declared scope of practice and membership in place at the time.

Your membership is designed to provide personalised protection for your individual practice. However, if your membership includes claims indemnity, you can also seek assistance with clinical negligence claims arising from the actions of up to four full-time equivalent (FTE) staff, who support your individual practice and for whom you are vicariously liable (as a practice owner, for example). Of these, a maximum of two FTE can be clinical support staff that are not required by law to have their own individual indemnity, or for whom we do not offer a separate category of membership (such as nurses or dental nurses). The remaining FTE can be administrative non-clinical roles, such as a receptionist.

Membership benefits are summarised in the table below, however, you should also read your membership documents to check which apply to you:

Indemnity for clinical negligence arising from:

- ✓ Private or independent / non-employer indemnified clinical practice* in the Republic of South Africa and / or Namibia
- ✓ Good Samaritan acts (worldwide)
- ✓ Voluntary, humanitarian or charity work (on request)

Representation for:

- ✓ Regulatory matters
- ✓ Disciplinary proceedings
- ✓ Criminal allegations arising from your clinical practice
- ✓ Coroners' inquests

Support with:

- ✓ Medicolegal / Dentolegal advice (emergency helpline available 24/7)
- ✓ Defamation cases (legal costs only)
- ✓ Product Liability claims brought under section 61 of the Consumer Protection Act (CPA) alleging that a product supplied caused bodily injury
- ✓ Breach of confidentiality (directly related to clinical practice)
- ✓ Complaints handling
- ✓ Unwanted media attention
- ✓ Wellbeing support (Counselling Service and 50% off Portal Premium App)
- ✓ Professional development (for example, online learning and resources)

**Indemnity for claims does not apply to those with non-claims membership.*

What is not indemnified?

We carefully consider each request for assistance on a discretionary basis, but there are some circumstances in which we are unlikely to help. The following list, while not exhaustive, are some examples of matters that we would be unlikely to assist with:

- Any previous practice undertaken without an insurance or indemnity arrangement in place at the time.
- Circumstances or claims arising from any malpractice incident, negligent act, error, omission, breach or loss that occurred before the membership start date.
- Matters related to deliberate, reckless or criminal acts.
- Matters related to personal conduct unless brought before your professional regulator.
- Assistance with research for academic projects.
- Claims or vicarious liabilities that fall under the provisions of State / employer indemnity arrangements or equivalent.
- Assistance with criminal investigations or proceedings arising from non-professional practice for example, drink-driving offences, possession of drugs or assault.
- Assistance with allegations of fraud.
- Payment of fines or financial penalties.
- Claims brought outside the country of membership (unless they arise from Good Samaritan acts which are protected worldwide or work elsewhere that has been declared and agreed by us).
- Matters arising from intentionally performing, supporting or encouraging female genital mutilation / female circumcision.
- Matters arising from the use of fully autonomous* Artificial Intelligence (AI) systems, tools or robotics.
- Matters arising from use of robotics where the clinician, robotic device and patient are not co-located.
- Matters that fall outside of healthcare indemnity, such as claims relating to property, including its damage or destruction or claims arising from cyber-attacks and / or cybersecurity breaches.
- Claims arising from your vicarious liability (other than as described above).
- Matters of commercial interest such as partnership, employment or agency disputes (whether contractual or otherwise), or compensation claims.
- Claims arising from Data Protection / Privacy or Equality / Anti-discrimination laws including the Republic of South Africa's Protection of Personal Information Act, 2013 (POPIA), Namibia's Data Protection Bill (if and when enacted), and claims based on equality or discrimination (including under the Republic of South Africa's Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) or Namibia's Constitution, Article 10). We may use our discretion to assist where the claim arises from a clinical consultation or treatment.
- Product Liability claims where the product is prohibited, unregistered or used outside the scope of clinical care.
- Other matters which may not be in the wider interests of our members, for example, damages awarded in a claim for defamation against you or personal costs arising from your attendance at court, hearings or meetings with us about a case.

**Fully autonomous means that a clinician does not maintain oversight or final decision-making authority. AI must support but not replace clinical professional judgement.*

Are there any financial limitations to my membership?

Medical

For Private Specialists working in the field of High-Risk Paediatrics or Obstetrics or Private General Practitioners providing comprehensive Primary Care services that include Intrapartum Obstetrics, the indemnity limit for each claim, and in the aggregate for all claims and other matters in an annual membership period is R50 million, including legal costs. No excess applies.

For all other specialties with occurrence-based membership, there are no financial limits or excesses.

Dental

As a Private Practice Dentist with claims indemnity membership, there are no financial limits or excesses, except for matters related to the treatment of non-residential patients. This is subject to a R1 million aggregate limit (including legal costs) for claims and other matters (for example, regulatory investigations), during the membership period. No other indemnity limits or excess apply (although where a patient seeks reimbursement of their treatment cost, we may ask you to contribute a fair proportion of the refund amount based on the profit element of the charge).

When we agree to take on a case, we can take care of any payments for damages or costs ordered against you or agreed in the settlement of the claim, as well as your legal costs.

Where am I indemnified?

We will only provide assistance in the country of membership. Individual occurrence-based membership also provides protection for Good Samaritan acts worldwide.

What are my responsibilities as a member?

All the benefits of membership are discretionary and subject to you complying with the Memorandum and Articles of Association. You must:

! Ensure you have notified any known claims or circumstances to prior insurers as they will not be indemnified by this membership.

! Be registered and / or licensed with the appropriate regulatory body to carry out the clinical duties you undertake, have appropriate training and experience, and be (or have been) working within the boundaries of your professional competence and scope of practice.

! Take reasonable steps to prevent accident or injury.

! Provide true, accurate and complete information when taking out, renewing or making changes to your membership to ensure that the protection provided is appropriate for the work you undertake.

- Ensure your membership subscription is paid on time and that this reflects your current scope of practice.
- Check your membership documents and tell us (if you applied directly) or the South Africa Medical Association (SAMA) or the South Africa Dental Association (SADA) in advance of any changes to your practice during your membership period including your role, hours or scope of practice to ensure that you are suitably protected.
- Let us (if you applied directly) or the SAMA / SADA know as soon as reasonably possible if your contact details change.
- Not have equivalent benefits available from Medical / Dental Protection with another medical / dental defence organisation or an insurer without our agreement.

In the event of a case, complaint or claim you must:

- Notify us at the earliest opportunity of any matter where assistance may be required or that may lead to a claim.
- Comply with our reasonable requirements for case management (for example, attending conferences or meetings to provide information).
- Be honest and truthful in all dealings and behave in a reasonable manner towards our staff.
- Accept our choice of legal representation.
- Accept our advice and conduct of cases in all material matters (including case strategy and settlement).
- Co-operate fully with us and our representatives.
- Provide full and accurate information relevant to the case without delay and act in good faith at all times.
- Not admit legal liability for a claim or settle a claim without our agreement. This does not restrict you from complying with your professional obligations relating to open disclosure and being transparent in the event of an adverse incident, or from providing an appropriate apology.

Any failure to disclose full and accurate details could result in us rejecting requests for assistance, declining or withdrawal of membership benefits and / or the cancellation or non-renewal of your membership.

When and how do I pay?

Your annual membership subscription is payable by the due date. For full details on how to pay, please refer to your membership documents.

When does my membership start and end?

Your membership starts on the date shown on your certificate of membership. Your membership will run for 12 months. During your membership, you must let us (if you applied directly) or the SAMA / SADA know of any changes to the information held about you. You will be notified when your membership is approaching renewal, and your subscription should be paid by the due date to ensure continuous membership.

Can I pause my membership?

You can apply for deferred membership if you are already a member and have temporarily stopped practising medicine / dentistry due to a career break, maternity or paternity leave or long-term sickness.

As a deferred member with occurrence-based protection, you will not be required to pay a subscription and can still apply for assistance with any medicolegal / dentolegal problems arising from a Good Samaritan act and can continue to access our risk prevention and wellbeing support services.

Do I still need membership with Medical / Dental Protection if I retire?

If you decide to remain on the medical / dental register for a period post-retirement, you may wish to move into a retired deferred category of membership.

As a retired deferred member, you will not be required to pay a subscription, and you can continue to request assistance with any medicolegal / dentolegal problems arising from a Good Samaritan act and have access to our risk prevention and wellbeing support services. You can also reactivate your full membership should you decide to return to practice after a short period of time.

How do I cancel my membership?

- Medical / Dental Protection membership is on an annual basis (unless stated otherwise).
- You may cancel your membership at any time, by giving at least two months' prior notice to us (if you applied directly), or to the SAMA / SADA by phone or in writing (email or post).