

**ASSESSMENT PLAN PROFESSIONAL LIABILITY  
CLAIMS MADE INSURANCE POLICY**

**MISSOURI DOCTORS MUTUAL INSURANCE COMPANY**

**601 Francis St.  
P.O. Box 914  
St. Joseph, MO 64502  
1-800-264-5959**

Missouri Doctors Mutual Insurance Company herein called the company.

In consideration of the payment of the premium, in reliance upon the statements in the Application made a part hereof and subject to all the terms of this policy, agrees with the named Insured as follows:

**NOTICE**

THIS POLICY IS KNOWN AS A "CLAIMS MADE" POLICY. EXCEPT TO THE EXTENT AS MAY BE PROVIDED HEREIN, COVERAGE IS LIMITED GENERALLY TO CLAIMS ARISING FROM THE PERFORMANCE OF PROFESSIONAL SERVICES SUBSEQUENT TO THE RETROACTIVE DATE STATED IN THE DECLARATIONS, FIRST MADE AGAINST THE INSURED WHILE THE POLICY IS IN FORCE AND FIRST REPORTED TO THE COMPANY WHILE THE POLICY IS IN FORCE. PLEASE READ THE POLICY CAREFULLY.

THIS IS AN ASSESSMENT PLAN POLICY. THE COMPANY IS FORMED UNDER SECTION 383 RSMO. THE INSURED AGREES TO PAY ALL ASSESSMENTS DESCRIBED ON THE DECLARATION AND ALL ASSESSMENTS WHICH MAY BE ASSESSED PURSUANT TO THE ARTICLES AND BY-LAWS, AS THE SAME MAY BE AMENDED FROM TIME TO TIME. FAILURE TO PAY ASSESSMENTS WHEN DUE MAY RESULT IN ACTIONS FOR ENFORCEMENT AGAINST DELINQUENT PARTIES AND WILL RESULT IN TERMINATION OF COVERAGE UNDER THIS POLICY. EACH INSURED AGREES TO PAY ALL COSTS INCURRED BY THE COMPANY, INCLUDING ATTORNEYS' FEES AND COURT COSTS, INCURRED IN COLLECTING ANY ASSESSMENT.

CONSENT TO BE RATED. THE INSURED ACKNOWLEDGES THAT THE COMPANY IS AN ASSESSMENT COMPANY AND HAS FILED RATES WITH THE STATE OF MISSOURI. THESE RATES ARE FOR GUIDANCE ONLY AND THE INSURED CONSENTS TO HAVING THIS POLICY RATED.

## **I. COVERAGE AGREEMENTS**

The company will pay on behalf of the insured:

### **COVERAGE A – INDIVIDUAL PROFESSIONAL LIABILITY**

All sums which the insured shall be legally obligated to pay as damages because of bodily injury arising out of the rendering of, or failure to render, professional services, occurring subsequent to the retroactive date, for which claim is first made against the insured and reported to the company during the policy period, arising out of the practice of the insured's profession as a physician, surgeon or dentist, with the exception of the exclusions listed in Section V. of this policy.

### **COVERAGE B – CLINIC, PARTNERSHIP, ASSOCIATION, OR CORPORATION PROFESSIONAL LIABILITY**

All sums which the insured shall become legally obligated to pay as damages because of bodily injury arising out of the rendering of, or failure to render, professional services, occurring subsequent to the retroactive date, for which claim is first made against the insured and reported to the company during the policy period by any person whose acts or omissions the professional partnership, association or corporate insured is legally responsible, with the exception of the exclusions listed in Section V. of this policy.

## **II. DEFINITIONS**

When used in this policy (including endorsements forming a part hereof):

- “application” means an application for medical professional liability insurance personally completed by the applicant and made part of this policy.
- “declaration” means a part of this policy entitled “Declarations.” Declarations are issued by the company and set forth the named insured, limits of liability, and other pertinent items.
- “endorsement” means a written change of policy provisions during a policy period, including, but not limited to, an extension of a period for reporting medical incidents to the company, a written notice of the additional policy provisions or exclusions, or a written provision of supplemental information.
- “policy period” means the period of time between the date this policy becomes effective and the date of termination, expiration or cancellation of coverage provided by this policy.

- “extended reporting period” means the period of time after the end of the policy period for reporting claims arising out of acts or omissions which occurred prior to the end of the policy period and which would have been otherwise covered by this policy.
- “insured” means any person or organization qualifying as an insured in the “Persons Insured” provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company’s liability.
- “named insured” means any person or organization listed as “named insured” in the declarations of this policy.
- “medical incident” means any act or omission:
  - (a) Under Coverage A – Individual Professional Liability – (1) in the furnishing of professional medical or dental services by the insured, an employee of the insured, or any person acting under the personal direction, control, or supervision of the insured, or (2) in the service by the insured as a member of a formal accreditation, standards review or similar professional board or committee.
  - (b) Under Coverage B – Clinic, Partnership, Association or Corporation professional Liability – in the furnishing of professional medical or dental services by any person acting under the personal direction, control, or supervision of the insured, with the exception of the exclusions listed in Section V of this policy.
- “one medical incident” includes, without limitation, each of the following:
  - (a) The furnishing of obstetrical treatment to a mother and fetus or fetuses from conception through postpartum care;
  - (b) The furnishing of professional services that result in bodily injury to a patient even though the furnishing of such services (1) begins in one policy period and extends into another policy period or policy periods, or (2) results in multiple bodily injuries to the patient, or (3) involves multiple acts of negligence;

- (c) The furnishing of professional services that result in bodily injury to a patient and a claim by another person or persons due to the bodily injury to the patient;
- (d) All related acts or omissions in the furnishing of professional services.
- “bodily injury” means bodily injury, sickness or disease sustained by any person.
- “damages” means all actual compensatory damages, including damages for death, which are payable because of bodily injury to which this insurance applies.
- “claim” means a demand made upon the insured to pay money because of the insured’s alleged acts or omissions.
- “when a claim is to be considered as first made” means a claim for bodily injury shall be considered as first made at the earlier of the following times:
  - (a) When the insured first gives written notice to the company that a claim has been made, or
  - (b) When the insured has knowledge of (or becomes aware of) facts which could reasonably be expected to give rise to a claim under this policy and shall give written notice to the company during the policy period.
- “suit” means any proceeding brought in a court of law or equity in which redress of an injury or a right is sought.

### **III. SUPPLEMENTARY PAYMENTS**

Unless otherwise stated in this policy or by endorsement, the company will pay, in addition to the applicable limit of liability:

- (a) All expenses incurred by the company, all costs taxed against the insured in any suit defended by the company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company’s liability thereon.

- (b) Premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the company shall have no obligation to apply for or furnish any such bonds.
- (c) That part of the premiums on appeal bonds that the company's applicable limit of liability bears to the amount of the bond, but the company shall have no obligation to apply for or furnish any such bonds.
- (d) Reasonable expenses incurred by the insured at the company's request in assisting the company in the defense of any claim or suit.

#### **IV. CONDITIONS**

1. **PREMIUM.** All premiums for this policy shall be computed in accordance with the company's rules, rates, rating plans, premiums, and minimum premiums applicable to the insurance afforded herein. The named insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct.

2. **ASSISTANCE AND COOPERATION OF INSURED.**

- (a) The insured shall give written notice to the company as soon as practicable of any claim made against the insured or of any facts which would reasonably be expected to give rise to a claim. The notice shall identify the insured and contain reasonably obtainable information with respect to the time, place, and circumstances of the injury, including the names and addresses of the injured and of available witnesses and the extent of the type of claim anticipated. If a claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons, petition, or other process received by the insured or the insured's representative.
- (b) The insured and each of its employees shall cooperate with the company 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 or damage with respect to which insurance is afforded under this policy. The insured and any of its members, partners, officers, directors, stockholders and employees that the company deems necessary shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at the insured's own cost, voluntarily make any payment, assume any obligation, or incur any expense.

- (c) IF THE INSURED SUPPLIES FALSE INFORMATION TO THE COMPANY OR GIVES FALSE TESTIMONY, OR ALTERS PHYSICAL EVIDENCE OR MEDICAL RECORDS OR DOCUMENTS REGARDING A CLAIM, OR CAUSES THE SAME TO BE SUPPLIED, GIVEN, OR DONE BY ANOTHER, OR FAILS TO COMPLY WITH ANY OF THE INSURED'S DUTIES AND OBLIGATIONS UNDER THE TERMS OF THIS POLICY, THEN ALL COVERAGE REGARDING SAID CLAIM UNDER THIS INSURANCE IS FORFEITED.
- (d) The insured, insured's employee, agent, or assign shall not agree to give a statement, deposition, or have an informal meeting with any attorney, admit any error or mistake, or assume any liability, without the written consent of the company.
- (e) The insured, insured's employee, agent, or assign shall not take any action, directly or indirectly, that would hinder or impede the prosecution or settlement of any claim.
- (f) Failure of the insured to comply with any of the requirements of 2(a), 2(b), 2(c), 2(d) and 2(e) above may result in the company voiding the insured's coverage or, at the sole discretion of the company, voiding the insured's consent to settle as described in COVERAGE AGREEMENTS.

3. **ACTION AGAINST COMPANY.** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until 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 insured, the claimant and the company.

No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impeded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

4. **SUBROGATION.** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefore 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 do nothing after loss to prejudice such rights.

5. **ASSIGNMENT.** The interest hereunder of any insured is not assignable.

Under Coverage A – Individual Professional Liability – If the insured shall die or be adjudged incompetent, this insurance shall thereupon terminate for such person, but shall cover the insured’s legal representative as the insured with respect to liability previously incurred and covered by this insurance.

Under Coverage B – Clinic, Partnership, Association or Corporation Professional Liability – If any member, partner, officer, director or stockholder of the insured shall die or be adjudged incompetent, this insurance shall thereupon terminate for such person, but such insurance as is afforded by this policy shall cover such insured’s legal representative as the insured with respect to liability previously incurred and covered by this insurance.

6. **CANCELLATION OR TERMINATION OR NON-RENEWAL.** This policy may be cancelled or terminated:

**BY THE NAMED INSURED:**

- (a) Voluntary termination for any reason by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. In this event, the company shall return the unearned premium, which shall be computed in accordance with the company’s early cancellation premium adjustment procedure.
- (b) Upon the death of the named insured, when said insured was in full compliance with all the provisions of this policy, the company shall provide an extended reporting endorsement, as described in Paragraph II and Paragraph IV: 11, at no additional premium.
- (c) If the company determines that a named insured, who was then in full compliance with all the provisions of this policy (including, without limitation, the fact that such insured is not delinquent in the payment of any premium) has become unable to perform any and every duty of his or her regular professional occupation, then such named insured shall be deemed disabled for the purposes of this agreement. In making such determination, as well as in making the determination that a named insured is no longer disabled, the company may rely on whatever medical evidence it deems relevant, and any such determination by the company made in good faith shall be conclusive and binding upon the named insured and company. During any period when a named insured is disabled as so determined (or until the death or retirement of such insured), the company shall provide an extended reporting endorsement as described in Paragraph II and Paragraph IV:11 at no additional premium or assessment.

- (d) Retirement: Any named insured who was then in full compliance with all the provisions of this policy (including, without limitation, the fact that such insured is not delinquent in the payment of any premium), and who has attained the age of 50, and who has had continuous coverage by a Claims Made policy with the company for three (3) or more years immediately preceding his/her retirement, and who has retired completely and permanently from the practice of medicine, may notify the company in writing to that effect and, following receipt of such notice, the company shall provide an extended reporting endorsement as described in Paragraph II and Paragraph IV: 11 at no additional premium.

**BY THE COMPANY:**

- (e) This policy is automatically cancelled if the insured's license to practice is revoked or limited, the date of cancellation being the date of revocation or limitation. Failure of the insured to advise the company of the date of revocation will not extend the cancellation or termination date.
- (f) For non-payment of premium by mailing to the named insured written notice stating that no less than ten (10) days thereafter such cancellation shall be effective. In the event this policy is reinstated after cancellation due to non-payment of a premium, the policy may be subject to a reinstatement fee in accordance with the company's Reinstatement Policy.
- (g) For misrepresentation in any application.
- (h) For other reasons by mailing to the named insured, at the address shown on this policy, written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in this notice shall become the end of the policy period. In this event, the company shall return the unearned premium, which shall be computed 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.

In Lieu of mailing a written notice, the written notice may be delivered in person, and such delivery shall be equivalent to mailing.

**7. OTHER INSURANCE.** The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of

other insurance. When this insurance is primary and the insured has other insurance, which is stated to be applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) **Contribution by Equal Shares.** If all of such other valid and collectible insurance provides for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the shares of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute to equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.
- (b) **Contribution by Limits.** If any of such other insurance does not provide for contribution by equal shares, the company shall not be liable for greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the applicable limit of liability of all valid and collectible insurance against such loss.

8. **APPLICATION.** By acceptance of this policy, the named insured agrees that the statements in the Application are his representations, that this policy is issued in reliance upon the truth of such representations, that the representations are material, that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance and that the application is made a part of this policy.

9. **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 estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

10. **ONE-YEAR POLICY.** This policy is issued for one year. Premiums for renewal of this policy for any subsequent year are subject to change in accordance with the company's Articles of Association and By-Laws.

11. **EXTENDED REPORTING PERIOD OPTION.** In the event the policy is cancelled or not renewed by either the named insured or the company, except as noted in the following paragraph, the named insured may purchase an extended reporting endorsement provided that the named insured requests this in writing within thirty (30) days of coverage expiration. This endorsement covers claims provided that the incident giving rise to the claim occurred after the retroactive date and prior to the termination date of this policy.

The named insured shall have no right to the Extended Reporting Period Option, although the company may at its election offer the option, if the reason for cancellation or non-renewal is non-payment of premium, loss of license, or if the company has cancelled or not renewed for misrepresentation in any application.

The premium for this endorsement will be specified by the company, but will be waived if the insured dies, subject to the provisions in Paragraph IV:6(b), becomes permanently and totally disabled, subject to the provisions in Paragraph IV:6(c), or fully retires after age 50, subject to the provisions in Paragraph IV:6(d).

The limit of liability stated in the declaration of this insurance at the time this insurance is terminated shall be the limits applicable to the extended reporting period.

12. **MISREPRESENTATIONS.** Misrepresentations in any application shall entitle the company to cancel or rescind the policy at the election of the company, cancellation to be effective upon notice to the named insured.

13. **ENTIRE AGREEMENT.** This policy, including the application forms, declarations, endorsements, and By-Laws and the Articles of Association, which will be furnished to the insured upon request, embodies all agreements existing between the insured and the company or any of its agents relating to this insurance.

## V. EXCLUSIONS

This insurance does not apply:

- (a) To bodily injury for which the insured may be held liable as a proprietor, director, medical director, hospital administrator, officer, stockholder, equity owner or member of the Board of Directors, trustees, or governors of any hospital, long term care facility, dialysis center, outpatient care center, sanitarium, clinic with bed and board facilities, nursing home, laboratory, or other business enterprise;
- (b) Under Coverage A – Individual Professional Liability – To bodily injury arising out of the rendering of, or failure to render, professional services by

any other person for whose acts or omissions the insured may be held liable as a member, partner, officer, director, or stockholder of any professional Partnership, association, or corporation;

- (c) Under Coverage B – Clinic, Partnership, Association or Corporation Professional Liability – to vicarious liability assumed by or extending to the clinic, partnership, association, or corporation arising out of the rendering of, or failure to render, professional services by any physician whether or not a named insured under Coverage A;
- (d) To bodily injury to any employee of the insured arising out of and in the course of that person’s employment by the insured;
- (e) To any obligation for which the insured or any carrier acting as insurer may be held liable under any worker’s compensation, unemployment compensation or disability benefits or under any similar law;
- (f) To any liability growing out of services rendered by any physician or dentist employed by the insured, unless such employee is covered as a named insured;
- (g) To punitive and/or exemplary damages;
- (h) To liability assumed by the insured under any contract or agreement with a third party;
- (i) To damages arising out of any unlawful, fraudulent or intentional act of the insured;
- (j) To liability arising from sexual relations, activity, acts or conduct with any person, with or without consent of any such person, or from the performance of criminal acts, or from acts or omissions, which occur while under the influence of intoxicants or narcotics or while engaged in any other substance abuse;
- (k) To injury arising out of the provision of, or failure to provide medical care or other professional services prior to the retroactive date;
- (l) To liability arising from incidents, claims or suits which have been, or should have been, reported to prior carriers, occurring after the retroactive date of this policy;

- (m) To liability arising with respect to any act or omission of a Physician's Assistant if the supervising physician is not in full compliance with all statutes and regulations governing the supervision of Physician Assistants at the time of the alleged act or omission;
- (n) To liability arising with respect to any act or omission of a Nurse Practitioner (including registered professional nurses and advanced practice nurses) if the supervising physician is not in full compliance with all statutes and regulations governing collaborative practice arrangements with such nurse, at the time of the alleged act or omission;
- (o) Notwithstanding any provisions in this policy to the contrary, it is hereby understood and agreed that coverage is specifically excluded in the event a claim(s) arises out of a medical incident while providing services under a formal contract with the State of Missouri, or any agency of the State, any city or county health department or agency, or any city-county health department or agency, which is providing coverage through the State Legal Expense Fund;
- (p) To liability related to the prescription of or use of any drug or device not yet approved by the FDA for the prescribed treatment;
- (q) To liability arising from or relating to any insured's participation in any clinical studies and/or clinical trials.

## **VI. PERSON INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) Under Coverage A – Individual Professional Liability – each individual named in the declarations as insured;
- (b) Under Coverage B – Clinic, Partnership, Association or Corporation Professional Liability – the partnership, association or corporation described in the declarations or endorsements and any member, partner, officer, director or stockholder thereof with respect to acts or omissions of others, provided that no such member, partner, officer, director or stockholder or a partnership, association or corporation shall be an insured under this paragraph (b) with respect to acts or omissions in the furnishing of professional services by the insured or any person acting under the insured's personal direction, control or supervision.

## **VII. LIMITS OF LIABILITY**

### **COVERAGE A – INDIVIDUAL PROFESSIONAL LIABILITY**

The total liability of the company for all damages because of all bodily injury to which this insurance applies shall not exceed the limit of liability stated in the declarations as “aggregate.”

Subject to the above provision with respect to “aggregate,” the total liability of the company for all damages because of all bodily injury arising out of any one medical incident, regardless of the number of insureds covered by this policy, shall not exceed the limit of liability stated in the declarations as applicable to “each medical incident.”

### **COVERAGE B – CLINIC, PARTNERSHIP, ASSOCIATION OR CORPORATION PROFESSIONAL LIABILITY**

Regardless of the number of insureds under this insurance or the number of claims made or suits brought, the company’s liability is limited as follows:

The total liability of the company for all damages because of all bodily injury to which this insurance applies shall not exceed the limit of liability stated in the declarations as “aggregate.”

Subject to the above provision with respect to “aggregate,” the total liability of the company for all damages because of all bodily injury caused by any one medical incident shall not exceed the limit of liability stated in the declarations as applicable to “each medical incident.”

### **INCLUDED LIMITS**

The term “included” under Coverage B in the declarations means that there is only one limit of liability for both Coverage A and Coverage B.

## **VIII. CLAIMS SETTLEMENT**

The company shall have the right and duty to defend any suit against the insured seeking damages because of such bodily injury even if any of the allegations of the suit are groundless, false, or fraudulent. The company may make such investigation of any claim or suit as it deems expedient, but the company may not settle any such claim or suit without the consent of the insured, unless so authorized by the insured in writing or as an endorsement to this policy.

The insured has the right to consent to settle a claim and request that the company settle said claim within policy limits in accordance with all other relevant provisions of the policy. Such request must be made within (30) days following the claim being first made against the insured as defined in Section II, or notification to the company under Section IV.2.(a), whichever is later. If the company agrees, the insured may make such request after the thirty (30) day period defined above, so long as the insured reimburses the company for costs and expenses of defending the claim incurred by the company following expiration of the insured's thirty (30) day option period until such time as the insured requests that the company settle within the policy limits. Such payment shall be made from the insured by reduction in the face amount of the policy.

The company is not obligated to settle a claim when reasonable investigation indicates conformance with the standard of care. The company shall not be obligated to pay any claim or judgment or defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

#### **IX. BY-LAWS AND ARTICLES OF ASSOCIATION**

The By-Laws and Articles of Association of Missouri Doctors Mutual Insurance Company, as they exist or may be amended, are expressly incorporated into this policy, and are made a part of the terms hereof. These documents will be made available upon request.

**IN WITNESS WHEREOF**, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

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MARTIN M. BAUMAN  
PRESIDENT/CHIEF EXECUTIVE OFFICER

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ROBERT O. SCHAAF, M.D.  
TREASURER/CHIEF OPERATING OFFICER