



Insurance Solutions for Healthcare Providers

Medical Professional Liability Insurance Policy

Claims Made Policy

Non-Assessable

First Professionals Insurance Company, Inc.

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Introduction

This **policy** is written in clear, straightforward English. Please read it and familiarize yourself with what it says. If there are any questions, corrections or changes, please contact **us** at the telephone number or address listed on page 1 of this **policy**.

First Professionals Insurance Company, Inc. recommends that this entire **policy** be read carefully in order to fully understand the coverage provided. It is particularly important to note that this **policy** contains defined terms, which are identified by bold face type. Headings are also in bold face type. In order to properly understand the coverage provided, the definitions of these terms contained in the Definitions Section must be read. This **policy** also excludes certain matters from coverage and defense. These exclusions are contained in Section VI of the Individual Professional Liability Coverage Part, in section VI of the Professional Organization Coverage Part and in the Common Exclusions Section of the **policy** and should be read carefully in order to fully understand the coverage provided. There may also be endorsements attached to this **policy** which should be read carefully because they affect coverage.

Insureds have certain obligations in the event of a **claim** which must be satisfied in order for coverage to exist. These obligations are detailed in Section II of the Individual Professional Liability Coverage Part, in Section II of the Professional Organization Coverage Part and in the Common Policy Conditions section of the **policy**.

<u>The Medical Professional Liability Policy is made up of the following items</u>		<u>Page Number</u>
1.	Coverage Summary	Separate Page
	This is a page which is typed or printed and inserted manually as the first page seen when the policy is opened. It lists policyholder(s) , insured(s) , applicable limits of liability, insured organizations , which Coverage Parts and/or Endorsements that are applicable, when coverage begins and ends and other information required to understand the policy . If this page is missing or incorrect, please call or write us so we may send you a copy or issue any needed corrections.	
2.	Common Policy Conditions	<u> 3</u>
	The conditions contained in this section apply to every Coverage Part and Endorsement(s) that is/are a part of this policy . Rather than repeat them, we have consolidated them in this section.	
3.	Common Exclusions	<u> 8</u>
	The exclusions contained in this section apply to every Coverage Part and Endorsement(s) that is/are part of this policy . Additional exclusions, if any, are contained in the applicable Coverage Part and Endorsement(s) that is/are part of this policy . Rather than repeat them, we have consolidated them in this section.	
4.	Common Definitions	<u> 12</u>
	The definitions contained in this section apply to every Coverage Part and Endorsement(s) that is/are part of this policy . Additional definitions, if any, are contained in the applicable Coverage Part or Endorsement(s) that is/are part of this policy . Rather than repeat them we have consolidated them in this section.	

5. **Coverage Part(s)** If applicable Pages 15,21,25 or separate pages

Only those Coverage Parts shown on the Coverage Summary and which have a premium shown or indicate the premium is included are applicable. Those applicable Coverage Parts provide specific coverage agreements which detail the type of coverage provided by this **policy**. The **policy** may contain more than one Coverage Part, each providing different specific coverage agreements.

6. **Endorsements** Separate Page(s)

Quite often, a **policy** will contain endorsements. Endorsements may be added to allow the **policy** to comply with individual state requirements, used to broaden or restrict coverage, or used due to the specific nature of the risk of the practice. Endorsements to the **policy** at inception are listed on the Coverage Summary.

COMMON POLICY CONDITIONS

1. **The Policy Period:**

Coverage under this **policy** shall begin at 12:01 a.m. standard time at the location of the insured's primary medical practice on the effective date shown in the Coverage Summary. If this **policy** replaces a **policy** ending at noon, rather than 12:01 a.m., coverage shall begin at noon when coverage under the old **policy** expires. The coverage shall expire at 12:01 a.m., standard time, on the expiration date shown in the Coverage Summary. If all or part of this **policy** is cancelled for any reason before that date, the coverage will end at 12:01 a.m. standard time on the cancellation date.

2. **Premiums:**

- a. All premiums paid to **us** shall be computed in accordance with **our** rules, rates, rating plans, premiums and minimum premium applicable on the effective date of the **policy**.
- b. The first premium payment is due at inception. Each renewal premium payment is due on or before the beginning of the renewal period to which it applies. If any premium is not paid when due, this **policy**, if not previously cancelled, will be terminated in accordance with the cancellation provisions of this **policy**.
- c. The **policyholder** shown in the Coverage Summary is:
 - (1) responsible for the payment of all premiums; and
 - (2) shall be the payee for any return premium **we** pay; however,
 - (3) if the premium is paid by another person or organization, that person or organization shall be entitled to any return premium.
- d. **We** will notify the **policyholder** of a rate increase no less than (60) sixty days prior to such increase.
- e. Subsequent endorsements to the **policy** may require an adjustment to the premium for the **policy period**. If an adjustment to increase the premium is necessary and the premium is already paid in full for the **policy period**, **we** will bill **you** separately. If an adjustment to decrease the premium is necessary and the premium is already paid in full for the **policy period**, **we** will provide **you** with a credit on **your** next renewal policy or provide **you** with the appropriate return premium. If a premium adjustment is necessary and **you** were making scheduled premium payments and installment payments are owed, an endorsement setting forth a revised premium payment schedule will be issued by **us**.

3. Policy Changes:

This **policy** can only be changed by a written endorsement to the **policy**. This endorsement must be signed by one of **our** authorized representatives. Notice to any of **our** agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change any part of this **policy**. Any notice to any person will not prevent **us** from asserting any rights under the provisions of the **policy**.

We make changes in **our** standard **policy** from time to time. Any change must comply with applicable state law. While this **policy** is in effect, **we** may make a change in **our** standard **policy**, which may broaden or restrict coverage under that **policy**. However, coverage under this **policy** will only be changed in the following manner:

- a. If the change broadens coverage and the change can be added to this **policy** without requiring a premium increase, all **insureds** will automatically receive the benefit of the broadened coverage.
- b. If the change restricts coverage, it will not become effective until and unless this **policy** is renewed.

We agree to notify the **policyholder** of any change that may restrict coverage at least (60) sixty days before the effective date of any renewal **policy**.

4. Renewal, Non-Renewal and Cancellation:

Neither the **policyholder** nor **us** is required to renew this **policy**. Any renewal will be on **policy** forms then in effect. **We** may renew by issuing a Continuation Coverage Summary specifying a new **policy period** or by offering a completely new **policy**. If the **policyholder** rejects **our** offer of renewal, either by failure to pay the premium on or before the effective date of such renewal or by written notice received by **us**, then any coverage under a new **policy period** or a completely new **policy** shall be null and void as of its effective date.

The **policyholder** can cancel this **policy** at any time.

To cancel, the **policyholder** must mail or deliver to **us** written notice stating when the coverage is to end. If the **policyholder** cancels this **policy** during the **policy period**, a pro rata refund of the unearned premium, less a cancellation charge of ten percent (10%) of unearned premium, shall be returned within (15) fifteen working days from the date of cancellation.

We will provide the **policyholder** (90) ninety days notice of cancellation or non-renewal. However, when the cancellation is due to non-payment of premium, or the loss or suspension of an **insured's** license to practice, **we** will only provide the **policyholder** ten (10) days notice of cancellation. If this **policy** is canceled by **us**, unearned premiums shall be computed pro rata and promptly returned according to the provisions of this **policy**.

Premium adjustments 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 premiums is not a condition of cancellation.

Except as noted above concerning non-payment of premium or loss or suspension of license, after this **policy** has been in effect for ninety (90) days or longer, **we** will not cancel the **policy** except for one or more of the following reasons:

- a. failure to comply with underwriting requirements established by the insurer within ninety (90) days of the date of effectuation of coverage;
- b. substantial change of risk covered by the **policy**; or
- c. the cancellation is for all **insureds** under such policies for a given class of **insureds**.

If **we** cancel the **policy** for any reason specified in a, b, or c above, **we** will provide the **policyholder** with a (90) ninety day cancellation notice.

5. **Policy Territory:**

This **policy** applies to a **medical incident** or **committee incident** occurring in the United States of America, including its territories and possessions, Puerto Rico and Canada. A **claim** must be made and suit must be filed within the United States of America only.

6. **Assignments and Transfers:**

Neither the **policyholder** nor anyone else covered under this **policy** can assign or transfer its or their interest in the **policy**. If an **insured** dies or is adjudged mentally incompetent, the coverage under the **policy** shall be automatically terminated as to that **insured**, and, that **insured's** interest in the **policy** shall be automatically transferred to his or her duly appointed legal representative. Any unearned premium shall be calculated on a pro rata basis from the termination date and returned according to the provisions of this **policy**.

7. **Settlement of Claim or Suit:**

We have the right to determine, to make, and to conclude, without an **insured's** permission, in accordance with applicable law, any offer of admission of liability and for arbitration pursuant to Florida Statute 766.106, settlement offer, or offer of judgment within the applicable limit of liability of this **policy**.

8. **Other Insurance:**

A loss that is covered under this **policy** may also be covered under another insurance **policy** or risk transfer instrument, including but not limited to, self-insured retentions, deductibles, or other alternative arrangements.

The coverage provided by all Coverage Parts of this **policy** shall apply as excess insurance to any coverage under another insurance **policy** or risk transfer instrument.

In the event a court holds this policy must provide primary coverage, **we** shall not be liable under this **policy** for a greater proportion of such loss than the applicable limit of liability under this **policy** that such loss bears to the total applicable limits of liability of all valid and collectible insurance or risk transfer instruments, whether primary, contributory, excess, contingent or otherwise.

These other insurance provisions do not apply to any insurance policies or risk transfer instruments written as specific excess insurance over the limits of liability of this **policy**.

9. **Recovering Damages From a Third Party:**

Any **insured** covered under this **policy** may be able to recover all or part of a loss from a person or organization other than **us**; therefore, each **insured** must do all that is reasonably possible to preserve any right of recovery. If **we** make a payment under this **policy** then the right of recovery shall belong to **us** (on an **insured's** behalf). If **we** recover more than **we** have paid then the excess

shall belong to the **insured** who had the loss, but **we** shall deduct **our** recovery expenses first, including reasonable attorney's fee.

10. Lawsuits Against Us:

An **insured** may not bring legal action against **us** concerning this **policy** until:

- a. the **insured** has fully complied with all the provisions of this **policy**; and
- b. the amount of the **insured's** obligation to pay has been decided. Such amount can be set by court judgment or by written agreement between the **insured, us** and the claimant.

No person or organization (including an **insured**) can join **us** in an action against an **insured**, and no one can sue **us** directly on a **claim** against an **insured**.

After liability against an **insured** has been determined by court judgment or written agreement, the party making the **claim** may be able to recover under this **policy** but only up to the limit of the **insured's** coverage. If an **insured** or an **insured's** estate is adjudged bankrupt or becomes insolvent, **we** will still be obligated under this **policy**.

11. Fraud or Misrepresentation in Connection with Application or Negotiations for Coverage:

This **policy** may be void if the **policyholder** or any **insured** covered under this **policy** knowingly and with intent to injure, defraud or deceive makes any misrepresentation, omission, concealment of fact, or incorrect statement, in connection with any application, renewal application, or negotiations for coverage:

- a. which is fraudulent; or
- b. which is material either to the acceptance of the risk or to the hazard assumed; or
- c. if the true facts had been known **we** in good faith would not have issued this **policy** or any endorsement(s) thereto, would not have issued this **policy** or any endorsement(s) thereto at the same premium rate, would not have issued this **policy** or any endorsement(s) thereto with as large of a Limit of Liability, or would not have provided coverage with respect to the hazard resulting in the loss.

12. Fraud and Misrepresentation After a Medical Incident or Committee Incident:

This **policy** may be void if the **policyholder** or any **insured** covered under this **policy** knowingly and with intent to injure, defraud or deceive fails or refuses to disclose any relevant fact or information to **us**, alters, conceals or destroys any relevant record or document, misleads **us** or defrauds or lies to **us** about any relevant issue relating to coverage under this **policy**, after a **medical incident** or **committee incident**.

13. Our Right To Inspect and Audit:

All **insureds** agree to let **us** inspect their property and business operations during normal business hours while this **policy** is in force. **We** are not, however, required to make inspections. Nor will **we** guarantee that an **insured's** property or operations are safe, or that they will conform to any laws, rules or regulations. All **insureds** agree to allow **us** to examine and audit their books and records that relate to this insurance at any time up to three years after the **policy** expiration date. Any inspection, surveys, reports or recommendations shall relate only to insurability under the **policy** and premium charged.

14. How State Law Affects this Policy:

This **policy** is issued according to the laws of the state shown in the mailing address of the **policyholder** as shown on the Coverage Summary. Any part of this **policy** that conflicts with the law of that state is automatically changed to conform to that law.

15. Cooperation:

All **insureds** are required to fully cooperate with **us** or **our** designee in the making of settlements within the **policy** limits of liability, the defense of suits or other proceedings and enforcing any right of contribution or indemnity against another, who may be liable to an **insured** because of **injury, damage**, loss or expense. If **we** ask, an **insured** shall attend hearings and trials, assist in obtaining and presenting evidence and obtaining the attendance of witnesses.

All **insureds** are required to cooperate fully in the review process prescribed under Florida Statute 766.106 if a notice of intent to file a **claim** for medical malpractice is made against an **insured**.

Do not agree to any financial obligations or make any payments of money without **our** authorization. Doing so will result in **our** not making reimbursement of any payment or obligation, even though it may have been covered by this **policy**.

All **insureds** must keep their records in a safe place. Do not alter, cancel or destroy medical records or commit any act that would interfere with **our** ability to defend a **claim** or lawsuit against an **insured**. Create a separate litigation file for all items relating to a **medical incident, committee incident, claim** or lawsuit.

The failure to cooperate shall be grounds for denial of coverage.

16. Extended Reporting Period:

- a. When coverage under this **policy** ends for any reason, the **insured physician(s)**, allied healthcare provider(s) and **insured organization(s)** insured with a separate limit of liability under this **policy**, have the right, but not the obligation, to buy an Extended Reporting Period endorsement, commonly referred to as "tail coverage." If purchased, this endorsement allows an **insured** to report to **us claims** or **potential claims** that resulted from **medical incidents** or **committee incidents** that occurred subsequent to the **retroactive date** and prior to the **expiration date** of the **policy**.
- b. The **insured physician**, allied healthcare providers or **insured organization** must submit a written request expressing a desire to purchase this endorsement and pay the premium within (30) thirty days after the date **we** mailed notification of the option to purchase this endorsement. This notification will outline the premium quote and the payment options for this endorsement. If **we** do not receive the written request and premium within this (30) thirty day period there will be no Extended Reporting Period.
- c. The **policy** language that applied immediately prior to the cancellation date will apply to all **claims** and **potential claims** reported during the extended reporting period. No deductible shall be offered by **us**, however, for any Extended Reporting Period, except as provided by any applicable Investigation Defense Coverage Part. The broadening of the coverage portion of the Policy Changes provision found in the General Conditions section will not apply during the Extended Reporting Period.
- d. The Per Claim Limit of Liability that applied on the cancellation date will apply to all **claims** and **potential claims** reported during the Extended Reporting Period. The unused portion of

the Aggregate Limit that applied on the cancellation date is the maximum amount **we** will pay for all **claims** covered by this **policy** under the Extended Reporting Period.

- e. Once the Extended Reporting Period is in force, subsequent payment of the premium, if applicable, must be made within (30) thirty days of the due date for each installment payment. If **we** fail to receive any payment due, **we** will send an official notice of cancellation effective as of the first applicable date that **your** premium was unpaid. A lump sum payment of the entire premium or a partial amount of the premium for an Extended Reporting Period endorsement shall be deemed fully earned upon receipt by **us**.
- f. There will be no charge for an Extended Reporting Period endorsement for an **insured physician** or allied healthcare provider who, while actively insured with **us**:
 - (1) dies (**We** must have a copy of the Death Certificate or other proof of death.);
 - (2) becomes **disabled** and cannot continue the practice of medicine; or
 - (3) fully **retires** from the practice of medicine at any age and has been continuously insured by **us** for the last five years immediately before retirement.

In the event that **insured physician** or allied healthcare provider decides to return to medicine, he or she must notify **us** in writing. If a **claim** is reported to **us** under the Extended Reporting Period and **we** determine the **insured physician** or allied healthcare provider was not fully **retired** from the practice of medicine, no coverage will apply to the **claim**.

- g. No **insured** shall have any vested, future or cumulative right to purchase or receive without charge any endorsement for any Extended Reporting Period except as provided in this **policy**.
- h. If an **insured** has failed to reimburse **us** for any deductible amount advanced by **us** on behalf of the **insured** or if this **policy** is cancelled due to non-payment of premium or voided due to **your** fraud or material misstatement in connection with **your** application or negotiations for coverage or voided due to **your** fraud or material misstatement after a **medical incident** or **committee incident**, the **insured** shall not have any right to purchase or receive without charge any Extended Reporting Period.

17. **Notice of Change In Information Provided On Application**

The **policyholder** and **insured physicians** or allied healthcare provider must immediately notify **us**, in writing, of any change in the information provided to **us** in any application or other communication, including but not limited to any change in medical specialty, location of practice, addition, substitution or termination of **insured** employees named on the Schedule of Organization and Individuals Protected, partners, agents, independent contractors and **insureds**; changes in the corporation, partnership or professional association or affiliation of the **policyholder** and **insured physicians** or allied healthcare provider. Such a change may result in a condition that would not be covered by this **policy**.

COMMON EXCLUSIONS

This **policy** shall not cover:

- 1. Any award of punitive or exemplary **damages** unless coverage for those types of **damages** are required by the state insurance regulatory agency where this **policy** is issued.

2. Any **injury** or **damages** arising out of any of the following committed by any **insured**: any intentional tort (including but not limited to malicious prosecution, intentional discrimination, false arrest, detention, false imprisonment, intentional defamation, intentional invasion of the right of privacy, intentional infliction of severe emotional distress); any criminal act; any acts or omissions while under the influence of intoxicants or narcotics; or any violation of a criminal or civil state or federal R.I.C.O. statute or any similar statute.
3. Any **injury** or **damages** which are expected or intended by any **insured**.
4. Any **injury** or **damages** that any **insured** must pay under any unemployment or workers' compensation, disability benefits, or other similar law.
5. Any **injury** or **damages** to:
 - a. any **insured's** employee arising out of and in the course of employment by any **insured**; or
 - b. the spouse, child, parent, brother or sister of that employee as a consequence of "a." above.

This exclusion applies to any liability any **insured** has assumed under any contract or agreement other than a contract covered by this **policy**. However, this exclusion shall not apply if an **insured** is providing immediate medical or surgical care to an employee after an **injury** or there is a **medical incident** resulting from the providing or withholding of **professional services** to an employee.
6. Any **injury** or **damages** arising out of any of the following whether intentional, negligent or vicarious:
 - a. refusal to employ;
 - b. termination of employment; or
 - c. coercion, demotion, reassignment, defamation, harassment, humiliation, or discrimination claimed by a former employee, employee, or applicant for employment, or any other employment related practice, policy, act or omission.
7. Any **injury** or **damages** arising out of **claims** asserting any business or employment dispute, antitrust violations, unfair competition, boycott, conspiracy, the independent tort of conspiracy, trademark, patent or copyright infringement, deceptive or unfair trade practices, misappropriation of trade secrets, breach of covenant not to compete, non-competition agreement, interference with business relations or contract, or any other act or omission which violates any statute, ordinance or regulation imposing any fine, penalty or other sanction.
8. Any **injury** or **damages** due to any acts of war.
9. Any required return or withdrawal of fees or government payments to any **insured**, the payment of any fines, penalties, sanctions or any multiplication of amounts payable as penalties.
10. Any fees, costs, expenses or other charges attributable to compensation of private legal counsel an **insured** may retain to protect an **insured's** personal interests, whether or not a conflict of interest exists between an **insured** and **us**.
11. Any **damages** based upon the Employee Retirement Income Security Act of 1974, Public law 93-406 commonly referred to as the Pension Reform Act of 1974, and amendments thereto or similar provisions of any federal, state or local law.
12. Any **injury** or **damages** arising out of all causes of action involving, in whole or in part, premises liability.

13. **Nuclear Energy Liability Exclusion:**

This **policy** shall not cover:

a. Any **injury** or **damages**:

- (1) with respect to which an **insured** under the **policy** 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 limit of liability; or
- (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **insured** is, or had this **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 organization.

b. Any **injury** or **damages** relating to (i) immediate medical or surgical relief; (ii) first aid expenses incurred with respect to **bodily injury**; or (iii) **bodily injury** resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

c. Any **injury** or **damages** resulting from the hazardous properties of nuclear material, if:

- (1) the nuclear material is at any nuclear facility owned by, or operated by or on behalf of an **insured** or has been discharged or dispersed therefrom; or
- (2) 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
- (3) the **injury** or **damages** arise 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; but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion subsection (c) applies only to any injury to or destruction of property at such nuclear facility, or property damage to such nuclear facility and any other property threat.

d. As used in this exclusion:

hazardous properties include radioactive, toxic or explosive properties; **nuclear materials** means **source materials**, **special nuclear material** or **byproduct material**; **source material**, **special nuclear material**, and **byproduct material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; **waste** means any **byproduct material** other than tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content and resulting from the operation by any person or organization of any **nuclear facility** as defined in subparagraphs (1) and (2) of the definition of **nuclear facility**.

nuclear facility means:

- (1) any nuclear reactor;

- (2) any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel, or (c) handling, processing or packaging waste;
 - (3) 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
 - (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "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; *with respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property;* "property damage" includes all forms of radioactive contamination of property.
- e. The inception dates and thereafter of all original policies affording coverages specified in this paragraph whether new, renewal or replacement, being policies which become effective on or after 1st May, 1960, provided this paragraph shall not be applicable to (i) Garage and Automobile Policies issued by the Reassured on New York risks, or (ii) statutory liability insurance required under Chapter 90, General Laws of Massachusetts, until 90 days following approval of the Broad Exclusion Provision by the Governmental Authority having jurisdiction thereof.

Without in any way restricting the operation of paragraph a. of this exclusion, it is understood and agreed that paragraphs b. and c. above are not applicable to original liability policies of the Reassured in Canada and that with respect to such policies this Clause shall be deemed to include the Nuclear Energy Liability Exclusion Provisions adopted by the Canadian Underwriters' Association of the Independent Insurance Conference of Canada.

- 14. If any physician or surgeon who is an **insured** under this **policy** because of their being a partner, stockholder or employee of the **policyholder** and they cease being a partner, stockholder or employee of the **policyholder**, then that physician or surgeon shall cease to have coverage under this **policy** from such change of status. This change in status shall have no effect on the coverage maintained by the **policyholder**.
- 15. Any **injury** or **damages** resulting from the use, administration or prescription of any drug, pharmaceutical or medical device disapproved or not yet approved by the United States Food and Drug Administration for the treatment of human beings or liability arising out of **your** providing **professional services** that are considered by the medical community to be experimental in nature unless; (a) **you** are specifically licensed or approved by an appropriate governmental regulatory body, or (b) the **insured physician** has requested and received written approval in the form of an **endorsement** to this **policy** to use, administer or prescribe such drug, pharmaceutical or medical device.
- 16. Any **injury** or **damages** resulting from a **medical incident** caused by an **insured physician** or allied healthcare provider who is engaged in providing "moonlighting" services which means **your** providing of **professional services**, for which you expect charge, or receive compensation, to a **patient** on behalf of an entity or employer that is not covered under this **policy** unless such moonlighting services are approved by us and is provided for by an endorsement.
- 17. Any **injury** or **damages** resulting from or relating in any way to pollution or the disposal of waste of any kind including, but not limited to, medical, biological, chemical or other hazardous waste.

18. Any **injury** or **damages** resulting from or in connection with your providing bariatric surgical procedures for the treatment of obesity or assisting with such surgical procedures including but not limited to gastric banding, vertical banded gastroplasty, laparoscopic adjustable gastric banding, jejunioileal bypass, biliopancreatic diversion, Roux-en-Y gastric bypass and other open or laparoscopic bariatric surgical procedures for the treatment of obesity unless such services are approved by us and is provided for by an endorsement. This exclusion shall not apply to any **insured** that provides support services during a bariatric surgical procedure (including assisting in surgery nor shall it apply to your providing or failing to provide emergency corrective surgery to bariatric patients of other surgeons or your providing or failing to provide follow up **professional services** on an on-call or coverage basis to bariatric patients of other surgeons.
19. Any **injury** or **damages** resulting from the management of active labor and any subsequent delivery for Vaginal Birth after Caesarean (VBAC) **patients** by non-physicians who are either employed or supervised by an **insured** unless the **insured** is immediately available for the entire course of care.
20. Any **injury** or **damages** for liability assumed under a contract or agreement. This exclusion does not apply to liability the **policyholder** or **insured physician** assume in a contract with a health maintenance organization, preferred provider organization, independent practice association or any other similar organization, but only for such liability as is attributable to **your** providing or failure to provide **professional services** to a **patient**.
21. Any **injury** or **damages** resulting from the administration or arrangement of anesthesia for pain management purposes or the administration of regional or general anesthesia, except local and infiltrative anesthesia and regional anesthesia not involving major plexus nerve blocks, unless there is a specific endorsement attached to this **policy**.
22. Any **injury** or **damages** resulting from the provision of **professional services** to a **patient** incarcerated in any jail, detention center, prison or any other similar facility, while on site at such facility and while under contract with any governmental body unless approved by **us** and is provided for by an endorsement to this **policy**.

COMMON DEFINITIONS

Wherever used in this **policy**, the following words or phrases in bold type shall have these meanings:

Bodily Injury means physical injury, sickness or disease; mental or emotional distress; or death sustained by a **patient**, which is neither expected nor intended from the standpoint of any **insured**.

Claim means:

- (a) a lawsuit;
- (b) a notice of intent to initiate litigation, or
- (c) a demand letter from a lawyer, a patient or a patient's representative expressing an intent to hold an **insured** responsible for **damages** arising from a **medical incident** or **committee incident**.

Committee Incident means the services or activities described in the Individual Professional Liability Coverage Part, section I. 2. a., b. and c. which cause **personal injury(ies)** to a person or entity regardless of whether: (i) one or more services or activities are causally related or causally unrelated to each other or to the **personal injury(ies)** sustained; (ii) one or more **personal injury(ies)** sustained are causally related or causally unrelated to each other or to one or more services or activities; and (iii) the time period involved in (i) or (ii) was continuous or interrupted.

Damages mean all amounts of money which are legally payable because of **bodily injury** or **personal injury** to which this insurance applies. **Damages** shall include any award of attorney's fees to a claimant.

Disabled means permanent, complete and continuous inability to perform duties of the healthcare profession, as certified by a physician acceptable to **us**.

Injury means:

- A. With respect to the Individual Professional Liability Coverage Part: **Bodily Injury** or **Personal Injury**.
- B. With respect to the Professional Organization Coverage Part: **Bodily Injury** (because **Personal Injury** is not covered under the Professional Organization Coverage Part).

Insured means any person or entity covered under this **policy**.

Insured Organization means any partnership, professional corporation, professional association, limited liability company or other entity designated as such on the Coverage Summary.

Insured Physician means any physician or surgeon designated as such on the Schedule of Organization and Individuals Protected.

Medical Incident means:

- A. With respect to the Individual Professional Liability Coverage Part: any act, error or omission in the providing of or failure to provide **professional services** to a **patient** by **you** or by persons described in the Individual Professional Liability Coverage Part for whom **you** are determined to be legally responsible.
- B. With respect to the Professional Organization Coverage Part: any act, error or omission in the providing of or failure to provide **professional services** to a **patient** by persons described in the Professional Organization Coverage Part for whom the **insured organization** is determined to be legally responsible.

For purposes of this definition, the following constitute a single **medical incident**: all **bodily injury(ies)** caused by a course of treatment(s) of a **patient** or of a mother and fetus (or fetuses) from conception through postpartum care regardless of whether such treatment or treatments are: (a) continuous or interrupted; (b) related or unrelated to each other; (c) performed on one part of the body or on separate parts of the body; or (d) provided by one or more persons.

Patient means:

- A. With respect to the Individual Professional Liability Coverage Part and the Investigation Defense Coverage Part: a person to whom **you** have undertaken, or are otherwise obligated to provide, **professional services** and who receives or fails to receive **professional services** from **you** or by persons described in the Individual Professional Liability Coverage Part for whom **you** are determined to be legally responsible.
- B. With respect to the Professional Organization Coverage Part: a person who receives or fails to receive **professional services** by persons described in the Professional Organization Coverage Part for whom the **insured organization** is determined to be legally responsible.

Personal Injury means injury other than **bodily injury** neither expected nor intended from the standpoint of any **insured** caused by one or more of the following: negligent libel, negligent slander, negligent defamation, negligent discrimination, or negligent invasion of the right of privacy.

Policy means the Medical Professional Liability Insurance Policy, the Coverage Summary, the applicable Coverage Part or Parts, Schedule of Organization and Individuals Protected and any Endorsements to the **policy**.

Policyholder means the person or organization designated as such in the Coverage Summary.

Policy Period means the date and time when the **policy** begins and ends as set forth in the Coverage Summary.

Potential Claim mean any act(s), error(s) or omission(s) or circumstance(s) which an **insured** knows or could have reasonably foreseen from the facts, reasonable inferences or circumstances that a **claim** for a **medical incident** or **committee incident** might be made, including but not limited to records requests by an attorney, or dissatisfaction expressed by a **patient**, the **patient's** family, friends, or relatives; provided that a written report includes the information required by the Claims Made and Reporting Requirements section of the applicable Coverage Part.

Professional Services means providing or failing to provide medical services, including making or failing to make a medical diagnosis.

Retroactive Date, as specified in the Coverage Summary, means the earliest date on or after which a **medical incident** or **committee incident** would be covered under this **policy**. No coverage exists for a **medical incident** or **committee incident** that occurred prior to the **retroactive date**.

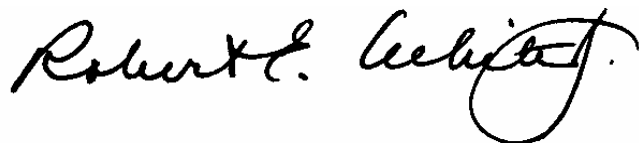
Retire means to completely withdraw from the practice of medicine.

Sexual Activity means any sexual act, intimacy, assault, molestation, harassment, exploitation, or any treatment, procedure, conduct or behavior that is considered undue sexual familiarity.

You and **your** means (a) the **policyholder** (b) an **insured physician** (c) any locum tenens, approved by **us**, employed by the **policyholder** while acting within the scope of their duties as such (d) any allied healthcare provider, employed by the **policyholder**, who is individually named on any schedule of **insureds** applicable to this **policy** (e) any authorized volunteer worker of the **policyholder**, other than the healthcare provider, but only while acting within the scope of their duties as such (f) any of the employees of the **policyholder**, other than a physician or an allied healthcare provider not named individually on any schedule of **insureds** applicable to this **policy**, but only while acting within the scope of their duties as such.

We, us and **our** means First Professionals Insurance Company, Inc.

This **policy** is signed by **our** President, but is not valid unless a Coverage Summary signed by **our** authorized representative is attached.



President



Vice President of Underwriting

INDIVIDUAL PROFESSIONAL LIABILITY COVERAGE PART

This Coverage Part applies only if indicated on the Coverage Summary and a premium is shown.

I. Coverage Agreement

A. Coverage Provided To You

1. **You** are covered for **damages** because of **bodily injury** caused by a **medical incident**, which occurs after the **retroactive date** and prior to the end of the **policy period** stated in the Coverage Summary resulting from:
 - a. **Your** providing or failure to provide **professional services** to a **patient**.
 - b. **Your** refusal to treat or to accept a person as a **patient**, or for wrongful termination, transfer or abandonment of the care and treatment of a **patient**.
 - c. **Your** providing or failure to provide **professional services** to any injured person at the scene of an accident or emergency and/or failure to provide or arrange for further medical treatment for the injured person.
 - d. **Your** providing or failure to provide **professional services** to anyone for and at the request of a hospital, school, religious entity, non-profit organization, or state or local governmental agency for which neither the requesting entity or organization nor **you** expect, charge or receive any compensation.
 - e. **Your** service as a member of a partnership, corporation or professional association, but that organization is only covered for **injury** or **damages** resulting from the providing or withholding of **professional services** to a patient by **you** individually. The organization is not protected for acts of any other members of the partnership, corporation or professional association. There will be no coverage under this Coverage Part unless the partnership, corporation or professional association is specifically named on the Coverage Summary or by endorsement.
 - f. **Your** vicarious liability resulting from the providing or failure to provide **professional services** to a **patient** by **your** or the **insured organization's** employed, leased or loaned employee whose acts **you** are legally responsible. However, there is no coverage under this provision to the extent such employee is described in, Exclusions 2, 3 or 4 of the "Exclusions" section of this Coverage Part.
 - g. **Your** vicarious liability for providing or failure to provide **professional services** by medical students and/or residents only when working in **your** medical practice while acting within the scope of a program approved by their educational institution.
 - h. **Your** negligence in placing, or causing to be placed erroneous medical information in a medical chart or in an electronic medical record. **You** will also be covered if **you** negligently relied upon erroneous medical information in a medical chart or in an electronic medical record in providing **professional services** to a **patient**.

2. **You** are covered for **damages** because of **personal injury** caused by a **committee incident**, which occurs after **the retroactive date** and prior to the end of the **policy period** stated in the Coverage Summary resulting from:
 - a. **Your** service on a formal hospital or professional society board or committee. However, the coverage provided by this Coverage Part shall not apply if **you** have other insurance coverage or it is provided to or on **your** behalf by another or an agreement providing some form of protection to **you** for these services.
 - b. **Your** quality assurance activities when performed for the purposes of evaluating and improving the quality of healthcare services and for patient safety. **We** will cover **you** when **you** participate as a member, a witness or a clinical practice advisor of a formal credentialing, peer review or quality assurance board or committee formed by an organization for the purposes of improvement of patient safety or the quality of healthcare services delivered to patients. Quality assurance activities do not include **your** services to an organization, which reviews utilization, necessity and treatment issues related to controlling healthcare costs unless added by endorsement or Coverage Part. However, the coverage provided by this section of the Coverage Part shall apply in excess of other insurance coverage provided to or on **your** behalf by another or an agreement providing some form of protection to **you** for these activities.
 - c. **Your** negligent disclosure of **patient** confidential or privileged medical information to a person or persons who are not otherwise entitled to it.

B. Coverage Provided To Others

The following are provided with coverage under this Coverage Part for **damages** because of **bodily injury** caused by a **medical incident** which occurs after the **retroactive date** and prior to the end of the **policy period** stated in the Coverage Summary, but only if **you** are entitled to coverage, and then only to the extent the **insureds** listed below agree to be bound by all terms contained in this **policy**:

1. **Your** employed, leased or loaned licensed healthcare providers for whose acts **you** are legally responsible are covered while acting within the course and scope of the **professional services** provided to a **patient** and authorized by **you**. However, there is no coverage under this provision to the extent these persons are described in Exclusions 2, 3 or 4 of the "Exclusions" section of this Coverage Part. There is also no coverage under this provision if the Professional Organization Coverage Part of this **policy** was purchased. Insurance provided under this provision is excess of and payable only after all other valid insurance and self-insurance limits of coverage have been exhausted by the payment of settlements and judgments.
2. The **insured organization** is covered solely for vicarious liability for **damages** caused by **bodily injury** resulting from the providing or withholding of **professional services** to a **patient** by **you** individually. However, there is no coverage under this provision if the Professional Organization Coverage Part of this **policy** was purchased.
3. Any locum tenens physician approved by **us** in writing while acting within the course and scope of his or her duties as such.

II. Claims Made and Reporting Requirements

This **policy** applies only to:

1. **claims** first made against an **insured** and reported to **us** in writing during the **policy period** stated on the Coverage Summary. An **insured** must also send us copies of all demand or legal documents immediately; and
2. **potential claims** reported to **us** in writing setting forth the circumstance(s) from which an **insured** knows or could have reasonably foreseen that a **claim** might be made and during the **policy period** stated on the Coverage Summary, provided that the written report of a **potential claim** must include the following: (a) the date, time and place of the incident; (b) the persons and **insureds** involved; (c) the specific nature of the incident and what **professional services** or **committee services** were being performed and by whom; (d) the type of **claim** that may result; (e) the names and addresses of any injured persons and witnesses; and (f) a complete copy of **your** medical records relevant to the **potential claim**.

A **claim** or **potential claim** shall be considered reported to **us** only upon the earlier of (a) the date which appears on the postmark affixed by the United States Postal Service to the written notice sent by the **insured** or the **insured's** representative provided that such written notice is received by us or (b) the date affixed by **us** on the written notice sent by the **insured** or the **insured's** representative.

A **claim** or **potential claim** reported as to one **insured** shall not be deemed reported as to any other **insured**. Notice of any **covered proceeding** under the Investigation Coverage Part of this **policy** shall not be considered to be notice of any related **claim** or **potential claim** under this Coverage Part.

No coverage exists for **claims** first made against an **insured** or **potential claims** first reported to **us** after the end of the **policy period** unless, and then only to the extent, an Extended Reporting Period endorsement was issued by **us**.

III. Defense

We will defend any **claim** brought against an **insured** for **damages** covered under this Coverage Part. **We** will do this even if the **claim** is groundless or fraudulent. **We** will not defend a **claim** after the applicable limit of liability of this Coverage Part has been used to pay judgments or settlements.

IV. Limit of Liability

A. Per Claim Limit

The Per Claim Limit stated on the Coverage Summary is the maximum amount **we** will pay under the **policy** for a **medical incident** or **committee incident** regardless of the number of:

1. **insureds** or other persons who cause or contribute to **injury(ies)** covered by this **policy**;
2. persons or entities who sustain **damages**; and
3. **claims** or causes of action which were or may be asserted.

Only one Per Claim Limit can ever apply to a **medical incident** or **committee incident**.

B. Aggregate Limit

The Aggregate Limit stated on the Coverage Summary is the maximum amount **we** will pay for all **medical incidents** and **committee incidents** covered under this **policy**. The Per Claim Limit and the Aggregate Limit shall not be added together.

C. Shared Limits

The Per Claim Limit and Aggregate Limit under this Individual Professional Liability Coverage Part are shared between all **insureds** in sections I. A. 1. and 2. and I. B. 1., 2., and 3. If the shared limits are insufficient to protect all **insureds**, **you** shall have priority over those shared limits to extinguish **your** liability or potential liability.

D. Changes in Limits of Liability

If the limits of liability are increased, the increased limits of liability shall apply to all **medical incidents** and all **committee incidents** reported to **us** on or after the effective date of change; however, the increased limits of liability shall not apply to any **medical incidents** or **committee incidents** occurring on or after the **retroactive date** and before the effective date of the change if the **insured** knew or could have reasonably foreseen from any facts, reasonable inferences or circumstances that a **claim** might be made during the **policy period**. If the limits of liability are decreased, the decreased limits of liability shall apply to all **medical incidents** and all **committee incidents** reported to us on or after the effective date of change.

V. Additional Benefits

A. Defense Costs Including Appeal Bonds

In addition to the limits of liability to pay a covered **claim**, **we** will pay the following for covered **claims**:

1. Premiums for appeal bonds or to release property that is being used to secure a legal obligation, but only bonds valued up to the limit of liability of the **policy**. **We** have no obligation to apply for or to furnish the bond, or provide collateral for the bond above the applicable limit of liability.
2. The following costs of investigating and defending a **claim**: the fees charged by an attorney **we** designate; all other reasonable fees, costs and expenses which result from the investigation, adjustment, defense and appeal of a **claim** incurred by **us**, or by an **insured** at **our** request and with **our** prior written consent; loss of earnings of an **insured**, not to exceed \$500 per day, for that **insured's** attendance at hearings or trials at **our** request.
3. Interest on that part of any judgment that does not exceed the applicable limit of liability.

B. Costs Not Included

Additional Benefits do not include any attorney fees awarded to a claimant.

C. Obligations After Exhaustion of Limits of Liability

We have no obligation to pay any Additional Benefits incurred after the applicable Limit of Liability of this Coverage Part has been used to pay judgments or settlements.

VI. Exclusions

We will not defend or pay under this coverage part for:

1. Any **injury** or **damages** resulting from liability as a proprietor, superintendent, medical director, medical review officer, administrative or executive officer of any of (but not limited to) the following:

- a. hospital, nursing home or sanitarium;
- b. clinic with bed and board facilities;
- c. outpatient surgery center, healthcare facility, laboratory, emergency medical service; or
- d. other business enterprise.

This exclusion does not apply to **claims** arising from laboratory or healthcare facilities **you** maintain for testing of **your** own **patients** or necessary to the practice of **your** specialty.

2. Any **injury** or **damages** arising out of the providing or failure to provide **professional services** to a **patient** by any employed, loaned or leased chiropractor, podiatrist, optometrist, physician's assistant, nurse anesthetist, anesthesia assistant, nurse midwife or nurse practitioner, unless such person is individually **insured** either by **us** or by another company acceptable to **us**; and unless proof of other insurance with limits of liability acceptable to **us** is provided in the form of a Certificate of Insurance issued to **us** or other proof accepted by **us** prior to the **medical incident**.
3. Any **injury** or **damages** arising out of the providing or failure to provide **professional services** to a **patient** by any person employed, loaned or leased by:
 - a. a hospital, nursing home or sanitarium;
 - b. a clinic with bed and board facilities; or
 - c. an outpatient surgery center, healthcare facility, laboratory or emergency medical service facility, which is not an **insured organization**.
4. Any **injury** or **damages** arising out of the providing or failure to provide **professional services** to a **patient** by any employed, loaned, or leased physicians. However, this exclusion will not apply if those physicians are individually **insured** either by **us** or by another company acceptable to **us**. Those physicians must have other insurance with a Per Claim and Aggregate limit of at least the amount provided by this **policy** and proof must be provided in the form of a Certificate of Insurance issued to **us** or other proof accepted by **us** prior to the **medical incident**.
5. Any **injury** or **damages** **you** are liable for while on active duty in the United States Military Service or Reserve or any National Guard Unit.
6. Any **injury** or **damages** in the event any **insured** or anyone instructed by any **insured** fraudulently alters, defaces, destroys or falsifies any records and:(a) the court imposes sanctions for such fraud; or (b) the fact of such fraud is made known to the trier of fact; or (c) such fraud interferes with our ability to defend the case.
7. Any **injury** or **damages** resulting from **your** liability, arising out of **your** own **sexual activity** or the **sexual activity** of those for whom **you** are legally responsible. This exclusion applies whether the **sexual activity** is done under the guise of treatment or otherwise and with or without the consent of the individual. However, **we** will defend any action until such time as **you** admit to such **sexual activity** or **sexual activity** has been found to have occurred by any judicial, quasi-judicial or administrative body. However, this exclusion does not apply if caused by **sexual activity** of non-physician employees for whom **you** are legally responsible when such **sexual activity** is done without **your** actual or implied knowledge.
8. Any **injury** or **damages** for liability arising out of the manufacturing, selling, distribution, disposing, altering or dispensing of any product by any **insured** to any person. But this exclusion does not apply to dispensing of pharmaceuticals or medical appliances to an **insured's patient** when such dispensing arises out of the rendering of or failure to render **professional services** to a **patient**.

9. Any **injury** or **damages** resulting while providing professional services as employees or agents of a state, its agencies, subdivisions of the United States, its agencies, departments, or subdivisions or from **claims** for which an **insured** is entitled to a sovereign immunity defense or limitation.
10. Any **injury** or **damages** arising from a **medical incident** or **committee incident** which occurs, in whole or in part, while the **insured's** license to practice or license to prescribe controlled substance has been suspended, revoked, restricted or voluntarily surrendered.
11. Any **injury** or **damages**:
 - a. arising out of a **medical incident** or **committee incident** which occurs in whole or in part after the **retroactive date** and prior to the effective date of this **policy**, if at any time prior to the effective date of this **policy** any **insured** knew or could have reasonably foreseen from the facts, reasonable inferences or circumstances that a **claim** might be made during the policy period, including but not limited to records requests by an attorney, dissatisfaction expressed by a **patient**, the **patient's** family, friends, or relatives, or any expression of an intent to hold an **insured** responsible for **damages** arising from a **medical incident** or **committee incident**; or
 - b. arising out of a **medical incident** or **committee incident** which prior to the effective date of this **policy** was:
 - i. reported to any insurer; or
 - ii. a pending **claim** or proceeding; or
 - iii. a paid **claim**; or
 - c. arising out of a **medical incident** or **committee incident** disclosed or which should have been disclosed on **our** applications, renewal applications, or during the application or renewal process.
12. Any **injury** or **damages** for liability resulting from an **insured's** status as a partner of a partnership or solely by reason of the insured's status as a member, officer, director or shareholder of any entity.

PROFESSIONAL ORGANIZATION COVERAGE PART

This Coverage Part applies only if indicated on the Coverage Summary and a premium is shown.

I. Coverage Agreement

A. Coverage Provided To the Insured Organization

The **insured organization** is covered for vicarious liability for **damages** because of **bodily injury** caused by a **medical incident** which occurs after the **retroactive date** and prior to the end of the **policy period** stated on the Coverage Summary resulting from the providing of or failure to provide **professional services** to a **patient** by the **insured organization's** employed, leased or loaned licensed healthcare providers for whose acts the **insured organization** is legally responsible. However, there is no coverage under this section to the extent such licensed healthcare provider is described in Exclusions 1, 4, or 5 of the "Exclusions" section of this Coverage Part.

B. Coverage Provided To Others

The following are provided with coverage under this Coverage Part for **damages** because of **bodily injury** caused by a **medical incident** which occurs after the **retroactive date** and prior to the end of the **policy period** stated on the Coverage Summary, but only if the **insured organization** is entitled to coverage, and then only to the extent the **insureds** listed below agree to be bound by all terms contained in this **policy**:

The **insured organization's** employed, leased or loaned licensed healthcare providers (except physicians) for whose acts the **insured organization** is legally responsible are covered while acting within the course and scope of the **professional services** provided to a **patient** and authorized by the **insured organization**. However, there is no coverage under this section to the extent these persons are described in Exclusions 4 or 5 of the "Exclusions" section of this Coverage Part.

II. Claims Made and Reporting Requirements

This **policy** applies only to:

1. **claims** first made against an **insured** and reported to **us** in writing during the **policy period** stated on the Coverage Summary. An **insured** must also send us copies of all demand or legal documents immediately; and
2. **potential claims** reported to **us** in writing setting forth the circumstance(s) from which an **insured** knows or could have reasonably foreseen that a **claim** might be made and during the **policy period** stated on the Coverage Summary, provided that the written report of a **potential claim** must include the following: (a) the date, time and place of the incident; (b) the persons and **insureds** involved; (c) the specific nature of the incident and what **professional services** were being performed and by whom; (d) the type of **claim** that may result; and (e) the names and addresses of any injured persons and witnesses.

A **claim** or **potential claim** shall be considered reported to us solely on the date we actually receive it.

A **claim** or **potential claim** reported as to one **insured** shall not be deemed reported as to any other **insured**. Notice of any **covered proceeding** under the Investigation Coverage Part of this **policy** shall not be considered to be notice of any related **claim** or **potential claim** under this Coverage Part.

No coverage exists for **claims** first made against an **insured** or **potential claims** reported to **us** after the end of the **policy period** unless, and then only to the extent, an Extended Reporting Period endorsement was issued by **us**.

III. Defense

We will defend any **claim** brought against an **insured** for **damages** covered under this Coverage Part. **We** will do this even if the **claim** is groundless or fraudulent. **We** will not defend a **claim** after the applicable limit of liability of this Coverage Part has been used to pay judgments or settlements.

IV. Limit of Liability

A. Per Claim Limit

The Per Claim Limit stated on the Coverage Summary is the maximum amount **we** will pay under the **policy** for a **medical incident** regardless of the number of:

1. **insureds** or other persons who cause or contribute to **bodily injury(ies)** covered by this **policy**;
2. persons or entities who sustain **damages**; and
3. **claims** or causes of action which were or may be asserted.

Only one Per Claim Limit can ever apply to a **medical incident**.

B. Aggregate Limit

The Aggregate Limit stated on the Coverage Summary is the maximum amount **we** will pay for all **medical incidents** covered under this **policy**. The Per Claim Limit and the Aggregate Limit shall not be added together.

C. Shared Limits

The Per Claim Limit and Aggregate Limit under this Professional Organization Coverage Part are shared between all **insureds** in sections I. A. and I. B. If the shared limits are insufficient to protect all **insureds**, the **insured organization** shall have priority over those shared limits to extinguish the **insured organization's** liability or potential liability.

D. Changes in Limits of Liability

If the limits of liability are increased, the increased limits of liability shall apply to all **medical incidents** reported to **us** on or after the effective date of change; however, the increased limits of liability shall not apply to any **medical incidents** occurring on or after the **retroactive date** and before the effective date of the change if the **insured** knew or could have reasonably foreseen from any facts, reasonable inferences or circumstances that a **claim** might be made during the **policy period**. If the limits of liability are decreased, the decreased limits of liability shall apply to all **medical incidents** reported to **us** on or after the effective date of change.

V. Additional Benefits

A. In addition to the limits of liability to pay a covered **claim**, **we** will pay the following for covered **claims**:

1. Premiums for appeal bonds or to release property that is being used to secure a legal obligation, but only bonds valued up to the limit of liability of the **policy**. **We** have no

obligation to apply for or to furnish the bond, or provide collateral for the bond above the applicable limit of liability.

2. The following costs of investigating and defending a **claim**: the fees charged by an attorney **we** designate; all other reasonable fees, costs and expenses which result from the investigation, adjustment, defense and appeal of a **claim** incurred by **us**, or by an **insured** at **our** request and with **our** prior written consent; loss of earnings of an **insured**, not to exceed \$500 per day, for that **insured's** attendance at hearings or trials at **our** request.
 3. Interest on that part of any judgment that does not exceed the applicable limit of liability.
- B. Additional Benefits do not include any attorney fees awarded to a claimant.
- C. We have no obligation to pay any Additional Benefits incurred after the applicable limit of liability of this Coverage Part has been used to pay judgments or settlements.

VI. Exclusions

We will not defend or pay under this Coverage Part for:

1. Any **injury** or **damages** arising out of the providing or failure to provide **professional services** by any physicians not listed on the Schedule of Organization and Individuals Protected attached to the Coverage Summary. However, this exclusion will not apply if those physicians are individually **insured** either by **us** or by another company acceptable to **us**. Those physicians must have other insurance with a Per Claim and Aggregate limit of at least the amount provided by this **policy** and proof must be provided in the form of a Certificate of Insurance issued to **us** or other proof accepted by **us** prior to the **medical incident**.
2. Any **injury** or **damages**:
 - a. arising out of a **medical incident** which occurs in whole or in part after the **retroactive date** and prior to the effective date of this **policy**, if at any time prior to the effective date of this **policy** any **insured** knew or could have reasonably foreseen from the facts, reasonable inferences or circumstances that a **claim** might be made during the policy period, including but not limited to records requests by an attorney, dissatisfaction expressed by a **patient**, the **patient's** family, friends, or relatives, or any expression of an intent to hold an **insured** responsible for **damages** arising from a **medical incident**; or
 - b. arising out of a **medical incident** which prior to the effective date of this **policy** was:
 - i. reported to any insurer; or
 - ii. a pending **claim** or proceeding; or
 - iii. a paid **claim**; or
 - c. arising out of a **medical incident** disclosed or which should have been disclosed on **our** applications, renewal applications, or during the application or renewal process.
3. Any **injury** or **damages** resulting from **claims** for which an **insured** is entitled to a sovereign immunity defense or limitation.
4. Any **injury** or **damages** arising out of the providing or failure to provide **professional services** by any employed, loaned, or leased chiropractor, podiatrist, optometrist, physician's assistant, nurse anesthetist, anesthesia assistant, nurse midwife or nurse practitioner, unless such person is individually **insured** either by **us** or by another company acceptable to **us** and

unless proof of other insurance with limits of liability acceptable to **us** is provided in the form of a Certificate of Insurance issued to **us** or other proof accepted by **us** prior to the **medical incident**.

5. Any **injury** or **damages** arising out of the providing or failure to provide **professional services** to a **patient** by any person employed, loaned or leased by:
 - a. a hospital, nursing home or sanitarium;
 - b. a clinic with bed and board facilities; or
 - c. an outpatient surgery center, healthcare facility, laboratory, emergency medical service facility, which is not an **insured organization**.
6. Any **injury** or **damages** arising out of **sexual activity** by anyone resulting directly or indirectly from any causes whatsoever including, but not limited to, **damages** on account of vicarious liability; any negligence in hiring, employment, supervision, retention, or transfer of any employee or volunteer worker; any recommendation or referral of any person for employment or volunteer work; any failure to protect or negligent supervision of any person (including any child); and any failure to warn, failure to investigate, or failure to comply with any obligation to report. This exclusion applies whether the **sexual activity** is done under the guise of treatment or otherwise and with or without the consent of the individual.
7. Any **injury** or **damages** in the event any **insured** or anyone instructed by **any insured** fraudulently alters, defaces, destroys or falsifies any records and: (a) the court imposes sanctions for such fraud; or (b) the fact of such fraud is made known to the trier of fact; or (c) such fraud interferes with our ability to defend the case.
8. Any **injury** or **damages** for liability arising out of the manufacturing, selling, distribution, disposing, altering or dispensing of any product by any **insured** to any person. But this exclusion does not apply to dispensing of pharmaceuticals or medical appliances to an **insured's patient** when such dispensing arises out of the rendering of or failure to render **professional services** to a **patient**.
9. Any **injury** or **damages** arising from a **medical incident** which occurs, in whole or in part, while the license to practice or license to prescribe controlled substances of an **insured** or any other person for whom the **insured organization** is legally responsible has been suspended, revoked, restricted or voluntarily surrendered.

VI. Extended Reporting Endorsement

1. The Extended Reporting Endorsement issued for this Coverage Part provides coverage only for the **insured organization** and its other covered employees (I. B.).

INVESTIGATION DEFENSE COVERAGE PART

This Coverage Part applies only if indicated on the Coverage Summary.

We will also provide **legal and audit defense costs** for **covered proceedings instituted** against **you** before a regulatory or administrative body arising out of **your** professional practice while **insured** under the **policy** to which this Coverage Part is attached. This Coverage Part is subject to all of the provisions listed below:

A. What is Covered

This Coverage Part will pay **legal expenses** on **your** behalf that are **legal and audit defense costs** subject to the General Rules, Definitions, Exclusions and all other provisions of this Coverage Part, if **you** have a **covered proceeding instituted** against **you**. We will pay **legal expenses** on **your** behalf up to the **individual aggregate legal and audit defense costs** or the **group aggregate legal and audit defense costs** less any **deductible** as shown in the Coverage Summary attached to this **policy**.

B. General Rules

1. Appeals shall be considered to be part of the original **covered proceeding** and all related **covered proceedings** and all consolidated proceedings arising out of the same events shall be considered as one **covered proceeding**. In addition, a **covered proceeding instituted** against an **insured organization** for any act(s) or any failure(s) to act by an **insured(s)** under the **policy** shall be deemed to be one **covered proceeding**.
2. **You** need to notify **us** within thirty (30) days from the date a **covered proceeding** is **instituted** against **you** but in all events during the **policy period** in order to receive coverage under this Coverage Part. Notice of any **claim** or **potential claim** covered by any other coverage part under this **policy** shall not be considered to be notice of any related **covered proceeding** under this Coverage Part. A **claim** or **potential claim** reported as to one **insured** shall not be deemed reported as to any other **insured**.
3. **You** are only covered if, on the initial effective date of this **policy**, **you** had no knowledge of any event or circumstance that **you** knew or could reasonably foresee might result in a **covered proceeding** being **instituted** against **you**.

C. Definitions

1. **Legal and audit defense costs** include any **legal expense** incurred by **you** arising out of a **covered proceeding instituted** against **you** during the **policy period**.
2. **Covered audit** means any audit or review of billing or medical records undertaken by **you** in response to an investigation or proceeding instituted by any federal or state agency alleging violation by **you** of Medicare or Medicaid laws, rules or regulations relating to reimbursement for medical services.
3. **Covered proceedings** mean the following types of proceedings before an administrative or regulatory body (except that I. below need not be before an administrative or regulatory body) arising out of **your** professional practice that requires **you** to incur **legal and audit defense costs**:
 - a. An investigation or proceeding **instituted** by the governmental or regulatory agency that is charged with enforcement of compliance with laws regulating Medicare or Medicaid (or other similar federal or state healthcare program), to determine whether **you** provided **professional services** improperly to a **patient** covered by Medicare or Medicaid (or

other similar federal or state healthcare program). **Legal and audit defense costs** covered under this provision are subject to a deductible as defined in C. Definitions subsection 8. **Deductible** of this Coverage Part.

- b. An investigation or proceeding **instituted** by any federal or state agency alleging a violation by **you** of Medicare or Medicaid laws, rules or regulations relating to reimbursement for medical services. **Legal and audit defense costs** covered by this provision are subject to a deductible as defined in C. Definitions, subsection. 8. **Deductible** of this Coverage Part.
- c. Any action **instituted** against **you** by a governmental agency related to the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulations") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
- d. Investigations **instituted** by any professional licensing agency.
- e. Any professional review action against **you** by the professional review body of a healthcare entity with which **you** have clinical privileges or membership, which action is taken for the purpose of adversely affecting said clinical privileges or membership. The terms used in this paragraph shall be defined in 42 United States Code 11151 Definitions.
- f. An investigation or proceeding **instituted** by the governmental or regulatory agency charged with determining whether **you** participated in the improper transfer of a **patient** ("dumping"), in violation of the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended ("COBRA").
- g. An investigation or proceeding **instituted** by a utilization and quality control peer review organization, but only at the level of such investigation or proceeding in which sanctions may be imposed on **you**.
- h. An investigation or proceeding **instituted** by the governmental or regulatory agency charged with the enforcement of compliance with regulations pertaining to the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), whether or not **you** were in violation of such regulations.
- i. An investigation or proceeding **instituted** by the governmental or regulatory agency charged with the enforcement of compliance with the Occupational Safety and Health Administration ("OSHA") regulations pertaining to blood borne pathogens, whether or not **you** were in violation of such regulations.
- j. A subpoena or request received by **you**, requiring **you** to testify in a trial, deposition or to provide other discovery, other than as an expert witness, in connection with a legal proceeding arising out of a **medical incident**, but in which **you** are not a party.
- k. A disciplinary proceeding **instituted** by a licensure commission, board of ethics, specialty, county, regional or state medical society or similar professional body, which accuses **you** of, or investigated an accusation that **you** engaged in improper or unprofessional conduct or any disciplinary proceeding related to your providing **professional services** to a **patient** in the course of **your** medical practice.
- l. **Your** violations of the Americans with Disabilities Act (ADA) if the allegations concern either: (1) the physical accessibility or construction of **your** medical office premises; or (2) a refusal to provide **professional services** to a disabled person.

- m. Administrative actions instituted against you brought by any Equal Employment Opportunity Commission (EEOC) brought under the administrative rules and procedures promulgated by the EEOC only.
4. **Attorneys** means an individual or group duly licensed to practice law at the time and place the legal services are rendered.
 5. **Instituted**, when referring to the beginning of any **covered proceeding**, means the time formal written notice is given to **you** of the **covered proceeding**.
 6. **Legal expense** means expert witness fees, if any, and attorney's fee for legal services rendered and any associated expenses. **Legal expense** also includes any fees of an accountant or other consultant in connection with any **covered audit**. No judgments, fines or penalties are covered. No costs, expenses or fees of any kind required or ordered by any administrative or regulatory body to be paid by an **insured** are covered.
 7. **Individual aggregate legal and audit defense costs** is the total aggregate limit of covered **legal and audit defense costs** that will be paid on **your** behalf for all **covered proceedings instituted** during the **policy period**. Only one per claim limit can ever apply to a **covered proceeding**. The per claim and **individual aggregate legal and audit defense costs** is set forth in the Coverage Summary to this **policy**. The per claim and the **individual aggregate legal and audit defense costs** limits shall not be added together. Upon **our** paying the **individual aggregate legal and audit defense costs** for the **policy period**, **we** shall have no further obligation to pay any further **legal and audit defense costs** on **your** behalf for the **policy period**.
 8. **Deductible** means \$1,000 shall be deducted from all amounts paid on **your** behalf for legal and defense costs by **us**. The \$1,000 shall be deducted from each and every **covered proceeding instituted** against **you** that is subject to the **deductible** as determined in C. Definitions subsections 3.a and 3.b. The \$1,000 amount to be deducted shall apply to each healthcare professional included in any **covered proceeding** for whom coverage is being provided. **We**, at **our** discretion, may require **you** to pay the **deductible** amount at the outset of a **covered proceeding** or collect the **deductible** amount at any point during the **covered proceeding**. The **deductible** will not reduce the per claim, **individual aggregate legal and audit defense costs** or the **group aggregate legal and audit defense costs** paid under this Coverage Part.
 9. **Group aggregate legal and audit defense costs** is the total dollar amount of all covered **legal and audit defense costs** that will be paid for a **policy period** on behalf of all **insureds**, except as limited by the **Individual Aggregate legal and audit defense costs**, for all **covered proceedings instituted** during that **policy period**. The **group aggregate legal and audit defense costs** is set forth in the Coverage Summary to this **policy**. Upon **our** paying the **group aggregate legal and audit defense costs** for the **policy period**, **we** shall have no further obligation to pay any further **legal and audit defense costs** for the **policy period**.
 10. **Criminal prosecution** means any governmental action for enforcement of criminal laws, including offenses, conviction for which could result in imprisonment.
 11. **You** and **Your** means the **insured physician** and any additional **insureds** individually named on any schedule of **insureds** applicable to this **policy**.

D. Exclusions

We will not pay for **legal and audit defense costs**:

1. **You** incurred in disputes with respect to this coverage, including questions as to whether **legal and audit defense costs** are to be paid under this **policy**.
2. **You** incurred in defense of any **criminal prosecution**.
3. Arising out of any circumstance or event of which **you** were aware prior to the effective date of this **policy** which **you** knew or could reasonably foresee might result in such **legal and audit defense costs**.
4. Arising out of any matter other than a **covered proceeding**.
5. Arising out of any matter that resulted from **professional services** that were rendered either:
 - a. before the **retroactive date**; or
 - b. after the **retroactive date**, if at any time prior to the effective date of this **policy you** knew or could have reasonably foreseen from the facts, reasonable inferences or circumstances that a **covered proceeding** might result during the **policy period**; or
 - c. which prior to the effective date of this **policy**, or prior to the effective date of any continually preceding renewal policies written by **us**, if applicable, was:
 - (1) an incident reported to any insurer; or
 - (2) a pending **claim** or **covered proceeding**; or
 - (3) a paid **claim**.
6. Arising out of proceedings **instituted** by any governmental taxing authority for the purpose of conducting an examination of any of **your** tax returns or any other tax related matter.
7. Arising out of proceedings based upon or arising from or in consequence of the actual or alleged purchase, sale or distribution of securities or the offer or solicitation of an offer to purchase or sell any securities.
8. Arising out of proceedings based upon or arising from the actual or alleged violation of any anti-trust law or agreement or conspiracy to restrain trade, unfair competition or any boycott, trademark, patent or copyright infringement.
9. Any proceedings arising from the actions or omissions of an **insured** that are expected or intended by any **insured**.
10. Arising out of proceedings based upon actual or alleged **sexual activity** by anyone resulting directly or indirectly from any causes whatsoever including, but not limited to, vicarious liability; any negligence in hiring, employment, supervision, retention, or transfer of any employee or volunteer worker; any recommendation or referral of any person for employment or volunteer work; any failure to protect or negligent supervision of any person (including any child); and any failure to warn, failure to investigate, or failure to comply with any obligation to report. This exclusion applies whether the **sexual activity** is done under the guise of treatment or otherwise and with or without the consent of the individual. However, **we** will defend an action against **you** alleging your responsibility arising out of **your** own **sexual activity** until such time as **you** admit to the **sexual activity** or it has been found to have occurred by any judicial, quasi-judicial or administrative body.
11. Arising out of proceedings involving fees for **professional services**.

12. **Covered proceedings instituted** against **you** after the cancellation or expiration of **your policy**, unless, and then only to the extent, an Extended Reporting Period endorsement is issued by **us**.

E. Payment of Legal and Audit Defense Costs

We will pay on **your** behalf only **legal and audit defense costs** incurred for services rendered and **legal expenses** actually incurred as a result of a **covered proceeding**.

F. Choice of Attorneys

We reserve the right to choose the expert witness(es), consultant(s), accountant(s) and attorney(s) to represent **you** in any **covered proceeding**.