



STATE FISCAL ACCOUNTABILITY AUTHORITY

**INSURANCE RESERVE FUND
POST OFFICE BOX 11066
COLUMBIA, SOUTH CAROLINA 29211**

Phone: (803) 737-0020

MEDICAL PROFESSIONAL LIABILITY INSURANCE POLICY

OCCURRENCE FORM

POLICY PROVISIONS

SOUTH CAROLINA BUDGET AND CONTROL BOARD

**INSURANCE RESERVE FUND
(HEREINAFTER CALLED THE FUND)**

**P. O. BOX 11066
1201 MAIN STREET, SUITE 500
COLUMBIA, S. C. 29211
803-737-0020**

These policy provisions with declarations and endorsements, if any, issued to form a part thereof, complete your Medical Professional Liability Insurance Policy.

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12:01 AM standard time at the location involved.

IN WITNESS THEREOF The State Fiscal Accountability Authority of the State of South Carolina, through the Insurance Reserve Fund, executed and attested these presents.

INSURANCE RESERVE FUND

By 

Director

(This policy is not complete or in effect unless a Declarations page is attached).

In consideration of the receipt of the premium on behalf of and the performance of services by the Insured, and subject to the limits of liability, exclusions, conditions, endorsements, and other terms of this policy, the State Fiscal Accountability Authority, Insurance Reserve Fund, herein called the "Fund", agrees with each insured, as defined herein as follows:

I. INSURING AGREEMENT

I.A. Coverage

The Fund will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of an occurrence which results in Injury to any person arising out of the rendering or failure to render to such person any one or more Professional Services during the Policy Period.

I.B. Defense

The Fund shall have the exclusive right and duty to defend any suit against an Insured seeking damages on account of Injury covered by this policy, even if any of the allegations of the suit are groundless, false, or fraudulent or if the claim is one for which the Fund is not liable under Exclusion IV.A(7) of this policy.

The Fund may investigate exclusively any claim or suit for which insurance may be afforded by this policy and make, upon notice to the Insured but with or without the consent of the Insured, such settlement on behalf of the Insured as the Fund deems expedient and reasonable.

I.C. Additional Payments

The Fund will pay, in addition to any applicable limit of liability:

- (1) all expenses incurred by the Fund;
- (2) all costs taxed against the Insured in any suit defended by the Fund and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Fund has paid, tendered, or deposited in court that part of the judgment which does not exceed the Fund's liability thereon;
- (3) in the event of an appeal from any judgment favorable to the Insured in any suit defended by the Fund, or in the event the Fund, in its discretion, determines to appeal from any judgment adverse to the Insured in any such suit, all premiums on appeal bonds required of the Insured;
- (4) all premiums required of the Insured on bonds to release attachments in any suit defended by the Fund, for an amount not in excess of the applicable limit of this policy but without any obligation to apply for or furnish any such bonds;
- (5) reasonable expenses incurred by the Insured at the request of the Fund or of counsel for the Fund in assisting the Fund in the investigation or defense of any claim or suit, which expenses shall include actual loss of earnings not to exceed \$250 per day.

I.D. Limits of Liability

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain Injury or (3) claims made or suits brought on account of Injury, the Fund's liability is limited as follows:

- (1) The total liability of the Fund for all damages as the result of any Occurrence including damages for care and loss of services, because of Injury sustained by one or more persons or organizations, shall not exceed the limit of liability stated in the declarations as applicable to "each Occurrence." The limits under Coverage "A" and Coverage "B" are separate limits and under no circumstances would both limits apply to one Occurrence.
- (2) For any action or claim brought under the provisions of Chapter 78 of the South Carolina Code of Laws, cited as the "South Carolina Tort Claims Act", the liability of the Fund shall not exceed the following limits:

Coverage A

- (a) No person shall recover in any action or claim a sum exceeding three hundred thousand dollars (\$300,000) because of a loss arising from a single Occurrence regardless of the number of agencies or political subdivisions involved.
- (b) The total sum recovered arising out of a single Occurrence shall not exceed six hundred thousand dollars (\$600,000) regardless of the number of agencies or political subdivisions or claims or actions involved.

Coverage B

- (a) No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his / her profession, a sum exceeding one million two hundred thousand dollars (\$1,200,000) because of loss arising from a single Occurrence regardless of the number of agencies or political subdivisions involved.
- (b) The total sum recovered hereunder arising out of a single Occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his / her profession, may not exceed one million two hundred thousand dollars (\$1,200,000) regardless of the number of agencies or political subdivisions or claims or actions involved.

II. DEFINITIONS

When used in this Policy:

II.A. "Declarations" means the information and material stated in the declarations page or pages attached to this policy, along with all revisions, amendments, and endorsements thereof or thereto.

II.B. "Injury" means bodily physical injury, sickness, disease, mental or emotional distress accompanied by a physical manifestation thereof, or death resulting from any one or more thereof.

II.C. "Insured" means (1) the entity in the Declarations, (2) an employee or authorized volunteer worker, to include an executive officer of the Named Insured, a member or employee of any governing or other formal board or committee of the Named Insured, any person charged with executing directives of any formal board or committee of the Named Insured, or as respects the liability of an individual referred to in subparts (1) and (2) of this Definition II.C. and to the extent stated in Condition III.C.(1)., the legal representative of such individual.

II.D. "Named Insured" means the entity identified as the Named Insured in the Declarations, along with any successor to such entity which has, as its primary purpose, the provision of the type of services theretofore provided by such entity; provided that the identity and address of any such successor, along with such other information as the Fund may reasonably request in connection therewith, is reported in writing to the Fund promptly after the same is known and in no event later than the next anniversary date of this Policy.

II.E. "Occurrence" means any accident, incident, or other event (including non-action) which does or may reasonably be expected to result in Bodily Injury neither expected nor intended by the Insured.

II.F. "Policy Period" means the period from the inception date of this Policy to the earlier of (1) the expiration date as shown in the Declarations or as otherwise extended, or (2) the effective date of a termination of this Policy, if any.

II.G. "Policy Territory" means

- (1) The United States of America, its territories or possessions, or
- (2) anywhere in the world with respect to "Injury" arising out of the activities of any "Insured" permanently domiciled in the United States of America, though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions.

II.H. "Professional Services" means

- (1) medical (including emergency medical and paramedical), surgical, psychological, dental, radiological, or nursing service or treatment, including the furnishing of food or beverages in connection therewith;
- (2) furnishing, fitting, or dispensing of drugs or medical, dental, or surgical supplies or appliances if the Injury occurs after the Insured has relinquished possession thereof;
- (3) handling of or performing post-mortem examinations on human bodies; and
- (4) services by any person as a member or employee of any governing or other formal board or committee of the Named Insured or as any other person charged with executing directives of any such board or committee.

III. CONDITIONS

III.A. Premiums

All premiums for this policy shall be computed and paid in accordance with the Fund's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded by this policy. The initial

premium for this policy is as stated in the Declarations, except that if the Named Insured changes during the Policy Period to additional individual Insureds, the Fund may adjust the premium as of the date of such changes.

III.B. Inspection and Audit

The Fund shall be permitted but not obligated to inspect the Insured's operations at any time. Neither the Fund's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that such operations are safe or proper. The Fund may examine and audit the Insured's books and records at any time during the Policy Period and after the final termination of this policy as far as they relate to the subject matter of the insurance afforded by this policy.

III.C. Insured's Duty in the Event of Occurrence, Claim or Suit

- (1) In the event of an Occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place, nature, and circumstances thereof, and the names and addresses of the injured party and of available witnesses, shall be given by or for the Insured to the Fund as soon as practicable. The Insured shall promptly take at his expense all reasonable steps to prevent other injury arising out of the same or similar conditions, but such expense shall not be recoverable under this policy. In the event of an incident not reasonably deemed to be an Occurrence at the time thereof but which is subsequently determined to be an Occurrence, the Insured shall give such notice to the Fund as soon as practicable after such determination.
- (2) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Fund every demand, notice, summons, complaint, or other process received by the Insured or his / her representative.
- (3) The Insured shall cooperate with the Fund and, upon the Fund's request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of Injury with respect to which insurance is afforded under this policy; and the Insured shall, at the request of the Fund or of counsel of the Fund, submit to examination and interrogation (under oath if required), attend hearings and trials, and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall exercise the right, if any, to reject or demand arbitration of any claim made against him / her in accordance with the written instructions of the Fund. The Insured shall not, except at the Insured's own cost and with the consent of the Fund, voluntarily make any payment, admit any liability, settle any claim, assume any obligation, or incur any expense other than for first aid to others at the time of accident.

III.D. Action Against Fund

No action shall lie against the Fund unless, as conditions precedent thereto, there shall have been full compliance with all of the terms of this Policy and the amount of the Insured's obligation to pay shall

have been finally determined either by judgment against the Insured after actual trial or by written agreement of the claimant and the Fund. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Fund as a party to any action against the Insured to determine the Insured's liability, nor shall the Fund be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Fund of any of its obligations hereunder.

III.E. Other Insurance

The insurance afforded by this policy is primary insurance, except when stated (by endorsement or other writing) to apply in excess of or contingent upon the absence of other or sufficient other insurance. Then the insurance afforded by this policy is primary and the Insured has other insurance which is stated to be applicable on an excess or contingent basis to an Occurrence covered hereby, the amount of the Fund's liability under this policy shall not be reduced as a result of such other insurance. When both the insurance afforded by this policy and other insurance apply to an Occurrence on the same basis, whether primary, excess, or contingent, the Fund shall not be liable under this policy for a greater proportion of the damages than the applicable limit of liability under this policy for such damages bears to the total applicable limit of liability of all valid and collectible insurance against such damages.

III.F. False or Fraudulent Claims

If any Insured, or if any person for whose acts or omissions an Insured is responsible, shall commit fraud in proffering any claim as regards the amount thereof or otherwise, the insurance afforded by this policy shall become void as to such Insured from the date such fraudulent claims is proffered.

III.G. Subrogation

In the event of any payment under this policy, the Fund shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall further cooperate with the Fund and do whatever the Fund reasonably requests to secure and effect any rights of indemnity, contribution, or apportionment which the Insured may have. The Insured shall exercise the right, if any, to reject or demand arbitration of any claim made against the Insured in accordance with the written instructions of the Fund. The Insured shall do nothing after loss to prejudice such rights.

The Fund may exercise any rights of subrogation against any Insured in respect of any claim brought about or contributed to by any dishonest, fraudulent, criminal, malicious, or deliberately wrongful act or omission of such Insured. Otherwise, the Fund shall not exercise any such rights against any person or organization included in the definition of "Insured", but the Fund may exercise any of such rights against any insurer providing coverage which is or may be available to or provide coverage for any such person or organization.

III.H. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or preclude the Fund from asserting any right under the terms of this policy, nor shall any term of this policy be changed except by endorsement hereto signed by a duly authorized officer of the Fund. No agent has authority to change this policy or waive any of its provisions except by delivery of an endorsement hereto duly executed on behalf of the Fund.

Any and all provisions of this policy which are in conflict with the statutes of the State of South Carolina are understood, declared and acknowledged to be amended to conform to such statutes, as they may exist from time to time.

III.I. Assignment

Assignment of interest under this policy shall not bind the Fund until its consent is endorsed hereon; if, however, an Insured shall die, the insurance afforded by this policy shall, with respect to liability previously incurred by the Insured and covered by this policy, apply to the Insured's legal representative as if such representative were the Insured.

III.J. Waiver of Exclusions and Breach of Condition

Whenever coverage under any provision of this policy would be excluded, suspended, or lost because of Exclusion IV.A.(7) of this policy or because of noncompliance with Condition III.C. or because any Insured other than the Named Insured directly or indirectly furnished incorrect or inaccurate information to the Fund in violation of Condition III.L., the Fund agrees that such insurance as would otherwise be afforded under this policy shall apply with respect to each Insured who did not personally commit or participate in committing, and was not responsible for the acts or omissions of any person who did personally commit or participate in committing, one or more of the acts or omissions described in such exclusion or condition; provided that if the Insured entitled to the benefit of this Condition III.J. can comply with the requirements of Condition III.C. after receiving knowledge thereof, such Insured shall so comply promptly after obtaining knowledge of the failure to comply therewith.

III.K. Cancellation/Non-Renewal

- (1) This policy may be **cancelled** by the named Insured by mailing to the Fund a **90-day written** advance notice stating when thereafter the cancellation shall be effective. A **political subdivision** may **cancel all policies** with the Fund by mailing to the Fund a **90-day written advance notice as provided in § 15-78-140** of the South Carolina Code of Laws.
- (2) The Fund may **cancel** this policy for **non-payment of premium** by mailing a notice of cancellation giving not less than **30 days** notice of the cancellation as provided in § 15-78-160 of the South Carolina Code of Laws.
- (3) If the policy is cancelled in accordance with (1) above, earned premium shall be computed in accordance with the customary short rate table and procedure. If cancelled in accordance with (2) above, premium will be calculated pro-rata.

Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- (4) For the purposes of this policy, the term "non-renewal" shall mean "cancellation" if the Insured is ceasing all coverages with the Fund and conditions as provided in sections (1), (2), and (3) above apply.

III.L. Application

By acceptance of this policy, the Named Insured agrees as follows:

- (1) the statements in the application and those in the Declarations are its personal representations;
- (2) each such representation is and shall be deemed to be material; and
- (3) this policy is issued and, where applicable, reissued, extended, and reinstated in reliance upon the truth of each such representation.

III.M. Entire Policy

This policy embodies all agreements existing between the Insured and the Fund, or any of its agents, relating to the insurance afforded by this policy.

III.N. Severability

In the event that any portion of this policy, other than the portions requiring the payment of premiums herefor or assuring the truth of the statements in the Declarations and the application herefor, is found to be invalid or otherwise unenforceable, the remaining portions of this policy shall remain in full force and effect. Where possible, this policy shall be read and construed in such a manner as to minimize the likelihood of a finding that any portion of this policy is invalid or otherwise unenforceable.

III.O. References

Certain words are specifically defined for this policy, and those definitions are found in Article II above.

III.P. Addresses

All notices and other communications under this policy to the Fund may be sent or delivered to the Fund at 1201 Main Street, Suite 500, Columbia, South Carolina 29201, unless changed by written notice to the Named Insured.

III.Q. Discovery Period

Effective 10/1/90 this policy replaces any medical professional liability policy issued by the Fund prior to 10/1/90 which was written on a claims made basis and covers Occurrences which took place during the period of those policies but which had not been reported as of 10/1/90

IV. EXCLUSIONS

IV.A. The insurance afforded by this policy does not apply to:

- (1) Injury to any employee of the Named Insured arising out of or in the course of his / her employment by the Named Insured;

- (2) any obligation for which the Insured or any carrier as his insurer may be liable under any Workers' Compensation, unemployment compensation, disability benefits, or other similar law or regulation;
- (3) expenses incurred by the Insured for first aid at the time of any accident or Occurrence;
- (4) liability assumed by the Insured by contract or agreement; or liability arising under the Insured's guarantee of the result of any treatment;
- (5) liability imposed upon the Insured pursuant to statute (including without limitation the liability of sellers of defective products imposed by S. C. Code Ann. §515-73-10 et. seq. (1976) as may be amended from time to time or pursuant to any statutory successor thereto);
- (6) an Occurrence which takes place at any time the Named Insured is not a department, agency, institution, commission, or board of the State of South Carolina; a non-federal government hospital; a chartered, nonprofit, eleemosynary hospital; or any other entity approved in writing by the Fund;
- (7) the damages in any judgment or final adjudication based upon or arising out of any dishonest, fraudulent, criminal, malicious, or deliberately wrongful act or omission of an Insured;
- (8) any claim made by or against or liability of any entity, not named in the Declarations, which is owned (totally or partially), controlled, operated, or managed, in whole or in part, by an Insured or which is under common ownership, control, or management with an Insured;
- (9) any claim against or liability of an Insured solely because the Insured is a partner, officer, director, stockholder, owner, or employee of or in any entity other than the Named Insured;
- (10) any claim or liability arising out of the ownership, maintenance, operation, use, loading, or unloading of any motor vehicle, trailer, watercraft or aircraft;
- (11) an Occurrence arising other than pursuant to, in connection with, or in the course of the individual Insured's employment by the Named Insured. This exclusion does not apply to an Insured under this policy who in good faith gratuitously renders emergency care at the scene of an accident or emergency to the victim thereof;
- (12) to any claim or liability for Injury
 - (a) with respect to which an Insured is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limits or liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any amendment thereof, or (ii) the Insured is, or had his policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organizations;

- (13) any claim or liability, under Section I.C. above relating to first aid, for expenses incurred with respect to Injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- (14) any claim or liability for Injury resulting from the hazardous properties of nuclear material if
 - (a) the nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (ii) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or
 - (c) the Injury arises out of the furnishing by an Insured of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility.

IV.B. As Used in These Exclusions:

- (1) "hazardous properties" include radioactive, toxic, or explosive properties;
- (2) "nuclear material" means source material, special nuclear material, or byproduct material;
- (3) "source material", special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any amendment thereof;
- (4) "spent fuel" means any fuel element or fuel

- component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- (5) "waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under subparagraph (6)(a) or (b) hereof;
- (6) "nuclear facility" means
 - (a) any nuclear reactor,
 - (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste,
 - (c) any equipment or device used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235, or
 - (d) any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste, and includes the operations; and
- (7) "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.