



## Review Article

### PROFESSIONAL INDEMNITY INSURANCE – A MEASURE TO SHARE THE PROFESSIONAL LIABILITY

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**KEYWORDS:** Professional negligence, Professional Indemnity Insurance.

#### ABSTRACT

Ayurved is one of the holistic science which stands on the strong pillars of fundamental concepts and clinical applicability. There is no doubt about the greatness of Ayurved. But unfortunately, the human errors cannot be eliminated.

After the Consumer Protection Act came into force, many filed cases for medical negligence against doctors claiming for compensations. Thus, the act of error and omission may drag; even the knowledgeable and skillful professionals into the legal matters resulting with unbearable consequences.

The Forensic medicine and Jurisprudence (*Vidhi Vaidyak Avum Vyavahar Ayurved*) here came forward with a helping hand in a form of an insurance policy for the professionals rendering their services in various fields to the society. Therefore, Professional Indemnity Insurance was introduced which not only protects but also covers the liability falling on professionals as a result of the error and omission.

This article does not encourages the act of professional negligence, rather it aims to impart the detailed information about a preventive measure which insures defence and share the liability in case of act of error and omission, the general rules and regulations, how one can claim, benefits and limitations as well as how an Ayurvedic professionals get covered by Professional Indemnity Insurance.

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#### INTRODUCTION

Ayurved is the autonomous branch of science with the foundation of holistic principles. But it is inevitable- mistakes can happen. The act of error and omission may drag the legal liabilities to fall upon even over a knowledgeable and skillful practitioner.

The Forensic Medicine and Jurisprudence (*Vidhivaidyak Avum Vyavahaar Ayurved*) provides a thorough knowledge of ethics and laws, essential for all medical professionals. This helps in correcting the practice standards among the medical professionals.

After the Consumer Protection Act 1986 has come into force, the public awareness regarding medical negligence is growing

#### What is Professional Negligence?

The omission to do something which a reasonable person would do, or doing something which a reasonable person would not do or the absence of reasonable care and skill, or willful negligence of a medical practitioner in the treatment of the patient, which causes injury or death of the patient is known as Professional Negligence.<sup>[1]</sup>

A 2016 study by the India Medical Times shows that there has been a 110% rise in medical

negligence cases in India each year. A quick look at the CIA World Fact book reveals that in India, there are 0.73 physicians for every 1,000 people. In the US and UK, the doctor to patient ratios are 2.55 and 2.73 respectively. This increases the chances of medical negligence.<sup>[2]</sup>

Many cases are being filed against the medical professionals leading them to unbearable liabilities. Therefore, to avoid the litigation and provide the security to the medical professionals, a preventive measure was introduced known as Professional Indemnity Insurance.

### What is Professional Indemnity Insurance?

The term “indemnity” means reimbursement to compensate. The principle of indemnity is strictly observed in liability insurance. These insurances are designed to provide protection to the insured person against the financial consequences of legal liability.<sup>[3]</sup>

This policy is meant for professionals to cover liability falling on them as a result of errors and omissions committed by them while rendering professional services.

Professional Indemnity Insurance cover became available for doctors and medical establishments from December 1991 and it is also referred to as ‘Malpractice Insurance’; so it is globally considered a must have for the conscientious practitioners.<sup>[4]</sup>

### Aim & Objective

1. To spread awareness about the measure sharing professional liability.

### Professional Indemnity Insurance

2. Compilation of data from vivid sources.

### Material

1. Data collection from various authentic and essential texts.
2. Other alliances- various websites, research works and articles.

### Methodology

This paper will be presented by compiling the data and information from various sources including text books, online data, research articles, etc.

### DISCUSSION

#### Who can take the policy? <sup>[4-6]</sup>

1. Doctors and medical practitioners- It covers the registered medical practitioners like surgeons, cardiologists, pathologists, physicians, Ayurvedic and homeopathic practitioners etc.
2. Medical establishment- It covers the legal liability falling on medical establishment such as hospitals, as a result of error or omission

committed by any named professional or qualified assistant, or the hospital staff engaged by that medical establishment.

3. Others professionals like- Engineers, Lawyers, Architects, Chartered Accountants and Financial Consultants can also take this policy.

### General rules and regulations <sup>[4-6]</sup>

1. The policy provides insurance cover in respect of errors and omission on the part of the professional while rendering their services. The aggregate limits within India, during the policy period shall not exceed Rs. 2crores.
2. The rates of premium under the agreement are annual rates and it is not allowed to accept premium in installments.
3. It is not permissible to issue policies for periods more than 12 months. The following short period scale of premium shall apply to policies issued for period less than 12 months.

**Table 1: Short period scale of Premium**

Period	Rate
Up to 1 month	1/4 <sup>th</sup> of the premium
Up to 2 month	3/8 <sup>th</sup> of the premium
Up to 3 month	1/2 <sup>th</sup> of the premium
Up to 4 month	5/8 <sup>th</sup> of the premium
Up to 6 month	3/4 <sup>th</sup> of the premium
Exceeding 6 months	Full annual premium

4. Policies cancelled during the currency at the request of the insured, cannot be claimed.
5. The policy will indemnify any act committed by the insured (registered medical practitioner) giving rise to any legal liability to third party.
6. The insured includes the policy holder as well as his qualified assistants or employees named in the proposal.
7. During this tenure, all claims for compensation have to be legally established in a court of law, however; insurers may arrive at compromised settlement if prima facie liability exists under the policy.

### How to claim? <sup>[4-7]</sup>

The term liability means “responsibility” and legal liability means “the responsibility which can be enforced by law”. Legal liability may be classified into criminal liability and civil liability. Only Civil liability claims are payable.

Civil liability may arise if there is prima facie evidence of negligence by the insured, resulting into injury or death or damage to property belonging to person other than the insurer.

Negligence will be proved only on the grounds of:

1. Existence of professional duty owed to patient.
2. Breach of duty.
3. Injury suffered by that person or property damaged as a result of that breach.

In case of any event likely to give rise to any liability claim, it should be informed to insurance company immediately. In case any legal notice or summon is received, it should be sent to the insurance company. The company has the option of arranging the defense of the case.

The event giving rise to the claim should have occurred during the period of insurance and the claim should be made in writing against the insured. The maximum amount payable including the defense cost will be the AOA (Any One Accident) limit selected. The AOY (Any One Year) limit will get reduced by the amount of claim paid for any one accident. Any number of such claims made during the policy period will be covered subject to the total indemnity not exceeding the AOY (Any One Year) limit.

#### **Benefit** <sup>[4-11]</sup>

1. It takes care and protects the professional interests of the insured doctor.
2. It arranges, conducts and pays for the defense of the insurer.
3. It arranges pre-litigation advice and all required professional assistance.
4. It helps to indemnify the insured doctor with respect to any loss or expense directly arising from actions, claims and demands against him on the grounds of professional negligence.

#### **Limitation** <sup>[4-11]</sup>

No liability shall attach to the insurance company in respect of

1. Any criminal act or any act committed in violation of any law or ordinance.
2. Services rendered while under the influence of intoxicants or narcotics.
3. Any condition caused by or associated with AIDS.
4. Any third party liability.
5. Rising out of all personal injuries like, false arrest, defamation etc.
6. Resultant mental injury, anguish or shock.
7. Any dishonest, fraudulent, criminal or malicious act.
8. Loss of pure financial nature or loss of goodwill.
9. Cross-path: like a dentist or dental surgeon performing- general anesthesia or cosmetic surgery or using drug for wt. reduction.
10. The amount of compensation is restricted by the limit of indemnity one decides.

#### **Ayurved and Professional Indemnity Insurance** <sup>[12]</sup>

Professional Indemnity Insurance covers the Ayurved as the holistic science.

**Need-** As a profession Ayurved is relatively low risk but due to increasing legal proceedings for compensation and the incidents of claims against the therapies practiced; there is a need to have backup for safety.

According to latest marketing insurance scheme, Ayurved is covered under trade description of holistic therapist insurance. Due to the low risk, the low cost cover is offered at very affordable price. Besides, we can get cover for -

1. Public liability
2. Product liability
3. Malpractice cover

#### **CONCLUSION**

The provision of Professional Indemnity Insurance seems to be a sigh of relief for the practitioners against the growing menace of compensation claims from the patients. The medical professional stands on an individual's goodwill.

Besides the fact that money is paid, the intention is never to promote the negligence. Though it provides the security, but there is no policy which can insure one's reputation.

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