

# Provision Prohibiting Insureds from Altering Medical Records Upheld

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A state trial court, applying Massachusetts law, has applied a professional liability policy provision that prohibits insured healthcare providers from altering medical records to bar coverage where the insurer established that the insured did alter medical records and that the alteration prejudiced the insurer. *E. Dentists Ins. Co. v. Lindsay*, DDS, 2004 WL 2004778 (Mass. Super. Ct. Aug. 16, 2004).

In discussing the case, the court first determined that the insurer established that the insured had altered relevant medical records in violation of the following policy condition:

The *insured* shall not alter any medical records or commit any other act that would interfere with the company's ability to defend a claim or suit against the *insured*. Alteration of medical records will make the policy void.

Then, after noting that interpretation of the specific provision was an issue of first impression under Massachusetts law, the court concluded that, in order to disclaim coverage under similar provisions, Massachusetts law generally requires a showing of "actual prejudice" to the insurer's interest to bar coverage. The court accordingly held that the insurer had to demonstrate the alteration had prejudiced its interests. The court then held that the insurer had demonstrated actual prejudice as a matter of law because Massachusetts law provided that failure to keep accurate medical records "increases the likelihood of a judgment against the [insured] in a medical malpractice case."

After determining that prejudice had been demonstrated, the court next considered the insured's argument that the policy's prohibition on alteration of medical records was overbroad. The court rejected this argument, noting the fact that the insurer had to demonstrate both breach and prejudice substantially limited the breadth of the policy provision. The court also rejected the insured's argument that the policy's condition was contrary to public policy, concluding that, so long as the insurer could demonstrate prejudice, there was no violation of public policy in applying the condition in the policy. Accordingly, the court applied the policy's provision and held that the insured was entitled to void the insured's policy as a result of his alteration of medical records.

For more information, please contact us at 202.719.7130.