



**Medical Professional  
Liability Insurance  
Policy**

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# MEDICAL PROFESSIONAL LIABILITY INSURANCE POLICY

State Volunteer Mutual Insurance Company  
101 Westpark Drive, Suite 300  
Brentwood, TN 37027-5031

(615) 377-1999  
(800) 342-2239

## TO OUR POLICYHOLDER

The medical professional liability coverage provided in Coverage A and Coverage B of PART I of this **policy** is **modified claims-made** coverage, meaning that it covers only those **medical incidents** resulting from **professional services** or **peer review services** rendered, or that should have been rendered, on or after the **retroactive date** shown in the **declarations** and that are **first reported** during the **policy period**. All other coverage provided in this **policy** is occurrence based.

Terms appearing in boldface print in this **policy** and in any endorsements forming a part of this **policy** are defined at the end of this **policy** in SECTION 14 of PART IV, and have the meaning set out there.

This **policy** is non-assessable. The premiums designated in the **declarations** and in the endorsements forming a part of this **policy** are the only premiums for which **named insured** will be liable. If any premium is not paid when due, this **policy** will be terminated in accordance with the cancellation provisions.

In consideration of the payment of the premiums for the applicable coverage parts, in reliance upon the statements and representations made by or on behalf of an **insured**, including those made in the applications for insurance and the **declarations**; and subject to all the terms and conditions of this **policy**, State Volunteer Mutual Insurance Company, hereinafter called the "Company," agrees with **insured** as follows:

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## PART I

### PROFESSIONAL LIABILITY INSURANCE

#### SECTION 1. COVERAGE AGREEMENTS APPLICABLE TO PART I

- 1.1. Coverage A – Individual Professional Liability. This Coverage A insures the individual **insured** against professional liability resulting from a **medical incident**. Under Coverage A the Company will pay, on behalf of **insured**, all sums that **insured** becomes legally obligated to pay as **damages** resulting from a **medical incident** that occurs on or after the **retroactive date** and is **first reported** during the **policy period**.
- 1.2. Coverage B – Practice Entity Professional Liability. This Coverage B insures the **practice entity** shown in the **declarations** against professional liability resulting from a **medical incident**. Under Coverage B the Company will pay, on behalf of **insured**, all sums that **insured** becomes legally obligated to pay as **damages** resulting from a **medical incident** that occurs on or after the **retroactive date** and is **first reported** during the **policy period**.
- 1.3. Coverage C – Extender Employee Professional Liability. This Coverage C applies only when the Company has approved an application for Coverage C for an **extender employee** and only while such **extender employee** is employed by **named insured**. When applicable, this Coverage C insures the **extender employee** employed by **named insured** while acting within the scope of his/her employment against professional liability resulting from a **medical incident**. Under Coverage C the Company will pay, on behalf of **insured**, all sums that **insured** becomes legally obligated to pay as **damages** resulting from a **medical incident** that occurs during the **policy period**.
- 1.4. The Company shall have the right and duty under Coverages A, B, and C to:
  - (a) defend any lawsuit brought against **insured** to which this PART I professional liability insurance applies seeking **damages** resulting from a **medical incident**, whether actual or alleged, and even if any of the allegations are groundless, false or fraudulent;
  - (b) select defense counsel;
  - (c) investigate and settle, as it deems appropriate, any claim or lawsuit; *provided, however,* that the Company will not settle a claim or lawsuit without the consent of the **named insured** covered under Coverage A or Coverage B unless one of the following has occurred: (i) the Company and/or its selected defense counsel has tried unsuccessfully to contact and communicate with **named insured** concerning a settlement decision or (ii) a verdict or judgment has already been rendered against **named insured**; and
  - (d) allocate **damages** and supplementary payments among claimants, **insureds**, and policies as it deems appropriate and reasonable in its sole discretion.
- 1.5. The Company shall not be obligated to pay any **damages**, or to defend or continue to defend any lawsuit, after the applicable limit of liability of this **policy** has been exhausted.

#### SECTION 2. EXCLUSIONS APPLICABLE TO PART I

The insurance provided under PART I does *not* apply to:

- 2.1. under Coverage A, liability of **insured** in his/her capacity as a member, partner, officer, director (other than as a medical director while providing **peer review services**), owner or shareholder of any **practice entity**;
- 2.2. liability of **insured** in his/her capacity as an owner, shareholder, proprietor, member, partner, director (other than as a medical director while providing **peer review services**), officer, trustee, superintendent or administrator, of any hospital, sanitarium, clinic with bed and board facilities, nursing home, ambulatory surgery center, laboratory, managed care organization, health maintenance organization, preferred provider organization, exclusive provider organization or other similar health care entity, or other business enterprise;
- 2.3. liability assumed by **insured** under a contract or agreement, except a **professional services contract**;
- 2.4. liability of **insured** resulting, in whole or in part, from any act or omission that: (i) if proven, would violate any statute, ordinance, law, rule or regulation imposing a penalty for one or more criminal offenses or (ii) results in a plea by **insured** of *nolo contendere*, no contest, or any equivalent plea, to the violation of any statute, ordinance, law, rule or regulation imposing a penalty for one or more criminal offenses;
- 2.5. liability of **insured** resulting from any conduct or activity by **insured** that is intended to cause harm or that such **insured** should reasonably expect to cause harm (except with respect to harm resulting from the intentional torts of defamation, breach of confidentiality, and invasion of privacy);
- 2.6. liability of **insured** arising, in whole or in part, from **sexual conduct**, whether under the guise of **professional services** or not; but this exclusion shall not apply to liability of **insured** resulting from **sexual conduct** by another person for whose acts or omissions **insured** is legally responsible;
- 2.7. any claim or lawsuit for which **insured**, or any carrier as his/her/its insurer, may be held liable under any workers' compensation, unemployment compensation, disability benefits, employment discrimination or other law related to the terms or conditions of employment;
- 2.8. under Coverage B, any claim or lawsuit against **insured** that is covered under Coverage A;
- 2.9. under Coverage A, any claim or lawsuit against **insured** that is covered under Coverage B;
- 2.10. with respect to **insured** who is required by law to be licensed in order to practice his/her profession, liability resulting from any act or omission of such **insured** that (i) occurs either while such **insured** is not licensed, or during any time such **insured's** license to practice his/her profession has expired or has been suspended, revoked or voluntarily surrendered, or (ii) constitutes a violation of any restriction imposed upon the license, or (iii) constitutes a violation of any applicable licensing law, rule, or regulation;
- 2.11. any **medical incident** with respect to which insurance is afforded under PART II or PART III of this **policy**, or would be afforded but for the exhaustion of the applicable limits of liability under this **policy**;

2.12. liability of **insured**:

- (a) who is immune (or would be immune but for the existence of coverage under this **policy**) from liability resulting from a **medical incident**; or
- (b) resulting from a **medical incident** for which a governmental entity is responsible under any applicable law including, but not limited to, (i) the Public Health Service Act, 42 U.S.C. 233, (ii) any federally-funded or sponsored program that is covered under the Federal Tort Claims Act 28 U.S.C. 1346(b) and 28 U.S.C. 2671-2680 or (iii) any state statutory immunity scheme including, as an example and not as a limitation, Tennessee Code Annotated §9-8-301 *et seq.*, as from time to time amended.

The exclusions in this SECTION 2.12 shall not affect the Company's right and duty otherwise to defend an **insured** made party to a lawsuit in state or federal court prior to **insured's** dismissal on immunity grounds. Under no circumstance shall any governmental entity be considered a co-**insured** or **insured** under this **policy**.

**SECTION 3. PERSONS INSURED UNDER PART I**

Each of the following is an **insured** under PART I to the extent set forth below:

3.1. Under Coverage A – Individual Professional Liability:

- (a) If **named insured** is an individual, **named insured**;
- (b) Any **practice entity** solely owned by **named insured**, but only if the same **practice entity** is not an **insured** under Coverage B of this **policy** or under any other policy issued by the Company;
- (c) Any **non-extender employee** of **named insured** that is insured under this SECTION 3.1, but only while both employed by **named insured** (or by any **practice entity** solely owned by **named insured**) and acting within the scope of such employment as a **non-extender employee**.

3.2. Under Coverage B – Practice Entity Professional Liability:

- (a) If **named insured** is a **practice entity**, **named insured**;
- (b) Any partner, executive officer, director, member, shareholder or other equity owner of **named insured** that is a **practice entity** while acting within the scope of his/her duties as such, with respect to claims of vicarious liability for the acts or omissions of others; but no partner, executive officer, director, member or shareholder is an **insured** under Coverage B to the extent that he/she was acting outside the scope of his/her duties as such partner, executive officer, director, member or shareholder or with respect to liability resulting from his/her own personal acts or omissions;
- (c) Any **non-extender employee** of **named insured** that is insured under this SECTION 3.2, but only while both employed by **named insured** and acting within the scope of such employment as a **non-extender employee**.

3.3. Under Coverage C – Extender Employee Professional Liability:

Any **extender employee** for whom an application for Coverage C has been approved by the Company, provided that such **extender employee** is covered only while both employed by **named insured** (or by any **practice entity** solely owned by **named insured**) and is acting within the scope of such employment.

**SECTION 4. LIMITS OF LIABILITY APPLICABLE TO PART I**

4.1. Under Coverage A and Coverage B:

- (a) The limit of liability stated in the **declarations** as “each **medical incident**” is the total of the Company’s liability for **damages** resulting from any one **medical incident**. The limit of liability stated in the **declarations** as “annual aggregate” is the total limit of the Company’s liability for **damages** resulting from all **medical incidents** that are **first reported** during the **policy period**.
- (b) If **named insured** obtains a reporting endorsement in accordance with PART I, SECTION 6, of this **policy**, then:
  - (i) the limit of liability stated on such reporting endorsement for “each **medical incident**” is the limit of the Company’s liability for **damages** resulting from any one **medical incident** that is **first reported** during the **reporting period** and
  - (ii) the limit of liability stated on such reporting endorsement as “annual aggregate” is the total limit of the Company’s liability for **damages** resulting from all **medical incidents** that are **first reported** during each successive annual term of the **reporting period**.
- (c) The limit of liability specified in this SECTION 4.1 shall apply regardless of:
  - (i) the number of persons or entities claiming **damages** resulting from a **medical incident**;
  - (ii) the number of claims or lawsuits brought resulting from a **medical incident**;
  - (iii) the number of **insureds** under this **policy**; or
  - (iv) the inclusion of an additional **insured** under this **policy**.

4.2. Under Coverage C:

The limit of liability for each covered **extender employee** stated in the **declarations** as “each **medical incident**” is the total of the Company’s liability for **damages** resulting from any one **medical incident**. The limit of liability stated in the **declarations** as “annual aggregate” is the total limit of the Company’s liability for **damages** resulting from all **medical incidents** that occur during the **policy period**.

The limit of liability for each covered **extender employee** shall apply regardless of:

- (a) the number of persons or entities claiming **damages** resulting from a **medical incident**; or
- (b) the number of claims or lawsuits brought resulting from a **medical incident**.

#### **SECTION 5. POLICY TERRITORY APPLICABLE TO PART I**

Unless stated otherwise in the **declarations** or endorsements, the insurance offered under PART I applies to **medical incidents** resulting from **professional services** or **peer review services** rendered, or that should have been rendered, anywhere in the world, provided that any lawsuit therefor is brought within the United States of America, its territories or possessions.

#### **SECTION 6. REPORTING ENDORSEMENT PROVISION APPLICABLE TO PART I**

- 6.1. In the event of termination of this **policy**, either by non-renewal or cancellation of the **policy** (except in the event of cancellation for non-payment of premium), **named insured** shall have the right, upon the payment of an additional premium (to be computed in accordance with the Company's rules, rates, rating plan and premiums applicable on the most recent **policy** effective date), to have issued an extended reporting endorsement providing an indefinite **reporting period** in which **medical incidents** otherwise covered by this **policy** may be **reported**. Such right must be exercised by **named insured** by written notice to the Company not later than thirty (30) days after such termination date.
- 6.2. If **named insured** exercises this right but then fails to make a payment when and as due, the Company may cancel the extended reporting endorsement and, if it does so, shall retain any premium installment that has been paid to date as payment for the insurance coverage provided up to the date of cancellation.
- 6.3. Notwithstanding the foregoing, an extended reporting endorsement shall be issued automatically and without payment of any additional premium in case the termination of the **policy** results from:
  - (a) the death of **named insured**;
  - (b) the **retirement** of **named insured** from the practice of medicine; or
  - (c) the permanent and total disability of **named insured** to carry on the professional activity or endeavor in which he/she was theretofore engaged.

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### **PART II PROFESSIONAL PREMISES INSURANCE**



## SECTION 1. COVERAGE AGREEMENTS APPLICABLE TO PART II<sup>1</sup>

- 1.1. Coverage D – Office Premises Liability. Under Coverage D the Company will pay, on behalf of **insured**, all sums that **insured** becomes legally obligated to pay as **damages** resulting from **bodily injury, property damage** or **personal injury** to which this Coverage D applies, caused by an **occurrence** resulting from the ownership, maintenance or use of **insured premises** and all operations necessary or incidental thereto.
- 1.2. Coverage E – Office Premises Medical Payments. Under Coverage E the Company will pay on behalf of each person who sustains **bodily injury** caused by accident all reasonable and necessary medical expenses incurred within one year from the date of the accident resulting from such **bodily injury**, provided such **bodily injury** is caused by a condition of **insured premises** and/or any operations necessary or incidental thereto.
- 1.3. The Company shall have the right and duty to:
  - (a) defend any lawsuit brought against **insured**, to which this **policy** applies seeking **damages** resulting from alleged **bodily injury, property damage** or **personal injury** even if any of the allegations are groundless, false or fraudulent;
  - (b) select defense counsel; and
  - (c) investigate and settle, as it deems expedient, any such claim or suit.
- 1.4. The Company shall not be obligated to pay any **damages** or medical expenses or to defend or continue to defend any lawsuit after the applicable limit of liability of this **policy** has been exhausted.

## SECTION 2. EXCLUSIONS APPLICABLE TO PART II

The insurance provided under PART II does *not* apply to:

- 2.1. **bodily injury** or **property damage** resulting from ownership, maintenance, operation, use, loading or unloading of any land vehicle, aircraft or watercraft, whether powered or not;
- 2.2. **bodily injury** or **property damage** resulting from the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion shall not apply if such discharge, dispersal, release or escape is sudden and accidental;
- 2.3. **bodily injury** or **property damage** resulting from war, whether or not declared, civil war, insurrection, terrorism, rebellion, revolution or other belligerent acts, or to any act or condition incident to any of the foregoing;
- 2.4. any claim or lawsuit for which **insured**, or any carrier as his/her/its insurer, may be held liable under any worker's compensation, unemployment compensation or disability benefit

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<sup>1</sup> Insurance under PART II is provided only if so indicated on the **declarations** and the premium for it is paid timely.

- law, employment discrimination law or other law related to the terms or conditions of employment;
- 2.5. **bodily injury** to any employee of **insured** resulting from and in the course of his/her employment by that **insured**;
- 2.6. **property damage** to:
- (a) property owned or occupied by, or rented to, **insured**,
  - (b) property used by **insured**, or
  - (c) property in the care, custody or control of **insured** or as to which **insured** is, for any purpose, exercising physical control; but part (c) of this exclusion does not apply with respect to **property damage** (other than to **elevators**) resulting from the use of an **elevator** at **insured premises**;
- 2.7. **bodily injury** or **property damage** resulting from operations on or from premises (other than **insured premises**) owned by, rented to or controlled by **insured**, or to liability assumed by **insured** under any contract or agreement relating to such premises;
- 2.8. **personal injury** resulting from:
- (a) violation of a criminal statute or ordinance committed by or with the knowledge or consent of **insured**;
  - (b) any publication or utterance described in Group B of the definition of **personal injury** if the first injurious publication or utterance of the same or similar material by or on behalf of **insured** was made prior to the effective date of this **policy**;
  - (c) any publication or utterance described in Group B of the definition of **personal injury** concerning any organization or business enterprise, or its products or services, if made by or at the direction of **insured** with knowledge of the falsity thereof;
- 2.9. any **bodily injury**, **property damage** or **personal injury** with respect to which insurance is afforded under PART I or PART III of this **policy**, or would be afforded but for the exhaustion of the applicable limits of liability under PART I or PART III;
- 2.10. liability assumed by **insured** under any contract or agreement except an **incidental contract**; or
- 2.11. **bodily injury**, **property damage** or **personal injury** resulting from the conduct of any **practice entity** of which **insured** is a partner, executive officer, director, member, owner or shareholder and that is not designated on the **declarations** as **named insured**.

### SECTION 3. PERSONS INSURED UNDER PART II

If coverage under PART II is provided, each of the following is an **insured** under PART II to the extent set forth below:

- 3.1. if **named insured** is designated in the **declarations** as an individual, the person so designated - but only with respect to the conduct of business of the medical practice of which he/she is the sole proprietor - and the spouse of **named insured** with respect to the conduct of such business;
- 3.2. any **practice entity** solely owned by **named insured**, but only if the same **practice entity** is not an **insured** under any other policy issued by the Company;
- 3.3. if **named insured** is designated in the **declarations** as a **practice entity**, the **practice entity** so designated and any owner, partner, executive officer, director, member, shareholder or other equity owner thereof, but only while acting within the scope of his/her duties as such and only with respect to his/her liability as such;
- 3.4. any employee of **named insured** while acting within the scope of his/her duties as such, but the insurance afforded to such employee does *not* apply:
  - (a) to **bodily injury** or **personal injury** to (i) another employee of **named insured** resulting from or in the course of his/her employment, (ii) **named insured** or (iii) if **named insured** is a **practice entity**, any owner, partner, executive officer, director, member or shareholder thereof;
  - (b) to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by (i) another employee of **named insured** or (ii) **named insured** or, (iii) if **named insured** is a **practice entity**, any owner, partner, executive officer, director, member or shareholder thereof.

### SECTION 4. LIMITS OF LIABILITY APPLICABLE TO PART II

Regardless of the number of (i) **insureds** under this **policy**, (ii) persons or organizations who sustain **bodily injury**, **property damage** or **personal injury**, (iii) claims made or lawsuits brought resulting from **occurrences** or (iv) **occurrences** or other incidents giving rise to claims or suits, the Company's liability is limited as follows:

- 4.1. Under Coverage D – The total liability of the Company for all **damages**, including **damages** for care and loss of services, resulting from **bodily injury**, **property damage** or **personal injury** to which this **policy** applies shall not exceed the applicable limit stated in the **declarations** as “aggregate;” and
- 4.2. Under Coverage E – The limit of liability stated in the **declarations** as applicable to “each person” is the limit of the Company's liability for all medical expenses for **bodily injury** to any one person as the result of any one accident but, subject to the above provision respecting “each person,” the total liability of the Company for all medical expenses for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of liability stated in the **declarations** as applicable to “each accident.”

### SECTION 5. POLICY TERRITORY APPLICABLE TO PART II

This insurance offered under PART II applies only to **bodily injury, property damage** or **personal injury** that occurs within (i) the United States of America, its territories or possessions, or Canada or (ii) international waters or air space, provided the **bodily injury** or **property damage** does not occur in the course of travel or transportation to or from any other country, foreign state or nation.

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## PART III

### LIMITATIONS; SUPPLEMENTARY PAYMENTS

**SECTION 1.** The Company shall not be obligated to pay any **damages** or to defend any investigation, proceeding, claim or lawsuit under any PART of this **policy** after the applicable limit of liability of this **policy** has been exhausted.

**SECTION 2.** The limitation in PART III, SECTION 1, notwithstanding, the Company will pay the following expenses separate from any other applicable limit of liability:

2.1. in any lawsuit that the Company defends:

- (a) all normal, reasonable, and customary costs and expenses of defense counsel furnished by the Company, but not legal fees, costs or expenses for counsel retained by or on behalf of **insured** by anyone other than the Company;
- (b) reasonable travel and lodging expenses incurred by any physician insured under this **policy**;
- (c) up to \$1,000 per day for loss of time for each day such physician is required to attend the trial, arbitration or mediation of a civil lawsuit for **damages** covered hereunder;
- (d) interest on the amount of any judgment against **insured** that does not exceed the applicable limit of liability of this **policy** that accrues after entry of 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; and
- (e) premiums on appeal bonds required in any lawsuit defended by the Company and premiums on bonds to release attachments in any such lawsuit for bond amounts not in excess of the applicable limit of liability of this **policy**, *provided, however*, that the Company shall have no obligation to apply for or obtain any such bond.

2.2. reimbursement of **legal expenses** paid by **named insured** resulting from a **covered investigation**, *provided that*:

- (a) the acts giving rise to the **covered investigation** occurred on or after the **retroactive date**;
- (b) the **covered investigation** is **first reported** during the **policy period**; and
- (c) such **legal expenses** are limited to:
  - (i) a maximum of \$50,000 for each **named insured** for all **covered investigations** that are **first reported** during a **policy period** regardless of the number of investigating agencies or the number of claims brought; and
  - (ii) a maximum of \$150,000, inclusive of all amounts paid pursuant to SECTION 2.2(c)(i), above, for each **group** for all **covered investigations**

that are **first reported** during a **policy period** regardless of the number of investigating agencies or the number of claims brought.

## PART IV

### GENERAL CONDITIONS APPLICABLE TO ALL PARTS OF THIS POLICY

#### SECTION 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.

#### SECTION 2. INSPECTION

The Company shall be permitted to, but is not obligated to, inspect **insured's** property and operations at any time. None of (i) the Company's right to make inspections, (ii) the making of such inspections or (iii) the creation of any reports based on such inspections shall constitute an undertaking on behalf of or for the benefit of **insured** or others to determine or warrant that such property or operations inspected are safe, healthful, or in compliance with any law, rule or regulation, and neither the Company's exercise of its rights to make inspections or the making thereof or any reports thereon nor its not exercising such rights shall obligate the Company to take or not to take any action whatever (whether underwriting or otherwise) with regard to **insured** or this **policy**.

#### SECTION 3. INSURED'S DUTIES TO REPORT AND COOPERATE

- 3.1. When **insured** becomes aware of any **medical incident** to which PART I of this **policy** may apply, any **bodily injury, property damage or personal injury**, or **occurrence** to which PART II of this **policy** may apply, or any **covered investigation** to which PART III of this **policy** may apply, such **insured** or his/her/its authorized representative shall **report** all pertinent facts and circumstances relating to the **medical incident, bodily injury, property damage, personal injury or covered investigation** to the Company as soon as practicable.
- 3.2. **Insured** shall cooperate with the Company and, upon the Company's request, shall timely assist in (i) making settlements, (ii) the conduct of suits, and (iii) enforcing any right of contribution or indemnity against any person or entity who may be liable to an **insured** because of **injury** with respect to which insurance is afforded under the **policy**. **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. **Insured** shall not, except at his/her/its own cost, voluntarily make any payment, assume any obligation or incur any expense. **Insured** shall not, without the Company's consent, carry on any negotiations with any person or entity, or his/her/its representative, asserting a claim or maintaining a lawsuit against **insured**.
- 3.3. If a claim is made or lawsuit is brought against **insured**, **insured** shall immediately forward to the Company every demand, notice, summons or other process that he/she/it or his/her/its representative receives.
- 3.4. **Insured** shall not alter, amend, supplement or destroy any part of any patient record or any other record pertinent to, or otherwise misrepresent or conceal facts pertinent to, any incident, claim or lawsuit.

- 3.5. If **insured** fails to comply with his/her/its obligations under this **policy**, including the obligations set out in PART IV, SECTIONS 3.1 through 3.4 above, the Company's obligations under this **policy** may be terminated by the Company including, without limitation, (i) any obligation to defend, prosecute or continue any litigation or conduct any investigation, (ii) any obligation to indemnify **insured** with respect to any litigation against or liability of **insured**, and (iii) any obligation related to any liability of **insured** or obligation to any third party.

#### **SECTION 4. ACTION AGAINST COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance by **insured** with all of the terms of this **policy** and the amount of **insured's** obligation to pay shall have been finally determined either by judgment against **insured** after actual trial or by written agreement of **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 an **insured** to determine an **insured's** liability; neither shall the Company be impleaded by an **insured** or his/her/its legal representative. The bankruptcy or insolvency of **insured**, or of **insured's** estate, shall not relieve the Company of any of its obligations hereunder. This **policy** and its subject matter have substantial contacts with the State of Tennessee, and all actions, lawsuits, or other proceedings against the Company with respect to this **policy** shall be brought only in a court of competent jurisdiction sitting in Williamson County, Tennessee, or in the United States District Court having jurisdiction over that County.

#### **SECTION 5. OTHER INSURANCE**

The following provisions shall apply when other insurance is available to an **insured**:

- 5.1. If there is more than one policy issued by the Company under which coverage may be afforded, only one policy shall apply.
- 5.2. Except as provided in SECTIONS 5.3 and 5.4 below, this **policy** is primary.
- 5.3. With respect to loss and any duty to defend resulting from **peer review services** (other than **peer review services** performed on behalf of the Company), the insurance provided by this **policy** shall only apply in excess over any other valid and collectible insurance, self-insurance fund, agreement of indemnification or any other form of protection (such other valid and collectible insurance, self-insurance fund, agreement of indemnification or any other form of protection hereinafter called, collectively, "Other Insurance").
- 5.4. When both this **policy** and Other Insurance apply to the same loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this **policy** for a greater proportion of that loss than that stated in the applicable contribution provisions below:
- (a) if all Other Insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of loss paid and, with respect to any remaining amount of loss not so paid, the remaining insurers

then continue to contribute in equal shares of the remaining amount of the loss until each insurer has paid its limit in full or the full amount of the loss is paid;

- (b) if any Other Insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this **policy** for such loss bears to the applicable limit of liability of all valid and collectible insurance against such loss.

## **SECTION 6. SUBROGATION**

In the event of any payment under this **policy**, the Company shall be subrogated to all of **insured's** rights of recovery therefore against any person or entity, and such **insured** shall execute and deliver all such instruments and papers and do whatever else is necessary to secure such rights including, but not limited to, giving testimony in open court. No **insured** shall do anything after the **medical incident** or **occurrence** to prejudice any such right.

## **SECTION 7. ASSIGNMENT**

Assignment of interest under this **policy** shall not bind the Company until the Company's consent is endorsed hereon. If, however, **insured** shall die, such insurance as afforded by this **policy** shall apply (i) to **insured's** legal representative, as **insured**, but only while acting within the scope of his/her/its duties as such, and (ii) with respect to the property of **insured**, to the person having proper temporary custody thereof, as **insured**, but only until the appointment and qualification of the legal representative.

## **SECTION 8. CHANGES**

Except as otherwise specifically provided herein, neither this **policy** nor any of its terms shall be renewed, waived, modified or changed except by renewal **declarations** or written endorsement issued by the Company to be a part of this **policy**. Notice to any agent of the Company or knowledge possessed by any such agent or by any other person shall not be imputed to the Company and 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**.

## **SECTION 9. CANCELLATION**

- 9.1. This **policy** may be canceled by **named insured** by written notice to the Company stating when thereafter the cancellation shall be effective. This **policy** may be canceled by the Company by written notice to **named insured**, at the address shown in this **policy**, stating the effective date and hour of cancellation which shall in no event be less than 30 days after such notice (10 days for non-payment of premium) or the minimum time required by applicable law, whichever is less. The effective date and hour of cancellation stated in the notice shall be the end of the **policy period**.
- 9.2. Upon cancellation of this **policy** for whatever reason, earned premium shall be computed on a *pro rata* basis. 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. Refund of any excess premium will be paid only to **named insured** unless **named insured** authorizes the Company in writing to pay the refund directly to another party.

## **SECTION 10. RENEWAL OF POLICY**



Neither **named insured** nor the Company has any obligation to renew this **policy**. The Company may effect renewal by issuing renewal **declarations** specifying an additional **policy period** or by offering a new policy with the same or different limits, terms, and/or conditions. If **named insured** rejects the Company's offer of renewal, either by failure to pay the premium within 45 days from the effective date of such renewal or the minimum time required by applicable law, whichever is greater, or by written notice received by the Company, then such renewal coverage shall be ineffective and void as of its effective date.

## **SECTION 11. DECLARATIONS**

By acceptance of this **policy**, **insured** agrees (i) that the statements in the **declarations** and in his/her/its application or renewal application for insurance are his/her/its agreements and representations, (ii) that this **policy** is issued in reliance upon the truth of such representations, and (iii) that this **policy** embodies all agreements existing between himself/herself/itself and the Company or any of its agents relating to this **policy**. In the event of any fraud, material misrepresentation or omission by or on behalf of **insured** in his/her/its application or renewal application for insurance, or related communications, this **policy** shall be void, no coverage shall be afforded hereby, and **insured** shall have no right to purchase or to receive any reporting endorsement under SECTION 6 of PART I.

## **SECTION 12. MUTUAL POLICY CONDITIONS**

The Company is a mutual insurance company owned by its members. Each individual physician policyholder shall be considered a single member with a single vote at membership meetings irrespective of the number or the size of policies he/she may hold or the amount of premiums paid. He/she shall remain a member of the Company during the period any such **policy** is current and in force. A former policyholder is not a member irrespective of whether he/she was issued a reporting endorsement at the time his/her **policy** terminated. Each member is bound by the then-current Charter and Bylaws of the Company.

## **SECTION 13. LIBERALIZATION**

If, during the **policy period**, the Company adopts, in conformity with law, any changes in the form of this **policy** by which this insurance could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of **insured** hereunder as though such endorsement or substitution of form has been made. But this SECTION 13 shall not apply to extend or broaden the terms and conditions of coverage afforded under any reporting endorsement issued under SECTION 6 of PART I, so that the **policy** terms and conditions in effect immediately before the termination date will apply to **medical incidents** that are **first reported** during the extended **reporting period**.

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## SECTION 14. DEFINITIONS

When used in this **policy**, the words and phrases in bold-face print shall have the following meanings:

**Approved counsel** means the attorney or firm of attorneys approved by the Company to represent **named insured** in any **covered investigation**.

**Bodily injury** means **bodily injury**, sickness or disease sustained by any person that occurs during the **policy period**, including death resulting at any time therefrom.

**Covered investigation** means:

- (1) an investigation or proceeding commenced by any governmental or regulatory agency charged with determining whether **named insured** participated in the improper transfer of a patient ("dumping") in violation of the Emergency Medical Treatment & Active Labor Act ("EMTALA") as from time to time amended;
- (2) an investigation or proceeding commenced by any governmental or regulatory agency charged with the enforcement of laws regulating Medicare or Medicaid (or other federal or state health care program offered as an alternative to Medicare or Medicaid) to determine whether **named insured** provided **professional services** improperly to a patient covered by Medicare or Medicaid (or other federal or state health care program offered as an alternative to Medicare or Medicaid);
- (3) an investigation or proceeding commenced by a **Utilization and Quality Control Peer Review Organization (PRO)**, but only at the level of such investigation or proceeding in which sanctions may be imposed on **named insured**;
- (4) an investigation or proceeding commenced by any governmental or regulatory agency charged with the enforcement of regulations pertaining to the Clinical Laboratory Improvement Amendments of 1988 ("CLIA") to determine whether **named insured** was in violation of such regulations;
- (5) an investigation or proceeding commenced by any governmental or regulatory agency charged with the enforcement of regulations pertaining to the Omnibus Budget Reconciliation Act of 1990 ("OBRA '90") to determine whether **named insured** was in violation of such regulations;
- (6) an investigation or proceeding commenced by any governmental or regulatory agency charged with the enforcement of the Occupational Safety and Health Administration ("OSHA") blood borne pathogens regulations, to determine whether **named insured** was in violation of such regulations;
- (7) an investigation or proceeding commenced by any state or federal governmental or regulatory authority regulating employment practices, or any claim alleging a **wrongful employment practice act** brought by a past, present or prospective employee against **named insured**, whether brought directly by the employee or by any state or federal governmental or regulatory authority regulating employment practices on behalf of such employee;

- (8) an investigation or proceeding commenced by any managed care organization, health insurance company, state or federal regulatory agency, or by a contractor appointed by such organization or agency, related to fraud or abuse, violation of reimbursement rules or regulations, lack of a compliance plan or the presentation of any actual or allegedly erroneous or false claim(s) for reimbursement for health care services by **named insured**;
- (9) an investigation or proceeding commenced by the U.S. Secretary of Health and Human Services or other governmental or regulatory agency charged with the enforcement of the national Standards for Privacy of Individually Identifiable Health Information promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") related to the alleged wrongful or unauthorized disclosure of protected health information by **named insured**; or
- (10) an investigation or proceeding commenced by any governmental or regulatory agency charged with the enforcement of the Americans with Disabilities Act (the "ADA") related to allegations concerning either (i) the physical accessibility or construction of **insured premises**, or (ii) a refusal by **named insured** to provide **professional services** to a person who is disabled within the meaning of the ADA.

**Damages** means all amounts of money, not exceeding the applicable limits of liability, that are payable pursuant to a judgment or a settlement approved by the Company, because of **injury** to which this **policy** applies. **Damages** includes pre-judgment interest and punitive **damages**, if any. **Damages** does not include fines, taxes or penalties, none of which is covered by this **policy**, and does not include matters that are uninsurable under the law pursuant to which this **policy** may be construed.

**Declarations** means the Medical Professional Liability Insurance Policy declarations forming a part of this **policy**.

**Elevator** means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft hoist way, stairway, runway, power equipment, and machinery.

**Extender employee** means any person whose duties include the prevention, diagnosis and treatment of illness or **injury**, or the rendering of care during pregnancy, labor and/or delivery, and who substantially extends the practice of **named insured**, including, but not limited to, nurse anesthetists, nurse midwives, nurse practitioners, graduate physicians assistants, psychologists, and optometrists. **Extender employee** does not include any physician, surgeon, dentist, oral surgeon, podiatrist or chiropractor.

**First reported** means **reported** for the first time to the Company and not previously **reported** to the Company or to any other insurance carrier, self-insurance fund, agreement of indemnification or any other form of protection.

**Group** means a **practice entity** and any and all individuals who provide **professional services** as part of, or through the **practice entity**, regardless of whether any of those individuals is a **named insured** under any other **policy** issued by the Company.

- (1) lease of **insured premises**, or
- (2) **elevator** maintenance agreement.

**Injury** means any injury including, but not limited to, **bodily injury**, death, libel, slander, defamation of character, breach of confidentiality or invasion of privacy.

**Insured, insureds, and insured's** means:

- (1) **named insured**,
- (2) any other person or entity qualifying as an **insured** under the provisions of PART I, SECTION 3 (PERSONS INSURED UNDER PART I) or PART II, SECTION 3 (PERSONS INSURED UNDER PART II), respectively, or
- (3) any person identified in the preceding paragraphs (1) or (2) of this definition who/that is entitled to coverage under PART III.

**Insured premises** means any office premises used or maintained by **named insured** for the practice of medicine.

**Legal expenses** means the normal, reasonable, and customary charges of **approved counsel** in representing **named insured** in any **covered investigation**, including reasonable expenses incurred by such **approved counsel**. **Legal expenses** does not include any other expenses incurred by **named insured** and does not include any **damages**, interest, fines, judgments or penalties that may be assessed in any **covered investigation** or paid in any settlement thereof.

**Medical incident** means:

- (1) a single act or omission, or a series of related acts or omissions, by **insured** or by any person for whose acts or omissions **insured** is legally responsible, that results, or is likely to result, in **damages** caused by the rendering of, or failure to render, **professional services** to any one person; or
- (2) a single act or omission, or a series of related acts or omissions, by **insured** or by any person for whose acts or omissions **insured** is legally responsible, during the performance of **peer review services** that results, or is likely to result, in **damages**.

A continuing course of treatment or repeated exposure to substantially the same general conditions constitutes a single **medical incident**.

**Modified claims-made**, as applicable to Coverage A and Coverage B, means that, as a condition of coverage, a **medical incident** must result from the rendering of or failure to render **professional services** or the performance of **peer review services** on or after the **retroactive date** and must be **first reported** to the Company during the **policy period**.

**Named insured** means the person or entity designated as **named insured** in the **declarations**.

**Non-extender employee** means any employee of **named insured** who does not substantially extend the practice of **named insured**. **Non-extender employee** does not include any physician, surgeon, dentist, oral surgeon, podiatrist, chiropractor, or **extender employee**.

**Occurrence** means (i) an accident, including continuous or repeated exposure to conditions, that results in **bodily injury** or **property damage** during the **policy period** and which **bodily injury** or **property damage** is neither expected nor intended from the standpoint of an **insured**; or (ii) the happening of any of the offenses described in the definition of **personal injury** which results in **personal injury** during the **policy period**. **Occurrence** does not include any **medical incident** or accident resulting from a **medical incident**.

**Peer review services** means the good faith service by **insured** in reviewing professional standards, reviewing utilization of **professional services**, evaluating or improving quality of care, and reviewing the qualifications, credentials, or competence of any health care provider. Such **peer review services** specifically include service by **insured** on any board, committee or program of the Company relating to peer review. But **peer review services** does not include the business or administrative decision-making activities or decisions of any **practice entity**, neither does **peer review services** include service by an **insured** in making or participating in any business or administrative decision on behalf of any **practice entity**.

**Personal injury** means **injury** resulting from any of the following offenses committed during the **policy period** within the **policy** territory as defined in SECTION 5 of PART II of this **policy**:

Group A – False arrest, detention or imprisonment, or malicious prosecution;

Group B – The publication or utterance of libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; but excluding publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of **named insured**.

Group C – Wrongful entry or eviction, or other invasion of the right of privacy.

**Policy** means this contract of medical professional liability insurance between the Company and **insured**, setting forth the **policy period**, coverages, premiums, deductibles, exclusions, and other terms and conditions of the insurance, including its **declarations** and endorsements as from time to time issued.

**Policy period** means the period specified in ITEM 2 of the **declarations**.

**Practice entity** means a partnership, corporation, professional corporation, limited liability company, professional limited liability company, limited liability partnership, professional service association, or any similar entity organized to provide **professional services**.

**Professional services** means the providing of medical services, including medical treatment, making medical diagnosis, and rendering medical opinions or medical advice.

**Professional services contract** means a written contract or written contractual provision in which **insured** agrees to provide **professional services** and to indemnify any person or entity for losses or defense costs caused, or allegedly caused, solely by the negligence of **insured** and resulting from a **medical incident**.

**Property damage** means:

- (a) physical **injury** to or destruction of tangible property caused by an **occurrence** during the **policy period**, including loss of use thereof at any time resulting therefrom, or
- (b) loss of use of tangible property that has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the **policy period**.

**Report, reported, and reporting** mean, when used with respect to a **medical incident, occurrence or covered investigation**, the giving by **insured**, or a representative authorized by **insured**, of notice of a **medical incident, occurrence or covered investigation**, either in writing or by telephone, to the Company, and the Company's receipt of such notice. **Reports** must specify the circumstances giving rise to the **medical incident, occurrence or covered investigation**, the nature of the **damages, bodily injury, property damage, or personal injury**, the claim or lawsuit that has resulted or is likely to result from the **medical incident, occurrence or covered investigation**, and any other information the Company may reasonably require.

**Reporting period** means the period of time stated in the reporting endorsement for the **reporting of medical incidents**.

**Retirement** means the conclusion of, and complete withdrawal from, one's working or professional career.

**Retroactive date** means the **retroactive date** applicable to PART I and PART III as specified in the **declarations**.

**Sexual conduct** means any actual or attempted sexual contact, act or intimacy. Such conduct specifically includes, but is not limited to: deception; seduction; sexual touching; fondling; intercourse; masturbation; molestation; exposure of genitalia or other bodily part(s) for a sexual purpose; harassment; exploitation; assault; battery; and the negligent mishandling of the phenomenon of transference between a patient and an **insured** who is acting as a therapist in the treatment of mental or emotional illness or symptoms, either while the patient is receiving therapy or while the patient is still emotionally dependent upon **insured** as a therapist.

**Utilization and Quality Control Peer Review Organization (PRO)** means a utilization and quality control peer review organization under contract with the U.S. Department of Health and Human services to review the professional activities of physicians and other health care practitioners and providers under the federal Social Security Act, as amended, while acting within the scope of its duties under such contract, or any successor organization thereto and by whatever name it may be known at the time.

**Wrongful employment practice act** means any actual or alleged: (i) wrongful dismissal, discharge or termination of employment; (ii) **sexual conduct** or other form of harassment in the workplace; or (iii) employment discrimination, including termination of an employment relationship or a demotion or a failure or refusal to hire or promote any individual based on any discriminatory practice, however it may be titled or denominated under then-applicable law.

## SECTION 15. NOTICE

All notices, offers, requests, demands, and other communications pursuant to this **policy** shall be given in writing by personal delivery, by prepaid first class, registered or certified mail properly addressed with appropriate postage paid thereon, or by UPS, FedEx or other recognized, reputable overnight courier, and shall be deemed to be duly given and received on the date of delivery if delivered personally, on the second day after the deposit in the United States Mail if mailed, or upon delivery if by UPS, FedEx or other recognized, reputable overnight courier. Notice shall be sent to the Company at the address first set out above and to **insured** at the address shown in this **policy**.

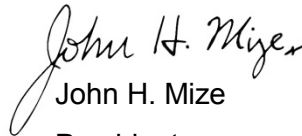
#### **SECTION 16. CAPTIONS AND HEADINGS**

The section and paragraph captions and headings contained in this **policy** are included for reference purposes only and shall not affect in any way the meaning or interpretation of this **policy**.

**IN WITNESS WHEREOF**, State Volunteer Mutual Insurance Company has caused this **policy** to be signed by its authorized officers at Brentwood, Tennessee.



Katrina M. Hood, M.D.  
Secretary



John H. Mize  
President

(Balance of this page is intentionally blank.)

**State Volunteer Mutual Insurance Company**  
**101 Westpark Drive, Suite 300**  
**Brentwood, TN 37027-5031**  
**800.342.2239**

**[www.SVMIC.com](http://www.SVMIC.com)**

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