

Partnership, Corporation or Association
Professional Liability
Insurance Policy (Assessable and Participating)

FMM JUA

Policy Provisions
Form MP-115-1 7/94

PLEASE REPORT ALL CLAIMS
AND/OR INCIDENTS TO:

FLORIDA MEDICAL MALPRACTICE
JOINT UNDERWRITING ASSOCIATION
C/O THE MEDICAL PROTECTIVE COMPANY
PO BOX 15020
FORT WAYNE, IN 46885
(407) 349-5032

FLORIDA MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION
1836-201 Hermitage Boulevard, Tallahassee, Florida 32308-1535
(A statutory non-profit unincorporated association, herein called the Company)

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

I. Coverage PN - Partnership, Corporation or Association Professional Liability

The Company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of injury to any person, including death resulting therefrom, arising out of the rendering of or failure to render, during the policy period, professional services by any person for whose acts or omissions the **insured** is legally responsible.

The Company shall have the right and duty to defend any suit against the **insured** seeking such damages, even if any of the allegations of the suit are groundless, false or fraudulent. The Company may make such investigation and such settlement of any claim or suit as it deems expedient. The Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

- (a) to bodily injury, sickness or disease or death at any time resulting therefrom, sustained by any employee of the **insured** arising out of and in the course of his employment by the **insured**;
- (b) to any obligation for which the **insured** or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (c) to injury for which the **insured** or any member, partner, officer, director or shareholder of the **insured** may be held liable as a proprietor, superintendent, officer, director or shareholder of any hospital, sanitarium, clinic with bed and board facilities, nursing home, laboratory (except an X-ray or pathological laboratory, if the **insured** is engaged in practice as a pathologist or radiologist) or other business enterprise.

II. Persons Insured

The word insured means the partnership, corporation, association or joint venture named in the declarations, and any member, partner, officer, director or shareholder thereof with respect to acts or omissions of others, provided that no such person shall be an insured hereunder with respect to liability for his or her personal acts or omissions of a professional nature.

III. Limits of 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 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 injury caused by any one medical incident shall not exceed the limit of liability stated in the declarations as applicable to "each medical incident."

IV. Supplementary Payments

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 appeal bonds required in any such suit, 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) reasonable expenses incurred by the **insured** at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

V. Definitions

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

"**insured**" means any person or organization qualifying as an insured in the "Persons Insured" provision of this policy. The insurance afforded applies separately to each **insured** against whom claim is made or suit is brought, except with respect to the limits of the Company's liability;

"**named insured**" means the person or organization named in Item 1 of the declarations of this policy.

"**Medical incident**" means any act or omission in the furnishing of professional medical or dental services by:

- (a) any member, partner, officer, director, stockholder or employee of the **insured**, or
- (b) any person acting under the personal direction, control or supervision of the insured.

Any such act or omission together with all related acts or omissions in the furnishing of such services to any one person shall be considered one medical incident.

NUCLEAR ENERGY LIABILITY EXCLUSION

It is agreed that:

I. The policy does not apply:

A. to injury or death (including all forms of radioactive contamination)

(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. to injury or death (including all forms of radioactive contamination) resulting from the **hazardous properties** of **nuclear material**, if

(1) the **nuclear material** (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or (b) has been discharged or dispersed therefrom;

(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 death arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**.

II. As used in this exclusion:

"**hazardous properties**" include radioactive, toxic or explosive properties;

"**nuclear material**" means **source material**, **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 waste material (1) containing **byproduct material** and (2) resulting from the operation by any person or organization of any **nuclear facility** included within the definition of **nuclear facility** under paragraph (a) or (b) thereof;

"**nuclear facility**" means

(a) any **nuclear reactor**,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing **spent fuel**, or (3) handling, processing or packaging **waste**,

(c) any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) 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.

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.

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the end of the policy period, the earned premium shall be computed for such period and, upon notice thereof to the **named insured**, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the Company shall return to the **named insured** the unearned portion paid by the **named insured**.

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.

If the **named insured** fails to pay any premium due under the terms of this policy, legal action necessary for the collection of such premium due may be filed in the county of the site of the main office of the Company.

The **named insured** shall pay all costs and reasonable attorneys' fees involved in the collection of such unpaid premiums.

2. Assessable Policy Provision

This policy has been issued by the Company under the temporary joint underwriting plan established by The Medical Malpractice Reform Act of 1975 (Chapter 75-9, Laws 1975) and is subject to the provisions of the Act. The Act provides, and the **named insured** agrees, that in the event an underwriting deficit exists at the end of any year the joint underwriting plan is in effect, the **named insured** shall pay to the Company a premium contingency assessment not to exceed one third of the annual policy premium payment paid by the **named insured** to the Company. The **named insured** further agrees that any assessment shall be made at the direction of the board of governors of the Company. The Act further provides that the Company shall cancel the policy of any policyholder who fails to pay the premium contingency assessment.

3. Participating Policy Provision

The **named insured** shall participate in the earnings of the Company, to such extent and upon such conditions as shall be determined by the board of governors of the Company in accordance with law and as made applicable to this policy, provided the **named insured** shall have complied with all of the terms of this policy with respect to the payment of premium.

4. Insured's Duties in the Event of Injury, Claim or Suit

- (a) In the event of an injury, claim or suit, written notice containing particulars sufficient to identify the **insured** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **insured** to the Company or any of its authorized representatives as soon as practicable.
- (b) If claim is made or suit is brought against the **insured**, the **insured** shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

- (c) The **insured** shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits and enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury with respect to which insurance is afforded under this policy; and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **insured** shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

5. 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.

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

6. Other Insurance

If the **insured** has other insurance against a loss covered by this policy, the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

7. Subrogation

In the event of any payment under this policy, the Company shall be subrogated to all the **insured's** rights of recovery therefor against any person or organization and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing after loss to prejudice such rights.

8. Changes

Notice to any representative of the Company or knowledge possessed by the representative 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, signed by an authorized representative of the Company.

9. Assignment

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, an individual **insured** dies or is adjudged incompetent, such insurance as is afforded by this policy with respect to acts or omissions previously occurring shall apply to the **insured's** legal representative while acting within the scope of his duties as such.

10. Cancellation

This policy may be cancelled by the **named insured** by mailing or delivering to the Company written notice stating when thereafter cancellation shall be effective.

The Company may cancel this policy upon one or more of the following grounds:

- (1) Failure of the **insured** to pay when due the premium or any premium contingency assessment as provided for in Condition 2 of this policy.
- (2) Loss by the **insured** of his license to provide professional care or services.
- (3) Failure of the **insured** to comply substantially with any term or condition in this policy.
- (4) The **insured** knowingly having made, or caused to be made, any false statement or misrepresentation of a material fact for use in applying for insurance.

This policy may be cancelled by the Company by mailing or delivering written notice to the **named insured** at the address shown in this policy stating when, not less than the applicable notice period, thereafter cancellation shall be effective. The applicable notice period for cancellation upon ground (1) or (2) is ten days and upon ground (3) or (4) is sixty days.

The mailing of notice as aforesaid shall be sufficient proof of notice. The time of delivery or the effective date and hour stated in the notice shall become the end of the policy period. Delivery of such written notice either by the **named insured** or by the Company shall be equivalent to mailing.

If either the **named insured** or the Company cancels, earned premium 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.

11. Sole Agent

The person or organization named in Item I. of the declarations shall act on behalf of all members, partners, officers, directors or shareholders with respect to giving or receiving notice of cancellation, accepting any endorsement issued to form a part of this policy and receiving return premium, if any; and is charged with the responsibility for notifying the Company of any changes of members, partners, officers, directors, shareholders or employees or of any other change which might affect the insurance hereunder.

12. Declarations

By acceptance of this policy, the **named insured** agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the Company or any of its representatives relating to this insurance.

13. Nonrenewal of Policy

If the Company elects not to renew this policy, it shall mail to the **named insured** at the mailing address shown in this policy written notice of nonrenewal at least sixty days prior to the expiration date of this policy. However, in the event the policy is not renewed for nonpayment of premium or loss of license, only ten days notice shall be given.

The mailing of notice as aforesaid shall be sufficient proof of notice. Delivery of such notice shall be equivalent to mailing.

In Witness Whereof, Florida Medical Malpractice Joint Underwriting Association has caused this policy to be signed by its Manager, but the same shall not be binding unless countersigned on the declarations page by a duly authorized representative of the association.

Manager

