

Under California Law, Medical Malpractice Policies Do Not Cover Medical Board Professional Disciplinary Actions

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A New Jersey appellate court, applying California law, has held that a medical malpractice liability insurer had no duty to reimburse an insured physician for defense costs incurred in connection with a professional disciplinary action brought against him by the California Medical Board. *Jehan Zeb Mir, M.D. v. Admiral Ins. Co.*, 2012 WL 1694714 (N.J. Super. Ct. Mar. 27, 2012).

The California Medical Board filed a disciplinary action against a physician in 2003 based on his alleged inappropriate delay in performing surgery. After unsuccessfully seeking coverage from his malpractice insurer for defense costs, the physician brought suit against the carrier, seeking reimbursement for legal fees incurred in defending against the disciplinary action. The policy provided coverage for "damages, including loss payments, legal and claims expense" that the policyholder became legally obligated to pay "because of injury . . . caused by a medical incident." "Medical incident" was defined as an "act or omission" arising from the provision of "medical services." The "Defense and Settlement" provision of the policy provided that the insurer would defend "any claim or suit against the Insured seeking damages to which this insurance applies" regardless of the ultimate merits of "any of the allegations of the suit."

The physician argued that the phrase "any claim" should be read separately from the phrase "suit against the Insured seeking damages" in the policy's "Defense and Settlement" provision. According to this insured, this untethered the phrase "any claim" from the relief sought by the claim and required the carrier to provide a defense for "claims" that did not seek damages, such as the disciplinary action. The court rejected this argument. The court held that the policy unambiguously limited coverage to damages arising out of medical malpractice claims and did not provide coverage for a professional disciplinary action that only sought to suspend or revoke the physician's medical license. In doing so, the court noted that California courts previously have held that professional disciplinary hearings before the California Medical Board are not considered "suits for damages." The court therefore held that the policy did not require the insurer to provide a defense for an action for which there was no coverage.