

PHYSICIANS, SURGEONS AND DENTISTS PROFESSIONAL LIABILITY INSURANCE

Claims-Made

THIS IS A CLAIMS-MADE POLICY. COVERAGE AFFORDED BY THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE "CLAIMS" THAT ARE FIRST MADE AGAINST YOU AND REPORTED IN WRITING TO US DURING THE POLICY PERIOD OR AN EXTENDED REPORTING PERIOD. PLEASE REVIEW THIS POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED.

OUR LIMIT OF LIABILITY WILL BE REDUCED BY THE AMOUNTS INCURRED FOR "DAMAGES" AND "CLAIMS EXPENSES". AMOUNTS INCURRED FOR "DAMAGES" AND/OR "CLAIMS EXPENSES" WILL BE APPLIED AGAINST THE DEDUCTIBLE, IF APPLICABLE, BORNE BY THE INSURED.

Throughout this policy the words "you" and "your" refer to the "Insured". The word "Insured" means any person or organization qualifying as such under Section II. Definitions. The words "we", "us" and "our" refer to the Company providing this insurance. Refer to Section II. Definitions, for the meaning of other phrases that appear in quotation marks.

In consideration of the premium paid, and in reliance upon the statements in the Application which is made a part of this Policy, and subject to the terms and conditions of this Policy, the Company agrees with the "Named Insured" as follows:

I. INSURING AGREEMENT

We will pay on behalf of the "Insured" those amounts in excess of the Deductible stated in the Declarations, if applicable, which you are legally obligated to pay as "damages" for a "claim" first made against you during the "policy period" and reported to us in writing during the "policy period", or an Extended Reporting Period, provided that the following additional conditions are met:

- A. the "claim" results from a "medical incident" that takes place within the Policy Territory;
- B. the "claim" results from a "medical incident" that takes place during the "policy period" or on or after the "retroactive date" stated in the Declarations;
- C. prior to the effective date of this policy, no "Insured" had knowledge of a "medical incident" or circumstance that could reasonably be expected to result in a "claim"; and
- D. we receive notice of a "claim" within sixty (60) days after the expiration or termination date of this policy in accordance with:
 1. Section VII. "INSURED'S" DUTIES IN THE EVENT OF A "CLAIM"
 2. Section V. EXTENDED REPORTING PERIOD.

Our obligation to pay "damages" applies only to the amount that exceeds the deductible, if any, stated in the Declarations.

We have the right and duty to defend any "claim" or suit against the "Insured" seeking "damages" because of a "medical incident", even if any of the allegations

of the suit are groundless, false or fraudulent. We may make such investigation of any "claim" or suit as we deem expedient. We shall not be obligated to pay any "claim", settlement or judgment and/or "claims expenses" or to defend any "claim" or suit after the applicable limit of liability has been exhausted by payment of "damages" and/or "claims expenses".

We have no obligation or duty to defend any "claim" or suit for which coverage is excluded hereunder or not otherwise afforded by this policy and we shall not be obligated to pay any "claims expenses" incurred by the "Insured" in the defense of any "claim" or suit not covered by this policy.

II. DEFINITIONS

- A. "Bodily Injury" means physical injury, sickness, disease, mental anguish, or emotional distress sustained by a person, including death resulting from any of these at any time.
- B. "Claim" means:
 1. a demand received by you for money or services; or
 2. a written notice received by any "Insured" resulting from a "medical incident" that may result in a demand for money or services; or
 3. service of suit, or notice received of the initiation of arbitration or other proceedings against you."Claim" includes "related claims". "Related claims" means two or more "claims" arising out of a negligent act, error or omission or negligent acts, errors or omissions that are logically or causally connected.
- C. "Claim Expenses" means:
 1. fees charged by an attorney designated by us;
 2. all other fees, costs and expenses resulting from the investigation, adjustment, and defense of a "claim"; and the premiums for ap-

peal, attachment or similar bonds, but only for bond amounts that are within our limit of liability.

3. interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under this policy;
4. allowable expenses of \$250. per day but no more than \$5,000. in total for the compensation to all "Insureds" for personally attending any legal proceeding at our request. These allowable expenses shall not be applied towards reducing the applicable deductible amount and are in addition to the limit of liability.

"Claim Expenses" do not include salaries or expenses of our regular employees or officials.

D. "Damages" means a monetary judgment, award or settlement. However, "damages" does not include:

1. punitive or exemplary damages or any damages which are a multiple of compensatory damages;
2. amounts the "Insured" is required to pay or return as restitution;
3. fines, penalties, sanctions, taxes or fees assessed against any "Insured";
4. judgments or awards arising from acts deemed uninsurable by law.

E. "Discrimination" means any alleged violation of any right which is or may be protected by state or federal constitutions; statutory or common law; ordinance; rule or regulation which prohibits conduct that has an unfavorable, unfair or disparate affect on individuals because of their personal status or characteristics, including but not limited to race, color, religion, national origin, age, sex, marital or parental status, sexual orientation or preference, disability, handicap, pregnancy, medical condition, or any other physical or mental characteristics or impairment.

F. "Insured" means:

1. The "Named Insured";
2. If you are an individual, you are an "insured". Your employees (other than a physician, surgeon or dentist) are also an "insured" while acting within the course and scope of their duties on your behalf;
3. If you are:
 - a. A partnership, you are an "insured". Your partners are also "insureds", but

only with respect to acts or omissions arising out of the furnishing of professional medical or dental services to others, for which they are held liable as a partner;

- b. A limited liability company, you are an "insured". Your members and managers are also "insureds", but only with respect to acts or omissions arising out of the furnishing of professional medical or dental services to others, for which they are held liable as members or managers;
- c. An association or corporation, you are an "insured". Your executive officers, directors, trustees, governors and stockholders are "insureds", but only with respect to acts or omissions arising out of the furnishing of professional medical or dental services to others, for which they are held liable as executive officers, directors, trustees, governors and stockholders;
- d. An employee of a., b. or c. above (other than a physician, surgeon or dentist), is an "insured" while acting within the course and scope of their duties on behalf of the "Named Insured".

4. If an "insured" dies or is adjudged incompetent, this insurance will terminate for that "insured". But the "insured's" legal representative will be an "insured" for any "medical incident" previously committed and covered by this policy.

G. "Medical Incident" means any act or omission arising out of the: (1) furnishing of "professional services" by the "Insured" any member, partner, officer, director or stockholder of the "Insured" or any person acting under the personal direction, control, or supervision of the "Insured" for whose conduct the "Insured" may be held vicariously liable, or (2) service by the "Insured" as a member of a formal accreditation, standards review or similar professional board or committee.

H. "Named Insured" means the entity or individual named in the Declarations.

I. "Other Insurance" includes, but is not limited to, coverage or benefits provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, inter-insurance exchanges, mutual insurance companies, stock insurance companies, risk retention groups, reciprocal exchanges, mutual benefit or assistance programs, or any other plan or agreement of risk assumption.

- J. "Policy Period" means the period noted in the Declarations, or any shorter period resulting from a termination or cancellation of this policy.
- K. "Professional Services" means work performed by you for others involving specialized training, knowledge and skill in the pursuit of the business stated in the Declarations.
- L. "Retroactive Date" means the date stated in the Declarations as such and is the earliest date that "medical incidents" to which this insurance applies will be covered by this policy.

III. POLICY TERRITORY

This policy applies to "medical incidents" anywhere in the world provided the original suit for such damages is brought within the United States of America, its territories or possessions and Canada.

IV. EXCLUSIONS

This policy does not apply to:

- A. any liability based in whole or in part on any knowingly wrongful, dishonest, fraudulent, criminal or malicious act committed by or at the direction of any "Insured" in the course of providing professional medical or dental services. This exclusion does not apply to any liability of the "Named Insured" or any "Insured" who did not personally participate or personally commit the knowingly wrongful, dishonest, fraudulent, criminal or malicious act committed by or at the direction of any "Insured" in the course of providing "professional services".
- B. any "claim" arising out of an Insured's interference with contract, statements or acts which violate state and/or federal antitrust laws, interference with prospective advantage, unfair competition, unfair trade and business practices, conspiracy to do any unlawful or tortious act, abuse of process, slander and libel, even if such activities are related to the rendering of or failure to render "Professional Services."
- C. any injury for which the "Insured" may be held liable as a proprietor, hospital administrator, officer, stockholder, or member of the board of directors, trustees or governors of any hospital, sanitarium, clinic with bed and board facilities, nursing home, laboratory or other business enterprise;
- D. any "claim" arising out of "Discrimination";
- E. any injury caused by a person while under the influence of alcohol, narcotics, hallucinogenic agents or any other substance abuse;
- F. any liability based upon or arising out of the administration of general anesthesia by dentists or dental surgeons;

- G. any liability based upon or arising out of, contributed to, by or resulting from, directly or indirectly from:

1. Any infection caused by the transmission, testing or failure to test for the presence of any one or more of the following viruses including any counseling related thereto:
 - (a) Human Immunodeficiency Virus (HIV), and variations thereof;
 - (b) Human T-Lymphotropic Virus (HLV), and variations thereof;
 - (c) Lymphadenopathy Associated Virus (LAV);
2. The alleged or actual transmission of Acquired Immune Deficiency Syndrome (AIDS) or any AIDS-like condition caused as a result of the Named "Insured's" professional services, or any other person for whose act or omissions the "Insured" may be held liable as a member, partner, officer, director or stockholder of any professional partnership, association or corporation.

The definition of Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), Human T-Lymphotropic Virus (HTLV), and Lymphadenopathy Associated Virus(LAV) includes any revisions or amendments made by the Center for Disease Control (CDC) from time to time.

- H. any "claim" based upon or arising out of the practice of weight reduction or treatment of obesity (other than by diet and/or exercise) including but not limited to the use, administration, or prescription of amphetamines or Human Chorionic Gonadotropin (HCG), the insertion of the gastric bubble or similar device, jejunioileal or other like bypass procedure, or gastric restrictive surgery such as gastric stapling or banding;
- I. any liability based upon or arising out of any sexual act or acts including but not limited to behavior that is licentious, immoral or sexual in nature including, but not limited to, physical abuse, undue familiarity, molestation, coercion, quid-pro-quo offer of work-favor for sexual favors, or other verbal or physical conduct to a sexual nature, whether or not such conduct is under the guise of "Professional Services" performed or alleged to have been performed by an "Insured" or an employee or agent of the "Insured";
- J. any liability based upon or arising out of the "Insured's" use of silicone gel implants, and/or fat recycling; or the use, administration or prescription for injection of silicone fluid;

- K. any liability based upon or arising out of any “medical incident” or circumstances that any “Insured” knows or should reasonably anticipate would result in a “claim” prior to the effective date of this policy;
- L. any liability based upon or arising out of any “claim” or circumstance that is reported to any other insurer by an “Insured” prior to the effective date of this policy;
- M. any liability based upon or arising out of nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a nuclear facility;
- N. any liability based upon or arising out of the use, administration or prescription of any drug, pharmaceutical or medical device not yet having received final approval by the Food and Drug Administration (FDA) for treatment of human beings or which is not an FDA approved study;
- O. any liability based upon or arising out of sex change operations;
- P. any “claim” which results from any act, or omission to act, arising from your rendering or failing to render “Professional Services” which takes place while your license to practice medicine is under suspension or has been restricted, revoked, surrendered, or otherwise terminated or any act of dispensing or prescribing controlled substances while your license or registration to dispense such substances is under suspension or has been restricted, revoked, surrendered, or otherwise terminated.

Such coverage as is provided by the policy shall apply to “Claims” which result from any act, or omission to act, arising from your rendering or failing to render “Professional Services” while you are on probation, provided that the probation has been reported to the Company, in writing, and such “Professional Services” are in compliance with the limitations, terms and restrictions of the probation order.

No coverage is afforded under this policy for damages arising out of action taken by any state licensing agency.

- Q. Any liability of an “Insured” as a result of “Bodily Injury” to an employee, leased worker or temporary worker or the spouse or relative of an employee, leased worker or temporary worker, or to any obligation of the “Insured” to indemnify or to assume the defense or indemnity of another because of such “Bodily Injury”;
- R. Any obligation for which the “Insured” or any carrier as his insurer may be liable, under any Workers’ Compensation, Unemployment Com-

pensation, Disability Benefits Law, the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time, or any rule or regulation promulgated thereunder, or under any similar law; and to any liability arising out of the sickness, disease or death resulting therefrom of any employee of the “Insured” arising out of and in the course of his employment by the “Insured”.

- S. any liability based upon or arising out of the accessing or misuse of confidential information.

V. EXTENDED “CLAIM” REPORTING PERIOD

A. Automatic Extended Claim Reporting Period

If we or you terminate or non-renew this insurance for any reason, other than:

1. non-payment of premium;
2. non-payment of deductible;
3. non-compliance with any terms and conditions of this policy; or
4. fraud or material misrepresentation;

you shall be entitled to a period of (60) sixty days from the date of policy expiration or termination to report "claims" which take place on or after the retroactive date and prior to such expiration or termination date. This Automatic Extended Claims Reporting Period may not be canceled by us and does not require payment of an additional premium.

If the Optional Extended Claim Reporting Period offered in item B. below is purchased, then this Automatic Extended Claims Reporting Period shall be included within such Optional Extended Claim Reporting Period.

The Automatic Extended Claim Reporting Period does not reinstate or increase the Limits of Liability of this policy.

The Automatic Extended Claim Reporting Period does not extend the “policy period” or change the scope of coverage afforded by this policy.

B. Optional Extended “Claim” Reporting Period

If we or you terminate or non-renew this insurance for any reason, other than:

1. non-payment of premium;
2. non-payment of deductible;
3. non-compliance with the terms and conditions of this policy; or
4. fraud or material misrepresentation;

upon the payment of an additional premium, you shall have the option to extend the period by which a "claim" that takes place on or after the retroactive date and prior to the expiration or ter-

mination date can be made against you and reported to us.

The premium for the Optional Extended Claims Reporting Period shall not exceed 175% of the annual premium for one (1) year. The purchase of an Optional Extended Claims Reporting Period shall be endorsed hereon.

Your right to purchase the Optional Extended Claims Reporting Period must be exercised by notice in writing to us, not later than thirty (30) days after the expiration or termination date of this policy. Effective notice must indicate the number of months up to 12 months (or one year) for which you are requesting the Optional Extended Claims Reporting Period and must include payment of premium for such period. If such written notice and the premium are not received by us in within (30) days, then you shall not be entitled to purchase an Optional Extended Claims Reporting Period at a later date.

At the commencement of any Optional Extended Claims Reporting Period, the entire additional premium shall be deemed earned, and in the event you terminate the Optional Extended Claims Reporting Period before its term for any reason, we shall not be obligated to return to you any portion of the premium.

The purchase of an Optional Extended Claims Reporting Period does not reinstate or increase the Limits of Liability of this policy.

Our liability shall further be limited to cover only those "claims" arising out of a "medical incident" that takes place subsequent to the "retroactive date" and prior to the expiration or termination date of this policy. The Optional Extended Claim Reporting Period does not extend the "policy period" or change the scope of coverage afforded by this policy.

With respect to items A. and B. above, any "claims" reported during an Extended Reporting Period must be reported in accordance with Section VII., "INSURED'S" DUTIES IN THE EVENT OF A "CLAIM".

VI. LIMITS OF LIABILITY

The applicable limit of liability stated in the Declarations is the maximum we shall pay regardless of the number of:

1. "Insureds";
2. individuals or organizations that make a "claim"; or
3. "claims" made

A. Limit of Liability Each Claim

The limit of liability shall apply in excess of the Deductible stated in the Declarations, if applicable. The liability of the Company for each "claim" or series of "related claims" shall not exceed the amount stated in the Declarations as applicable to each "claim". This limit is the maximum amount the Company will pay for "claim expense(s)" and "damages" attributable to each "claim" or series of "related claims", including those "claims" or "related claims" reported in accordance with Section V., Extended Reporting Period.

If two or more policies issued by us apply to the same "claim" or "related claims", the each claim limit shall not exceed the amount stated in the Declarations of the policy in effect at the time the first "claim" was made.

B. Limit of Liability Aggregate

Subject to Limit of Liability - Each Claim, the liability of the Company shall in no event exceed the amount stated in the Declarations as aggregate as a result of all "claims". This limit is the total amount of "claim expense(s)" or "damages" or both that the Company will pay under this policy for all "claims" including those "claims" reported in accordance with Section V., Extended Reporting Period.

C. Deductible Each "Claim"

The deductible amount stated in the Declarations applies to each "claim" and shall be paid by the "Named Insured". The deductible shall be applied to the payment of "damages" or "claim expense(s)" or both.

The Company may advance payment of part or all of the deductible amount and, upon notification of such payment made, the "Insured" must promptly reimburse the Company for the deductible amounts advanced by the Company.

Once the limits of liability have been exhausted by payment of "Damages" and/or "Claims Expense(s)", the Company will not defend, pay "damages" or "claim expense(s)" for any "claim".

VII. "INSURED'S" DUTIES IN THE EVENT OF A "CLAIM"

Each "Insured" must comply with the following conditions:

- A. If a "claim" to which this policy applies is made against you, then you must give written notice, as soon as practicable, and as otherwise required by this policy to us.
- B. With regard to Item II. DEFINITIONS, B. 1, 2 and 3, when a "claim" is reported in writing to us, the notice must contain reasonably obtainable in-

formation regarding the alleged act, error or omission including, but not limited to names of the potential witnesses, name of the alleged claimant(s), and the extent and type of "claim" anticipated.

- C. You must cooperate with us in the defense and investigation of any "claim". We may require that you submit to examination under oath, if required, produce and make available all records, documents and other materials which we deem relevant to the "claim".
 - 1. You must also, at our request, attend hearings, depositions and trials.
 - 2. In the course of investigation or defense, provide us with written statements as requested by us or your attendance at meetings with us.
 - 3. You must assist us in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses, all without charge to us.
- D. The right to either accept or reject arbitration of any "claim" by you shall be exercised only with our written consent.
- E. Except and to the extent otherwise provided in this policy, you must not make any payment, admit any liability, settle any "claim" or assume any obligations without our prior written consent.
- F. You must do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment that you may have.
- G. You shall refrain from discussing the facts and circumstances of any "claim" with anyone other than our legal counsel or representatives.

VIII. OTHER CONDITIONS

A. Transfer of Rights of Recovery

If there is a payment made by us, we shall be subrogated to all of your rights of recovery against any person or organization. You will cooperate with us and do whatever is necessary to secure these rights. You must not waive or prejudice such rights. We agree to waive this right of subrogation against a client of the "Insured" to the extent that the "Insured" had, prior to the "claim", entered into a written, duly executed agreement to waive such rights.

B. How "Other Insurance" Applies

This insurance shall be excess of and not contribute with "other insurance", whether collectable or not, that affords coverage for a "medical incident". If one or more policies issued by us and one or more policies issued by another insurer apply to the same "claim" or "related claims", our pro-rata share will be determined by the total of

the Limits of Liability of our policy in effect at the time the first "claim" was made and reported to us in writing and the Limits of Liability of all "other insurance".

This condition does not apply to "other insurance" that is written to apply in excess of the limits provided by this policy.

The insurance afforded by this policy does not apply to any "medical incident" for which an Insured has coverage under any other policy issued by us.

C. Changes Made to this Policy

The terms and conditions of this policy cannot be waived or changed except by specific written endorsement issued by us and made part of the policy.

D. Assignment of the "Insured's" Interest

The interest of the "Insured" under this policy is not assignable to any other person or organization.

E. Cancellation

This policy may be canceled by the "Named Insured" by returning the policy to us or its authorized representatives. The "Named Insured" can also cancel this policy by written notice to the Company stating at what future date cancellation is to be effective. If the "Named Insured" cancels, earned premium shall be computed using the customary short rate table or the amount stated elsewhere in this policy as Minimum Earned Premium, whichever is greater.

This policy can be canceled by us by written notice to the "Named Insured", at the address last known to us. We will provide written notice at least thirty (30) days before cancellation is to be effective.

There are exceptions to the length of the notice that must be provided to the "Named Insured". The "Named Insured" will only be entitled to at least ten (10) days notice if we cancel:

1. because you have failed to pay a premium when due; or
2. because you have failed to pay applicable deductible amounts due.

If we cancel, earned premium will be computed pro-rata, except that if we cancel for the reason specified in 1. or 2. above, earned premium will be computed in the same manner provided above when the "Named Insured" cancels.

The mailing of any notice of cancellation shall be sufficient proof of notice.

The effective date of cancellation terminates the "policy period". Return of unearned premium is

not a condition of cancellation. Unearned premium will be returned by us as soon as practicable.

F. Bankruptcy

Bankruptcy or insolvency of the "Insured" or the "Insured's" estate shall not relieve us of any of our obligations under this policy.

G. Application

The statements in the Application are your representations and are deemed material. This policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the Application shall be attached and become part of this policy.

H. Audit

We may examine and audit your books and records at any time during the "policy period" and within three (3) years after the final termination of this policy, as far as they relate to this policy.

I. Multiple "Insureds", "Claims" and Claimants

The number of "Insureds" covered by this policy shall not operate to increase the limits of liability as specified in the Declarations.

A series of "related claims" will be considered a single "claim". This policy shall only apply if the first or earliest "claim" arising from a "medical incident" is made during the "policy period". These provisions apply regardless of the number of "Insureds" involved in such a "claim", the number of "claims" made, or the number of people or organizations that make the "claim".

The number of "claims" made or the number of people or organizations that make "claims" shall not operate to increase the limits of liability as specified in the Declarations.

Once a "claim" has been first made under this policy or a predecessor or successor policy of the Company, only the policy against which the "claim" was first made and reported to us shall be available to pay "damages" and/or "claims expenses", if coverage is afforded by the policy, and under no circumstances will any other policy of the Company apply.

J. Action Against Us

No action shall be brought against us by you to recover for any loss or "damages" under this policy unless, as a condition precedent thereto:

1. you have fully complied with all the terms and conditions of this policy; and
2. the amount of such loss or "damages" has been fixed or rendered certain;

- a. by final judgment against you after trial of the issues; or
- b. the time to appeal such judgment has expired without an appeal being taken; or
- c. if appeal is taken, after the appeal has been determined; or
- d. the "claim" is settled in accordance with the terms and conditions of this policy.

In no event shall any action brought by anyone be maintained against us unless such action is brought within twenty-four (24) months from the time the right to bring action first becomes available.

K. False or Fraudulent "Claims"

If you report any "claim" knowing such "claim" to be false or fraudulent, this policy shall become void and all insurance coverage hereunder shall be forfeited as of the inception date of this policy.

L. Terms and Conditions of Policy Conformed to Statute

Where necessary, the terms and conditions of this policy will be amended to conform to applicable law.

M. Premium

The premium amount for this policy is stated in the Declarations and is for coverage for the "policy period". If during the "policy period" there is a change in coverage afforded, we have the right to adjust the premium as of the date of change. Any premium adjustment shall be made in accordance with our prevailing rules and rates.

Premium shown as advance premium is a minimum and deposit premium. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable by notice to the first "Named Insured".

If the premium for this policy is a flat premium, it is not subject to adjustment.

This policy shall not be binding upon the Company unless completed by a signed Application and a Declarations Page, countersigned on the aforesaid Declarations Page by a duly authorized representative of the Company.