

**PHYSICIANS PROFESSIONAL LIABILITY
RETROACTIVE COVERAGE POLICY**



**THIS POLICY IS WRITTEN ON A CLAIMS MADE AND REPORTED BASIS. PLEASE READ THIS
POLICY CAREFULLY.**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Underwriter, and subject to all of the terms and conditions of this Policy (including all endorsements hereto), the Underwriter and the **Insured** agree as follows:

I. INSURING AGREEMENTS

(A) Claims Made Professional Liability Insurance:

The Underwriter will pay, up to the applicable Limit of Liability stated in ITEM 4 of the Declarations, on behalf of the **Insured** any **Loss** that the **Insured** is legally obligated to pay as a result of any covered **Claim** for a **Professional Services Wrongful Act** committed or allegedly committed during the **Retroactive Period**; provided, that the **Claim** is first made against the **Insured** during the **Policy Period** and reported to the Underwriter in accordance with GENERAL CONDITION (C) of this Policy.

(B) Defense and Supplementary Payments:

The Underwriter has the right and duty to defend any **Claim** that is covered by this Policy, even if any of the allegations of such **Claim** are groundless, false or fraudulent. In addition to the applicable Limit of Liability, the Underwriter will pay **Defense Expenses** and will:

- (1) pay the premium on any bond to release attachments for an amount not in excess of the applicable Limit of Liability and the premium on any appeal bond required in any defended suit, provided, that the Underwriter will not be obligated to apply for or furnish any such bond;
- (2) pay all costs imposed against the **Insured** in any such suit;
- (3) provide a legal defense and pay **Defense Expenses** for any arbitration, mediation or other alternative dispute proceeding if:
 - (a) the dispute at issue is a **Claim** covered by this Policy, and
 - (b) the **Insured** provides notice of the proceeding as required by GENERAL CONDITION (C) of this Policy; and
- (4) pay reasonable expenses, plus loss of earnings due to time off from work, incurred by an **Insured** as a result of being a defendant or co-defendant in a **Claim** or at the Underwriter's request, but not to exceed:
 - (a) \$500 per day per **Insured**; and
 - (b) \$12,500 per **Claim**.

II. DEFINITIONS

(A) "**Claim**" means a written demand received by an **Insured** for monetary damages resulting from a

Professional Services Wrongful Act.

- (B) "**Defense Expenses**" means the reasonable fees of attorneys, experts and consultants and costs and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim** with the approval or at the direction of the Underwriter; provided, that **Defense Expenses** shall not include:
- (1) remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of an **Insured**; or
 - (2) any amounts incurred in defense of a **Claim** for which any other insurer has a duty to defend, regardless whether such other insurer undertakes such duty.
- (C) "**Employee**" means any person, other than a **Named Insured** individual, who has an assigned work schedule for and is on the regular payroll of the **Named Insured**, with federal and state taxes withheld. An **Employee's** status as an **Insured** shall be determined as of the date of the **Professional Services Wrongful Act** upon which a **Claim** involving the **Employee** is based.
- (D) "**First Named Insured**" means the individual or entity designated as such in ITEM 1 of the Declarations.
- (E) "**Good Samaritan Acts**" means emergency medical treatment provided by an **Insured**, without remuneration, at the scene of an accident, medical crisis or disaster.
- (F) "**Insured**" means any of the following:
- (1) any **Named Insured** entity;
 - (2) any **Named Insured** individual, but only when such **Named Insured** individual is acting within the capacity and scope of his or her duties for the **Named Insured** or while providing **Good Samaritan Acts**;
 - (3) any **Employee**, but only when such **Employee** is acting within the capacity and scope of his or her duties as such or while providing **Good Samaritan Acts**; and
 - (4) any **Locum Tenens**, but only when such **Locum Tenens** is acting within the capacity and scope of his or her duties as such. Coverage for any **Locum Tenens** shall only extend for up to sixty (60) consecutive days during the applicable **Retroactive Period** per **Named Insured** individual for whom such **Locum Tenens** is serving as a substitute.
- (G) "**Locum Tenens**" means any physician who is temporarily serving as a substitute physician for an **Named Insured** individual while such **Named Insured** individual is temporarily absent from professional practice. **Locum Tenens** shall not include any physician engaged by the **Named Insured** on a temporary basis to provide additional staffing to the **Named Insured**.
- (H) "**Loss**" means any damages, settlements, judgments or other amounts (including punitive or exemplary damages if insurable under the applicable law most favorable to the insurability thereof) which an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** shall not include:
- (1) **Defense Expenses**;
 - (2) the multiple portion of any multiplied damage award;
 - (3) fines, penalties, sanctions, fees, government payments or taxes;
 - (4) amounts owed to any provider of **Medical Services** under any contract;

- (5) restitution, return or disgorgement of fees, profits, charges for products or services rendered, capitation payments, premium or any other funds allegedly wrongfully held or obtained;
 - (6) relief or redress in any form other than monetary compensation or monetary damages, including without limitation the cost of complying with any injunctive, declaratory or administrative relief;
 - (7) the payment, satisfaction or writing off of any medical bills or charges by an **Insured**; or
 - (8) matters which are uninsurable under applicable law.
- (I) "**Medical Services**" means health care, medical care, or treatment provided to any individual, including without limitation any of the following: medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional health care; the furnishing or dispensing of medications, drugs, blood, blood products, or medical, surgical, dental, or psychiatric supplies, equipment, or appliances in connection with such care; the furnishing of food or beverages in connection with such care; the providing of counseling or other social services in connection with such care; and the handling of, or the performance of post-mortem examinations on, human bodies.
- (J) "**Named Insured**" means each individual or entity designated as a **Named Insured** in ITEM 3 of the Declarations.
- (K) "**Peer Review**" means the process of evaluating, by members of a formal, duly constituted professional review board or committee of the **Named Insured**, any individual or entity for purposes of selecting, employing, contracting with or credentialing current or prospective providers of **Medical Services**.
- (L) "**Policy Period**" means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) the Declarations.
- (M) "**Proctoring Services**" means the supervision, evaluation or instruction provided by a **Named Insured** individual to members of a medical staff; provided, that such supervision, evaluation or instruction is provided in accordance with applicable medical staff bylaws, rules and regulations or a governmental authority or directive.
- (N) "**Professional Services**" means:
- (1) **Medical Services**;
 - (2) **Good Samaritan Acts**;
 - (3) **Proctoring Services**;
 - (4) the activities of an **Insured** as a member of a board or committee of a **Named Insured** entity, or as a member of any committee of the medical or professional staff of a **Named Insured** entity, when engaged in **Peer Review** or **Utilization Review**;
 - (5) the activities of an **Insured** as a member of a formal accreditation, standards review or similar professional board or committee, including executing the directives of such board or committee; or
 - (6) reviewing the quality of **Medical Services** or providing quality assurance on behalf of the **Named Insured**.
- (O) "**Professional Services Wrongful Act**" means any actual or alleged act, error or omission, or series of acts, errors or omissions, by an **Insured** in rendering, or failing to render, **Professional Services**.

- (P) **"Related Claims"** means all **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, in any way involving, or in any way having a common nexus of the same or related facts, circumstances, situations, transactions, or events, or the same or related series of facts, circumstances, situations, transactions or events.
- (Q) **"Retroactive Period"** means the applicable period of time stated in ITEM 3 of the Declarations during which a **Professional Services Wrongful Act** must be committed or allegedly committed.
- (R) **"Utilization Review"** means the process of evaluating the appropriateness or necessity of **Medical Services** provided or to be provided by an **Insured**. **Utilization Review** shall include prospective review of proposed **Medical Services**, concurrent review of ongoing **Medical Services**, and retrospective review of already rendered **Medical Services**. **Utilization Review** does not include services or activities performed in the administration or management of health care plans.

III. EXCLUSIONS

This Policy does not apply to, and the Underwriter will not pay any **Loss** or **Defense Expenses** for, any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged:

- (A) **Professional Services Wrongful Act** committed or allegedly committed prior to or after the **Retroactive Period**;
- (B) rendering of, or failure to render, **Medical Services** by any **Insured** while the **Insured's** license to practice was restricted, suspended, revoked or inactive;
- (C) act, error, omission or **Professional Services Wrongful Act** if any **Insured**, on or before the Inception Date of this Policy stated in ITEM 2(a) of the Declarations, knew or reasonably could have foreseen that such act, error, omission or **Professional Services Wrongful Act** might result in a **Claim**;
- (D) act, error, omission, **Professional Services Wrongful Act**, event, suit or demand which was the subject of any notice given under any other policy of insurance or plan or program of self-insurance in effect prior to the Inception Date of this Policy stated in ITEM 2(a) of the Declarations;
- (E) violation of any federal, state or local antitrust, restraint of trade, unfair competition, or price-fixing law, or any rules or regulations promulgated thereunder, or any involvement in any agreement or conspiracy to restrain trade, except for any **Claim** otherwise covered under this Policy arising out of the rendering of, or failure to render, **Medical Services**;
- (F) dishonest, fraudulent, criminal or intentionally malicious act, error or omission by an **Insured**; any willful violation of law, statute, rule or regulation by an **Insured**; or the gaining of any profit, remuneration or advantage by an **Insured** to which such **Insured** was not legally entitled, including, but not limited to, health care fraud; provided, however, that no such act of one **Insured** will be imputed to any other **Insured** who was not aware of and did not participate in such act;
- (G) obligation of an **Insured** pursuant to any workers' compensation, unemployment compensation, disability benefits or similar law;
- (H) unauthorized or illegal use or release of confidential, private or proprietary information;
- (I) liability of any individual acting as an independent contractor for an **Insured**;

- (J) discrimination or harassment of any kind on any basis or employment-related act, error or omission, except to the extent that such discrimination relates to the rendering of, or failure to render, **Professional Services**;
- (K) violation of the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, all as may be amended, or any similar federal, state or local statutory or common law, or any rules or regulations promulgated thereunder; except this EXCLUSION (K) will not apply to any **Claim** arising out of the rendering of, or failure to render, **Medical Services**, which is otherwise covered under this Policy and for which reimbursement for such services was received from health care plans covered by such statutes, rules or regulations; or
- (L) rendering of, or failure to render, **Medical Services** by any **Named Insured** individual outside the scope of the applicable "Specialty" stated in ITEM 3 of the Declarations.

IV. GENERAL CONDITIONS

(A) Limits of Liability; Deductible:

- (1) The "Each **Claim**, each **Named Insured**" amount stated in ITEM 4 of the Declarations will be the Underwriter's maximum Limit of Liability for all **Loss** resulting from each **Claim** or **Related Claims** made against a **Named Insured** for which this Policy provides coverage.
- (2) The "Aggregate for all **Claims**, each **Named Insured**" amount stated in ITEM 4 of the Declarations will be the Underwriter's maximum Limit of Liability for all **Loss** resulting from all **Claims** or **Related Claims** made against a **Named Insured** for which this Policy provides coverage.
- (3) The Limits of Liability described in subparagraphs (1) and (2) above shall apply separately to each **Named Insured**.
- (4) It is understood and agreed that:
 - (a) **Employees** shall share in the available applicable Limit of Liability of the **First Named Insured**; and
 - (b) any **Locum Tenens** who is serving as a substitute for a **Named Insured** individual shall share in the available applicable Limit of Liability of the **Named Insured** individual for whom such **Locum Tenens** is serving as a substitute.
- (5) (a) The **Insured** shall be responsible for payment in full of the applicable deductible stated in ITEM 5 of the Declarations, and the Underwriter's obligation to pay **Loss** or **Defense Expenses** under this Policy shall be excess of such deductible; provided, that the Underwriter has agreed to pay the applicable deductible on behalf of the **Insured**. The **Insured** agrees that he/she/it shall repay the Underwriter any amounts so paid as soon as practicable upon demand of the Underwriter. The applicable deductible shall apply to each **Claim** or **Related Claims** (subject to the applicable aggregate deductible, if any), and shall be eroded (or exhausted) by the **Insured's** or the Underwriter's payment of **Loss** or **Defense Expenses**.
 - (b) Any payment of **Loss** within the applicable deductible will reduce, and may exhaust, the applicable Limits of Liability. Any payment of **Defense Expenses** within the applicable deductible will not reduce the applicable Limits of Liability.
- (6) If any **Claim** made against the **Insureds** gives rise to coverage both under this Policy and

under any other policy or policies issued by the Underwriter or any affiliate of the Underwriter, the Underwriter's and, if applicable, such affiliate's maximum aggregate limit of liability under all such policies for all **Loss** in respect of such **Claim** will not exceed the largest single available limit of liability under any such policy, including this Policy. In no event will more than one policy issued by the Underwriter respond to a **Claim**.

(B) Related Claims Deemed Single Claim:

All **Related Claims**, whenever made, shall be deemed to be a single **Claim**, regardless of:

- (1) the number of **Related Claims**;
- (2) the number or identity of claimants;
- (3) the number or identity of **Insureds** involved or against whom **Related Claims** have been or could be made;
- (4) whether the **Related Claims** are asserted in a class action or otherwise; and
- (5) the number and timing of the **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Period**.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made.

(C) Reporting of Claims:

If, during the **Policy Period**, any **Claim** for a **Professional Services Wrongful Act** is first made against any **Insured**, as a condition precedent to its right to any coverage under this Policy, the **Insured** shall give the Underwriter written notice of such **Claim** as soon as practicable thereafter, but in no event later than the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations.

(D) Defense and Settlement:

- (1) No **Insured** shall, except at its own cost, incur any expense, make any payment, admit liability for, assume any obligation, or settle any **Claim** without the Underwriter's written consent. With respect to any **Claim**, the Underwriter will have the right to investigate, direct the defense, and conduct settlement negotiations it deems appropriate. The Underwriter will not settle any **Claim** without the written consent of the applicable **Named Insured**, which consent shall not be unreasonably withheld; provided, that the **First Named Insured** shall have the authority to act for any **Insured**, other than a **Named Insured**, in connection with consenting to a settlement.
- (2) The **Underwriter** will have no obligation to pay **Loss** or **Defense Expenses**, or continue to direct the defense of any **Insured**, after the applicable Limit of Liability has been exhausted by the payment of **Loss**.
- (3) If both **Loss** covered by this Policy and loss not covered by this Policy are incurred, either because a **Claim** made against the **Insureds** includes both covered and uncovered matters, or because a **Claim** is made against both **Insureds** and others not included within the definition of "**Insured**" set forth in DEFINITION (F) above, the **Insureds** and the Underwriter agree to use their best efforts to determine a fair and proper allocation of all such amounts. The Underwriter's obligation to pay **Loss** under this Policy shall relate only to those sums allocated to the **Insureds**. In making such determination, the parties shall take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by the **Insureds** and others. In the event that the Underwriter

and the **Insureds** do not reach an agreement with respect to an allocation, then the Underwriter shall be obligated to make an interim payment of the amount of **Loss** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

(E) Territory:

This Policy applies to **Professional Services** rendered anywhere in the world; provided, that any **Claim** must be made against an **Insured** in the United States of America, including its territories or possessions, Puerto Rico, or Canada.

(F) Cancellation; Premium; Non-Renewal:

- (1) This Policy is non-cancellable, except for cancellation by the Underwriter for non-payment of premium, in which case twenty (20) days' written notice will be given to the **First Named Insured** by the Underwriter. In such event, the Underwriter shall have the right to cancel this Policy as of its Inception Date, as if it never existed, if:
 - (a) no premium whatsoever is received by the premium due date; and
 - (b) no premium whatsoever is received by the last day of the notice period set forth in the notice of cancellation for nonpayment of premium provided by the Underwriter to the **First Named Insured** in accordance with this paragraph.
- (2) The Policy Premium stated in ITEM 6 of the Declarations is payable and fully earned on the Inception Date of this Policy stated in ITEM 2(a) of the Declarations.
- (3) The Underwriter will not be required to renew this Policy upon its expiration.

(G) Assistance and Cooperation:

In the event of a **Claim**, the **Insured** shall provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests. At the Underwriter's request, the **Insured** shall assist in: investigating, defending and settling **Claims**; enforcing any right of contribution or indemnity against another who may be liable to any **Insured**; the conduct of actions, suits, appeals or other proceedings, including, but not limited to, attending trials, hearings and depositions; securing and giving evidence; and obtaining the attendance of witnesses.

(H) Subrogation:

In the event of any payment hereunder, the Underwriter shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in its name. The **Insured** shall do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. The obligations of the **Insured** under this GENERAL CONDITION (H) shall survive the expiration or termination of this Policy.

(I) Other Insurance and Risk Transfer Arrangements:

Any **Loss** or **Defense Expenses** resulting from any **Claim** insured under any other insurance or self-insurance policy or program or risk transfer instrument, including, but not limited to, self-insured retentions, deductibles, fronting arrangements, professional liability policies covering any **Insured**, or other alternative arrangements which apply to the **Loss** or **Defense Expenses** shall be paid first by those instruments, policies or other arrangements. It is the intent of this Policy to apply only to **Loss** or **Defense Expenses** that are more than the total limit of all deductibles, limits of liability, self-insured amounts or other insurance or risk transfer arrangements, whether primary, contributory, excess,

contingent, fronting or otherwise and whether or not collectible. These provisions do not apply to other insurance policies or risk transfer arrangements written as specific umbrella or excess insurance over the applicable Limits of Liability of this Policy. This Policy shall not be subject to the terms of any other policy of insurance or plan or program of self-insurance; and in no event will the Underwriter pay more than the applicable Limits of Liability stated in ITEM 4 of the Declarations.

(J) Exhaustion:

If the "Aggregate for all **Claims**, each **Named Insured**" Limit of Liability applicable to a **Named Insured** is exhausted by the payment of **Loss**, all obligations of the Underwriter under this Policy to such **Named Insured** (and any **Insured** sharing in such Limit of Liability) will be completely fulfilled and exhausted, including any obligation to pay **Defense Expenses** on behalf of or to continue to direct the defense of such **Named Insured** (or any **Insured** sharing in such Limit of Liability), and the Underwriter will have no further obligations of any kind or nature whatsoever to such **Named Insured** (or any **Insured** sharing in such Limit of Liability) under this Policy.

If all applicable "Aggregate for all **Claims**, each **Named Insured**" Limits of Liability are exhausted by the payment of **Loss**, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, including any obligation to pay **Defense Expenses** or to continue to direct the defense of any **Insured**, and the Underwriter will have no further obligations of any kind or nature whatsoever under this Policy.

(K) Authorization and Notices:

The **First Named Insured** will act on behalf of all **Insureds** with respect to: the giving or receiving of any notices under this Policy; the payment of premiums to, and receiving of return premiums from, the Underwriter; and the receiving and acceptance of any endorsements issued to form a part of this Policy.

(L) Conformance:

Any terms of this Policy that are in conflict with the laws or regulations of the state in which this Policy is issued are amended to conform to such laws or regulations.

(M) Representation; Incorporation of Application:

The **Insureds** represent that the particulars and statements contained in the Application submitted for this Policy are true, accurate and complete and agree that:

- (1) this Policy is issued and continued in force by the Underwriter in reliance upon the truth of such representation;
- (2) those particulars and statements are the basis of this Policy; and
- (3) the Application and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any **Insured** shall be imputed to any other **Insured**, except for material facts or information known to the person or persons who signed the Application. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the Application, this Policy shall be void with respect to any **Insured** who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

(N) No Action against Underwriter:

- (1) No action shall be taken against the Underwriter by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all of the terms of this Policy and the

amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings or by written agreement of the **Insured**, the claimant and the Underwriter.

- (2) No individual or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Underwriter be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

(O) Notice:

- (1) Notice to any **Insured** shall be sent to the **First Named Insured** at the address designated in ITEM 1 of the Declarations.
- (2) Notice to the Underwriter shall be sent to the address designated in ITEM 7 of the Declarations.

(P) Changes:

Notice to or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or prevent or stop the Underwriter from asserting any right(s) under this Policy. This Policy can only be altered, waived, or changed by written endorsement issued to form a part of this Policy.

(Q) Insolvency of Insured:

The Underwriter will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured** or his/her/its estate.

(R) Examination of Books and Records:

The Underwriter may examine and audit the books and records of the **Insured** as they relate to this Policy.

(S) Assignment:

No assignment of interest under this Policy shall bind the Underwriter without its written consent issued as an endorsement to form a part of this Policy.

(T) Entire Agreement:

The **Insureds** agree that this Policy, including the Application and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

(U) Headings:

The descriptions in the headings and subheadings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof the Underwriter has caused this Policy to be executed by its authorized officers.