

Professional Services Exclusion Bars Coverage for Restraint-Related Death

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When does an act constitute a “professional service”? A recent Sixth Circuit decision applying Kentucky law held that the answer to that question lies in the service itself, and not the context or circumstances surrounding its use.

In *Scottsdale Insurance Co. v. Seven Counties Services, Inc.*, No. 25-5806 (6th Cir. Sept. 9, 2026), a behavioral care center sought coverage under a commercial general liability policy after it was sued following the death of a minor resident who choked while being restrained by workers. Although the care center argued that its employees’ use of the restraint was improper and inconsistent with their training, the court concluded that the restraint was an excluded “professional service” because it involved specialized training and the exercise of judgment, and was subject to state regulation.

The decision illustrates the potential breadth of professional services exclusions and highlights the need for policyholders to consider the scope of the services they provide, especially when those services carry a risk of injury, in building a liability insurance program.

Background

The policyholder operated several behavioral care centers across Kentucky. In July 2022, a seven-year-old resident died after care workers used a restraint technique. The Kentucky Office of Inspector General concluded that the facility had failed to protect the resident from an unnecessary emergency safety intervention, leading to the care workers being criminally indicted. The resident’s estate also sued the care center for wrongful death.

The care center’s commercial general liability policy covered bodily injury but excluded injury arising from undefined “professional services.” The insurers filed a declaratory judgment action seeking a determination of their coverage obligations, and the care center counterclaimed for breach of contract. The central dispute was whether the workers’ use of the restraint on a seven-year-old who, until that point, was not a danger to himself or others constituted a “professional service,” triggering the exclusion and eliminating indemnity coverage.

Though the district court held that the insurers had a duty to defend, based on the developed factual record it also found that the restraint was a professional service and therefore that the insurers had no duty to indemnify. The care center appealed the indemnity ruling.

The Sixth Circuit’s Decision

The Sixth Circuit agreed. Noting that the policy did not define “professional services,” the court emphasized that, under Kentucky law, whether an action constitutes a “professional service” focuses on the nature of the action itself, as opposed to the circumstances surrounding that action. From this, the court derived three factors applicable to whether an employee’s conduct constitutes a professional service:

1. whether the action can be performed by a layperson or if it requires specialized learning;
2. whether the task at issue requires an exercise of judgment or is routine or rote, including if it is predominantly manual; and
3. whether the act itself is subject to regulation.

The court concluded that each of these factors supported application of the exclusion where the restraint (1) “demanded specialized knowledge and training to be performed safely on a child,” as the workers received training on the use of restraints; (2) required judgment, as the workers had to “assess... an evolving behavioral incident” and decide whether and how to restrain the child; and (3) was governed by Kentucky regulations regarding the use of emergency safety interventions.

The care center argued that the restraint was punitive, improper, and inconsistent with the workers’ training, and raised the fact that the care workers were criminally indicted for their conduct. The court was unpersuaded. In its view, improper *performance* does not change the underlying nature of the service. A negligently or improperly performed professional service remains a professional service for purposes of the exclusion.

Key Takeaways

The meaning of “professional services,” and the applicability of professional services exclusions, are recurring sources of coverage disputes, particularly when the policy leaves the term undefined. *Seven Counties* provides an interpretation that focuses the analysis on the act itself, isolated from its context, in determining whether it constitutes a professional service.

Policyholders should not assume that a particular act constitutes a professional service without first understanding how courts in the relevant jurisdiction have approached that question, especially in the absence of a controlling definition. Policyholders renewing or negotiating coverage should consider the potential benefits of negotiating a specific definition of “professional services,” rather than leaving the term undefined. This is especially true for policyholders whose work involves inherent risks of physical injury to third parties, including healthcare providers like the care center in *Seven Counties*.

And as we discussed in connection with another recent Sixth Circuit decision, *Professional Services Exclusion Leaves Pharmacy’s Coverage Order Unfilled*, policyholders should be particularly aware of the scope of their professional services when structuring a broader insurance program. While organizations may expect CGL programs to respond to bodily injury claims generally, professional services exclusions may bar coverage specifically for those injuries arising from the activities most central to an organization’s operations. Considering and coordinating CGL coverage with professional liability and other policies as part of a broader program can help policyholders avoid discovering a coverage gap when it’s too late.