



YOUR REVISED INDIVIDUAL MEDICAL PROFESSIONAL LIABILITY POLICY

Occurrence & Claims Made Forms

*Enclosed is your revised Individual Professional Liability Coverage Form. Certain words and phrases defined in the policy are shown in italics. This summary is designed to call your attention to the principal changes in your revised policy; however it is not a legal document and does not modify or change the policy. Should there be a conflict between this explanation and the policy, the policy language will govern. In addition to the changes summarized here, your policy contains other terms and conditions that may limit your coverage. **We strongly urge you to read your Policy, Declarations, and any Endorsements attached for complete information on the coverage provided.** If you have any questions, please contact your agent or ProMutual Group.*

The following terms were added or revised:

- An *Insured* now includes students of the *Named Insured*, except an intern, extern, resident, fellow, dental, osteopathic or medical doctor, under a shared limit of liability while they are acting within the scope of their duties.
- A professional corporation owned by the *Named Insured* is not an *insured* if the corporation owns or operates any laboratory, hospital, long term care facility or any other healthcare facility or business enterprise.
- *Licensing board proceeding* is a newly defined term. A *licensing board proceeding* is defined as "a civil regulatory proceeding by the state agency with jurisdiction to issue, revoke, suspend or restrict your license to perform *professional services*" as well as actions in a court of law for judicial review of any order or decision by such an agency concerning your professional license. *Licensing board proceeding* includes any investigation of your performance of *professional services* by such an agency and any complaint filed with or by such an agency concerning your performance of *professional services*. A *licensing board proceeding* does not include any proceeding concerning your license to prescribe controlled substances or to participate in any federally or state-funded healthcare or payment program, including Medicare or Medicaid.
- The definition of *damages* now includes attorney's fees awarded against an *insured* attributable to *damages* covered by the *policy*.
- The definition of *suit* is expanded to include an arbitration to which the *insured* must submit or submits with our consent and other alternative dispute resolution proceedings to which we consent.

In some cases, these changes may reduce the coverage available to you. Please read the sections of your revised *policy* entitled **Definition of Insured** and **Other Definitions** carefully.

The following coverage changes apply ONLY if you have a Claims Made Policy:

- Information on an application for insurance or notice to an attorney retained by us to defend you is not considered notice to us of a *claim*, *incident* or circumstances that may be expected to give rise to a *claim*. Please review the claim reporting requirements in the section of your revised *policy* entitled **Reporting A Claim**.
- The **Known Claims and Circumstances** exclusion has been revised to include facts and circumstances that the *insured* knew or should have known before the *retroactive date* could potentially give rise to a *licensing board proceeding* and *claims* arising out of circumstances, *incidents* or facts alleged in a *licensing board proceeding* that began before the *retroactive date*.
- The **Authority of the Named Insured** condition has been modified to provide that the *Named Insured* is authorized to act on behalf of all *insureds* with respect to exercising or declining the right to purchase an *extended reporting period*.

The following are other important changes:

Our Limit of Liability

- This section of the *policy* has been amended to further clarify when multiple *claims* will be subject to a single per claim limit of liability, including when the *claims* arise out of or share the same or related *incidents, professional services, advice, decisions* or same general conditions.

Defense and Claim Expenses

This section of the *policy* has been revised significantly. **Please read this section of your policy carefully.** The revisions are summarized below:

- If there is a judgment against you, we may pay all or any portion of that judgment even if the payment does not settle the *claim* and your right to appeal has not been exhausted.
- If we pay *claims expenses*, but it is later determined that we were not obligated to make such payment, the *insured* must reimburse us for those *claim expenses*.
- If under applicable state law you have the right to select your own defense counsel because we have reserved our rights to disclaim coverage, we will only be responsible for paying reasonable fees and expenses for that defense counsel. The reasonableness will be determined by the rates that we usually pay our panel counsel. The *insured's* selected counsel will be responsible for complying with our Legal Billing Guidelines and Case Management Guidelines.
- The definition of covered *claim expenses* has been revised as follows:
 1. The *policy* has been revised to clarify that any award of a claimant's attorney's fees is not covered as a *claim expense*. However, as noted above, certain awards of a claimant's attorney's fees will constitute covered *damages*.
 2. We only pay post-judgment interest that accrues through the date that we pay, offer to pay or deposit into court the amount of the judgment that is within the *policy* limits.
 3. We provide reimbursement for your defense costs, up to the amounts stated in the *policy*, for certain types of regulatory proceedings and certain *suits* alleging sexual abuse. **The revised policy modifies coverage for these reimbursements. Some of these modifications reduce the circumstances in which this reimbursement will be available and are summarized below.** Under the revised *policy*, we will reimburse:
 - Up to \$25,000 of reasonable defense expenses incurred in a *licensing board proceeding* alleging that an *incident* in the performance of *professional services* by an *insured* resulted in *bodily injury* to the *insured's* patient. As noted above, a *licensing board proceeding* is limited to certain types of regulatory proceedings. Regardless of the number of *insureds, incidents, patients, injuries* or proceedings **the maximum reimbursement we will pay is \$25,000.** Further, multiple proceedings arising from one or more related *incidents* or related *professional services* will be subject to a maximum reimbursement of \$25,000 regardless of the number of *policy periods* involved. Reimbursement will be paid only under the *policy* in effect at the time the first related proceeding is first made and reported to us.
 - Up to \$100,000 for reasonable defense expenses incurred in a *suit* or *licensing board proceeding* alleging the actual or threatened sexual abuse, sexual misconduct

or any other sexual activity with your patient by you or by anyone for whom you are legally responsible while you or such person were performing *professional services* on or after the Supplementary Payments Retroactive Date stated in the Declarations. Regardless of the number of *insureds*, *incidents*, patients, injuries, *suits* or proceedings **the maximum reimbursement we will pay is \$100,000**. Further, multiple *suits* or proceedings arising from one or more related *incidents* or related *professional services* will be subject to a maximum reimbursement of \$100,000 regardless of the number of *policy periods* or *insureds* involved. Reimbursement will be paid only under the *policy* in effect at the time the first related *suit* or proceeding is first made and reported to us and the most we will pay for all related *suits* or proceedings brought during the *policy period* is \$100,000.

These reimbursement provisions cannot be combined or stacked and do not apply if any insurer has a duty to defend the proceeding or *suit*.

The reimbursement described above is subject to the following conditions:

- The *suit* or proceeding must be first brought against you during the *policy period*.
 - We must be notified of the *suit* or proceeding in writing during the *policy period*. Notifying us of an *incident* suspected to lead to a *suit* or proceeding does not constitute notice of the subsequent *suit* or proceeding.
 - Notice must be given within sixty (60) days after you receive notice of the *suit* or proceeding. We will not reimburse any expenses you incur before you notify us of the *suit* or proceeding.
4. The *policy* has also been revised to provide that we will also pay for counsel hired by us to represent you at certain depositions about *professional services* performed by you even if you are not a party to that *suit*. You must immediately notify us when you receive a subpoena of notice of the deposition. Please see your *policy* for more information about when this benefit applies.

We will not reimburse you for lost earnings due to your participation in the defense of a *licensing board proceeding* or sexual misconduct *suit* or in any deposition taken in a *suit* to which you are not a party.

Please note the following exclusions:

Some sources of a potential *claim* are not covered by professional liability insurance but may be covered by other policies. Similar exclusions are commonly found in other medical professional liability policies. The following exclusions are new or have been expanded:

- **Assault or Battery.** This *policy* excludes coverage for assault and battery, unless the *claim* results from the *insured's* failure to obtain informed consent for *professional services* or the use of reasonable force to detain or restrain a patient to prevent injury to the patient or others.

- **Breach of Contract.** We do not cover *claims* arising from a breach of contract unless the *claim* is brought by a patient as a result of the performance of medical or dental treatment.
- **Business Enterprises.** *Claims* arising out of the *insured's* acts as a medical director are excluded. *Claims* arising out of the *insured's* ownership, operation or management of partnerships, corporations and other entities are also excluded, except for the those professional corporations solely owned by the *Named Insured* that are also covered under the *policy*.
- **Federal or State Tort Claims Acts.** An exclusion has been added for *claims* where the *insured* is eligible for protection under a federal, state, or municipal tort claims act.
- **Sexual Misconduct.** This exclusion has been expanded to clarify that *claims* arising from a violation of professional boundaries are not covered. In addition the portions of this exclusion barring coverage for the failure to terminate the healthcare provider-patient relationship or abandonment of patients has been broadened to include patients with whom you have engaged in any of the inappropriate behavior described in the exclusion.
- **Violation of Statutes.** This exclusion has been expanded to add violations of constitutional rights or by-laws.

The following revised policy conditions may, in certain situations, reduce coverage:

Declarations and Applications: This condition requires that all statements in any *policy application* for coverage be accurate and complete as of the effective date of the *policy* and provides that misrepresentations in any *policy application* shall invalidate the *policy* for all *insureds*. This condition also defines a *policy application* to include not only the application, but all other documents submitted to us in connection with the underwriting or issuance of the *policy*. If no application was submitted for this *policy*, then the most recent application and other documents submitted to us in connection with any prior *policy* for which this *policy* is a renewal or replacement will be considered the *policy application*.

Other Insurance: This *policy* is excess over any other valid policy issued by another insurer except insurance specifically written to apply in excess of this *policy*. The duty to defend provision of such other policy, if any, takes precedence over any obligation to defend under this *policy*. The condition has also been revised to clarify that other insurance includes any captive program and applies even where the other insurance is subject to a deductible, co-payment or self-insured retention.

ENDORSEMENTS

If your *policy* contains one or more endorsements, you will find these listed on the Declarations Page of your *policy*. Endorsements modify the coverage contained in the *policy*. Availability of certain endorsements may depend on underwriting considerations and state insurance regulatory requirements. Some endorsements may impact your premium. Check your *policy's* Declaration Page for the name and number of the endorsements that apply to your *policy*. We want to draw your attention to the changes in the following endorsements. **We strongly urge you to read all endorsements to your policy for complete information.** If you have any questions, please contact your agent or ProMutual Group.

PL 004 Billing Errors and Omissions Endorsement was revised to state what does and does not constitute notice to us of a *claim* under the endorsement. Additionally, an exclusion has been added for *claims* or circumstances that could result in a *claim* that were known or should have been known prior to the Endorsement Period.

PL 040 FTCA Restricted Coverage Endorsement and PL 059 FTCA Restricted Coverage Endorsement—Group Policy were amended to inform you of your additional responsibilities associated with the Federal Tort Claims Act ("FTCA") in order for coverage to apply under the *policy*. You must notify the United States Department of Health and Human Services of any *claim* for which you may be considered an employee of the Public Health Service. You may not do anything that would prejudice or impair the defense of a *claim* protected by the FTCA. You must notify us immediately if you are deemed not to be an employee of the Public Health Service.

PL 065A and PL 065B Multiple Practitioner Endorsements were revised to correspond to certain changes in the *policy* described above including adding students as insureds, stating when a professional corporation owned by you is not an *insured*, and revising the **Declarations and Applications** condition of the *policy*.

Coverage may be provided by one of the following ProMutual Group companies:

Medical Professional Mutual Insurance Company
ProSelect Insurance Company
ProSelect National Insurance Company



ProMutualGroup®

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