

Coverage Barred for Registered Nurse Not Licensed in Jurisdiction Where Professional Services Were Provided

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The United States District Court for the District of Columbia, applying Virginia law, has held that an insurer had no duty to defend a registered nurse under a nurse's professional liability policy because the policy excluded coverage for liability arising when the professional's license was no longer valid and also because the policy excluded coverage for liability arising from the provision of professional services. *Sheinbaum v. Am. Cas. Co.*, 2010 WL 3909209 (D.D.C. Oct. 1, 2010). The court also held that the nurse, who was licensed in Denmark, did not make a material misrepresentation when she applied for the policy and therefore that the policy could not be rescinded.

A former patient filed suit against the nurse, alleging the nurse had failed to care for the patient properly after a surgery and had misrepresented that she was a registered nurse. The nurse admitted in responding to the suit that she was not a licensed, registered nurse in any jurisdiction in the United States. After the insurer denied coverage, the nurse brought a declaratory judgment action against the insurer.

The policy included a professional liability coverage part and a workplace liability coverage part. The professional liability part covered claims arising out of "any act, error or omission in your providing professional services which results in injury or damage" and applied to "those services for which you are licensed, certified, accredited, trained or qualified to perform within the scope of practice recognized by the regulatory agency responsible for maintaining the standards of the profession(s) shown on the certificate of insurance." The workplace coverage part covered "amounts . . . you become legally obligated to pay . . . as a result of injury or damage . . . caused by an occurrence that happens at the workplace during the policy period" and excluded coverage for claims arising out of the provision of professional services or "any liability you have for a business or profession . . . other than that named on the certificate of insurance."

In granting the insurer summary judgment on its duty to defend, the court held coverage was barred by two policy exclusions. First, with regard to the policy's professional liability coverage, the policy excluded coverage for claims "based on, arising out of, or related to . . . liability resulting from professional services you provide while your license or certification to practice is suspended, revoked, or no longer valid." The court interpreted the term "valid" to required the nurse to have a legally sufficient license to practice nursing in a specific

jurisdiction. Because the nurse admitted she only had a Danish license, the court held the exclusion barred coverage for the suit, which arose from services she provided in Virginia. Second, with regard to the policy's workplace liability coverage, the policy excluded coverage for claims "based on, arising out of, or related to . . . injury or damage resulting from any professional services, placement services, or personal injury." Noting the nurse had conceded the suit arose out of her provision of professional services, the court concluded workplace liability coverage was barred by this exclusion.

The court also addressed the insurer's attempt to rescind the policy, holding the nurse had not made a material misrepresentation when she applied for the policy. On her application, the nurse had indicated she was an "RN," and the court reasoned this statement was not false as a matter of law because she was licensed and registered in Denmark.