

ALERT

# Professional Services Exclusion in Policy Issued to Medical Provider Applies to All Actions Directed at Patient Treatment

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The United States District Court for the Western District of Washington has held that a professional services exclusion in a policy issued to a medical provider excludes coverage for any claims arising from the medical treatment of individuals. *Evanston Ins. Co. v. Clark Cty.*, 2011 WL 5563284 (W.D. Wash. Nov. 14, 2011).

The insurer issued a policy to a medical provider for both general and professional liability. When a Washington county hired the medical provider to give medical care to inmates at a county jail, the county was named as an additional insured under the general liability coverage part only. The general liability coverage part excluded coverage for claims based on negligence in the performance of professional services, which the policy defined as "correctional medical services." The estate of an inmate who committed suicide in prison sued the county and the medical provider for negligence. The insurer denied coverage to the county, arguing that the claims for negligence were based on professional services and thus excluded from coverage. In particular, the estate alleged that the medical provider failed to: 1) request that the inmate remain in custody of staff; 2) notify staff that the inmate was a risk to himself; 3) properly file the inmate's medical records; and 4) develop and maintain a policy manual. The county argued that the allegations were administrative, not professional, and thus covered under the general liability coverage part.

The court noted that applicable case law interpreted "professional services" as any act or service arising out of an occupation or employment involving specialized knowledge, labor, or skill – such

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labor or skill being predominantly intellectual, rather than physical. According to the court, the common-sense definition of “professional services” here includes all activities performed by medical personnel directed at treating the inmate. Consequently, the court held that with the exception of the fourth allegation, the estate’s claims were for professional services and within the scope of the professional services exclusion. The fourth allegation, which related to operations generally and not directed at any particular patient, was administrative in nature and not within the definition of medical services or professional services.