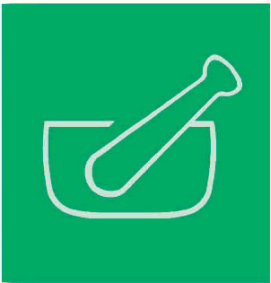


# Pharmacy Professional Indemnity Insurance - Ireland



Policy



# 1. BENEFITS AND COVER

NPA Insurance Ltd have agreed to provide policyholders with the following indemnity benefits subject to the exclusions, conditions and limitations set out below:

## 1.1 Damages and costs

1.1.1 To indemnify against liability to pay compensation and costs

- (a) For the death or personal injury of any person
- (b) For damage to or destruction of any property belonging to any person
- (c) For defamation, wrongful or unlawful arrest or imprisonment, or interference with goods
- (d) For damage to, interference with or infringement of intellectual property rights including patent, trade mark and copyright

where the Policyholder is liable in his professional capacity as the proprietor of a retail pharmacy business or where a claim has arisen from a professional act or default of any person employed or engaged in the Policyholder's retail pharmacy business.

1.1.2 To indemnify against liability to pay compensation for negligence by a pharmacist when acting in his capacity as such.

## 1.2 Period of Cover

Cover is extended on a claims made basis for any claim validly made within the period of cover, from the start of the policy until its termination, unless extended under the term of clause 1.2.1. For the benefit of clarity an incident which occurred prior to the date of the policy is covered if the claim is validly made during the period of cover. No retroactive date is applicable to this policy.

1.2.1 After three years of continual cover under this policy and where notified by the Company the period of cover will extend to claims where the incident occurred during the period covered by the policy but where the claim was made after termination of the policy and where the claim arose during that period of cover.

# 2. EXCLUSIONS

A Policyholder shall not be entitled to the benefits set out in paragraph 1:

## 2.1 Period of Cover

If the claim, or knowledge of the event which lead to the claim which the Policyholder should have reasonably known would be likely to lead to a claim, came to the attention of the Policyholder before the commencement of cover under this policy.

## 2.2 Employee

Except where and to the extent that in their absolute discretion the Company decide otherwise, in a case to which paragraph 1.1 applies, indemnity shall not extend to claims for compensation by or on behalf of an employee of the Policyholder or on behalf of the estate or dependants of a deceased employee of the Policyholder company where the employee is or has been employed at premises where a claim has arisen or where the act or default took place.

For the purposes of this Clause Policyholder shall include any company in the same group as the Policyholder including without prejudice to the generality of the foregoing any holding or subsidiary company.

### 2.3 **Unlicensed Products**

Where material events, save in the case of an emergency or with the prescriber's approval, involve the deliberate substitution of a product without a valid product licence in Ireland for a prescribed medicine.

### 2.4 **U.S.A.**

In respect of claims arising from the use of medicines or other products in the United States of America where legal proceedings are commenced in the United States of America.

### 2.5 **Costs**

In respect of any costs which the Policyholder is ordered to pay or is liable to pay to another except in cases falling within paragraph 1.1.1 and 1.1.2.

### 2.6 **Sight Testing**

In respect of claims arising from sight testing.

### 2.7 **Beauty Parlours**

In relation to any prosecution or claim for compensation for death or personal injury arising from the conduct of a beauty parlour or clinic (including hair removal by electrolysis) within the Policyholder's premises, whether ancillary to the retail pharmacy business or not.

### 2.8 **Registered Premises**

In relation to prosecutions or claims for compensation for death or personal injury arising from transactions on premises or any part of premises which are not registered as a pharmacy with the appropriate authorities.

### 2.9 **Fireworks and Other Explosives Products**

In respect of claims or prosecutions arising from the sale of fireworks or chemicals likely to be used in making fireworks or explosives.

### 2.10 **Wholesaling**

Except where and to the extent that in their absolute discretion the Company decides otherwise, material events involve wholesale dealing of any kind. The decision of the Company as to whether a transaction or dealing is wholesale or retail shall be conclusive and binding on the Policyholder.

### 2.11 **Fraud**

Except where and to the extent that in their absolute discretion the Company decides otherwise, material events whenever occurring (and whether or not he was a Policyholder at the relevant time) involve fraud.

### 2.12 **Indemnity for Vehicle Use**

Indemnity under paragraph 1.1 shall not extend to claims arising from the use of any motor vehicle.

### 2.13 Exclusions under Paragraph 1.1.2

Except where and to the extent that in their absolute discretion the Company decides otherwise indemnity under paragraph 1.1.2 shall not extend to:

- (a) Vicarious liability for anyone who is not a pharmacist;
- (b) Claims arising from the use or administration of defective products. For the purpose of this paragraph, a medicinal product shall be considered defective *inter alia* if it is not what it purports to be by reason of any label or description attached or applied to it or to any container.

### 2.14 General Third Party Public Liability

Except at the absolute discretion of the Company, liability for third party public liability claims arising out of actions that are not a result of the normal professional activities of the Policyholder, or any person employed or engaged in the Policyholder's business, are excluded from cover under this policy. Such cover is normally covered by public liability insurance included in standard commercial business policies.

## 3. CONDITIONS

### 3.1 Entitlement to the benefits referred to in paragraph 1 shall be subject to the following conditions:

#### 3.1.1 Due Diligence

Policyholders shall at all times take all reasonable precautions and exercise diligence to prevent errors in dispensing and selling. Goods shall be handled, stored and labelled in compliance with the relevant law and so as to minimise the risk of error, damage and injury. Indemnity will be provided only in the Company's absolute discretion against claims arising from loss or injury caused by the wilful act or default of the Policyholder or any person employed or engaged in the Policyholder's business.

#### 3.1.2 Notification

Policyholders must notify the Company immediately upon becoming aware of any incident likely to give rise to a claim.

#### 3.1.3 Submitting Claims Letters

Policyholders are required to forward to the Company immediately upon receipt any letter of claim, complaint or protocol intimating a claim.

Any Policyholder who fails to do so shall be liable to indemnify the Company against any costs or interest incurred by or awarded against the Company or the Policyholder as a result of such failure.

#### 3.1.4 Preservation and Disclosure

Policyholders shall carefully preserve all drugs, medicines, containers, packaging, labels, invoices, orders, prescriptions and any other articles, substances and documents in any way related to any incident likely to give rise to a claim and shall hand or deliver them to the Company's officers on request.

Policyholders shall furnish the Company with all details of the circumstances surrounding any claim and shall provide the Company with any such further information as may be requested.

### **3.1.5 Admission of Liability**

The Pharmaceutical Society of Ireland's Code of Ethics requires that the pharmacist or other such person should express regret if a mistake has been made to a patient where the patient has received pharmaceutical services of a standard below that which they are entitled to expect. However, beyond this, Policyholders shall not make any statement or admission, or take any step in connection with any claim or error without first consulting the Company.

### **3.1.6 Conduct and Control of Claim**

Subject to Condition 3.1.4, Policyholders shall not take any step in connection with any claim or error nor, except at their own cost, make any payment, settlement or arrangement in respect of any such claim without in either case the written consent of the Company. The Company and its agents shall have the absolute conduct and control throughout of any steps or proceedings which may be taken to enforce or defend any claim or negotiations with respect thereto in the name of and on behalf of the Policyholder and shall, subject to the exclusions and conditions in this policy, indemnify the Policyholder against all costs and expenses incurred by the Company or with its consent in any such proceedings or negotiations (except in so far as such costs are recoverable from another) the Company may take upon itself the settlement of any claim.

### **3.1.7 Contribution**

If any Policyholder has another policy of insurance covering any of the risks or benefits to which the Policyholder is entitled by virtue of this Policy, then the Company shall not be liable to contribute more than its rateable proportion of any compensation payable in respect of such risks or benefits.

### **3.1.8 Failure to Follow Advice**

If any Policyholder, contrary to the advice of the Company, its agents, its solicitors or other expert advisers, or any other competent person or body, takes or omits to take any step, or contests, pursues or defends any claim or proceedings or continues to do so, the Company shall not be liable to pay any costs incurred in contesting, pursuing or defending such claim after the date upon which such advice has been given.

### **3.1.9 Where to send correspondence**

Notices and other communications to the Company shall be made in writing addressed to NPA Insurance Ltd at the offices of the Company at the address notified to Policyholders at the commencement of the cover or if later at the most recent renewal. No notice or communication otherwise given or made shall be recognised for any purpose whatsoever.

### **3.1.10 Power to Appoint Representative**

For the purpose of providing benefits under paragraph 1 the Company may, at its absolute discretion, engage the services of a solicitor or other appropriate expert to act on behalf of or to assist, defend or represent the Policyholder and the Company may, at its absolute discretion, terminate any such engagement.

However, for the avoidance of doubt, the Company shall not be bound to engage a solicitor or other expert whom the Policyholder may wish to engage.

### **3.1.11 Co-operation and Assistance**

The Policyholder shall provide all assistance and co-operation which may reasonably be required by the solicitor or other appropriate expert engaged by the Company in accordance with paragraph 3.1.10.

### 3.1.12 Fines and Penalties

Except where specifically provided for in the Policy, or in any amendments or variations of that Policy, the Company shall not pay any fine imposed by any Court or Tribunal on a Policyholder, nor any compensation or costs awarded against a Policyholder by any Tribunal, nor shall it be liable to pay costs ordered to be paid by a Policyholder in any prosecution, but the Company may in its absolute discretion decide that it will pay such costs or any part of them.

### 3.1.13 "Subrogation"

The Company shall have power to appeal against any conviction, judgement, decision or determination adversely affecting a Policyholder or person employed or engaged in the Policyholder's retail pharmacy business and to defend, oppose, or otherwise resist any appeal by another.

In doing so, the Company may use the name of the Policyholder and the Policyholder shall afford the Company all possible assistance and co-operation in connection therewith and the Company will indemnify the Policyholder in respect of any liability for costs in connection therewith.

## 4. LIMIT OF INDEMNITY

4.1 Subject to paragraph 4.2 below, the liability of the Company to provide indemnity for a Policyholder shall not exceed €10m inclusive of all damages, compensation and claimant's costs in connection with any single claim or series of claims arising from a single incident.

4.2 Notwithstanding the contents of any other paragraph, the Company shall not be bound to incur any greater expense than it shall consider appropriate in the circumstances.

## 5. DEFINITIONS AND INTERPRETATIONS

In these paragraphs, the following words or expressions shall have the meanings given below: -

Close Relative	Spouse, former spouse, parent, step-parent, grandparent, brother, sister (including step-brother and step-sister), son, daughter, step-son, step-daughter, uncle, aunt, nephew, niece, and any other person who is or has been (a) living with and/or (b) treated by the Policyholder as a Policyholder of his family or household.
Electronic Equipment	Electronic equipment shall mean any product, equipment, machinery, system, software, spare part or accessory which contains or is operated by a data processor chip.
Company	NPA Insurance Ltd a company incorporated in England, authorised to provide services in the Republic of Ireland under the freedom of services basis of the 3rd EU non-life directive.
Fraud	Any act or omission involving or alleged to involve fraudulent conduct or deliberate deception.

Policyholder (Subject to paragraph 2.2)	A fully paid up Policyholder of NPA Insurance Ltd who, at the relevant time, has taken out and paid for a policy of insurance under the terms of this Policy.
Personal Injury	This expression includes any disease and any impairment of a person's physical or mental condition.
Pharmacist	Is a registered dispensing chemist and druggist, a registered druggist or a registered pharmaceutical chemist as defined in the Pharmacy Act 1962 or statutory modification thereof.
Premises	Premises are those premises which are registered with the Pharmaceutical Society of Ireland and which are normally identified as a pharmacy, chemist, medical hall or similar and are at the relevant time allowed to keep open shop for the dispensing of medical prescriptions or that part of a larger shop which undertakes the general business of a pharmacy and that is under the control of the pharmacist.
Relevant Time	The time of commission of any sale, dispensing or other act, omission or default which subsequently gives rise to any claim or prosecution.
Retail Pharmacy	A retail pharmacy business authorised to conduct such business under all relevant laws and requirements.

In these benefits unless the context otherwise requires, words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender, and words importing persons shall include bodies corporate.

## **6. ARBITRATION**

If any question or difference shall arise between any Policyholder and the Company as to the meaning or interpretation of the definitions or benefits in this statement or as to the rights, obligations or liabilities of either the Company or the Policyholder the matter shall, if either party so desire, be referred to arbitration by an arbitrator nominated by the President for the time being of the Institute of Chartered Accountants of Ireland.

## **7. ALTERATION TO BENEFITS**

The Company may at any time at its sole and absolute discretion add, delete, alter or amend any of these benefits or part of them where they consider that to do so will be in the general interest of Policyholders.

1st November 2007

## **NPA Insurance Ltd**

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