

Exclusion for Violation of Licensure Laws Inapplicable to Medical Malpractice Action

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Applying Kentucky law, a Kentucky intermediate appellate court has held that an exclusion for liability resulting from a violation of professional licensure laws does not bar coverage for a lawsuit against a doctor based on his alleged negligence that also resulted in the medical licensure board taking action that affected the doctor's license. *Healthcare Underwriters Grp. v. Strange*, 2013 WL 6571799 (Ky. Ct. App. Dec. 13, 2013).

A doctor was performing surgery on a patient when the doctor suddenly collapsed. He later tested positive for opiates. Consequently, the medical licensure board began an investigation and ultimately concluded that the doctor's medical license would be affected. When the patient filed an action against the doctor for professional negligence, the doctor sought coverage under his professional liability policy. The insurer denied coverage and filed a coverage action seeking a declaration that there was no coverage for the malpractice lawsuit based on an exclusion for "liability resulting from any violation of any law, including but not limited to, antitrust, unfair competition, consumer protection or professional licensure laws." The insurer asserted that the exclusion barred coverage for medical negligence if that negligence also resulted in a violation of professional licensure laws.

The court disagreed with the insurer. The court found the exclusion ambiguous and thus rejected the insurer's interpretation, holding instead that the exclusion barred coverage only for liability directly resulting from a violation of the professional licensure laws. According to the court, in a medical malpractice action, an insured's liability results from his or her negligence, not from a violation of professional licensure laws, and thus the exclusion does not apply every time an insured commits a tort of medical negligence that also happens to be a violation of a licensure law. As such, the court held that the exclusion did not bar coverage for the patient's lawsuit against the doctor.