



**PSYCHOLOGISTS AND OTHER MENTAL HEALTH COUNSELORS
DISCIPLINARY PROCEEDINGS DEFENSE COVERAGE POLICY**

NOTICE: THIS POLICY PROVIDES COVERAGE FOR DISCIPLINARY PROCEEDINGS FIRST BROUGHT AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER IN ACCORDANCE WITH SECTION V. OF THIS POLICY.

THE INSURER SHALL PROVIDE COVERAGE FOR DEFENSE EXPENSES FOR ANY DISCIPLINARY PROCEEDING FOR WHICH COVERAGE IS PROVIDED UNDER THIS POLICY.

PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR LEGAL OR INSURANCE ADVISOR.

In consideration of the payment of the premium and in reliance upon the application submitted in connection with the underwriting of this Policy, which shall be deemed to be attached to, incorporated into, and made a part of this Policy, the **Insurer** and the first **Named Insured**, on behalf of all **Insureds**, agree as follows:

I. INSURING AGREEMENTS

A. Defense Expenses for Proceedings

The **Insurer** will pay on behalf of the **Insured**, subject to the applicable Limit of Liability, **Defense Expenses** only, which arise from a **Disciplinary Proceeding** first brought during the **Policy Period** and reported to the **Insurer** in accordance with Section V. of this Policy.

II. DEFINITIONS

A. “Defense Expenses” means reasonable and necessary fees, costs, charges or expenses resulting from the investigation or defense of a **Disciplinary Proceeding**.

Defense Expenses do not include:

- (a) amounts incurred prior to the date a **Disciplinary Proceeding** is first brought, and reported to the **Insurer**;
- (b) compensation or benefits of any natural person **Insured** or any overhead expenses of any **Insured** organization;
- (c) fines or penalties;
- (d) damages or loss, including punitive or exemplary damages;
- (e) taxes; or
- (f) any costs, fees or expenses to comply with a determination or decision made by a regulatory body, licensing board, agency or other organization in a **Disciplinary Proceeding**.

- B.** “**Disciplinary Proceeding**” means any hearing or disciplinary action before any regulatory body, licensing board, agency or other organization responsible for monitoring, licensing or regulating the **Insured’s** conduct as respects the rendering of **Professional Services**, but only if such hearing or action is a direct result of a **Professional Incident**.
- C.** “**Insured(s)**” means the individual, partnership, or corporation designated as the **Named Insured** in Item 1(a) of the Declarations and the individual(s) designated as Additional **Named Insureds** in Item 1(b) of the Declarations.
- D.** “**Insurer**” means the Insurer specified in the Declarations.
- E.** “**Mental Health Counselor**” means an individual who is licensed or certified, as applicable by the appropriate State Licensing Board or other governmental regulatory body, to engage in **Professional Services** as a mental health counselor, social worker, pastoral counselor, hypnotist, psychoanalyst, psychotherapist, addiction counselor, life coach, or marriage and family counselor, as defined by state laws and regulations, or any individual practicing other mental health disciplines, as approved by the **Insurer**.
- F.** “**Named Insured**” means the natural person(s) or organization(s) named in Item 1(a) or 1(b) of the Declarations.
- G.** “**Policy Period**” means the period commencing on the inception date shown in Item 3 of the Declarations. This period ends on the earlier of either the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this Policy.
- H.** “**Pollutant**” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.
- I.** “**Professional Incident**” means any actual or alleged negligent act, error, or omission, solely in the performance of, or actual or alleged failure to perform, **Professional Services** as a **Psychologist** or **Mental Health Counselor**.

All such acts, errors or omissions, as referenced in this definition, that are actually or allegedly caused, committed, or attempted by or claimed against one or more **Insureds** arising out of the same or relating to the same or series of related facts, circumstances, situations, transactions or events shall be deemed to be the same **Professional Incident**.

- J.** “**Professional Services**” means all mental health related services rendered by the **Insured**, or by any person or organization for whom the **Named Insured** is legally responsible, including but not limited to the following:
- (1) services as a member of a formal accreditation, credentialing or standards review or similar professional board or committee;
 - (2) the publication of articles or books, and broadcasting or telecasting activities directly relating to **Professional Services**; and
 - (3) formal clinical teaching activities/clinical trials.

- K.** “**Psychologist**” means an individual with a master’s degree or doctorate in psychology by an accredited college or university, and who is licensed or certified, as applicable, by the appropriate State Licensing Board or other governmental regulatory body, to engage in the practice of psychology, as defined by state laws and regulations. Where used throughout the Policy, the term **Psychologist** shall be deemed to include a **Mental Health Counselor**.

III. EXCLUSIONS

- A.** This Policy shall not apply to, and shall not cover any **Defense Expenses** in connection with, any **Disciplinary Proceeding**:

- (1) alleging, arising out of, based upon or attributable to an **Insured’s** dishonest, fraudulent, criminal, or malicious act, error, or omission, or that of any person for whose acts the **Insured** is legally responsible.

In determining the applicability of Exclusion A.(1), the facts pertaining to, the knowledge possessed by, or any **Professional Incident**, committed by, any **Insured** shall not be imputed to any other **Insured**;

- (2) alleging, arising out of, based upon or attributable to any actual or alleged discrimination, harassment, retaliation, wrongful discharge, termination or any other employment-related or employment practice claim, including but not limited to any wage-hour claim, or claim of discrimination or harassment by any party who is not an employee of the **Insured**;
- (3) for any act, error or omission of a managerial or administrative nature; provided, however, that this Exclusion shall not apply to any **Disciplinary Proceeding** arising from the rendering of **Professional Services** as set forth in Definition J.;
- (4) alleging, arising out of, based upon or attributable to the **Insured’s** ownership or operation of a hospital or other similar facility, or any other facility which provides bed and board or in-patient care, or a laboratory;
- (5) for injury or damage sustained by any spouse or person who regularly resides in the home of any **Insured**;
- (6) arising out of the ownership, maintenance, use, operation or entrustment to others of any automobile, watercraft, aircraft or motor vehicle, or the loading or unloading thereof;
- (7) alleging, arising out of, based upon or attributable to any obligation pursuant to any workers’ compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law;
- (8) arising out of any intentional act of plagiarism, infringement or violation of any copyright, patent, trademark or service mark or the misappropriation of intellectual property, ideas or trade secrets;

- (9) alleging, arising out of, based upon or attributable to any business relationship between the **Insured** and any past or present patient or client;
- (10) alleging, arising out of, based upon or attributable to any **Professional Incident** committed with the knowledge that it was a **Professional Incident**, or which, before the effective date of this Policy, the **Insured** was aware of and could reasonably have foreseen might result in a **Disciplinary Proceeding**;
- (11) alleging, arising out of, based upon or attributable to any **Professional Service** that is not allowable since the **Insured's** professional license or registration to practice is suspended, revoked, terminated, surrendered or is not in effect;
- (12) alleging, arising out of, based upon or attributable to any **Professional Incident** committed while the **Insured** was under the influence of a drug or intoxicant;
- (13) alleging, arising out of, based upon or attributable to the design, manufacture, use, distribution, promotion, or sale of any medication, device or equipment, or protocols;
- (14) alleging, arising out of, based upon or attributable to, or in any way related to fungi, including mold or mildew, any mycotoxins, toxins, allergens, spores, scents, vapors, gases or by-products released by fungi, regardless of whether such fungi is:
 - (a) airborne;
 - (b) contained in a product; or
 - (c) contained in or a part of any building, structure, building material or any component of any part of any of the foregoing.
- (15) alleging, arising out of, based upon or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or any liability or obligation to test, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, whether or not any of the foregoing are to be performed by or on behalf of the **Insured**.
- (16) alleging, arising out of, based upon or attributable to:
 - (a) any actual or alleged Medicare/Medicaid fraud or abuse or any other actual or alleged fraud against the government; or
 - (b) any improper or excessive billing for the cost of the **Insured's** goods or services or any other type of billing or fee dispute.
- (17) alleging, arising out of, based upon or attributable to medical treatment, including the providing of drugs unless such treatment is provided under the written direction of a physician; provided, however, this Exclusion shall not apply to the use of biofeedback equipment customarily used in the **Insured's** practice as a **Psychologist** or **Mental Health Counselor**;

- (18) alleging, arising out of, based upon or attributable to **Professional Services** as a mediator, including but not limited to the provision of Divorce Mediation Services, whether or not for a fee;

provided, however, that this Exclusion shall not apply to the provision of Divorce Mediation Services, if:

- (a) prior to providing such services, a written statement to all parties is provided explaining that the **Insured** is a neutral and unbiased intermediary whom shall not act as an advocate for any one party;
 - (b) The **Insured** in fact, act exclusively as a neutral and unbiased intermediary between the parties; and
 - (c) the **Insured**, in connection with such Divorce Mediation Services, advises all parties, in writing at the time any settlement or other such agreement is presented to the parties, to have such agreement reviewed independently by counsel of their choice prior to their execution of the agreement;
- (19) alleging, arising out of, based upon or attributable to the actual or alleged unsolicited electronic dissemination of faxes, emails, text messages or similar communications to any prospective or actual patient of the **Insured** or to any other third party, including but not limited to any violation of the Telephone Consumer Protection Act, any federal or state anti-spam statute, or any other federal or state statute, law or regulation relating to a person's or entity's right of seclusion.

IV. LIMITS OF LIABILITY

A. Maximum Limit of Liability:

- (1) The amount set forth in Item 4(a) of the Declarations ("Per Disciplinary Proceeding") is the most the **Insurer** will reimburse the **Insured** for **Defense Expenses** for each **Disciplinary Proceeding** under this Policy.
- (2) There shall be no coverage for damages or any other amounts payable by the **Insured** as a result of any **Disciplinary Proceeding**.
- (3) If the **Insurer** fully pays the "Per Disciplinary Proceeding" Limit of Liability applicable to a particular **Disciplinary Proceeding**, it will have no duty to reimburse any additional **Defense Expenses** or any other amount(s) in connection with such **Disciplinary Proceeding**.

V. NOTICE PROVISIONS

- A. The **Insured** must give the **Insurer** or its authorized agent written notice of any **Disciplinary Proceeding** as soon as practicable after it is first brought, but in no event more than sixty (60) days after the end of the **Policy Period**.

- B. The **Insured** must also, as soon as possible, record and notify the **Insurer** of the specifics of the **Disciplinary Proceeding** and the date the **Insured** first received notice of it.
- C. The **Insured** must provide the **Insurer** or its authorized agent with a copy of all demands or legal papers the **Insured** receives as respects a **Disciplinary Proceeding**.

VI. DEFENSE OF PROCEEDINGS

With respect to **Disciplinary Proceedings** the **Insured** has the duty to defend, subject to the Limits of Liability, and using counsel selected by the **Insured** and approved in advance by the **Insurer**, any **Disciplinary Proceeding** against the **Insured** covered under this Policy.

The **Insureds** agree to give the **Insurer** full cooperation and provide such information as the **Insurer** may reasonably require relating to the investigation, defense and resolution of any **Disciplinary Proceeding**.

The **Insurer** shall have the right, but not the duty, to fully and effectively associate with the **Insured** in the control, investigation, defense and resolution of any **Disciplinary Proceeding**.

The **Insured** shall not incur any **Defense Expenses**, without the **Insurer's** prior written consent.

VII. OTHER INSURANCE

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance, self-insurance plan or self-funded vehicle whether such other insurance, plan or vehicle is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance, plan or vehicle is written specifically as excess insurance over the applicable Limits of Liability provided by this Policy. This Policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Disciplinary Proceeding** for which this Policy may be obligated to pay **Defense Expenses**. This Policy shall not be subject to the terms and conditions of any other insurance policy.

Two or more policies of insurance may have been issued by the **Insurer** or an affiliate thereof to persons or organizations other than the **Insured**. These policies may also provide coverage for a **Disciplinary Proceeding** involving the same or continuous, repeated, or related **Professional Incidents**, for which the **Insured** and persons or organizations covered in those other policies are jointly and severally liable. In such an event, and subject to the Limits of Liability set forth in the Declarations and Section IV., the **Insurer** shall not be liable under this Policy for a greater proportion of the total loss from that **Disciplinary Proceeding** than this Policy's applicable Limits of Liability bears to the total applicable Limits of Liability under all such policies. In addition, the total amount payable under the applicable Limits of Liability under all such policies in connection with that **Disciplinary Proceeding** will not exceed the highest single per **Disciplinary Proceeding** Limit of Liability under any of such policies.

VIII. REPRESENTATIONS

By accepting this Policy, the **Insured** agrees that the particulars and statements in the application submitted in connection with the underwriting of this Policy are true and that they are the **Insured's** agreements and representations.

The **Insured** acknowledges that this Policy is issued in reliance upon the truth of those particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy and which are the basis for this Policy.

IX. CANCELLATION

The first **Named Insured** may cancel this Policy by surrendering it to the **Insurer** or to any of its authorized agents, or by mailing the **Insurer** written notice stating when thereafter the cancellation will be effective. The **Insurer** may cancel this Policy by mailing to the first **Named Insured** at the address shown in Item 1(a) of the Declarations written notice stating when, not less than ninety (90) days thereafter, such cancellation will be effective. However, if the first **Named Insured** has not paid a premium when due, the **Insurer** may cancel this Policy by mailing to the first **Named Insured** at the address shown in Item 1(a) of the Declarations written notice stating when, not less than fifteen (15) days thereafter, such cancellation will be effective.

The mailing of the notice as stated above will be sufficient proof of notice. The time of surrender or the effective date of cancellation stated in the notice will become the end of the **Policy Period**. Delivery of written notice will be the equivalent of mailing.

If the first **Named Insured** cancels this Policy, the unearned premium will be computed in accordance with the customary short rate table and procedure. If the **Insurer** cancels, unearned premium will 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.

If applicable insurance department regulations require different times, content or procedures with respect to cancellation, this Policy will be cancelled in accordance with such regulations as in effect at the time of such cancellation.

X. AUTHORIZATION AND NOTICES

The **Insureds** agree that the first **Named Insured** named in Item 1(a) of the Declarations shall act on behalf of all **Insureds** with respect to all matters pertaining to this Policy including: (1) giving notice of any **Disciplinary Proceeding**; (2) giving and receiving of all correspondence and information; (3) giving and receiving notice of cancellation; (4) payment of premiums; (5) receiving of any return premiums; and (6) receiving and accepting of any endorsements issued to form a part of this Policy.

XI. TERRITORY

This Policy applies to **Professional Incidents** taking place anywhere in the world, to the extent permitted by law. However, any **Disciplinary Proceeding** arising from such **Professional Incidents** must be made and brought in the United States of America, its territories and possessions, Puerto Rico or Canada.

The **Insurer** shall not be deemed to provide coverage nor be liable to pay any claim or provide any benefit under this Policy to the extent that the provision of such coverage, payment of such claim or provision of such benefit would expose the **Insurer** to any sanction, prohibition or restriction, including under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

XII. ASSIGNMENT AND CHANGES TO THE POLICY

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.

If an **Insured** dies or is declared legally incompetent, such **Insured's** rights and duties will be transferred to such **Insured's** legal representative while acting within the scope of his or her duties as such.

This Policy contains all the agreements between the **Insured** and the **Insurer** or its authorized agents concerning this insurance.

Notice to any agent or knowledge possessed by any agent or person acting on the **Insurer's** behalf, will not result in a waiver or change in any part of this Policy or prevent the **Insurer** from asserting any right under the terms and conditions of this Policy. The terms and conditions of this Policy may only be waived or changed by written endorsement signed by the **Insurer**.

XIII. BANKRUPTCY

The bankruptcy or insolvency of the **Insured** or the **Insured's** estate does not relieve the **Insurer** of its obligations under the Policy.

XIV. ACTION AGAINST INSURER

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this Policy.

XV. HEADINGS

The descriptions in the headings and any subheading of this Policy, including any titles given to any endorsement attached hereto, are inserted solely for convenience and do not constitute any part of this Policy's terms or conditions.