

# Liability Benefit Plan, Professional Medical

## Purpose:

Provides certain medical staff and students with professional medical liability indemnity from and against medical liability claims

## Date Approved:

August 24-25, 2011

## Background:

The Plan for Professional Medical Malpractice Self-Insurance was approved by the Board of Regents on April 15, 1977. Authority for the Plan had been granted to the Board of Regents by Senate Bill 391, Acts of the 65th Legislature, effective March 10, 1977 (later codified as *Texas Education Code* Section 59.01 *et seq.*)

Since the Plan was first approved, it has been amended on March 29, 1979; February 29, 1980; June 12, 1981; April 8, 1982; August 11, 1983; December 7, 1989; February 8, 1990; June 14, 1990; June 11, 1992 and October 9, 1992. The name was changed to the Plan for Professional Medical Liability Self-Insurance in conjunction with rate changes made at the February 11, 1988 meeting. In order to incorporate changes in Texas insurance law, the Board of Regents rescinded the Plan for Professional Medical Liability Self-Insurance on February 12, 1998, and adopted the Professional Medical Liability Benefit Plan. Amendments to the new plan were made February 11, 1999, May 11, 2000, February 13, 2003, November 5, 2004, August 11, 2005, August 20, 2009, August 12-13, 2010 and August 24-25, 2011.

## THE UNIVERSITY OF TEXAS SYSTEM PROFESSIONAL MEDICAL LIABILITY BENEFIT PLAN

(Effective September 1, 2005)

### ARTICLE I PURPOSE

The purpose of The University of Texas System Professional Medical Liability Plan ("Plan") is to provide certain health care providers and students of The University of Texas System ("System") with professional liability indemnity from and against medical and dental liability claims pursuant to the authority granted to the Board of Regents of The University of Texas System by Texas Education Code Section 59.01 *et seq.*

### ARTICLE II DEFINITIONS

Unless otherwise required by the context, the following definitions shall control:

A. **Plan Participant** shall mean:

1. Staff physicians and dentists who are medical doctors, oral surgeons, oral pathologists, dentists, doctors of osteopathy, or podiatrists appointed to the faculty of a health

institution of the System, medical doctors employed in health services at and by a general academic institution of the System;

2. Residents and fellows enrolled in a residency program or fellowship at a System medical or dental school who are duly licensed, credentialed, and registered to practice their profession;
  3. Medical doctors, oral surgeons, oral pathologists, dentists, doctors of osteopathy, and podiatrists appointed to the faculty of a medical school or hospital of the System on a part-time or volunteer basis, and who either devote their total professional service to such appointments or provide services to patients by assignment from the department chairman. For purposes of the Plan, such persons are "Plan Participants" only when providing services to patients in conjunction with supervision of medical or dental students or residents by assignment from the department chairman and shall become Participants in the Plan only as provided in Article IV, Section 2;
  4. Medical or dental students of a medical or dental school of the System and only when participating (with prior approval of such medical or dental school) in a patient-care program of a duly accredited medical or dental school under the direct supervision of a faculty member of the school conducting such program; and
  5. System institutions against which a liability claim, as that term is defined in Article II.B. below, is made that arises from the treatment or lack of treatment by a Plan Participant in 1-4 above
- B. **Liability Claim** means a claim, lawsuit or cause of action based upon treatment or lack of treatment within the United States of America, its territories or possessions, or Canada that departs from accepted standards of medical or dental care which proximately results in injury to or death of a patient, whether the claim or cause of action sounds in tort or contract, subject to the exclusions described in Article V, Section 4, below. This definition shall extend to anywhere in the world for full-time or part-time faculty of a medical or dental school or hospital of the System after compliance with conditions for participation set by the Administrator and the Executive Vice Chancellor for Health Affairs or a delegate.
- C. **Disciplinary and Licensing Actions** means any disciplinary, licensing, or similar administrative proceeding brought against a Participant by a Texas licensing agency for the Participant's profession or a Texas quality review or regulatory body that arises from professional services, except those excluded pursuant to Article V, Section 4.
- D. **System** means The University of Texas System.
- E. **Board** means the Board of Regents of The University of Texas System.
- F. **Fund** means the Professional Medical Liability Fund established by the Board.
- G. **Administrator** means the Vice Chancellor and General Counsel of The University of Texas System.
- H. **Damages** mean all damages, including damages for death, which are payable because of injury to which the Plan applies, but does not include exemplary or punitive damages.
- I. **Coverage** means the liability indemnity and legal representation afforded Participants by this Plan.

- J. **Annual Enrollment period** begins on the date the Participant has a System appointment and meets the conditions for participation under Article IV below and ends on August 31<sup>st</sup> after enrollment begins.
- K. **Certificate of Coverage** means that document issued to the Plan Participant by the System specifying the enrollment period and limits of coverage.
- L. **Professional services** means medical, dental or health care and treatment.
- M. **Plan year** means the twelve-month period beginning on September 1 and ending on August 31 of each year.

### **ARTICLE III APPLICABILITY OF PLAN PROVISION**

The coverage afforded by this Plan is subject to the particular terms, conditions, and limitations (including, but not limited to limits of liability) of this Plan and the interpretation thereby by the Board or the Plan Administrator. Notwithstanding any other language of the Plan, the coverage afforded by the Plan applies only to Liability Claims and Disciplinary and Licensing Actions arising out of incidents, transactions or events occurring on or after April 1, 1977.

### **ARTICLE IV CONDITIONS FOR PARTICIPATION**

#### Section 1

Each Participant on the effective date of the Plan, and each person who becomes a Participant thereafter, as long as this Plan remains in effect, shall participate in the Plan provided, that

- A. Each medical or dental student, as an additional condition of participation, must pay into the Fund a fee in such amount or amounts, and at such time or times, as may be required by the Board; and
- B. A medical doctor employed in health services at and by a general academic institution of the System shall not become a participant unless and until
  1. Such institution files with the Administrator a written application, on behalf of such medical doctors, for participation in the Plan, and
  2. Such application is approved and accepted by the Administrator.

#### Section 2

Plan Participants as defined in Article IIA.3 above shall become participants in the Plan upon written designation by the president of the health care institution with the approval of the Administrator and the Executive Vice Chancellor for Health Affairs.

#### Section 3

Residents and fellows who work additional hours for additional compensation at a System health facility or facility affiliated with the System, will be provided coverage as long as it meets the requirements of the Accreditation Council for Graduate Medical Education (including requirements of supervision and restrictions on allowable number of work hours), and the work has previously been identified as part of the resident's or fellow's general training program and fees generated for

professional services are deposited in a System health component practice plan, trust or affiliated foundation or certified not-for-profit corporation as approved by the Board.

## **ARTICLE V COVERAGE OF PARTICIPANTS**

### Section 1 -- Payments on Behalf of Participants

- A. Except as otherwise provided herein, the System will pay on behalf of each Participant, from monies in the Fund, all sums which the Participant shall become legally obligated to pay as damages because of a Liability Claim arising from the exercise of the Participant's employment, duties or training with the System as a Plan Participant performed in the practice of the Participant's profession, including service by the Participant as a member of a formal accreditation or similar professional board or committee of a hospital or professional society with respect to medical staff privileges, accreditation or disciplinary matters related to competency.
- B. Coverage for Plan Participants as defined in Article IIA. 3 above shall be limited to claims arising from assigned teaching activities and supervision of medical or dental students, residents and fellows performed within the course and scope of the Participants' assignments.
- C. Peer review performed at the request of a credentialing body or a professional society for the purpose of determining quality of care is covered provided that any funds generated from the review are deposited into the practice plan as required by the practice plan bylaws.
- D. Coverage for Plan Participants for Disciplinary and Licensing Actions shall be limited to legal representation of the Plan Participant by an attorney in a proceeding brought against the Plan Participant by the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners that arises from a covered activity, subject to the limitation in Section 3 D below and exclusions set forth in Section 4 below.

### Section 2 -- Defense of Lawsuits

The System shall have the right and duty to defend any claim or lawsuit against a Participant seeking damages because of such injury even if any of the allegations of the claim or lawsuit are groundless, false or fraudulent. The System may make such investigation and settlement of any claim or lawsuit, as it deems appropriate. The System shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the System's liability has been exhausted by payment of judgments or settlements, or monies in the Fund have been exhausted. The System has no duty to defend any claims not covered by the Plan.

### Section 3 -- Supplementary Payments

The System will pay from the Fund, in addition to the applicable limit of liability:

- A. All expenses incurred by the System in investigating and defending any lawsuit, all costs taxed against the Participant in any suit defended by the System, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the System has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the System's liability thereon;
- B. Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such lawsuit for an amount not in excess of the applicable limit of liability of this Plan, but the System shall have no obligation to apply for or furnish any such bonds.

- C. Reasonable, personal expenses incurred by a Participant at the System's request in assisting the System in the investigation or defense of any claim or lawsuit.
- D. Costs and expenses incurred in connection with the investigation and defense of a disciplinary and licensing action brought against the Participant; however the Plan will not pay more than \$25,000 in costs and expenses on behalf of a Participant for any single proceeding. Furthermore, the Plan will not pay more than \$100,000 for costs and expenses on behalf of a Participant for all such proceedings during an annual enrollment period.

#### Section 4 -- Exclusions

The System will not defend or indemnify a Participant for:

- A. Injury arising out of the performance by the Participant of any illegal, dishonest, fraudulent, criminal or malicious act or omission by the Participant unless Participant had no reasonable cause to believe his conduct was unlawful or illegal;
- B. Any claims or lawsuits alleging violation of state or federal laws relating to antitrust, fraud and abuse, anti-kickback, and illegal remuneration;
- C. Injury arising out of any sexual conduct of the Participant, including but not limited to sexual harassment and sexual relations, and including, without limitation, when intentionally or negligently done in connection with any professional service, act or omission, and regardless of whether such conduct is alleged to constitute negligence;
- D. Any injury caused while Participant is acting under the influence of alcohol or controlled substances or as a result of excessive use of therapeutic drugs;
- E. Any use, administration or prescription of any drug or pharmaceutical disapproved or not yet approved by the United States Food and Drug Administration for treatment for human beings; unless such use, administration or prescription has been approved by the Institutional Review Board of the health care institution where such drug or pharmaceutical was used, administered or prescribed;
- F. Any liability arising out of any professional or licensed service, act or omission outside the scope of Participant's employment with System;
- G. Injury for which the Participant may be held liable as a proprietor, stockholder, owner, member of the board of directors, governors or trustees, superintendent, executive officer, department head or medical director of any non-System owned or managed hospital, sanitarium, laboratory, clinic with bed and board facilities, infirmary, nursing home, foundation, surgical center, blood bank, commercial or any other business enterprise whether or not related to patient care and/or treatment; but, this exclusion shall not be applied to responsibilities which require the special expertise or training of a physician or surgeon and which are not principally executive or administrative in nature;
- H. Injury arising out of the rendering of or failure to render professional services by any other person for whose acts or omissions the Participant may be held liable as a member, partner, officer, director or stockholder of any professional partnership, association or corporation;
- I. Injury to any employee of the Participant arising out of and in the course of that person's employment by the Participant;
- J. Any obligation for which the Participant or any carrier acting as insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;

- K. Any liability or indemnity obligation assumed by the Participant under contract or agreement, except to the extent endorsed hereto;
- L. Injury to any employee (past or present) or applicant for employment or patient of the Participant based upon actual or alleged discrimination based on race, religion, color, sex, national origin, age, veteran status, or disability;
- M. Damage to property:
  - 1. owned, occupied or rented by a Participant;
  - 2. used by a Participant;
  - 3. in any Participant's care, custody or control; or
  - 4. over which a Participant is exercising physical control for any reason;
- N. Any fines, penalties, the return or withdrawal of fees or government payments, including any fines, penalties or costs assessed against a Participant by the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners as a result of a Disciplinary and Licensing Action;
- O. Any award of punitive or exemplary damages, treble or multiple damages;
- P. Any claim arising out of professional services which occurred prior to the date of this Plan;
- Q. Any claim arising out of professional services which occurred after the termination of faculty appointment, residency or student status with the System;
- R. Any claim arising out of professional services where the professional services were billed for by the Participant and were not deposited in a System health component practice plan trust or affiliated foundation or certified not-for-profit corporation as approved by the Board;
- S. Any claim arising out of professional services performed for professional fees, salaries or other compensation by a Plan Participant that is not part of the Plan Participant's employment with the System or training program; and
- T. Legal representation of a Plan Participant before the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners in a Disciplinary and Licensing Action arising out of any activity that is excluded under this Plan.
- U. Matters before the Texas Medical Board or other Texas regulatory agency, where, in the judgment of the Plan Administrator or a designee, a potential conflict of interest exists between the Participant and The University of Texas System or its institutions with regard to a potential or pending employment or administrative matter.

## **ARTICLE VI PARTICIPANTS' OBLIGATIONS**

### Section 1 -- Notice of Claim, Suit or Disciplinary and Licensing Action

The Participant shall give written notice to the System as soon as practicable of any claim made against the Participant. The notice shall identify the Participant and contain reasonably obtainable information with respect to the time, place and circumstances of the injury, including the names and addresses of the patient and of available witnesses. If a claim is made or a lawsuit is

brought against the Participant, the Participant shall immediately forward to the Administrator every demand, notice, summons, or other process received by the Participant in accordance with administrative procedures prescribed or approved by the Administrator.

The Participant shall give written notice to the System as soon as practicable of any disciplinary and licensing action taken against the Participant for which the Participant seeks coverage.

## Section 2 -- Cooperation by Participant

The Participant shall cooperate with the System and, upon the System's request, respond to discovery requests, attend meetings with Plan representatives or defense counsel, and attend mediations and trials. Further, the Participant shall cooperate with the System in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Participant because of injury or damage with respect to which coverage is afforded under this Plan. The Participant shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Participant shall not, except at Participant's own cost, and after informing the Administrator in writing, voluntarily make any payment, assume any obligation or incur any expense. The Participant shall not take any affirmative act or omission which may reasonably prejudice the defense of the claim or lawsuit. The taking of any affirmative act or omission which prejudices the defense of the claim or lawsuit shall entitle the System, but not obligate the System, to deny indemnity for any or all claims or lawsuit so prejudiced.

## Section 3 -- Nonassignability of Interest in Plan

The Participant's interest under this Plan is nonassignable. If any Participant shall die or be adjudged incompetent, this Plan shall thereupon terminate automatically as to such Participant, but shall indemnify and defend the legal representative of such Participant's estate as a Participant with respect to liability previously incurred and covered by this Plan.

## **ARTICLE VII LIMITS OF LIABILITY**

The Plan's liability shall not exceed the limits of liability stated below, and such stated limits shall be applied as follows:

1. A single "per claim" limit of liability shall be applicable to a Liability Claim regardless of the number of claimants or Plan Participants involved.
  - a. A single "per claim" limit of liability shall apply to claims involving injuries to more than one patient such as in obstetrical services to the mother and fetus/child or children, a single "per claim" limit of liability shall be applicable for all such claims and resulting lawsuits.
  - b. A single "per claim" limit of liability shall apply to all claims by both the patient and by the family members or the heirs or estate of such patient, including derivative claims, claims for loss of consortium, claims of beneficiaries under the Texas Wrongful Death Statute and claims for mental anguish and related injuries associated with bystander perception or reaction to the injuries sustained by the patient.
  - c. Plan coverage limits of liability will not be stacked, added or combined in any manner to increase liability under this Plan even though multiple claimants, multiple claims or injuries, multiple lawsuits, or annual periods may be involved within a Liability Claim.

2. The "annual aggregate for all claims for all Participants" is the maximum amount of money the Plan will pay to indemnify all Participants for all Liability Claims arising during any one Plan year.

### **Limits of Liability Schedule**

The following limits shall apply unless lower liability limits are set by law, in which case the lower limits shall apply:

Staff Physician - \$500,000.00 per Liability Claim (up to \$1,500,000.00 for all Liability Claims during any one enrollment period)

Resident and Fellows - \$100,000.00 per Liability Claim (up to \$300,000.00 for all Liability Claims during any one enrollment period)

Medical or Dental Student - \$25,000.00 per Liability Claim (up to \$75,000.00 for all Liability Claims during any one enrollment period)

Annual Aggregate - \$30,000,000.00 for all Liability Claims for all Participants during any one Plan year

Per Claim Limitation - Plan liability shall be limited to \$2,000,000.00 per claim regardless of the number of the claimants or Plan Participants involved in an incident.

The above limits of liability for Plan Participants, as defined in Article II A 1 - 4 only, may be exceeded upon determination of necessity and with the conditions of participation determined by the Plan Administrator or a designee.

## **ARTICLE VIII OTHER COVERAGE**

### Section 1 -- Coverage

When the Participant has other professional liability coverage which is stated to be applicable to the loss on an excess or contingent basis, the amount of the System's liability under this Plan shall not be reduced by the existence of such insurance.

### Section 2 -- Insurance

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

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

limit of liability under this Plan for such loss bears to the total applicable limit of liability of all valid and collectible insurance and the Plan against such loss.

## **ARTICLE IX MODIFICATION AND TERMINATION**

### Section 1 -- Rights of Participants

The Board may terminate the Plan at any time or from time to time, may amend, alter or suspend the Plan in whole or in part, as to all persons eligible to participate hereunder, or any class or groups of such persons, provided such action shall not impair any rights accrued prior to the effective date of such termination, amendments, alterations or suspension. Any such termination, amendments, alterations or suspension shall be effective on the date of the Board action unless a later date is specified by the Board. The Administrator shall promptly give notice of any such termination, amendment, alteration or suspension to all Participants affected thereby.

### Section 2 -- Termination in Event of Mandatory Participation in Other Indemnity or Insurance Programs

It is an express condition of the Plan that if the System is required by law, or by a collective bargaining or other agreement, to contribute toward another plan, program or scheme providing professional liability insurance or indemnity benefits for a class or group of Plan Participants, this Plan will terminate forthwith as to such class or group of Plan Participants.

### Section 3 -- Termination of Plan Participation

This Plan shall apply to a Participant only so long as such Participant remains qualified to participate in this Plan, provided that cessation of such participation shall not impair any rights accrued under this Plan prior to the effective date of such cessation of qualification.

### Section 4 -- Benefits Terminable

All coverage of a Participant under this Plan shall cease at once if the Participant engages in any business or performs any act which in the sole judgment of the Board is prejudicial to the interest of the System.

## **ARTICLE X ACTION AGAINST SYSTEM**

### Section 1 -- Conditions Precedent

No action shall lie against the System unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Plan, nor until the amount of the Participant's obligation to pay shall have been finally determined either by judgment against the Participant after actual trial, or by written agreement of the claimant and the Administrator.

### Section 2 -- Third-party Actions

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 Plan to the extent of the coverage afforded by this Plan. No person or organization shall have any right under this Plan to join the System as a party to any action against the Participant to determine the Participant's liability, nor shall the System be impleaded by the Participant or the Participant's legal representative. Bankruptcy or insolvency of the Participant or the Participant's estate shall not relieve the System of any of its obligation hereunder.

**ARTICLE XI  
ADMINISTRATION OF PLAN**

Section 1 -- Administration

The Plan shall be administered by the Administrator under direction of the Board.

Section 2 -- Administrative Regulations

The Administrator may from time to time prescribe regulations for the administration of this Plan provided that such regulations shall, in the opinion of the Administrator, be consistent with the provisions of this Plan as it may be amended from time to time pursuant to Article IX of this Plan. Pursuant to The University of Texas System Regents' Rules and Regulations, the Administrator may delegate in writing certain administrative, accounting, and investment functions of the Plan.

Section 3 -- Legal Interpretation

The text of this Plan shall control and the headings to the Articles, Sections and Paragraphs are for reference purposes only, and do not limit or extend the meaning of any of the Plan's provisions. The Plan shall be governed by and construed in accordance with the laws of the State of Texas. Any interpretation of the Plan by the Administrator shall be conclusive as between the System and its employees and students, participating Plan Participant, and retired or otherwise terminated Participants, employees and students, and may be relied upon by the System and all parties in interest.

Section 4 -- Counsel and Settlement Authority

Authority to employ counsel, approve attorney fees and expenses, and approve settlement of all claims, including litigation, shall rest with the Administrator, or the Administrator's delegate, subject to any additional approval required by the Board of Regents of the System pursuant to any applicable policies of the System.

**ARTICLE XII  
GENERAL PROVISIONS**

Section 1 -- Subrogation

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

Section 2 -- Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Plan, or estop the System from asserting any right under the terms of this Plan; nor shall the terms of this Plan be waived or changed, except by written waiver or amendment duly approved by the Board.

Section 3 -- Entirety of Agreement

This Plan embodies all agreements existing between any and all persons and the System or any of its agents relating to this Plan and the coverage afforded hereunder.

Section 4 -- Employment Noncontractual

The System may terminate the appointment, internship, residency, fellowship, or student-school relationship of any Participant as freely and with the same effect as if this Plan were not in operation.

#### Section 5 -- Actions Against Participant

This Plan or its operations shall not in any way affect any claim or cause of action by the System against a Participant for indemnity or contribution arising out of or incident to any Liability Claim.

#### Section 6 -- Communications

All notices, reports and statements given, made, delivered or transmitted to a Participant shall be deemed duly given, made, delivered or transmitted when delivered to the Participant, or when mailed by first-class mail, postage prepaid, and addressed to the Participant at the address last appearing on the books of the System. A Participant who changes address shall forthwith give written notice to the System of such change. Written directions, notices and other communications from participants to the System shall be mailed by first-class mail, postage prepaid, or delivered as follows:

The University of Texas System  
Office of General Counsel  
Ashbel Smith Hall  
201 West 7th Street  
Austin, Texas 78701

**Attention:** Vice Chancellor and General Counsel

#### Section 7 -- Use of Pronouns

Whenever used in this Plan, masculine pronouns shall include both men and women unless the context indicates otherwise.

#### Section 8 -- Effective Date

The revised Plan shall be effective September 1, 2010.

