


The University of North Carolina Liability Insurance Trust Fund

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MEMORANDUM

TO: Members, UNC Physicians & Associates
Members, UNC Hospitals House Staff
Members, UNC Hospitals Nursing Staff
Members, Ambulatory Care Programs
Members, Home Health and Hospice Staff

FROM: Brian Goldstein, M.D., Chairman 
UNC Liability Insurance Trust Fund Council

DATE: June 15, 2009

RE: 2009 - 2010 Memorandum of Coverage
UNC Liability Insurance Trust Fund

Attached you will find a Memorandum of Coverage effective July 1, 2009, describing the professional liability coverage afforded under the UNC Liability Insurance Trust Fund. Please take the time to review this policy carefully. This policy was prepared for distribution to the insureds of the Trust Fund to define more clearly the coverage, limits of liability, exclusions from coverage and the duties and responsibilities of both the insureds and the Trust Fund. Any questions should be directed to the Legal Department at UNC Hospitals at (919) 966-3041.

In order for our Trust Fund to remain successful, it is very important that you, as one of the insureds, immediately advise the Legal Department at UNC Hospitals when you become aware of any incident involving patient care which might result in a claim or suit. If you want to discuss a legal question with an attorney, or if you need to report an incident or claim to Risk Management, please call the Legal Department at 966-3041.

Attachment



UNC
HOSPITALS



**University of North Carolina
Liability Insurance Trust Fund
Memorandum of Coverage (Effective July 1, 2009)**



School of Medicine

ARTICLE I, ESTABLISHMENT OF TRUST FUND

In 1975, the North Carolina General Assembly enacted legislation which granted authority to the Board of Governors of the University of North Carolina to establish a self-insurance program for professional liability and to delegate authority for the operation of the program to a Liability Insurance Trust Fund Council. A Resolution by the Board of Governors in 1978 established the Trust Fund Council and granted it such authority. In September, 1982, pursuant to the legislation, the School of Medicine of the University of North Carolina at Chapel Hill and the University of North Carolina Hospitals at Chapel Hill established the Trust Fund as a self-insurance program for professional liability.

The Trust Fund pays the expenses of investigating, managing, settling and defending claims and suits; pays civil judgments; and pays settlements on behalf of covered entities and covered individuals in actions, suits or claims based upon alleged tortious conduct in the provision of health care services.

The Legal Department of the University of North Carolina Hospitals at Chapel Hill is responsible for the daily operations of the self-insurance program under the overall direction and supervision of the Liability Insurance Trust Fund Council. The Legal Department receives advice and direction from the Professional Liability Advisory Committee, as well as advice and consultation from outside defense counsel and medical experts as necessary. The Legal Department staff interact directly with physicians covered by the Trust Fund regarding professional liability incidents and any subsequent actions brought on behalf of patients.

ARTICLE II, DEFINITIONS

A. "Covered entity" shall mean the School of Medicine of the University of North Carolina at Chapel Hill or the University of North Carolina Hospitals at Chapel Hill

B. "Covered individual" shall mean a member of the governing board, officer, director, employee or agent of a covered entity, as further defined in Article IV.

C. "Covered party" shall mean any covered entity or covered individual designated in Article IV.

D. "Health care" shall mean ministrations to the physical or mental well-being of a human being by preventive measures, consultation, counseling, analysis, diagnosis or treatment.

E. "Health care functions" shall mean (1) the ministrations to the physical or mental well-being of patients,

through clinical practice (including preventive measures, consultation, counseling, analysis, diagnosis or treatment), (2) other general patient support services for which expertise as a health care practitioner is required, or (3) medical research on human subjects pursuant to an institutional review board-approved research protocol.

F. "Professional Liability Advisory Committee" shall mean a committee of physicians and administrators of the covered entities that provides oversight and guidance for the financial, claims management and other operational aspects of the Trust Fund.

G. "Trust Fund" shall mean the University of North Carolina Liability Insurance Trust Fund, a program of professional liability self-insurance with respect to covered parties, authorized by General Statutes Chapter 116, Article 26, administered by designees of the Trust Fund Council as stated herein.

H. "Trust Fund Council" shall mean the University of North Carolina Liability Insurance Trust Fund Council, the governing body of the Trust Fund, authorized by Resolution of the Board of Governors of the University of North Carolina, adopted June 9, 1978.

ARTICLE III, PERIOD OF COVERAGE

This coverage applies to health care functions performed by covered parties during the period July 1, 2009 through June 30, 2010. Coverage is provided on an occurrence basis. Coverage does not apply to claims arising from an individual's conduct which occurs prior to or subsequent to his or her status as an employee, agent or officer of the School of Medicine of the University of North Carolina at Chapel Hill or University of North Carolina Hospitals at Chapel Hill.

ARTICLE IV, COVERAGE

A. Coverage Agreement

1. The Trust Fund shall pay on behalf of a covered entity all sums, up to the Limit of Liability stated in Article IV .C.1., which the covered entity shall become legally obligated to pay as damages, including costs and interest awarded as part of any judgments, because of a claim or claims based upon alleged negligent acts in the provision of health care services that may be prosecuted under the provisions of the State Tort Claims Act, General Statutes Chapter 143, Article 31.

2. The Trust Fund shall pay on behalf of a covered individual all sums, up to the Limit of Liability stated in Article IV .C.2., which the covered individual shall become legally obligated to pay as damages, including costs and

interest awarded as part of any judgment, because of a claim or claims of alleged personal tort liability based on conduct within the course and scope of health care functions undertaken by the individual.

3. With respect to the coverage provided pursuant to this document, the Trust Fund shall defend any claim or suit against a covered party alleging such negligence or personal tort liability and seeking damages on account thereof, even if the allegations of such claim or suit are groundless, false or fraudulent. The Trust Fund and its designated agents and attorneys may make such investigations, negotiations and settlement of any claim or suit as the Trust Fund deems advisable, as more fully set forth in Articles IV, V and VI herein.

B. Covered Parties.

1. The entities covered under this agreement are the School of Medicine of the University of North Carolina at Chapel Hill and the University of North Carolina Hospitals at Chapel Hill.

2. The individuals with coverage under this agreement are as follows:

a. Any officer, director or member of the governing boards of the covered entities with regard to any claims or suits arising out of alleged tort liability in the provision of health care services or health care functions.

b. Any attending physician employed full-time by the School of Medicine of the University of North Carolina at Chapel Hill, or any attending physician employed on less than a full-time basis by the School of Medicine of the University of North Carolina at Chapel Hill for whom the Dean of the School of Medicine of the University of North Carolina at Chapel Hill and the Chairman of the Trust Fund Council have authorized coverage, as to any:

1) Acts within the course and scope of health care functions undertaken as an employee of the School of Medicine of the University of North Carolina at Chapel Hill; or

2) Acts within the course and scope of health care functions when rendering unforeseen emergency care or similar public service, when engaging in activities on behalf of the School of Medicine of the University of North Carolina at Chapel Hill away from the individual's ordinary practice location which are authorized and approved professional activities, or when engaging in any professional activities which can reasonably be construed to be the duty and responsibility of a physician who is a member of the faculty and which are consistent with the Rules, Regulations and Policies of the Division of Health Affairs of the University of North Carolina at Chapel Hill and with the laws of the State of North Carolina.

c. Any intern, resident or fellow while participating in an approved rotation of a medical or surgical training program sponsored by the University of North Carolina Hospitals at Chapel Hill.

d. Any intern, resident or fellow while participating in an approved dental training program sponsored by the University of North Carolina Hospitals at Chapel Hill, but only for rotations at the University of North Carolina Hospitals at Chapel Hill or the Schools of Dentistry or Medicine of the University of North Carolina at Chapel Hill.

e. Any health care practitioner who is an employee of a covered entity and who renders health care to patients by direct ministration or by indirect ministration upon orders of one who renders health care to patients by direct ministration. By way of example, but not by limitation, health care practitioners shall include: nurses, nursing assistants, physicians assistants, nurse practitioners, pharmacists, medical technologists, radiology technicians, physical therapists, occupational therapists, respiratory therapists, professional counselors, social workers, chaplains and other technical and clerical personnel employed by a covered entity.

f. Any duly enrolled student in the School of Medicine of the University of North Carolina at Chapel Hill, including students in the Department of Medical Allied Health Professions.

g. Any student participating in a diploma program sponsored by the University of North Carolina Hospitals at Chapel Hill including without limitation, Radiation Therapy and Nuclear Medicine technologists.

C. Limits of Liability

1. The limit of liability for all covered entities under this agreement is \$1,000,000 for loss or damages due to injury or death to any one person.

2. The total limit of liability for all loss arising out of a single claim is \$7 million for loss of damage due to injury or death to any one person regardless of the number of covered parties involved in any legal action arising from the alleged negligent acts and regardless of the number of persons bringing claims for the alleged negligent acts.

Subject to the single claim limit of liability, covered individuals are subject to an "each person" sublimit of \$3 million. The "each person" limit is a sublimit of and does not increase the single claim limit of liability set forth above. The "each person" limit is the most the Trust Fund will pay for all damages against the covered individual arising out of a single claim.

The first \$1/3 million of liability for dental interns, residents and fellows is provided through a commercial insurance policy purchased by the Trust Fund.

3. All claims arising from a continuing course of treatment or repeated exposure are considered to be a single claim. For example, obstetrical treatment of mother and fetus, from conception through postpartum care, constitutes a single claim.

D. Exclusions

Specifically excluded from coverage are as follows:

1. Claims or suits arising out of acts or omissions of a covered individual while self-employed or in the employ of an organization which is not a covered entity, unless the Chairman of the Trust Fund Council has approved that such activities are, in fact, within the course and scope of an individual's employment or training program and a "Confirmation of Employment Status for Special Projects" form has been completed and approved. Specifically excluded under this provision is "moonlighting" by interns, residents and fellows as further delineated by the "Moonlighting Policy for House Staff" in the Policy Manual of the University of North Carolina Hospitals at Chapel Hill.

2. Any health care practitioner or independent contractor for whom commercial medical malpractice insurance coverage is required as a condition of their privileges at the University of North Carolina Hospitals at Chapel Hill.

3. Any student other than a duly enrolled student in the School of Medicine of the University of North Carolina at Chapel Hill.

4. Any employee or agent of a covered entity other than an employee or agent of the School of Medicine of the University of North Carolina at Chapel Hill or the University of North Carolina Hospitals at Chapel Hill

5. Claims or suits based on an incident, occurrence or conduct about which a covered party willfully fails to notify promptly the Legal Department of the University of North Carolina Hospitals at Chapel Hill when a covered party could reasonably have expected such incident, occurrence or conduct to result in a claim or suit.

6. Any individual serving as a direct service volunteer performing services for a covered entity who does not receive compensation or anything of value for the services, other than reimbursement for expenses actually incurred.

7. Any payment of damages arising out of a claim or suit alleging fraud, deliberate misrepresentation, sexual misconduct, conduct involving criminal activity or conduct involving impairment due to drug or alcohol use; or any payment of damages arising from any claim in which, during the course of investigation, it is determined that a covered party's involvement in such activities bears a causal relationship to or contributes to any patient injury.

ARTICLE V, CLAIMS MANAGEMENT

All claims investigation and claims adjustment activities shall be deemed to be carried out for the sole purpose of assisting the Legal Department of the University of North Carolina Hospitals at Chapel Hill and other designated legal representatives of the Trust Fund to defend potential or actual lawsuits against any covered party. All meetings held pursuant thereto shall be closed, all records

of such meetings shall be confidential, and all oral and written communications shall be subject to the attorney client and/or the attorney work product privilege. Furthermore, pursuant to General Statutes Section 116-222, all records pertaining to the Trust Fund, including all information, correspondence, investigations or interviews concerning or pertaining to the Trust Fund or to claims or potential claims against covered parties shall not be considered public records under General Statutes Chapter 132 and shall not be subject to discovery under the Rules of Civil Procedure, General Statutes Chapter 1A.

Procedures for claims adjustment, including but not limited to claims payments, denials and settlements of suits, shall be as determined by the Trust Fund Council, by and through the Professional Liability Advisory Committee and the Legal Department of the University of North Carolina Hospitals at Chapel Hill.

The Trust Fund shall have the final authority with regard to the settlement and compromise of claims and the terms and conditions of such settlements. However, the Trust Fund shall give due consideration to the wishes and opinions of any covered party with regard to whether or to what extent a claim or suit brought against such covered party should be settled.

The furnishing of all legal services pursuant to the Self Insurance Program shall be the responsibility of the Legal Department of the University of North Carolina Hospitals at Chapel Hill and the Attorney General of the State of North Carolina. If legal services are required beyond the resources available from the Legal Department such may be engaged by the Legal Department. The Legal Department will select such outside counsel from a list of approved attorneys established and maintained by the Trust Fund Council.

In the event that a covered party, in addition to the legal services provided for above, employs separate legal counsel of the covered party's own choice, such employment of separate legal counsel shall be at the covered party's sole expense. In the event that the covered party elects to employ separate legal counsel to assist the Legal Department and such outside counsel as may be retained by the Trust Fund Council, all decisions in regard to the defense of the claim or suit shall remain the right and responsibility of the Trust Fund Council or its designees.

ARTICLE VI, DUTY OF COVERED PARTIES

A. Upon a covered party becoming aware of an accident or incident involving patient care, which might result in a claim or suit, the covered party must give immediate notice containing the following information to the Legal Department of the University of North Carolina Hospitals at Chapel Hill: name(s) of injured party; name(s) of covered party(ies) involved; time, place and circumstances of incident; name(s) of available witnesses. The covered party should give this notice even though no claim is made if he or she is aware of having done something that may result in a claim.

B. If a claim is made or suit is brought against a covered party, each demand, complaint, notice, summons or other process shall be immediately forwarded to the Legal Department of the University of North Carolina Hospitals at Chapel Hill.

C. The covered party shall fully and completely cooperate with the Legal Department of the University of North Carolina Hospitals at Chapel Hill and designated outside counsel, if any, in the investigation and defense of incidents, claims and law suits. Such cooperation shall include but not be limited to: attending conferences with risk manager, claims analysts and attorneys; providing information to enable attorneys to answer complaints, interrogatories and requests for documents; providing depositions and/or special reports; attending hearings and trials; assisting in obtaining records and other evidence and the testimony and/or opinions of experts.

D. The timely notice and cooperation required by this Article shall be rendered as partial consideration for and a condition of the coverage and representation herein provided, without charge, except for reimbursement of reasonable out of pocket expenses, and regardless of whether or not the covered party is an agent, servant or employee of a covered entity at the time the same is rendered.

E. The Trust Fund Council reserves the right to assess the proportionate cost of defense against any covered party who fails or refuses to cooperate in the defense of any pending claim. Furthermore, a continuing refusal on the part of any covered party to assist in the defense of a claim against him, which materially increases the risk of loss to the Trust Fund, may, in the discretion of the Trust Fund Council or its designee, result in a revocation of coverage and a denial of further representation of said party by the Trust Fund. Such revocation shall be communicated in writing to the covered party by the Trust Fund Council or its designee thirty (30) days prior to the effective date, if practical, so as to provide the covered party with a reasonable opportunity to cure the failure or make other arrangements for his or her own defense.

F. As a condition of coverage during the term of this agreement, covered individuals shall comply with risk management continuing education requirements as may be imposed, from time to time, by the Trust Fund Council.

ARTICLE VII, ACTION AGAINST THE TRUST FUND

No action shall be commenced by a covered party or anyone else against the Trust Fund unless, as a condition precedent thereto, there shall have been full compliance with the terms and conditions of coverage, and until the amount of the Trust Fund's obligation to pay shall have been finally determined either by final judgment against the covered parties or by written agreement of the Trust Fund and a claimant.

No covered party or anyone else shall have any right to implead or otherwise join the Trust Fund as a party to any

action against the covered party to determine the covered party's liability.

ARTICLE VII, OTHER INSURANCE

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

A. Contribution by Equal Shares. If all such other valid and collectible insurance provides for contribution by equal shares, the Trust Fund shall not be liable for a greater proportion of such loss than would be payable if each insurance company contributes an equal share until the share of each company equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid. With respect to any amount of loss not so paid, the remaining companies shall continue to contribute equal shares of the remaining amount of the loss until each such company has paid its limit in full or the full amount of the loss is paid.

B. Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the Trust Fund shall not be liable for a greater proportion of such loss than the applicable limit of liability under this agreement for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

ARTICLE VIII, SUBROGATION

In the event of any payment by the Trust Fund, the Trust Fund shall be subrogated to all rights of recovery of the covered party against any person or organization and the covered party shall execute and deliver instruments and papers and do whatever else may be necessary to secure such right. The covered party shall do nothing to prejudice such rights.

ARTICLE IX, SOVEREIGN IMMUNITY

Nothing contained anywhere herein nor any action by the Trust Fund Council pursuant hereto, shall be construed as or constitute a waiver of the sovereign immunity of or the limitations of liability applicable to the State of North Carolina or the covered entities which are agencies thereof, except to the extent provided by General Statutes Chapter 143, Article 31.

ARTICLE X, CHANGES

The terms of this Memorandum shall not be changed except by endorsement or addendum issued as part of this Memorandum.

Brian Goldstein, M.D., Chairman
University of North Carolina
Liability Insurance Trust Fund Council