

# Individual Pharmacist Professional Liability Insurance Policy

## Table of Contents

	Page
DEFINITIONS .....	1
PROFESSIONAL LIABILITY COVERAGE .....	3
SUPPLEMENTAL PAYMENTS .....	3
HOW MUCH WE PAY .....	4
EXCLUSIONS .....	4
WHAT MUST BE DONE IN CASE OF A LOSS .....	5
CONDITIONS .....	6
LIMITED PHARMACIST'S LICENSE DEFENSE REIMBURSEMENT .....	7
CERTIFIED CPR COVERAGE.....	7

**IMPORTANT: THIS POLICY IS SPECIFICALLY DESIGNED AND RATED TO PROVIDE EXCESS PROFESSIONAL LIABILITY COVERAGE FOR "YOU". THIS POLICY DOES NOT APPLY TO "YOUR" EMPLOYER OR ANYONE EMPLOYED BY "YOU".**

Endorsements may also be part of this policy. They are identified on the declarations.

Words and phrases that have special meaning are shown in quotation marks. The special meanings for these words and phrases are set forth in Definitions.

### AGREEMENT

**Subject to all the "terms" that apply, and in return for "your" payment of the required premium, "we" provide the coverage described in this policy.**

### DEFINITIONS

Throughout this policy, "you" and "your" refer to the named insured as shown in the "declarations". "We", "us" and "our" refer to Pharmacists Mutual Insurance Company.

Other words and phrases are defined as follows:

1. "Bodily injury" means bodily harm, sickness, or disease sustained by a person. "Bodily injury" includes death that results at any time from bodily harm, sickness, or disease.

However, "bodily injury" does not include mental or emotional injury, suffering, or distress that does not result from a physical injury.

2. "Compound", "Compounded", or "Compounding":

A. means the mixing of components into a drug preparation:

- 1) as the result of a licensed medical prescriber's prescription drug order or initiative, based on the prescriber / patient / pharmacist relationship in the course of professional practice;
- 2) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing;
- 3) pursuant to a lawful request by a licensed medical prescriber for a drug to be used by the prescriber for the

purpose of direct administration to patients; or

- 4) in anticipation of receiving prescription drug orders based on routine, regularly observed prescribing patterns. However, the amount of product compounded pursuant to this paragraph is limited by the storage condition requirements of USP <795> and USP <797>.

B. also includes drug preparations that may be commercially available in the marketplace, as long as the "compounded" drug:

- 1) is either different from the Food and Drug Administration-approved product based upon the specific medical needs of the patient, or is temporarily unavailable to the pharmacy and there is an immediate need for the product by the patient; and
- 2) is based on the existence of a licensed medical prescriber / patient / pharmacist relationship and the presentation of a valid prescription order.

3. "Damages" means compensation in the form of money for a person who claims to have suffered an injury.

4. "Limit" means the amount of coverage that applies.

5. "Manufacturing" means the preparation of components into a drug product not specifically described within the definition of "compounding".

6. "Occurrence" means an accident and includes continuous or repeated exposure to similar conditions.

7. "Personal and advertising injury" means injury, including "bodily injury" that is a consequence thereof, arising out of one or more of the following offenses:

A. oral or written publication, including electronic publication, of material that:

- 1) slanders or libels a person or organization;

- 2) disparages a person's or an organization's goods, products, or services; or

- 3) violates a person's right of privacy;

B. false arrest, detention, or imprisonment;

C. malicious prosecution;

D. misappropriation of advertising ideas of another in "your" "advertisement"; or

E. infringement of the copyright, slogan, or trade-dress of another in "your" "advertisement".

8. "Property Damage" means physical injury to or destruction of tangible property. This includes the loss of its use.

9. "Pharmacy services"

A. means:

- 1) The interpretation, evaluation, preparation and dispensing of prescription orders;

- 2) Participation in drug and device selection (including, where permitted by law, prescribing by protocol, agreement or collaborative practice or the prescribing of legally recognized pharmacist-class of drugs or devices);

- 3) The administering of drugs, including immunizations, by "you" where permitted by law;

- 4) Drug regimen reviews;

- 5) Drug or drug-related research;

- 6) Medication consulting and patient counseling which are related to drugs, medical devices or medical conditions;

- 7) "Compounding";

- 8) Storage of drugs and devices;

- 9) Maintenance of proper records for drugs and devices; or

- 10) Pharmaceutical care and other services of a professional nature legally performed by "you".

- B. does not mean the administering of drugs or medical devices for cosmetic purposes.
10. "Suit" means a civil proceeding or an administrative proceeding alleging "damages" for "bodily injury", "property damage", or "personal injury" to which this policy applies. "Suit" includes any alternative dispute resolution proceeding or arbitration proceeding to which:
    - A. "you" must submit; or
    - B. "you" submit with "our" consent.
  11. "Terms" means all provisions, limitations, exclusions, conditions, and definitions used in this policy.
  12. "Underlying insurance" means any insurance policy, self-insurance program or risk retention program, including any deductible or retention, which provides pharmacy or pharmacist's professional liability coverage for "you" in any capacity, whether primary, contingent, excess or otherwise.

insurance" or where there is "underlying insurance" that provides a duty to defend, this policy will not apply to defense, indemnification, investigation, settlement or legal expenses which are covered by the "underlying insurance" until and unless such coverage limits are exhausted.

"We" have the right at any time to join "you" or any entity issuing or administering "underlying insurance" in the investigation or settlement of any claim or "suit".

If a claim for "bodily injury", "property damage", or "personal and advertising injury" to which this coverage applies is not covered by "underlying insurance", or if an entity issuing or administering such "underlying insurance" refuses or neglects to act on "your" behalf, or makes claims against "you" for subrogation, contribution, indemnification or similar theory, "we" shall have the right and duty to defend any "suit" against "you" seeking such damages. "We" may investigate or settle any claim or "suit" as "we" deem proper.

"Our" duty to defend ends when "our" limit of liability has been exhausted by the payment of a judgment, settlement or medical expenses.

---

## PROFESSIONAL LIABILITY COVERAGE

---

1. "We" pay, up to "our" "limit", all sums in excess of "underlying insurance" for which "you" become legally obligated to pay as "damages" due to "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies, arising out of "your" rendering or failure to render "pharmacy services".
2. This insurance applies only to:
  - A. "bodily injury" or "property damage" which occurs during the policy period and that is caused by an "occurrence" within the United States of America, its territories and possessions, Canada, or Puerto Rico; and
  - B. "personal and advertising injury" arising out of an offense committed by "you". The offense must be committed during the policy period within the United States of America, its territories and possessions, Canada, or Puerto Rico.
3. If a claim for "bodily injury", "property damage", or "personal and advertising injury" to which this coverage applies is covered by "underlying

---

## SUPPLEMENTAL PAYMENTS

---

1. If "we" investigate or settle a claim or defend a "suit" against "you", "we" will pay:
  - A. the costs taxed against "you" in the "suit";
  - B. the expenses incurred by "us";
  - C. the actual loss of earnings by "you" for the time spent away from work at "our" request. "We" pay up to \$500 per day, not to exceed \$20,000 per "occurrence" or offense;
  - D. the necessary and reasonable expenses incurred by "you" at "our" request to assist "us" in the defense or investigation of the claim or "suit";
  - E. pre-judgment interest awarded against "you" on that part of the judgment "we" pay. If "we" offer to pay the "limit", "we" will not pay any pre-judgment interest based on that period of time after the offer;

- F. the interest which accrues on the entire amount of a judgment beginning with entry of a judgment and ending when "we" tender, deposit in court, or pay the portion of the judgment that is up to, but does not exceed, "our" "limit"; and
- G. the cost of appeal bonds or bonds for the release of attachments up to "our" "limit". However, "we" are not required to apply for or furnish such bonds;

- 2. These payments will not reduce the "limit" as described under How Much We Pay.

---

## HOW MUCH WE PAY

---

- 1. The "limits" shown on the declarations and subject to the following conditions, are the most "we" pay regardless of the number of:
  - A. persons or organizations who sustain injury or damage;
  - B. claims made or suits brought; or
  - C. policy periods involved.

"Our" total liability for damages resulting from one loss will not exceed the "limits" shown on the declarations page. All "bodily injury" and "property damage" resulting from one "occurrence" or all "personal and advertising injury" resulting from one offense is considered the result of one loss.

- 2. The Per Occurrence Limit, subject to the Aggregate Limit, is the most "we" will pay for "damages" due to all "bodily injury" and "property damage" arising out of a single "occurrence" or due to all "personal and advertising injury" sustained by one person or organization.

A single "occurrence" includes:

- A. a "compounded" preparation prepared in a single batch for multiple prescriptions, regardless of the number of persons injured or the number of claims or suits brought;
- B. a single act or omission in the rendering or the failure to render "pharmacy services" that affects multiple prescriptions, regardless of the number of persons injured or the number of claims or suits brought; or

- C. an act or omission in the rendering or the failure to render "pharmacy services" to any one person, regardless of the number of times a prescription is refilled.

All "bodily injury" or "property damage" included within such "occurrence" will take place at the time the first "bodily injury" or "property damage" takes place.

---

## EXCLUSIONS

---

- 1. "We" do not pay for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your" position as proprietor, owner, partner, officer, member, or shareholder of any pharmacy or pharmacy-related business.
- 2. "We" do not pay for "bodily injury" to "your" employer or co-employee if the "bodily injury" arises out of or in the course of common employment.
- 3. "We" do not pay for "bodily injury" or "property damage":
  - A. which is expected by, directed by, or intended by "you" ; or
  - B. that is the result of "your" intentional and malicious acts.
- 4. "We" do not pay for "bodily injury", "property damage", or "personal and advertising injury" liability which is assumed by "you" under a contract or an agreement. However, this exclusion does not apply to liability that "you" would have had in the absence of the contract or agreement.
- 5. "We" do not pay for "bodily injury", "property damage" or "personal and advertising injury" arising out of the acts or omissions of any fellow employee or any member of a partnership, joint venture, association or other organization of which "you" are a member.
- 6. "We" do not pay for "property damage" to:
  - A. property of "your" employer or co-employee;
  - B. goods or products manufactured, sold, handled, or distributed by "your" employer; or

- C. property in "your" care, custody or control.
7. "We" do not pay for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your" ownership, maintenance, operation, use, loading or unloading of any aircraft, motor vehicle, or watercraft.
  8. "We" do not pay for "bodily injury", "property damage" or "personal and advertising injury" arising out of:
    - A. the rendering or failure to render "pharmacy services" by "you" or with "your" knowledge or consent that involves:
      - 1) a willful violation of a regulation or statute relating to "pharmacy services";
      - 2) a violation of criminal or penal statute or a criminal act; or
      - 3) the dispensing of prescription orders based upon telephonic, electronic or online medical consultations without there being a pre-existing patient - prescriber relationship that has included an in-person physician examination; or
    - B. "compounding" that contains a drug component which has been withdrawn or removed from the market for reasons of safety; or
    - C. "manufacturing".
  9. "We" do not pay for "bodily injury", "property damage", or "personal and advertising injury" that arises out of actual or threatened harassment, abuse or molestation
  10. "We" do not pay for "personal and advertising injury" arising out of the failure of goods, products, or services to conform with quality or performance as stated in "your" "advertisement".
  11. "We" do not pay for "personal and advertising injury" arising out of breach of contract, other than using the advertising ideas of another in "your" "advertisement" under an implied contract.
  12. "We" do not pay for "personal and advertising injury" arising out of wrong descriptions of the price of goods, products, or services as stated in "your" "advertisement".
  13. "We" do not pay for "personal and advertising injury" arising from an offense committed by "you" if "your" business is:
    - A. advertising, broadcasting, publishing, or telecasting; or
    - B. designing, developing, or coordinating the content of web sites for others.
  14. "We" do not pay for "personal and advertising injury" arising out of:
    - A. oral or written publication of material done by or at the direction of "you" knowing that it was false; or
    - B. oral or written publication of material that took place prior to the policy period.
  15. "We" do not pay for "personal and advertising injury" arising out of:
    - A. discriminatory practices prohibited by any law, ordinance or regulation; or
    - B. unfair competition or piracy.
  16. "We" do not pay for "personal and advertising injury" arising out of an act committed by or directed by "you" knowing that "personal and advertising injury" may occur as a result of the act.
  17. "We" do not pay for "personal and advertising injury" arising out of any violation of intellectual property rights, including infringement of trademark, trade-secret, or patent rights or copyright. However, this exclusion does not apply to a violation or infringement of copyright, slogan, or trade-dress rights that occur in your "advertisement".
  18. "We" do not pay for any fines or penalties.

---

#### WHAT MUST BE DONE IN CASE OF LOSS

---

1. Notice -- In the case of an "occurrence" or offense, or if "you" become aware of anything that indicates that there might be a claim involving "you", "you" must arrange for prompt notice to be given:
  - A. to "your" employer and any "underlying insurance", and

B. to "us", if this policy may become involved.

The notice to "us" must include the time, place, and circumstances of the "occurrence" or offense, or the situation that indicates that there might be a claim and the names and addresses of all known and potential claimants and witnesses.

2. Cooperation -- "You" must cooperate with "us" in investigating or settling a claim or defending a "suit".
3. Volunteer Payments -- Any payment or expense made or assumed by "you" without our written consent will be paid or assumed by "you". However, this does not apply to first aid to others at the time of "bodily injury".
4. Other Duties -- If a claim is made or a "suit" is brought against "you" that may involve this policy, "you" must:
  - A. promptly send to "us" copies of all legal papers, demands, and notices received in connection with such claim or "suit";
  - B. at "our" request, provide written authorization to obtain records and other information permitted to be obtained by applicable law; and
  - C. at "our" request, cooperate and assist "us" in:
    - 1) settling the claim;
    - 2) investigating claims and conducting "suits" or administrative hearings or proceedings. This includes attending trials, hearings, and proceedings;
    - 3) enforcing rights against all parties who may be liable to "you" for injury or damage that may be covered by this insurance;
    - 4) securing and giving evidence; and
    - 5) obtaining the attendance of all witnesses.

2. Bankruptcy -- "Your" bankruptcy or insolvency does not relieve "us" of "our" obligations under this policy.
3. Cancellation -- See state specific amendatory endorsement.
4. Change Or Waiver Of Policy Terms -- A change or waiver of "terms" of this policy must be issued by "us" in writing to be valid.
5. Conformity With Statute -- If the "terms" of this policy conflict with the statutes of "your" state, the "terms" are amended to conform to such statutes.
6. Insurance Under More Than One Policy -- The insurance under this policy is excess coverage. This insurance is non-contributory and does not apply until the limits of all "underlying insurance" have been exhausted.
7. Knowledge Of Bodily Injury Or Property Damage -- Knowledge of "bodily injury" or "property damage" will be deemed to have occurred at the earliest of the following times:
  - A. when a "suit", claim, or demand for "damages" alleging "bodily injury" or "property damage" is received by "you";
  - B. when "you" report the "bodily injury" or "property damage" to "us" or any other insurer; or
  - C. when "you" become aware of anything that indicates that "bodily injury" or "property damage" may have occurred or is occurring.
8. Liberalization -- If "we" adopt a revision of forms during a policy period which broadens this policy without additional premium, the broadened coverage will automatically apply to this policy. This also applies if "we" adopt the revision within 60 days before this policy is effective.
9. Misrepresentation, Concealment, Or Fraud -- This coverage is void if, before or after a loss:
  - A. "you" have willfully concealed or misrepresented:
    - 1) a material fact or circumstance that relates to this insurance or the subject thereof; or
    - 2) "your" interest herein; or

---

## CONDITIONS

---

1. Assignment -- This policy may not be assigned without "our" written consent.

B. there has been fraud or false swearing by "you" with regard to a matter that relates to this insurance or the subject thereof.

10. Subrogation -- If "we" pay under this policy, "we" may require from "you" an assignment of any right of recovery. This includes payments made after "underlying insurance" refuses or neglects to act on "your" behalf. "We" are not liable under this policy if "you" have impaired "our" right to recover. "You" may waive "your" right to recover, in writing, before an "occurrence" takes place.

11. Suit Against Us -- No "suit" may be brought against "us" unless:

- A. all the "terms" of this policy have been complied with; and
- B. the amount of "your" liability has been determined by:
  - 1) a final judgment against an "you"; or
  - 2) a written agreement by "you", the claimant, and "us".

However, "we" will not pay for injury or damage that is not covered by this policy or that exceeds the applicable "limit". No person has a right under this policy to join "us" or implead "us" in actions that are brought to determine "your" liability.

deposition or trial to give testimony concerning "pharmacy services" rendered by "you", "your" employer, or a fellow employee; or

4. a disciplinary proceeding or an official investigation by a state or federal agency against "you" for an action before the Board of Pharmacy in a state in which "you" are licensed.

#### HOW MUCH WE PAY

- 1. The "limits" shown on the declarations for Limited Pharmacist's License Defense Reimbursement, and subject to the following conditions, are the most "we" pay regardless of the number of actions, civil lawsuits, disciplinary proceedings or investigations brought against "you" or policy periods involved.
- 2. The per occurrence "limit", subject to the aggregate limit, is the most "we" will pay for legal fees arising out of each incident.
- 3. The aggregate "limit" is the most "we" will pay for legal fees from all incidents that occurred during the policy period shown on the declarations.
- 4. "Our" obligation to reimburse "your" legal fees applies in excess of the deductible shown in the declarations. The deductible will apply separately to each incident.

#### CONDITIONS

The following conditions apply to Limited Pharmacist's License Defense Reimbursement:

- 1. "Your" rendering or failure to render "pharmacy services" must have occurred during the policy period; and
- 2. The attorney fees must be for independent representation of "you" and may not be in connection with, or by the same attorney or firm, or a part of, representation of "your" employer.

---

#### LIMITED PHARMACIST'S LICENSE DEFENSE REIMBURSEMENT

---

"We" will reimburse "you" for legal fees incurred, arising out of "your" rendering or failure to render "pharmacy services" within the United States of America, its territories and possessions, Canada, or Puerto Rico, during the policy period, and must be in connection with:

- 1. a civil lawsuit, or a threatened civil lawsuit, in which "you" are a defendant or can reasonably be expected to be named a defendant;
- 2. a criminal indictment or charge in a case in which "you" have been named as a defendant or "you" have been notified "you" are a target of the criminal investigation;
- 3. civil lawsuit or criminal indictment in which "you" are required to appear as a witness at a

---

#### CERTIFIED CPR COVERAGE

---

- 1. "We" pay, up to "our" "limit", all sums in excess of "underlying insurance" for which "you" become legally obligated to pay as "damages" due to "bodily injury" or "property damage"

arising out of "your" performing cardio-pulmonary resuscitation (CPR), but only if "you" are certified for CPR.

2. If a claim for "bodily injury" or "property damage" to which this coverage applies is covered by "underlying insurance", this policy will not apply to defense, indemnification, investigation, settlement or legal expenses which are covered by the "underlying insurance" until and unless such coverage limits are exhausted. "We" have the right at any time to join "you" or any entity issuing or administering "underlying insurance" in the investigation or settlement of any claim or suit.
3. If a claim for "bodily injury", or "property damage" to which this coverage applies is not covered by "underlying insurance", or if an entity issuing or administering such "underlying insurance" refuses or neglects to act on "your" behalf, or makes claims against "you" for subrogation, contribution, indemnification or similar theory, "we" shall have the right and duty to defend any "suit" against "you" seeking such damages. "We" may investigate or settle any claim or "suit" as "we" deem proper.
4. "Our" duty to defend ends when "our" limit of liability has been exhausted by the payment of a judgment, settlement or medical expenses.
5. "We" shall have the right to invoke any immunity, statutory or otherwise, which and to the extent "you" could invoke such immunity if "you" were not insured.
6. This coverage does not apply:

- A. to expenses incurred by "you" for first aid to others at the time of an accident; or
- B. if "you" are engaged in the business or occupation of providing CPR as a paramedic or emergency medical technician

#### HOW MUCH WE PAY

1. The "limits" shown on the declarations for Certified CPR Coverage, and subject to the following condition, is the most "we" pay regardless of the number of claims brought against "you", or policy periods involved.
2. The per occurrence "limit", subject to the aggregate limit, is the most "we" will pay for "bodily injury" or "property damage" arising out of each "occurrence".
3. The aggregate "limit" is the most "we" will pay for "bodily injury" or "property damage" from all "occurrences" during the policy period shown on the declarations.

#### CONDITIONS

The following condition applies to Certified CPR Coverage:

1. "Your" performing cardio-pulmonary resuscitation (CPR) must have occurred during the policy period.