



# Republic of South Africa and / or Namibia Practice Membership

## Statement of benefits

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**Company** Medical Protection / Dental Protection  
**Product** Discretionary claims-made retroactive 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 claims-made discretionary Practice Membership for medical or dental practices. Your membership documents will detail the benefits available to your practice, and you should check these for any endorsements that change the scope of protection provided.

## Why is Practice Membership needed?

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A medical / dental practice could be held liable for a range of problems, including but not limited to:

- the actions or omissions of non-registrant staff who work for the practice who do not require their own professional indemnity arrangements (for example, administrative staff); and
- where the practice is named in a claim; and
- failures in practice protocols such as patient referrals or test results; and
- a failure to properly investigate complaints or patient safety concerns.

Even where claims are made against an individual practitioner there is still a risk that the practice itself is also sued for failures in its procedures and controls, so you should consider arranging appropriate clinical negligence indemnity or insurance for your practice. This is to ensure patients will be adequately compensated if they suffer harm due to clinical negligence when seeking legal recourse.

Practice Membership allows practice owners to request assistance in the event a legal challenge is brought against their practice. This product sits separately and in addition to any individual membership for medical / dental professionals with Medical / Dental Protection.



## What does Practice Membership offer?

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Practice Membership offers discretionary indemnity and not insurance. Our Practice Membership can provide the following:

- indemnity for clinical negligence claims brought against the practice; and
- protection against claims alleging vicarious liability and non-delegable duty of care for non-registrant staff who work for the practice.

Practice Membership benefits are provided on a claims-made basis, which 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.

You should therefore 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 made against your practice.

Practice Membership does not provide an ongoing right to request assistance (often known as extended reporting benefit) beyond the period of membership, so once your claims-made membership ends, you cannot notify us of any known adverse incidents or new claims arising from the membership period. You will need to ask your new insurer or indemnity provider for retroactive protection to cover any claims arising from your membership period that have not been notified to ensure no gaps in protection.

This membership type is only available to medical / dental practices (including sole traders and partnerships) and not individual students, medical / dental practitioners, registered dental ancillaries / auxiliaries or healthcare professionals. For the full range of membership types we offer, please refer to the relevant Statement of Benefits available online or on request.

## What does 'discretionary' membership mean for you?

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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](http://medicalprotection.org/southafrica) or [dentalprotection.org/southafrica](http://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 Practice Membership provide?



Practice Membership applies to the practice only and provides protection for clinical negligence claims brought against the practice including claims alleging vicarious liability and non-delegable duty of care for non-registrant staff who work for the practice.

All requests for assistance are considered on their individual circumstances, declared nature of work, locations of clinical services provided and membership in place at the time.

All registered health practitioners working for the practice must have and maintain their own individual insurance or indemnity arrangements covering the full scope of their practice in the Republic of South Africa and / or Namibia. Individual protection for all other staff who work for the practice that must be registered (for example, nurses, healthcare assistants, dental nurses and dental technicians) is not included within the Practice Membership, so this requirement should be considered separately.

The benefits of Practice Membership are summarised below, however, you should also read your membership documents to check which apply. Whilst we carefully consider each request for assistance on a discretionary basis, there are some circumstances in which we are unlikely to help. The list provided under 'exclusions' in the table below, while not exhaustive, are some examples of matters that we would be unlikely to assist with:

### Practice Membership

#### Benefits

- ✓ Advice and assistance with claims and other matters relating to clinical negligence brought against the practice
- ✓ Payment of legal costs and any compensation payments or damages up to a limit of R25 million for all incidents reported in the membership year
- ✓ Advice and assistance with incidents and complaints against the practice, for incidents caused by and relating to clinical care provided by the practice or staff who work for the practice
- ✓ Assistance with claims and other matters where there is no involvement from a treating health practitioner, but relates to failure in practice protocols, such as patient referrals or test results
- ✓ Assistance with Product Liability claims brought under section 61 of the Consumer Protection Act (CPA) alleging that a product supplied caused bodily injury
- ✓ Assistance with claims and other matters brought against the practice
- ✓ Support with breach of confidentiality (directly related to clinical practice)
- ✓ Medicolegal / Dentolegal advice (emergency helpline available 24/7)
- ✓ Help from our Press Office with unwanted media attention
- ✓ Option to include retroactive protection at the application stage

#### Exclusions

- ✗ Any matters or claims arising from adverse incidents occurring outside of your membership, unless you have a retroactive date
- ✗ Protection for claims or circumstances that fall within the retroactive period which were known about at the point of application
- ✗ Assistance with claims or circumstances brought against the practice relating to the clinical care provided by a registered health practitioner working in the practice who has not maintained their own indemnity / insurance arrangements or where evidence of this is not available
- ✗ Any claims that arise from events that occur after your Practice Membership has ended
- ✗ Any matters or claims that are notified to us more than 30 days after the end of your Practice Membership



- ✘ Indemnity for any other personal liability companies linked to the directors – each personal liability company should have its own indemnity
- ✘ Individual indemnity for registered health practitioners; Practice Membership does not replace the need for individual indemnity for clinicians and will not make up any shortfall where a health practitioner is under indemnified
- ✘ Claims arising outside of the Republic of South Africa and / or Namibia or claims relating to the clinical care of patients outside of the Republic of South Africa and / or Namibia unless previously agreed by Medical / Dental Protection
- ✘ Matters arising from intentionally performing, supporting or encouraging female genital mutilation / female circumcision
- ✘ Any claims arising from the failure or defects of equipment including where they arise from a failure by the practice and / or any third party to correctly maintain, calibrate or test the equipment
- ✘ Product Liability claims where the product is prohibited, unregistered or used outside the scope of clinical care
- ✘ Matters arising from the use of fully autonomous\* Artificial Intelligence (AI) systems, tools or robotics
- ✘ Matters arising from use of robotics by the practice where the clinician, robotic device and patient are not co-located
- ✘ Matters not arising from clinical negligence / clinical matters – for example, Employment Tribunals, Employers Liability, Directors' and Officers' Liability and Public Liability
- ✘ Any matters relating to criminal proceedings arising from the personal / non-professional or reckless conduct of employees or contracted staff, for example, drink-driving offences, possession of drugs or assault
- ✘ Assistance with allegations of fraud
- ✘ Payment of fines or financial penalties (for example, a fine that was the result of a breach of the Protection of Personal Information Act (POPIA))
- ✘ Corporate Manslaughter and Corporate Homicide

#### **Retroactive protection (optional)**

- ✘ Assistance with claims or circumstances that occurred during the retroactive period if the treating clinician did not hold valid Medical / Dental Protection membership or insurance at the time the adverse incident occurred
- ✘ Assistance with claims or circumstances that occurred during the retroactive period which have or should have been notified to a previous provider

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

#### **Conditions of Practice Membership**

- All registered health practitioners working in the practice have appropriate indemnity or insurance in place throughout the time they work for the practice, either with Medical / Dental Protection or elsewhere, covering their full scope of practice in South Africa and / or Namibia and they comply fully with the terms of their protection.
- You maintain a record of the indemnity or insurance arrangements of all registered health practitioners working in the practice and provide Medical / Dental Protection with such evidence, if requested.
- All registered health practitioners working in the practice maintain full registration with the Health Professions Council of South Africa (HPCSA) and Health Professions Council of Namibia (HPCNA) or appropriate regulatory body, and this is reviewed by the practice at least annually.
- All registered health practitioners work within the boundaries of their professional competence, scope of practice and remit of their employee contract / agreement.
- Retain a record of the contact details for all registered health practitioners which should be updated at the time they cease to work for the practice, and there will be full co-operation in tracing treating clinicians, if required.

**It is important to note that we cannot offer retroactive protection for any past period where the practice operated without any indemnity or insurance arrangements in place.**



## Are there any financial limitations to Practice Membership?



There are financial limits to claims-made indemnity provided to the medical / dental practice however, no excesses apply. The total amount we will pay for the aggregate of all claims, legal costs and other matters paid under each membership period will not exceed the maximum limit of indemnity of R25 million.

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

## Where is my practice indemnified?



Republic of South Africa and / or Namibia Practice Membership is available to medical / dental practices operating in the Republic of South Africa and / or Namibia.

## What are my member responsibilities as a practice owner?



All the benefits of membership are discretionary and subject to you complying with the Memorandum and Articles of Association. In addition to the Practice Membership conditions outlined above, you must:

- ! Ensure the business description in your membership documents adequately reflects the clinical services the practice provides.
- ! Notify Medical / Dental Protection as soon as practicable of any inaccuracies in the information you have given us.
- ! Ensure you have notified any known claims or circumstances to prior insurers as they will not be indemnified by this membership.
- ! Ensure that any agreed retroactive date is appropriate for this membership.
- ! You should have employment contracts / agreements in place for all staff confirming their role / remit.
- ! Ensure that all staff:
  - have appropriate qualifications and training for the work they undertake; and
  - receive induction and on-going training / supervision (including temporary / locum staff).
- ! Maintain a record of the maintenance and servicing of all clinical equipment or devices and retain such records in accordance with established local / national guidance.
- ! Conduct regular audits of the clinical records maintained by individual clinicians.
- ! Provide us with all the locations where clinical services are provided (including where different from the registered company address).
- ! Provide true, accurate and complete information when taking out, renewing or making changes to the membership to ensure that the protection provided is appropriate for the clinical services the practice provides. This is especially important for the retroactive date, if you have requested one from us.



- ! Tell us in advance of any change that materially changes the risk indemnified by the Practice Membership (for example, changes to risk locations or services provided by the practice) to ensure that the practice is suitably protected.
- ! Let us know as soon as reasonably possible if contact details change, including authorised persons assigned to manage the membership.
- ! Take reasonable steps to prevent accident or injury.
- ! Pay your Practice Membership subscription on time where applicable.
- ! Not have equivalent benefits available from this membership with another provider without our agreement.

Your ability to request assistance from us depends on two things:

- the date on which an adverse incident occurred; and
- the date the adverse incident and claim is reported to us.

The nature of clinical negligence means that a significant amount of time can go by between an adverse incident happening and a claim being brought. Recording the incident details early helps us manage the outcome more effectively and will ensure you are protected if it develops into a claim.

So, in the event that you become aware of an adverse incident, complaint or claim, or you wish to seek our assistance, you must tell us as soon as possible if an adverse incident occurs. If you do not let us know, it could mean that if a claim is ever made against you following the incident, we are unable to assist.

We are unable to assist with any matters or claims arising from adverse incidents occurring outside of your membership, unless you have a retroactive date. We are also unable to assist with any matters or claims that are notified to us more than 30 days after the end of your membership.

Additionally, you must:

- ! 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 disclose the amount of protection available to any third party unless you have our prior written consent.
- ! 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.

You may have specific additional obligations under your Practice Membership which will be shown in your membership documents.

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 Practice Membership.



## When and how do I pay?

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Generally, a subscription does not apply to your Practice Membership (subject to Underwriting). In the event a fee applies, please refer to your membership documents on how to pay.

## When does my Practice Membership start and end?

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Your Practice 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 know of any changes to the information held about your practice. We will send you notice when your Practice Membership is approaching renewal, and your subscription should be paid by the due date to ensure continuous membership (where applicable).

## How do I cancel my membership?

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- Practice 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 by phone or in writing (email or post).