

## DENTISTS PROFESSIONAL LIABILITY INSURANCE CLAIMS MADE COVERAGE

THIS POLICY PROVIDES CLAIMS MADE COVERAGE. THE RETROACTIVE DATE FOR YOUR CLAIMS MADE COVERAGE IS THE FIRST EFFECTIVE DATE OF COVERAGE WITH US, UNLESS WE MUTUALLY AGREE ON A DIFFERENT DATE. THERE IS NO COVERAGE FOR INCIDENTS, OCCURRENCES OR ALLEGED WRONGFUL ACTS THAT TOOK PLACE PRIOR TO THE RETROACTIVE DATE STATED IN YOUR POLICY.

DURING THEIR INITIAL YEARS, CLAIMS MADE POLICIES GENERALLY CHARGE LOWER RATES THAN OCCURRENCE POLICIES. RATES FOR CLAIMS MADE POLICIES WILL INCREASE OVER TIME. YOU MAY SEE SUBSTANTIAL INCREASES, INDEPENDENT OF OVERALL RATE INCREASES, UNTIL THE CLAIMS MADE RELATIONSHIP REACHES MATURITY.

THIS POLICY WILL COVER ONLY CLAIMS ACTUALLY MADE AGAINST YOU, OR DENTAL INCIDENTS PROPERLY REPORTED TO US, WHILE THE POLICY REMAINS IN EFFECT. ALL COVERAGE UNDER THE POLICY CEASES UPON THE POLICY'S TERMINATION, EXCEPT FOR BASIC EXTENDED REPORTING PERIOD COVERAGE. YOU MAY ALSO PURCHASE, FOR AN ADDITIONAL CHARGE, SUPPLEMENTAL EXTENDED REPORTING PERIOD COVERAGE.

THE LENGTH OF BASIC EXTENDED REPORTING PERIOD COVERAGE IS SIXTY (60) DAYS FOR CLAIMS NOT PREVIOUSLY REPORTED TO US.

SUPPLEMENTAL EXTENDED REPORTING PERIOD COVERAGE MAY BE PURCHASED BY ENDORSEMENT FOR A PERIOD OF UNLIMITED DURATION. THE PREMIUM CHARGE IS DISPLAYED ON YOUR POLICY DECLARATIONS.

In consideration of the payment of the premium and in reliance on all statements made and information furnished to us in the Application, which is attached to and becomes part of this Policy, we agree to this Policy as a contract with you.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section III. WHO IS AN INSURED.

Other words and phrases that are enclosed in quotations have special meaning. Refer to SECTION VI. DEFINITIONS.

### I. COVERAGE AGREEMENTS

A. We will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as "damages" because of "bodily injury" arising out of a "dental incident", provided that:

1. The "dental incident" occurs on or after the Retroactive Date shown in the Declarations and prior to the end of the "policy period"; and
2. The "claim" for "damages" because of "bodily injury" is first made against any insured, in writing, in accordance with Paragraph 3. below, during the policy period or any Extended Reporting Period we provide under Section VIII – Extended Reporting Period Option.

3. A claim by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

- a. When notice of such claim is received and recorded by any insured or by us, whichever comes first; or
- b. When we make a settlement in accordance with Paragraph A above.

B. We have the right and duty to defend the insured against any "claim" to which this insurance applies, even if the allegations in such "claim" are groundless, false, or fraudulent. However, we have no duty to defend the insured against any "claim" to which this insurance does not apply.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section V. **SUPPLEMENTARY PAYMENTS.**

- C. We may solicit settlement offers on any "claim". No offer to settle a "claim" will be accepted unless we have the insured's consent. However, if the insured withholds consent to a settlement that we find to be reasonable and that is acceptable to the claimant, we may request that the matter be arbitrated by the National Society of Dental Practitioners or another local arbitrator by agreement between you and us. The arbitrator will decide whether consent has been unreasonably withheld. The arbitrator's decision will be binding. If the arbitrator rules in our favor, the ruling will be deemed to be your consent where permitted by law. Each party will pay incurred expenses, except we will bear the expense of the arbitrator.
- D. The amount we will pay for "damages" is limited as described in Section IV. **LIMITS OF INSURANCE.** We will not be obligated to defend any "claim" after the Limits of Insurance have been exhausted by the payment of judgments or settlements.
- E. This insurance applies to "damages" because of "bodily injury" arising out of a "dental incident" that occurs anywhere in the world, provided that the "claim" is brought within the United States of America, its territories or possessions, Puerto Rico, or Canada.
- F. A "claim" for "damages" arising out of one or a series of related "dental incidents" to the same person, including "damages" claimed by any person or organization for care, loss of services, or death resulting at any time from "bodily injury", will be considered a single "claim" and be deemed to have been made at the time the first such "claim" is made against any insured. If the first such "claim" is made prior to the effective date of this policy, this insurance will not apply to that "claim" nor to any subsequent related "claim" made during this "policy period" or reported during any applicable Extended Reporting Period.

## II. EXCLUSIONS

This insurance does not apply:

- a. To "bodily injury" arising out of a "dental incident" which occurred prior to the inception date of this policy if an insured knew, or reasonably should have known, that the "dental incident" could result in, or had already resulted in, a "claim".
- b. To "bodily injury" arising out of any dishonest, fraudulent, criminal, or knowingly wrongful act,

error, or omission committed by or at the direction of any insured.

- c. To actual, alleged or threatened sexual abuse, sexual molestation or sexual exploitation including, but not limited to, any verbal or non-verbal communication, behavior or conduct, whether intentional or not:
  - (1) By any insured, including the negligent employment, training, investigation, supervision, reporting to proper authorities or failure to report, or retention of a person for whom any insured is or ever was legally responsible, or
  - (2) Of any person while they are receiving services from, or are in the care of, any insured for any reason.
- d. To "bodily injury" to your employee arising out of and in the course of employment by you or to any obligation to share "damages" with or repay someone else who must pay "damages" because of such "bodily injury".
- e. To any obligation of the insured under any workers' compensation, unemployment compensation or disability benefits law or under any similar law.
- f. To "bodily injury" arising out of libel, slander, invasion of any right of privacy, false imprisonment, discrimination and/or violation of the Health Insurance Portability or Accountability Act.
- g. To any actual or alleged wrongful hiring or employment practice, humiliation, harassment, misconduct or discrimination of any kind by any insured, based on factors including but not limited to race, color, creed, national origin, physical or other disability, marital status, age, gender or sexual orientation. This includes creation of a work environment that is intimidating, hostile or offensive.
- h. To the liability of others assumed by an insured under any contract or agreement.
- i. To "bodily injury" for which any insured may be held liable as a proprietor, administrator, officer, stockholder, or member of the board of directors, trustees or governors of any hospital, sanitarium, clinic with bed and board facilities, nursing home, laboratory or other enterprise not named in the Declarations.
- j. To a "dental incident" which involves the use of intravenous or intramuscular injections or "general anesthesia".

This exclusion does not apply:

- (1) When the intravenous or intramuscular injections or "general anesthesia" are

administered by a licensed provider of anesthetic services, other than the insured; or

- (2) To the use of intravenous or intramuscular injections to render "conscious sedation" in emergency situations where a life threatening or potential permanent injury exists.
- k. To "bodily injury" arising out of the use, quantities and/or qualities of Sargenti Paste.
- l. To "bodily injury" arising out of the administration of chloral hydrate; or to "bodily injury" arising out of the administration of Halcion, Triazolam or other hypnotic drugs to produce an unconscious state.
- m. To "bodily injury" arising out of a "dental incident" which occurs while an insured's professional license as required by law is suspended, expired, canceled, revoked, or otherwise invalid.
- n. To "bodily injury" arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances by anyone without the appropriate license, registration or certification.
- o. To "bodily injury" arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances that are not approved for use in the treatment of human beings by the United States Food and Drug Administration.
- p. To "bodily injury" arising out of the use of x-ray apparatus for therapeutic treatment.
- q. To "bodily injury" arising from an insured's actions while on active duty in the United States Military Service or Reserve, National Guard unit and/or Public Health Service.
- r. Resulting in any "damages", in whole or in part for any of the following:
  - (1) The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time;
  - (2) Any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  - (3) Any "claim" or "suit by or on behalf of a government authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

s. Nuclear Exclusion

1. This insurance does not apply:

A. Under any Liability coverage, to "bodily injury" or "property damage":

- 1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- 2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:

- 1) The "nuclear material" a) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured or b) has been discharged or dispersed therefrom;
- 2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

- 3) The "bodily injury" or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion 3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this exclusion:

"hazardous properties" include radioactive, toxic or explosive properties.

"nuclear material" means "source material", "special nuclear material" or "by-product material".

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"waste" means any waste material a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"nuclear facility" means:

- a. Any "nuclear reactor";
- b. Any equipment or device designed or used for 1) separating the isotopes of uranium or plutonium, 2) processing or utilizing "spent fuel", or 3) handling, processing or packaging "waste";
- c. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any

combination thereof, or more than 250 grams of uranium 235;

- d. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

- t. To "bodily injury" expected or intended by any insured or by any person for whose acts, errors or omissions an insured may be held liable.
- u. To "bodily injury" arising out of the rendering or failure to render any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy.

### III. WHO IS AN INSURED

- a. If you are designated in the Declarations as:
  - (1) An individual, you are an insured, but only with respect to the conduct of your "dental business";
  - (2) A partnership or joint venture, you, your members and your partners are insureds, but only with respect to the conduct of your "dental business";
  - (3) A limited liability company, you and your members are insureds, but only with respect to the conduct of your dental business;
  - (4) A "dental corporation" or an organization other than a partnership, joint venture, or limited liability company, you are an insured but only with respect to the conduct of your "dental business". Your executive officers, directors and shareholders are insureds, but only with respect to the conduct of your "dental business".
- b. Each of the following is also an insured:
  - (1) Your employees, other than executive officers, employed dentists, physicians, other medical doctors or nurse anesthetists, but only for acts within the scope of their employment by you or while

performing duties related to the conduct of your "dental business"; and

- (2) Temporary substitute dentists (locum tenens), but only for a "dental incident" which occurred while working on your behalf and then only if you have notified us and received our approval to add the locum tenens dentist by endorsement prior to the "dental incident".

No person, "dental corporation" or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### IV. LIMITS OF INSURANCE

a. Each Dental Incident:

Subject to b. below, and regardless of the number of insureds or "claims" made or "suits" brought, the most we will pay for "damages" for all "bodily injury" arising out of any one "dental incident" is the Limit of Insurance stated in the Declarations as applicable to Each Dental Incident.

b. Aggregate:

The most we will pay for the sum of all "damages" because of "bodily injury" to which this insurance applies is the Limit of Insurance shown in the Declarations as Aggregate.

- c. The Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than twelve months, starting with the beginning of the "policy period" shown in the Declarations, unless the "policy period" is extended after issuance for an additional period of less than twelve months. In that case, the additional period will be considered part of the last preceding period for purposes of determining the Limits of Insurance.

- d. If this coverage form and any other coverage form or policy issued by us to an insured apply to the same "dental incident", then the maximum aggregate limit of insurance under all applicable coverage forms or policies issued by us shall not exceed the highest applicable limit of insurance under any one coverage form or policy.

#### V. SUPPLEMENTARY PAYMENTS

- A. We will pay, with respect to any "claim" we investigate or settle or any "suit" against an insured we defend:

1. All expenses we incur, all costs taxed against the insured in the "suit", and all interest on the full amount of any

judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court that part of the judgment which does not exceed the applicable Limit of Insurance.

2. The cost of appeal bonds required in any such "suit", and the cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. We do not have to furnish these bonds.
3. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of any "claim" or "suit", including actual loss of earnings up to \$500 per day for the insured's attendance at hearings or trials.

These payments will not reduce the Limits of Insurance.

- B. Subject to the terms and limits listed in each paragraph below, we will provide the following coverages in addition to the Limits of Insurance:

##### 1. Good Samaritan Coverage

- a. We will pay for "claims" arising out of voluntary emergency treatment, other than "professional services", provided by you at the scene of an accident or other emergency located outside of a hospital or other medical facility having proper and necessary medical equipment, provided that:

- (1) The emergency treatment is rendered after the Retroactive Date shown in the Declarations and prior to the end of the "policy period"; and

- (2) The "claim" is made during the "policy period" or any Extended Reporting Period we provide as described in Section VIII. **EXTENDED REPORTING PERIOD.**

- b. The most we will pay under this coverage is \$10,000 for all "damages" and expenses, regardless of the number of persons injured or the number of "claims" made.

##### 2. Property Damage Coverage

- a. We will reimburse your patient for "property damage" sustained while on your office premises for the purpose of receiving "professional services", provided that:

- (1) The "property damage" occurs during the "policy period"; and
- (2) You report the "property damage" to us as soon as practicable during the "policy period" or any Extended Reporting Period we provide as described in Section VIII. EXTENDED REPORTING PERIOD.

b. The most we will pay under this coverage is \$500 per "property damage" incident.

### 3. Medical Payments Coverage

a. We will pay for reasonable and necessary medical expenses arising out of "bodily injury" to your patient while on your premises for the purpose of receiving "professional services" provided that:

- (1) The expenses are incurred and reported to us within one year of the date of the "bodily injury"; and
- (2) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments, regardless of fault, up to a maximum limit of \$1,000 per injured person and \$10,000 in total for the "policy period". We will pay reasonable expenses for:

- (1) First aid at the time of "bodily injury";
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

c. We will not pay you under Medical Payments Coverage for dental services required to correct "professional services" provided by the insured.

### 4. License Protection Coverage

a. We will pay for reasonable legal expenses incurred by us to defend you in a proceeding brought by a state licensing board or governmental body. The proceeding must be related

to a "dental incident" otherwise covered by this insurance.

b. You must provide us with written notice of the proceeding as soon as practicable.

c. The most we will pay under this coverage is \$50,000.

### 5. Peer Review Committee Coverage

a. We will pay for reasonable legal expenses incurred by us to investigate and defend a legal action brought against you arising out of your service on a peer review committee, utilization review committee, or similar committee associated with a Health Maintenance Organization (HMO), Preferred Provider Organization (PPO), Independent Practice Association (IPA), or American Dental Association and/or its components provided that:

(1) The service on the committee occurred after the Retroactive Date shown in the Declarations and prior to the end of the "policy period"; and

(2) We receive notice of the legal action as soon as practicable during the "policy period" or any Extended Reporting Period we provide as described in Section VIII. EXTENDED REPORTING PERIOD.

b. The most we will pay under this coverage is \$50,000.

### VI. DEFINITIONS

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

"Claim" means a "suit" or demand made by or for the injured person for "damages" because of alleged "bodily injury" to which this insurance applies.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof. For purposes of this insurance, the use of nitrous oxide/oxygen and/or oral pre-medication, used in an accepted therapeutic dose to induce a sedative

effect or to reduce anxiety, is not considered "conscious sedation".

"Damages" means all the sums that the insured becomes legally obligated to pay. Damages do not include:

1. Administrative, civil or criminal penalties, fines or sanctions;
2. Payment for "professional services", including the waiver, return, withdrawal or reduction of fees paid to the insured or payment by the insured of fees for "professional services" provided by others; or
3. Punitive or exemplary damages.

"Dental business" means operations or activities on premises used by you in the practice of your dental profession. "Dental business" includes operations necessary or incidental to those premises.

"Dental corporation" means a professional service corporation organized under the corporation law of your state for the purpose of performing "professional services".

"Dental incident" means any act, error or omission in the rendering of or failure to render "professional services" by:

1. An insured; or
2. Any person for whose acts, errors or omissions you are held legally liable.

Any such act, error or omission together with all related acts, errors or omissions in the furnishing of "professional services" to any one person will be considered one "dental incident".

"General anesthesia" includes deep sedation and means a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

"Policy period" means the period starting on the effective date of this policy as shown in the Declarations. This period ends on the earlier of the expiration date shown in the Declarations or on the effective date of cancellation of this policy.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, lead, asbestos, acids, alkalis, chemicals, mercury and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed, and liquid or solid material carried off with groundwater in sewers or drains;

"Professional services" means dental services provided to others by a person trained and qualified to perform those services pursuant to a valid and unrestricted dental, dental hygiene, or dental assisting certificate or license. "Professional services" do not include participation by any person in the third party approval or denial of dental or other healthcare benefits or as a consultant.

"Property damage" means partial or total physical injury to tangible property, including resulting loss of use of that property. "Property damage" also means loss of use of tangible property that is not physically injured. "Property damage" includes all forms of radioactive contamination of property.

"Suit" means a civil proceeding in which "damages" because of "bodily injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such "damages" are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent.

## VII. CONDITIONS

### A. Duties In The Event Of A "Dental Incident", "Claim", Or "Suit"

1. If an insured becomes aware of a "dental incident" which may result in a "claim", you must notify us in writing as soon as practicable. To the extent possible, notice should include:
  - a. The identity of any injured persons and witnesses as well as a complete and detailed description of the "dental incident" and actual or alleged "bodily injury"; and
  - b. The date on which the alleged "dental incident" took place and the circumstances by which the insured first became aware of the "dental incident".Any subsequent "claim" made against an insured arising out of a "dental incident" as reported above will be considered to have been first made at the time the written report of the "dental incident" was made.
2. If "claim" is made or "suit" is brought against an insured, you must:
  - a. Immediately record the specifics of the "claim" or "suit" and the date received; and

b. Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.

3. You and any other involved insured must:
  - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
  - b. Authorize us to obtain records and other information;
  - c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit";
  - d. Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of "bodily injury" or "damages" to which this insurance may also apply.
4. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
5. A late notice of "claim", "suit" or "dental incident" will not invalidate coverage under this condition, provided that:
  - a. it was not reasonably possible for the insured to give notice sooner; and
  - b. notice was given as soon as possible.

#### **B. Legal Action Against Us**

1. No person or entity has a right under this insurance:
  - a. To join us as a party or otherwise bring us into a lawsuit asking for "damages" from an insured; or
  - b. To sue us unless all of the policy terms have been fully complied with.
2. A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured, but we will not be liable for "damages" that are not payable under the terms of this policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

#### **C. Other Insurance**

1. If other valid and collectible insurance is available to an insured for "damages" we cover under this insurance, then this insurance is excess over any other such insurance. When this insurance is excess over other insurance, we will have no duty to defend against any "suit" if any other insurer has a duty to defend against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the rights of the individual dentist against all those other insurers.

When this insurance is excess over other insurance, we will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.

If other insurance is also excess, we will share the remaining loss with that other insurance.

2. If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### **D. Transfer Of Rights Of Recovery Against Others To Us (Subrogation)**

If an insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

#### **E. Assignment**

Your rights and duties under this insurance may not be transferred. If you die or are judged incompetent, this insurance will cover your legal representative as an insured with respect to a "dental incident" covered by this insurance.

#### **F. Application**

By accepting this policy, you agree that the

statements and representations made in the application, which is attached to and becomes part of this policy, are true and are the basis for acceptance of the risk assumed by us. In the event that any material statement or representation made in the application is untrue, this policy in its entirety will be void at inception.

#### **G. Sole Agent**

The first Named Insured shown in the Declarations will act on behalf of all insureds with respect to giving and receiving notice of cancellation, accepting any endorsement issued to form a part of this policy, and receiving return premium, if any. The first Named Insured must notify us within 30 days of any change which might affect the terms of this insurance, including a change in members, partners, officers, directors, stockholders, professional employees, or dental specialty.

#### **H. Insolvency**

Bankruptcy or insolvency of the insured or the insured's estate will not relieve us of any of our obligations under this insurance.

#### **I. Premium**

All premiums for this policy shall be computed in accordance with our rates, rules and rating plans applicable to this insurance.

### **SECTION VIII. EXTENDED REPORTING PERIOD**

**A.** We will provide one or more Extended Reporting Periods, as described below, if

1. This insurance is cancelled, non-renewed, or terminated either by us or by you for any reason other than non-payment of premium; or
2. We renew or replace this Dentists Professional Liability Insurance with insurance that:
  - a. Has a Retroactive Date later than the Retroactive Date shown in the Declarations of this insurance; or
  - b. Is not provided on a Claims Made basis; or
  - c. Offers coverage with lower limits, reduced coverage, a higher deductible, a new exclusion or other change that results in coverage less favorable to you.
3. If coverage is terminated, we will notify you in writing within 30 days of its termination date of the Basic Extended Reporting Period coverage provided

automatically as described below. We will also notify you of the availability of Supplemental Extended Reporting Period Coverage.

- a. However, if we have provided claims made coverage to you for less than one year and we terminate coverage because of nonpayment or fraud, we do not have to provide you with this notification.
- b. If you choose to purchase Supplemental Extended Reporting Period coverage, you must provide us with your written acceptance at the later of:
  - i. 60 days from the effective date of termination of coverage; or
  - ii. 30 days from the date we mail you notice of the availability of Extended Reporting Period coverage as described above.

**B.** The Extended Reporting Period provides an extended period of time to report "claims" covered by this policy, which arise out of "dental incidents" taking place on or after the Retroactive Date shown in the Declarations and prior to the end of the "policy period".

The Extended Reporting Period does not change the coverage, extend the "policy period", or reinstate or increase the Limits of Insurance. Once in effect, Extended Reporting Periods may not be cancelled.

The Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance you purchase which replaces this Dentists Professional Liability Insurance in whole or part, or that would be covered but for the exhaustion of the amount of insurance applicable to such "claims".

- C.** A Basic Extended Reporting Period is automatically provided without additional charge. The period begins at the end of the "policy period" and lasts for 60 days with respect to "claims" first made against the insured during the "policy period" but not previously reported to us.
- D.** A Supplemental Extended Reporting Period of unlimited duration is available, but only by endorsement and for an additional charge. This supplemental period begins at the end of the "policy period" and applies to "claims" first made against the insured during the Supplemental Extended Reporting Period.

The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due. We will determine the additional premium in accordance with our

rules and rates. However, there will be no charge for the Supplemental Extended Reporting Period if, during the "policy period", you:

1. Die;
2. Become totally and permanently disabled; or
3. Retire after age 55 and have been insured by the National Society of Dental Practitioners Risk Purchasing Group for five consecutive years.

In consideration of the payment of the premium, in reliance upon the statements in the application and subject to all of the terms of this policy, the Company agrees with the Named Insured as follows:

## NOTICE

**THIS IS A "CLAIMS MADE" POLICY. EXCEPT AS MAY BE PROVIDED HEREIN, COVERAGE IS GENERALLY LIMITED TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD AND ARISING FROM A "DENTAL INCIDENT" WHICH OCCURS SUBSEQUENT TO THE RETROACTIVE DATE AND PRIOR TO THE EXPIRATION DATE OF THE POLICY STATED IN THE DECLARATIONS.**

### DENTISTS PROFESSIONAL LIABILITY INSURANCE

#### I. COVERAGE AGREEMENTS

The Company will pay on behalf of the Insured those sums that the Insured becomes legally obligated to pay as damages because of injury to which this insurance applies caused by a **Dental Incident**, provided that:

- (a) the **Dental Incident** occurs subsequent to the Retroactive Date and prior to the expiration date of the policy stated in the Declarations; and
- (b) the **claim** for such **Dental Incident** is first made against the Insured and reported to the Company during the policy period, including any extended reporting period.

The Company shall have the right and duty to defend any **claim** against the Insured seeking damages to which this insurance applies. The Company may make such investigation and, with the written consent of the Insured, which shall not be unreasonably withheld, settlement of any **claim** as it deems expedient. If the Insured shall refuse to consent to any settlement recommended by the Company and acceptable to the claimant and shall elect to contest the **claim**, then the Company's liability shall not exceed the amount for which the **claim** could have been settled at the time of the Insured's refusal.

The Company shall not be obligated to pay any judgment or settlement to defend any **claim** after the applicable limit of the Company's liability has been exhausted by the payments of judgments or settlements.

#### II. EXCLUSIONS

This insurance does not apply:

- (a) to any **injury** caused by a **Dental incident**, which occurs prior to the inception, date of this policy which the insured knew or reasonably could expect would give rise to a **claim** under this policy.
- (b) to **injury** arising out of any criminal act committed by the Insured or by any person for whose acts the Insured may be held liable.
- (c) to **injury** for which the Insured may be held liable as a proprietor, administrator, officer, stockholder, or member of the board of directors, trustees or governors of any hospital, sanitarium, clinic with bed and board facilities, nursing home, laboratory or business enterprise other than the partnership, association or corporation described in the Declarations as an Insured.
- (d) to **injury** to any employee of the Insured arising out of and in the course of that person's employment by the Insured or any obligation of the Insured to indemnify or contribute with another because of damages arising out of such **injury**.
- (e) to any obligation for which the Insured or any carrier acting as his insurer may be held liable under any workers' compensation, unemployment compensation or disability benefits law or under any similar law.

- (f) to **injury** arising out of professional services rendered to patients who have been treated with general anesthetics, intravenous sedatives, intramuscular sedatives, or any form or method of sedation or anesthesia that produces general anesthesia, deep sedation, or unconscious sedation.
- (g) to **injury** arising out of the administering of an anesthetic agent by any employee of the Insured, other than a licensed dentist.
- (h) to **injury** arising out of acts of dishonesty, misrepresentation, or fraud.
- (i) to **injury** arising out of libel, slander, invasion of any right of privacy or any unlawful discrimination.
- (j) to the liability of others assumed by the Insured under any contract or agreement.
- (k) to the liability of the Insured for administrative penalties, fines, punitive or exemplary damages.
- (l) to the liability of the Insured for the rendering or failure to render professional services as an oral and maxillofacial surgeon.
- (m) to **injury** arising out of performance of professional services by an Insured while any license therefor, required by law, is suspended or after such license expires, is canceled or revoked.
- (n) to **injury** arising out of sexual molestation, sexual abuse or sexual misconduct of any kind.
- (o) to **injury** arising out of the use or qualities of Sargenti Paste.
- (p) to **injury** expected or intended by any Insured or by any person for whose acts, errors or omissions the Insured may be held liable.
- (q) to **injury** arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances by the Insured or by any person for whose acts, errors or omissions the Insured may be held liable, without the appropriate license, registration or certification.
- (r) to **injury** arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances that are not approved for use in the treatment of human beings by the United States Food and Drug Administration.

### III. WHEN CLAIM IS TO BE DEEMED FIRST MADE

A **claim** will be deemed first made on the earlier of:

- (a) when the Insured receives written notice of a **claim**; or
- (b) when the Company receives written notice from the Insured of a **Dental Incident**, which he reasonably expects, may give rise to a **claim** covered hereunder. All **claims** whenever made arising from such **Dental Incident** shall be deemed to have been first made during this policy period.

### IV. PERSONS INSURED

Each of the following is an Insured under this policy:

- (a) Each individual named in the Declarations as Insured;

- (b) The partnership, association or corporation described in the Declarations and any member, partner, officer, director or stockholder of such partnership, association or corporation with respect to a **Dental Incident** by an individual Insured or, any person other than a dentist not insured under this policy acting under an individual Insured's personal direction, control or supervision.

## V. LIMITS OF LIABILITY

- (a) Each **Dental Incident**:

Regardless of the number of Insureds or **claims** made or suits brought, the total liability of the Company for all **injury** arising out of any one **Dental Incident** shall not exceed the limit of liability stated in the Declarations as applicable to each **Dental Incident**.

For the purposes of determining the limit of the Company's liability, all **injury** arising from continuous, repeated or related acts, errors or omissions shall be deemed to arise from a single **Dental Incident**.

- (b) Aggregate:

Subject to the above provisions regarding each **Dental Incident**, the total liability of the Company for all damages because of injury to which this insurance shall not exceed the limit of liability stated in the Declarations as "aggregate".

- (c) Multiple Policies:

If this coverage form and any other coverage form or policy issued by the Company to the Insured apply to the same **Dental Incident**, then the maximum aggregate limit of liability under all applicable coverage forms or policies issued by the Company shall not exceed the highest applicable limit of liability under any one coverage form or policy.

## VI. POLICY TERRITORY

The insurance applies to damages because of **injury** caused by a **Dental Incident**, which occurs anywhere in the world, provided the claim, or suit for such damages is brought within the United States of America, its territories or possessions or Puerto Rico.

## VII. SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company, all costs taxed against the Insured in any suit defended by the Company, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the Insured for first aid to others at the time of a **Dental Incident** for injury to which the policy applies; not to exceed \$500 per Dental Incident.
- (d) reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defense of any **claim** or suit, including actual loss of earnings not to exceed \$500 per day for the Insured's attendance at hearings or trials.

## VIII. DEFINITIONS

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

“**Claim**” means an assertion of the right to money or other benefits, and includes a suit or an arbitration proceeding to which the Insured is required to submit or to which the Insured has submitted with the Company’s consent.

“**Dental Incident**” means any act, error or omission in the rendering or failure to render professional services as a dentist or as a member of a formal accreditation standards review board or similar professional board or committee.

“**Injury**” means bodily injury; sickness; or disease sustained by any person, including death at any time resulting therefrom.

## IX. CONDITIONS

A. **PREMIUM:** All premiums for this policy shall be computed in accordance with the Company’s rules, rating plans, premiums and minimum premium applicable to the insurance afforded herein.

B. **INSURED’S DUTIES IN THE EVENT OF A DENTAL INCIDENT, CLAIM OR SUIT:**

(1) Upon the Insured’s learning of an actual or alleged **Dental Incident** or **injury** resulting therefrom, written notice containing particulars sufficient to identify the Insured and all reasonably obtainable information with respect to the time, place and circumstances of such **Dental Incident** and the name and address of the injured person shall be given by or for the Insured to the Company or any of its authorized agents as soon as practicable.

(2) If **claim** is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons, or other process received by him/her or his/her representative.

(3) The Insured, and each of its employees, shall cooperate with the Company and, upon the Company’s request, assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of **injury** or damage with respect to which insurance is afforded under this policy. The Insured, and any of its members, partners, officers, directors, shareholders, and employees that the Company deems necessary, shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his/her own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid to others at the time of the accident.

C. **ACTION AGAINST COMPANY:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until the amount of the Insured’s obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

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

D. **OTHER INSURANCE:** If the Insured has other insurance against liability or expense to which this policy applies, then this policy shall be excess of all such valid and collectible insurance available to the Insured.

E. **SUBROGATION:** In the event of any payment under this policy, the Company shall be subrogated to all the

Insured's rights of recovery therefor, against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.

- F. **CHANGES:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this policy or stop the Company from asserting any right under the terms of this policy; nor shall the terms of the policy be waived or changed, except by endorsement issued to form a part of this policy.
- G. **ASSIGNMENT:** The interest hereunder of any Insured is not assignable. If the Insured shall die or be adjudged incompetent, this insurance shall thereupon terminate for such person but shall cover the Insured's legal representative as the Insured with respect to any **Dental Incident** covered by the policy.
- H. **CANCELLATION:** This policy may be canceled by the Named Insured by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the Company by mailing to the Named Insured at the address shown in this policy, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.
- If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected, or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- I. **APPLICATION:** By acceptance of this policy, the Named Insured agrees that the statements in the application are his/her agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements between himself/herself and the Company or any of its agents relating to this insurance.
- J. **SOLE AGENT:** The Insured first named in the Declarations shall act on behalf of all Insureds with respect to giving and receiving notice of cancellation, accepting any endorsement issued to form a part of this policy, and receiving return premium, if any; and is charged with the responsibility for notifying the Company within 30 days of any changes of members, partners, officers, directors, stockholders, or employees or any other change which might affect the insurance hereunder.
- K. **INSOLVENCY:** The insolvency or bankruptcy of an Insured shall not release the Company from the payment of damages for **injuries** sustained or loss suffered by any person or persons as the result of a **claim** made under the policy and occurring while this policy is in full force and effect; and in case execution against an Insured is returned unsatisfied in an action brought by the injured person or his/her personal representative in case of a **claim** for death because of such insolvency or bankruptcy, then an action may be maintained by the injured person, or his/her personal representative against the Company under the terms of the policy for the amount of judgment in said action, not exceeding the amount of the policy.

*Elizabeth M. Tuck*

Secretary

*John King*

President