



## Professional & General Liability Insurance Policy

Notice: This policy (the "Policy") is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group. In consideration of the payment of the premium, in reliance upon the statements made in the application for insurance provided under this Policy, and subject to the limits of liability, exclusions, conditions, and other terms of this Policy, the Company and the Named Insured (as hereinafter defined) enter into the following contract for insurance:

### I. DEFINITIONS

When used in this Policy:

- A. Association** - means the Association, listed on the Certificate of Insurance, with offices at 25188 Genesee Trail Road, Suite 200, Golden, CO 80401. The Association is not the Master Policyholder.
- B. Bodily Injury** - means physical injury, sickness, disease or death of a person, except for persons injured while taking part in athletics.
- C. Certificate of Insurance** - means the Certificate of Insurance issued to the Named Insured, evidencing coverage under this Policy, also referred to herein as the "Declarations".
- D. Claim Reported** - means a written notice filed by the Named Insured and received by the Company, or a written notice of a Suit filed by a claimant or other person acting for the claimant and received by the Named Insured and by the Company that alleges Damages to an injured party from acts or omissions by the Named Insured that are covered by this Policy.
- E. Client** - means a person to whom the Named Insured has provided Professional Services for a fee or in connection with an educational, charitable or promotional activity.
- F. Company** - means Allied Professionals Insurance Company, a Risk Retention Group, Inc., with offices at 1100 West Town & Country Rd., Suite 1400, Orange, CA 92868
- G. Damages** - means sums the Named Insured is legally obligated to pay for liability covered under this Policy. The term "Damages" does not include either any sums demanded or awarded as punitive or exemplary damages or defending the Named Insured from any claims.
- H. Incident** - means any act or omission which results in alleged or actual Damages.
- I. Named Insured** - means the person or organization named in the Declarations of this Policy.
- J. Other Health Provider** - means any person, other than the Named Insured, licensed, certified or registered under any health professions statute, or who recommends or renders any type of service, treatment, or procedure to maintain, diagnose, or treat any person's physical or mental condition or well-being, including, but not limited to, any physician, surgeon, podiatrist, nurse, anesthetist, chiropractor, acupuncturist, physical therapist, physical therapy assistant, or massage therapist.
- K. Policy** - means this policy, the Declarations to this policy, all applications for membership and / or coverage or endorsements to coverage provided by or on behalf of the Named Insured (including any supplemental documentation provided therewith) and all coverage endorsements issued to the Named Insured.
- L. Premises** - means the office, clinic, residence or such other location where the Named Insured is providing Professional Services.
- M. Professional Corporation** - means a professional corporation as defined in the Declarations.
- N. Professional Products** - means Professional Products as defined in the Professional Service Coverage Endorsement(s) issued with this Policy.
- O. Professional Services** - means Professional Services as defined in the Professional Service Coverage Endorsement(s) issued with this Policy.
- P. Property Damage** - means physical damage to tangible property. Electronic data is not tangible property.
- Q. Sexual Misconduct** - means any actual or alleged, attempted, proposed or threatened: 1) sexual molestation, sexual abuse, or sexual assault or battery, whether negligent or intentional, of any person; or 2) any sexual, sexually-related or erotic activity, including, but not limited to, consensual sexual activity or intimacy, sexual harassment, sexual exploitation, sexual gestures, undue familiarity, and/or voyeurism.
- R. Suit** - includes 1) a cross claim; and 2) an arbitration to which the Named Insured is required to submit or to which the Named Insured has submitted with the Company's consent.

### II. POLICY PERIOD; PREMIUMS; AUDITS

- A. Policy Period.** The initial policy period of this Policy is stated in the Declarations forming a part of this Policy. Subject to the right of the Company to cancel this Policy in accordance with the provisions of the Cancellation Condition, the Policy Period may be extended for successive periods by payment of the required renewal premium, and any other amounts required as a condition of such renewal, to the Company on or before the effective date of each successive period. The expiration date of such period shall be the end of the policy period.
- B. Premium.** All premiums and other charges for this Policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums, and minimum premiums applicable to the insurance afforded herein and in effect with respect to the period for which premiums are due. All premiums and other charges for this Policy are payable in advance to the Company or its authorized representative. The first payment is due at inception of the Policy. Each renewal payment is due on or before the expiration of the period for which the preceding payment was paid. Any payment not paid on or before its due date will be in default.
- C. Inspection and Audit.** The Company may examine, audit, and inspect the Named Insured's property, business operations, books, and records at any time during the policy period and renewals thereof within three (3) years after the final termination of this Policy, as far as they relate to the subject

matter of this insurance. The Company is not required to make such inspections and audits and does not guarantee that the Named insured's operations are safe or that they conform to any laws, rules, or regulations.

### III. CANCELLATION & NON-RENEWAL

The Named Insured may cancel this Policy by surrender thereof to the Company or any of its authorized agents by mailing to the Company written notice stating when thereafter the cancellation shall be effective. The Company may cancel or non-renew this Policy by mailing to the Named Insured at his or her latest address shown on the Company records, written notice stating when, not less than ninety (90) days thereafter, such cancellation or non-renewal shall be effective, unless cancellation is for nonpayment of premium, in which case such notice will be not less than ten (10) days prior to the effective date of cancellation or non-renewal. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation or non-renewal stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing. If this Policy is cancelled, the Company will send the Named Insured a refund of any unearned premium, computed on a pro-rata basis, as soon as practicable thereafter. Payment or tender of unearned premium is not a condition of cancellation.

### IV. CLAIMS

**A. Incident Report.** Upon the happening of any incident reasonably likely to involve this insurance, written notice containing information sufficient to identify the Named Insured, time, place, and circumstances of the event, and the names and addresses of available witnesses must be given by or for the Named Insured to the Company within three (3) business days of the happening of any such event or as soon as practicable.

**B. Notice of Claim or Suit.** If a claim or suit is reported against the Named Insured based on an Incident covered by this Policy, the Named Insured shall, within three (3) business days, by certified mail return receipt requested forward to the Company every demand, notice, summons, or other process received by him or her or by his or her representative. Failure to give such notice will result in a total loss of coverage and constitute a material breach of the Policy only when 1) such failure actually prejudices in any way the ability of the Company to adjust, settle or defend any claim or action, or 2) the Named Insured has failed to give notice until after the Named Insured has submitted to the jurisdiction of a court or until after judgment, which the Named Insured and the Company agree shall constitute substantial and actual prejudice which adversely affects the rights of the Company, which bases its Policy and premiums on cost-containment methods of dispute resolution, mandatory arbitration, and settlement.

**C. Cooperation.** All persons insured under this Policy shall cooperate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and other proceedings; and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. This shall include permitting the Company to question any person insured under this Policy under oath, at such times as may be reasonably required, about any matter relating to this insurance or any claim, including the Named Insured's books and records. In such event, the answers provided must be signed by the person being questioned. No person insured under this Policy shall, except at his or her own cost, voluntarily make any payment or assume any obligation without the consent of the Company. No person insured under this Policy shall destroy, discard, alter, or fabricate any evidence related to a claim, whether in the form of documentation or physical, tangible objects or equipment, including, but not limited to, records, therapy tables, heat lamps, and tens units. This does not apply to signed, dated bona fide corrections to records.

### V. GENERAL CONDITIONS

**A. Abide by Terms.** The Named Insured specifically agrees to abide by the terms and conditions of this Policy and by all rules and regulations of the Company relating to the conduct of the Named Insured's professional practice.

**B. Action Against the Company.** No action shall lie against the Company, its Agents, Employees, Brokers, or the Master Policy Holder unless the action is commenced within one (1) year from the date that the Company sends a letter denying coverage on a claim, or in the case of actions not relating to a denial of coverage by the Company, one (1) year from the date of loss or damage to the Named Insured. Additionally, as conditions precedent to any such actions, 1) there shall have been full compliance with all of the provisions of this Policy, and 2) the Named Insured's liability and the amount of the Named Insured's obligation to pay shall have been finally determined either by judgment against the Named Insured after actual arbitration or trial or by written agreement of the Named Insured, the claimant, and the Company.

**C. Arbitration.** All disputes or claims involving the Company shall be resolved by binding arbitration, whether such dispute or claim arises between the parties to this Policy, or between the Company and any person or entity who is not a party to the Policy but is claiming rights either under the Policy or against the Company. This provision is intended to, and shall, encompass the widest possible scope of disputes or claims, including any issues 1) with respect to any of the terms or provisions of this Policy, or 2) with respect to the performance of any of the parties to the Policy, or 3) with respect to any other issue or matter, whether in contract or tort, or in law or equity. Any person or entity asserting such dispute or claim (the "Claimant") must submit the matter to binding arbitration with the American Arbitration Association, under the Commercial Arbitration Rules of the American Arbitration Association then in effect, by a single arbitrator in good standing. If the Claimant refuses to arbitrate, then any other party may, by notice as herein provided, require that the dispute be submitted to arbitration within fifteen (15) days. Neither the Claimant nor any other party shall have the right to participate as a member of any class of claimants, and there shall be no authority for any dispute to be decided on a class action basis. In addition, an arbitration can only decide a dispute between the Claimant and the Company, and may not consolidate or join the claims of other persons who have similar claims. All procedures, methods, and rights with respect to the right to compel arbitration pursuant to this Article shall be governed by the Federal Arbitration Act. The arbitration shall occur in Orange County, California. The laws of the State of California shall apply to any substantive, evidentiary or discovery issues. Any questions as to arbitrability of any dispute or claim shall be decided by the arbitrator. If any party seeks a court order compelling arbitration under this provision, the prevailing party in such motion, petition or other proceeding to compel arbitration shall recover all reasonable legal fees and costs incurred thereby and in any subsequent appeal, and in any action to collect the fees and costs. A judgment shall be entered upon the arbitration award in the U.S. District Court, Central District of California, or if that court lacks jurisdiction, then in the Superior Court of California, County of Orange.

**D. Application Warranty.** The Named Insured warrants that he or she has made true, correct, and full answers to all questions propounded to him or her upon the application for insurance coverage (the "Application") and agrees to provide the Company with full and correct answers to any other questions related to his or her competence or financial ability as shall be reasonably propounded to him or her by the Company. **The Named Insured acknowledges and agrees that if the Named Insured does not sign the Application, this Policy is void and no insurance coverage is conveyed thereby.**

- E. Breach of Policy.** Breach by the Named Insured or any person covered by this Policy of any of the conditions of this Policy shall subject the Named Insured to termination at the instance of the Company and upon thirty (30) days written notice.
- F. Change of Address.** The Named Insured will keep the Association apprised of his or her current addresses, both business and residential, and will report in writing any change of address within ten (10) days.
- G. Changes.** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or bar the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part this Policy by an authorized representative of the Company.
- H. Assignment.** Assignment by the Named Insured of his or her interest under this Policy shall not bind the Company, until its consent is endorsed hereon; if however, the Named Insured shall die, such insurance as is afforded by this Policy shall apply to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his or her duties as such.
- I. Other Insurance.** If the Named Insured and/or Additional Insured has other valid and collectible insurance available, the insurance afforded by this Policy shall be secondary and shall not apply unless and until the limits of liability of such other insurance have been exhausted.
- J. Subrogation.** In the event of any payment under this Policy, the Company shall be subrogated to all the Named Insured's rights of recovery against any person or organization, and the Named Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Named Insured shall do nothing after loss to prejudice such rights. The Company reserves the right to make counter-claims and to bring suit against persons making frivolous claims against the Named Insured. The Named Insured hereby grants that right to the Company and acknowledges that any award resulting from such counter-claim or suit shall be the property of the Company.
- K. Non-Assessability.** This Policy is non-assessable.
- L. Territory.** This Policy only affords coverage for Professional Services rendered in U.S. States or Territories where the Named Insured is specifically legally authorized to practice.
- M. Captions.** Captions or headings in this Policy are inserted only as a matter of convenience and for reference and shall not be deemed to define, limit, enlarge, or describe the scope of this policy or the relationship of the parties and shall not affect the Policy or the construction of any provisions herein.
- N. Endorsements.** Any endorsements to this Policy are part of this Policy, and all the conditions and terms of this Policy shall apply to such endorsements.
- O. Settlements.** The Company may settle any claim without the Named Insured's consent, unless the Named Insured: 1) Objects to the proposed settlement; 2) Requests that the amount of the proposed settlement be paid directly to the Named Insured by the Company; and 3) Agrees to take over the defense of the claim at the Named Insured's sole expense. If the Named Insured makes such an election, then upon payment by the Company to the Named Insured of the proposed settlement amount, the Company shall have no further obligation of any kind to further defend or indemnify the Named Insured with regard to such claim.
- P. Choice of Law.** Except as provided in Article V, Section C, this Policy and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California, including all matters of construction, validity, performance, and enforcement without giving effect to the principles of conflict of laws.
- Q. No Intended Third Party Beneficiaries.** The parties to this Policy agree that there are no intended third party beneficiaries by or under this Policy, unless such person or entity is specifically identified by name in this Policy.
- R. Additional Profession Coverage.** If the Named Insured practices a profession other than the profession listed in the Declarations of this Policy ("Additional Profession"), coverage is automatically extended to the Named Insured for such Additional Profession ("Additional Profession Coverage"), subject to the terms and conditions specified below, and provided that: 1) The Named Insured has applied for and been approved by the Company for the Additional Profession; 2) The Company has not denied the Named Insured for the Additional Profession; and 3) the Named Insured has been provided with a Professional Service Coverage Endorsement applicable to the Additional Profession ("Applicable Professional Service Coverage Endorsement"). Additional Profession Coverage is extended on the following basis: 1) Whenever the Named Insured is practicing the Additional Profession, the Applicable Professional Service Coverage Endorsement shall be the basis for determining coverage in connection with the rendering or failure to render Professional Services; and 2) Additional Profession Coverage does not increase the limits of liability under this Policy. The Named Insured has paid for and received only one Policy with one set of limits. The fact that Additional Profession Coverage has been extended to the Named Insured does not increase, stack or cumulate these limits beyond the single set of limits set forth in the Declarations.

## VI. INSURING AGREEMENTS

- A. Liability Coverage.** The Company shall pay on behalf of the Named Insured all sums that the Named Insured shall become legally obligated to pay for loss because of Professional Liability, Personal and Advertising Injury Liability, Premises Liability, and Products Liability ("Liability Coverage") solely arising out of Incidents, during the Policy Period as set forth in the Declarations (the "Policy Period").
- 1. Professional Liability** - is defined as Damages the Named Insured shall legally be obligated to pay for Bodily Injury to a Client arising out of the rendering or failure to render Professional Services during the Policy Period. Professional Services means Professional Services as defined in the Professional Service Coverage Endorsement(s) issued with this Policy.
- 2. Personal and Advertising Injury Liability** - is defined as Damages arising out of the Named Insured's rendering of Professional Services to a Client, which the Named Insured shall legally be obligated to pay for, other than Bodily Injury, to a Client or Clients, which a) occurs during the Policy Period and b) arises out of one or more of the following: (i) false arrest, detention or imprisonment; (ii) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or Premises that a Client occupies, by or on behalf of its owner, landlord or lessor; (iii) oral or written publication of material that slanders or libels a Client; or (iv) oral or written publication of material that violates a Client's right of privacy
- 3. Premises Liability** - is defined as Damages resulting from Bodily Injury or Property Damage arising out of a) the rendering of Professional Services to a Client or Clients which occurred in the Named Insured's Premises; or b) an Incident which occurs in the common areas of the Premises if the Named Insured has specifically assumed liability of such common areas by way of a written agreement, and such claim alleges negligent acts by the Named Insured are the cause of the claimant's Damages: (i) by the Named Insured, or (ii) by any person for whose acts or omissions the Named Insured is legally responsible (as described in Article VIII. Persons Insured hereof). In circumstances where the Named Insured has rented a Premises,

separate from their residence (the "Rented Premises"), Property Damage to a third party, other than the Named Insured's Landlord, shall be considered to have arisen "out of the rendering of Professional Services to a Client or Clients", if such Property Damage is i) caused solely by Professional Service Equipment (as defined below), and such Professional Service Equipment is located on the Rented Premises; or ii) such Property Damage is caused by the negligent failure to turn on or off electricity or water resulting in water Property Damage or fire Property Damage. Professional Service Equipment means an appliance or other equipment: i) owned by the Named Insured, and ii) used by the Named Insured to practice Professional Services; and shall include, but not be limited to, fans, candles, clothes washers, clothes dryers, information technology equipment, music sound systems, lamps, water coolers and diffusers.

**4. Products Liability** - is defined as Damages the Named Insured shall legally be obligated to pay to a Client or Clients, subject to a \$10,000 Products Liability Sublimit, for Bodily Injury arising from Professional Products bought from the Named Insured. The Products Liability Sublimit does not apply to the Named Insured's liability for the application of a product during the rendering of Professional Services.

**B. Defend Claim.** The Company shall have the right and duty to defend each covered claim reported against a Named Insured during the Policy Period, even if any of the allegations of the claim or suit are groundless, false, or fraudulent (except as excluded by this Policy) and the Company may make such investigation and make settlement of any claim reported as it deems expedient. In the event that a covered claim results in a Suit where at least one of the causes of action are covered for indemnity under the Policy (the "Covered Cause of Action"), the Company shall have the obligation to defend all of the causes of action that are contained in the Suit, so long as there is a Covered Cause of Action pending. The Company's costs of providing such a defense shall not be included in the computation of the Named Insured's limits of liability.

**C. Defense Limitations.** The Company shall not be liable for the cost of professional services, including, but not limited to, legal and accounting services by any attorney, accountant, or any other professional selected by the Named Insured without the written consent of the Company. The Company will not pay for any costs or legal fees incurred in defense of any criminal investigation or prosecution.

**D. Supplementary Payments.** The Company will pay, within the applicable limit of liability:

**1. Expenses.** All costs assessed against the Named Insured in any suit defended by the Company and, with respect to any judgment, all interest on the entire amount of such judgment that accrues before the Company has paid or tendered or deposited in court that part of the judgment that does not exceed the limit of the Company's liability thereof.

**2. Bonds.** Premiums on appeal bonds required in any suit to which this Policy applies, and to furnish such appeal bonds necessary to appeal such suit up to the Company's limit of liability, but without any obligation to apply for or furnish a bond in excess of such limit of liability; and premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of the Company.

**3. Loss of Earnings.** The Company will pay up to \$500 per day for loss of earnings, up to a maximum of \$10,000 per suit, if the Named Insured is away from their practice at the Company's request to help defend a suit.

**4. Medical Expenses Coverage.** The Company will pay all medical expenses incurred by anyone other than the Named Insured, a person working for the Named Insured, or a person who usually occupies the Named Insured's Premises, except for those incurred for services rendered by the Named Insured, due to an accident at the office, clinic, or other such location where the Named Insured is providing Professional Services, regardless of fault, for which the Named Insured becomes liable, other than as a consequence of rendering or failing to render Professional Services, up to a maximum of \$2,500 per accident, and \$5,000 per Policy Period, irrespective of how many such claims are asserted in a Policy Period.

**5. Covered Proceedings – Defense Only.** Upon receipt of written notification that a Covered Proceeding has been initiated against the Named Insured, the Company will appoint an attorney and/or accountant of the Company's choice, and pay defense costs incurred through retained counsel and/or accountant during the defense of the Covered Proceeding. The maximum amount the Company will pay for a Covered Proceeding is limited to \$10,000 Each Claim and \$30,000 Aggregate, regardless of the number of Named Insureds, the number of Covered Proceedings, or the number of claims made during such Policy Period. The Company shall only have the responsibility to pay for defense costs in connection with a Covered Proceeding commenced and reported during the Policy Period. Covered proceedings do not include any civil suit or civil proceeding brought against the Named Insured alleging actual or threatened Sexual Misconduct involving a patient by the Named Insured while providing Professional Services. When a Sexual Misconduct Defense Sublimit is listed in the Declarations, such Sublimit shall apply to civil suits or civil proceedings of sexual abuse or molestation instead of the Covered Proceedings Sublimit. Covered Proceedings are:

a) Board Matters. Investigations regarding the in-force license of the Named Insured conducted by that regulatory entity responsible for the Named Insured's licensure and professional conduct in the profession listed in the Declarations;

b) Audits. Investigations/audits alleging errors or omissions by the Named Insured in billing statements for Professional Services rendered by the Named Insured by a health plan which compensates the Named Insured for Professional Services, whether operated privately or by a government agency;

c) HIPAA. Investigations of compliance by the Named Insured with the Health Insurance Portability and Accountability Act (HIPAA) by a government agency.

**6. Non-Party Deposition Defense Coverage.** The Company will appoint an attorney and pay the defense costs incurred up to \$2,500 per policy period, regardless of the number of incidents, for reasonable fees, costs and expenses necessary to represent the Named Insured at a deposition provided that:

a) the Named Insured is not named as a party in the underlying claim or lawsuit; b) the deposition involves the Named Insured's rendering of Professional Services; c) the Named Insured received during the Policy Period a valid subpoena compelling the Named Insured's attendance at an oral deposition; and d) the Named Insured has not been retained as an expert in the underlying lawsuit and has not been engaged to provide advice or expert testimony in connection with that action.

## VII. PERIOD OF COVERAGE

The Company shall not have any obligations under the above Insuring Agreements if a claim reported against a Named Insured during the Policy Period is based on an incident prior to the Policy Period stated in the Declarations of this Policy or in the Declarations of an earlier dated policy issued by the Company of which this Policy is a renewal or replacement. This insurance applies only to Incidents and to Professional Services rendered or which should have been rendered during the Policy Period as stated in the Declarations or in the Declarations of an earlier dated policy issued by the Company of which this Policy is a renewal or replacement.



## VIII. PERSONS INSURED

- A.** This Policy affords coverage to the Named Insured listed in the Declarations.
- B.** Within the applicable limits of liability, and subject to all the same terms, conditions and exclusions that apply to the Named Insured, this Policy affords coverage to:
- 1.** The following persons for whose acts or omissions the Named Insured is legally responsible, but only to the extent of the Named Insured's liability for the acts of these persons in connection with the rendering or failing to render Professional Services:
    - a.** Any employee of the Named Insured (or the Named Insured's professional corporation, if coverage for the Named Insured's professional corporation is indicated in the Declarations), except any Other Health Provider, while acting within the scope of his or her duties as such.
  - 2.** Any additional insured listed in the Declarations or endorsed on to the Policy ("Additional Insured"), including any professional corporation, but only for a covered Incident by the Named Insured. Anytime a state in which the Named Insured is practicing requires that the state be an Additional Insured under this Policy, such state is automatically an Additional Insured.
- C.** This Policy does **not** afford coverage for any act or omission of any Other Health Provider, unless such person is specifically listed in the Declarations of this Policy as a Named Insured.
- D. Student.** If the Named Insured is identified in the Declarations as a "Student", then the Named Insured is only covered by this Policy if a) the Named Insured is actively enrolled in the educational institution reflected on the Named Insured's application for membership and / or coverage ("Educational Institution") and has not graduated therefrom as of the date of incident; and b) the claim arises directly from acts or omissions of the Named Insured that were sponsored by, supervised by, or expressly approved by the Educational Institution.

## IX. LIMITS OF LIABILITY

- A.** The limit of liability stated in the Declarations as applicable to "Each Claim" is the limit of the Company's liability for loss resulting from any one claim or suit or all claims or suits because of any injury or Damages to any one person or entity for all acts arising out of the rendering of, or failure to render, Professional Services and for any other Incidents upon which the claims or suits are based. Two or more claims arising out of a single act, error, or omission or a series of related acts, errors, or omissions shall be treated as a single claim; and
- B.** The limit of liability stated in the Declarations as "Aggregate" is, subject to the provisions of Article IX, Section A, respecting "Each Claim," the total limit of the Company's liability for all claims reported during the Policy Period.
- C.** Such limits of liability shall apply separately to each Named Insured only when so indicated in the Declarations, except the inclusion of more than one (1) Named Insured or the inclusion of shareholders, officers, directors, employees, or agents of the Named Insured in any one (1) claim shall not increase the Company's liability applicable to "Each Claim" as set forth in Article IX, Section A. Where limits of liability at the time of any incident or injury are not identical to limits of liability at the time the claim is made or reported, the limits of liability at the time of such incident or injury shall apply.
- D. Fire Liability Sublimit.** In the event that there is a covered claim for a covered loss attributable in whole or in part to a fire, the maximum the Company will pay for Each Claim and Aggregate per Policy Period is \$100,000 ("Fire Liability Sublimit"). This Sublimit does not increase the limit of liability stated in the Declarations for this Policy.
- E. Products Liability Sublimit.** In the event that there is a covered claim for a covered loss attributable in whole or in part to Products Liability, the maximum the Company will pay for Each Claim and Aggregate per Policy Period is \$10,000 ("Products Liability Sublimit"). This Sublimit does not increase the limit of liability stated in the Declarations for this Policy. This Sublimit does not apply to the Insured's liability for the application of a product during the rendering of Professional Services.

## X. EXCLUSIONS

- A. No Defense or Payment of Damages.** This Policy **does not** apply to the defense or payment of Damages for any claim arising out of the following:
- 1. Professional Practice Exclusions.** As enumerated in the Professional Service Coverage Endorsement to the Policy.
  - 2. Breach of Application Warranty.** Any claim where the Named Insured violated General Condition Article V, Section D, of the Policy by failing to disclose the possibility of such claim. This exclusion applies only to such undisclosed potential claim.
  - 3. Failure to Sign Application.** Any claim of any type if the Named Insured did not sign the Application for this Policy.
  - 4. Collection Suits.** Any claim arising as a counter-claim by a Client who was sued for professional fees. Collection suits triggering this exclusion include, but are not limited to, those collections suits filed by a collection agency. Any claim made subsequent to a collection suit shall be presumed to be in response to the collection suit and to be in the nature of a counter-claim and, therefore, shall be within this exclusion.
  - 5. Failure to Obtain Certificate of Insurance.** Any claim against the Named Insured that involves, among others, any Other Health Provider with whom the Named Insured currently or in the future a) is a partner, b) an employee, c) an independent contractor, or d) shares office space, where the Named Insured has failed to procure for the Company, automatically and without request, a current certificate of insurance from the professional liability insurer of such Other Health Provider, which provides that the Master Policy Holder named in the Declarations of this Policy receive ongoing notification of the status and any cancellation of such Other Health Provider's professional liability insurance.
  - 6. No Active License.** Any act or omission, if at the time of such act or omission, the Named Insured did not hold a current, active license, as required by the U.S. State or Territory in which the act or omission occurred, to practice the profession listed in the Declarations.
  - 7. Intoxicants/Narcotics or Drugs.** Any claim arising from a service rendered, or which should have been rendered and was not, while the Named Insured or its employee or agent is under the influence of intoxicants, narcotics, or drugs.
  - 8. Sexual Misconduct.** Any claim arising out of or related in any way to any Sexual Misconduct performed or alleged to have been performed by the Named Insured or an employee or agent of the Named Insured. This exclusion applies regardless of the legal theory or basis upon which the Named Insured is alleged to be liable, including, but not limited to, assertions of: negligence; intentional torts; statutory or regulatory violations; improper or negligent hiring, employment or continued employment; improper or negligent investigation or failure to investigate; improper or negligent training; or improper or negligent supervision or failure to supervise. When Covered Proceedings coverage is indicated in the Declarations of the Policy, this exclusion shall not apply to limited defense coverage under the Covered Proceedings limits for defense only of such claim.
  - 9. Criminal Act.** Any claim arising from an alleged criminal act, or any act allegedly committed while in violation of any law or ordinance.

- 10. Workers' Compensation.** Any injury arising out of any obligation for which a Named Insured or an insurer has been or may be held liable under Workers' Compensation, Unemployment Compensation, Disability Benefits, or any similar law.
- 11. Guaranteed Results.** Any claim arising from guaranteeing the results of services of the Named Insured or its employees or agent.
- 12. Peer Review Activities.** Any claim arising from participation on a peer review committee, including, but not limited to, peer review committees of a hospital, trade association, or professional standards review organization.
- 13. Officers' and Directors' Liability.** Any injury arising out of the rendering of or failure to render Professional Services by any other person for whose acts or omissions the Named Insured may be held liable as a member, partner, officer, director, or shareholder of any professional partnership, association, or corporation that is not listed in the Declarations as being insured by this Policy.
- 14. Proprietors.** Any liability of the Named Insured as a proprietor, medical director, superintendent, administrator, or executive officer of any hospital, sanitarium, surgicenter, clinic with bed and board facilities, skilled nursing facility, convalescent hospital, laboratory, or business enterprise.
- 15. Assumed Liability.** Any liability assumed by the Named Insured, including liability due to breach of contract or assumed by a Named Insured under oral or written contract or agreement or liability resulting from factual admissions by the Named Insured, except as provided for in Article VI, Section A.3, "Premises Liability", above.
- 16. Government Employment.** Any injury from the acts or omissions of Named Insured or its employees or agents while employed by the United States Government or any other governmental or public entity.
- 17. Other Activities.** Any claim arising from statements, acts or omissions by the Named Insured or by any other person alleged to be in connection with or related to any of the following: interference with contract; violations of state and/or federal antitrust or deceptive advertising laws; interference with a person's right to occupy his or her property undisturbed; malicious prosecution; any injury or loss caused directly or indirectly by nuclear reaction, radiation, or radioactive contamination, whether controlled, uncontrolled, or accidental in nature or however caused, or any consequence of any of these; any injury or loss relating directly or indirectly to the Named Insured's actions as the employer of any claimant; discrimination; conversion; interference with prospective advantage; unfair competition; unfair trade and/or business practices; misappropriation of trade secrets; conspiracy to do any unlawful or tortious act; abuse of process; intentional or negligent infliction of emotional distress; negligent misrepresentation; fraud; any other intentional tort (even if such activities are related to a Named Insured's rendering of or failure to render Professional Services); or any injury not attributable to an Incident or to any act or any omission to the extent that such injury is not attributable to the rendering or failure to render Professional Services
- 18. Research Subject.** Any claim by any person who has ever been a research subject of the Named Insured or who was ever solicited to be a research subject of the Named Insured.
- 19. Excluded Personal and Advertising Injury.** Any claim arising from Personal or Advertising Injury: a) resulting in Bodily Injury; b) caused by or at the direction of the Named Insured with the knowledge that the act would violate the rights of another; c) caused by oral or written publication of material, if done by, or at the direction of, the Named Insured with knowledge of its falsity; d) caused by oral or written publication of material whose first publication took place before the beginning of the Policy Period; e) caused by the failure of goods, products, or services to conform with any statement of price, quality or performance made in any advertisement by the Named Insured; f) caused by the infringement of copyright, patent, trademark, trade secret, or other intellectual property rights; g) caused by an electronic chatroom, blog, or bulletin board the Named Insured hosts, has an ownership interest in, or exercises control over; h) caused by the unauthorized use of another's name or products; i) caused by misappropriation of advertising ideas or style of doing business; or j) to any person who is not a Client.
- 20. Liquor Liability.** Any claim arising from the Named Insured causing or contributing to the intoxication of any person; the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or any law or regulation relating to the sale, gift, distribution, or use of alcohol.
- 21. Pollution.** Any claim arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of pollutants: a) At or from any premises, site, or location that is or was at any time owned or occupied by, or rented or loaned to, any Named Insured; b) at or from any premises, site, or location that is or was at any time used by or for any Named Insured or others for the handling, storage, disposal, processing, or treatment of waste; c) which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any Named Insured or any person or organization for whom the Named Insured may be legally responsible; d) at or from any premises, site, or location on which any Named Insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if: (i) the pollutants are brought on or to the premises, site, or location in connection with such operations by such insured, contractor, or subcontractor; or (ii) the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of pollutants; e) which results in any loss, cost, or expense arising out of any request, demand, or order that any Named Insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of pollutants; or f) which result in any claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to or assessing the effects of pollutants. Pollutants are defined as any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.
- 22. Aircraft, Auto or Watercraft.** Any claim arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, auto, or watercraft.
- 23. War.** Any claim arising from war, whether or not declared, or any action or condition incident to war. War includes civil war, insurrection, rebellion or revolution.
- 24. Excluded Property Damage.** Any claim arising out of property damage to: a) property owned, rented or occupied by the Named Insured; b) property sold, given away, or abandoned by the Named Insured; c) property loaned to the Named Insured; (d) personal property loaned to the Named Insured.
- 25. Recall of Products, Work, or Impaired Property.** Damage claimed for any loss, cost, or expense incurred by the Named Insured or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of: a) the Named Insured's product or work; or b) impaired property; if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy, or dangerous condition in it.

- 26. Affiliated Parties.** Any claim a) for Bodily Injury to the Named Insured; b) arising from any business relationship other than the Named Insured providing Professional Services to any Client; c) brought by an employee of the Named Insured, including the spouse, child, parent, or sibling of any such employee, or brought by any member of the Named Insured's family or household; d) for Damages of any kind to a person hired to work for or on behalf of any Named Insured; or e) for Damages of any kind to a person on the part of the Premises that the person normally occupies.
- 27. Intentional Acts.** Any claim arising from acts expected or intended from the standpoint of the Named Insured to result in any injury to another.
- 28. Electronic Data.** Any claim arising from loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.
- 29. Illegal Distribution of Material.** Any claims arising directly or indirectly out of any action or omission that violates the Telephone Consumer Protection Act, the (CAN-SPAM ACT) or any similar laws, including any amendments or additions to such law.
- 30. Earth movement.** Any claim arising from movement of land or earth regardless of whether emanating from, aggravated by, or attributable to the Named Insured.
- 31. Dishonesty.** Any claim arising from any dishonest, fraudulent, or malicious act, error, or omission.
- 32. Sale of Goods.** Any claim arising from goods or products manufactured, bottled, or packaged by the Named Insured, except as provided for in Article VI, Section A.4, "Products Liability", above.
- 33. Excluded Substances.** Any claim arising from or related to asbestos, lead, silica dust, dust and/or toxic dust, fungus, bacteria or organic pathogens.
- 34. Transmission or Fear of Disease.** Any claim arising from or related to the transmission of Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus, or exposure to another having same, or to substances or materials contaminated with same, or fear of contracting Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus or any other disease or illness; or any sexually transmitted disease; or any form of communicable disease. This exclusion applies in all circumstances except where the transmission of the communicable disease is alleged to have occurred during the rendering of Professional Services.
- 35. Employed or Supervised Other Health Providers.** Any injury from the acts or omissions of any Other Health Provider employed or supervised by the Named Insured.
- 36. Collapse.** Any claim arising from the abrupt falling down or caving in of a building or any part of a building, including any fixture, awning, fence, patio, or deck.
- 37. Accidents at the Named Insured's Residence.** When the Named Insured is providing Professional Services at the Named Insured's residence, any claim arising from the Named Insured's failure to maintain or inspect that residence or from any faulty maintenance, construction, remodeling, renovation, or installation at the residence.
- 38. Virtual Professional Services.** Any claim arising from Professional Services which are rendered virtually, unless: a) The Named Insured can view their Client and the Client can view the Named Insured while the Professional Services are rendered; b) The session in which Professional Services are provided is live and not pre-recorded; and c) The Named Insured is in compliance with all scope of practice and / or licensing requirements applicable to providing such Professional Services, both in the state where the Named Insured is located and the state where the Client is located.
- B. No payment of Punitive Damages (Defense Only).** This Policy will provide a defense only, but does not provide any payment of punitive or exemplary damages.

**XI. EXTENDED COVERAGE**

If coverage terminates under this Policy, the Named Insured (and the Named Insured's professional corporation and/or additional insured, but only if named in the Declarations of this Policy) shall automatically have Extended Coverage providing an unlimited additional reporting period in which claims otherwise covered by this Policy may be reported.

By:  \_\_\_\_\_  
Authorized Representative  
Allied Professionals Insurance Company, A Risk Retention Group, Inc.



## Massage Professional Service Coverage Endorsement

In consideration of the payment of premium, in reliance upon the statements made in the application for insurance provided under the Policy, and subject to all of the terms of the Policy including this Endorsement, the Company agrees with the Named Insured as follows:

**I. DEFINITIONS.** The following definitions apply to coverage issued under the Policy:

**A. Professional Products** means massage products bought from the Named Insured, relating to external-use only preparations or essential oils.

**B. Professional Services** is defined as the following techniques, but only to the extent the Named Insured is permitted by law to use such techniques: 1) Massage, defined as stroking, kneading, tapping, pressing, vibrating, rocking, rubbing, pushing, squeezing, moving, or stretching the muscular structure or soft tissues of the human body, with the hand, arm, elbow, foot, and to the extent permitted by law, with the aid of implements, tools, hot and cold packs, or mechanical and electromechanical devices (that do not require the use of transcutaneous electrodes), which are commercially marketed as massage implements, tools, and devices and which mimic or enhance the actions made by the hands. Stretching and movement is limited to non-forceful, non-sudden, active or passive stretches and movement. Soft Tissue does not include any organ of the body other than the skin; 2) Movement Therapy, defined as teaching or guiding Clients through a system of movements, hold positions, breathing, and meditation to support the Client in achieving spiritual balance, self-awareness, and enhanced general wellbeing; 3) Energy Therapy, defined as the use of gentle hand placement, soothing sounds, aromas, soft lighting, breathing instruction, or verbal cues to assist the Client in achieving a state of relaxation and to positively affect the general energetic system of the body; and /or 4) Spa Therapy, defined as the use of body wraps; body scrubs; the use of oils, creams, gels, herbal pastes, rubbing alcohol, lotions and powders as lubricants; and the use of low dose light therapy, but only if such therapy utilizes LED devices rated Class I or Class II by the U.S. Food and Drug Administration, and the maximum dose is limited to 15 joules per square centimeter.

**II. EXCLUSIONS.** The following exclusions are added to Article X, Section A., Paragraph 1, "Professional Practice Exclusions", of the Policy.

**a. Activities Outside the Legal Scope of Practice.** Any claim arising out of any act that is outside the legal scope of massage practice in the U.S. State or Territory in which the act is performed.

**b. Excluded Services.** Any claim arising out of any of: (i) treatment or reduction of any fracture; (ii) practice of medicine; (iii) the failure of the Named Insured to diagnose or treat any condition; (iv) the failure of the Named Insured to refer a Client to any healthcare provider for treatment of any condition; (v) practice of obstetrics or gynecology, including the delivery of babies, or care of newborn infants until they are fourteen (14) days old; (vi) colonic irrigations, dehydration of hemorrhoids; (vii) the failure of the Named Insured to exercise professional standards of care while utilizing any modality of treatment other than Professional Services, as defined in Article VI, Section A; (viii) treatment of cancer, epilepsy, or acquired immune deficiency syndrome; (ix) magnetic therapy; (x) gemstone therapy; (xi) meridian therapy when being utilized for the treatment of cancer or any other disease; (xii) stressology or internal coccyx adjustment; (xiii) the use of the Toftness device, x-ray, or radium; (xiv) microwave or fever therapy; (xv) moxibustion; (xvi) ear candling; (xvii) hypnosis; (xviii) nutritional or dietary counseling or advice; (xix) detoxification services or advice; (xx) any procedure which penetrates body cavities either manually or with any other method of intrusion except soft tissue massage of the oral or nasal cavities; (xxi) exercise and or personal training services, counseling, or advice; (xxii) psychiatry, psychology, or counseling services; (xxiii) practice of acupuncture; or (xxiv) practice of chiropractic, including, but not limited to, manipulation or adjustments of bones and hard tissues of the human body.

**c. Drugs or Surgery.** Any injury arising out of the use, administration, or prescription of any drug or pharmaceutical for the treatment of human beings or arising out of the performance of any procedure involving the cutting or penetration of human tissue.

**d. Non-Disclosed Massage Modalities.** Any claim relating to a massage modality or any other modality that is not included within the definition of Professional Services, unless such modality is disclosed and approved in writing by the Company.

**e. Animal Massage.** Any claim arising from the Massage of an animal ("Animal Massage"), unless (i) the Named Insured can document proof of training in Animal Massage; (ii) the animal's owner has given written consent; and (iii) the Named Insured is not legally prohibited from rendering Animal Massage in the state in which the Animal Massage was rendered.

**f. Hot Stones.** Any claim arising from the use of any heated stone, unless (i) the Named Insured has completed ABMP's Hot Stones Acknowledgement and viewed ABMP's Hot Stones Video; (ii) the Named Insured has completed a Hot Stones training protocol approved by the Company; or (iii) if the Named Insured is a School or Educational Institution, and the claim involves a student, the student is under the direct physical supervision of the faculty at the time such services were rendered.





## How to File a Claim

**If any incident occurs that you believe may be covered by your liability insurance, immediately contact ABMP by phone (800-458-2267), fax (800-667-8260), email (expectmore@abmp.com), or mail (address below) to make your initial report of the incident/claim. You are required to report any incident immediately, even if your client has not made a demand, or indicated that they want to file a claim against you. Failure to report an incident in a timely manner may void your insurance coverage.**

### **When something goes wrong during or following a service:**

- **Assess the extent of injuries or damage.** Obtain medical help or call the police if warranted or required by law. Do not be overly defensive or hostile to the claimant. Do what you can to soothe the situation. Many times, minor claims are dropped once the claimant's emotional anger diminishes. Report the incident to ABMP.
- **Take photographs immediately**, if possible, and/or when circumstances warrant.
- **Do not admit fault.** While your instinct may be to apologize and admit fault when a client asserts that you caused an injury, you often will not actually know whether the alleged injury was caused by you or by some underlying condition that the client has. If you admit fault for something that it turns out you didn't really cause, your client could use your admission as a basis for pursuing a claim against you. Without admitting fault, you may want to refund the client if the client has already paid or not charge the client for the services. You can indicate that because the client is dissatisfied, you are happy to refund the client as a gesture of goodwill. When a client reports any adverse reaction to your services, please contact ABMP as soon as possible.
- **Write down the facts.** Detailed notes regarding the incident should be completed as soon as possible to take advantage of short-term memory. This information should include conversations, recollections, types of services or techniques/equipment used, length of session, whether the procedure was creating discomfort for the client, and any documentation outlining appointment history, preexisting conditions, procedures, client notes, releases, client consultation forms, post treatment/homecare forms, client intake forms and any consent forms, etc. In addition, record any extraneous circumstances you may be aware of, such as previous treatments, work environment, hobbies and sports activities of the client, etc. Finally, record in writing any correspondence, telephone calls, or verbal communication received by you from the claimant or claimant's legal counsel.

### **Reporting the incident or claim:**

- **Complete the claim form.** Once you have compiled the facts and documents to be forwarded to ABMP (see above), complete and submit a claim form, which is available online at [www.abmp.com](http://www.abmp.com). It is essential ABMP receives information regarding all communication between you and the possible claimant as soon as possible. You must include the client's name, address, area code, and telephone number; date and time of the alleged incident; date the complaint (verbal or written) was filed with you; a copy of any written correspondence and/or transcript of verbal correspondence, etc., so the insurance company has as much information as possible to pursue a complete investigation. Write down the date, time, and place of the incident. Get names, addresses, and phone numbers of all involved parties and witnesses. ***Forward this claim form and the corresponding documentation to ABMP within three (3) business days of an incident, or notice of claim or suit.***
- **Notice of a Claim from the Client or the Client's Attorney.** Sometimes you won't even know about a potential claim until you are contacted later. If, as an ABMP member, you have received written or verbal contact from a client (or client's legal counsel) regarding a possible claim being filed against you, don't panic. Do not immediately inform your client you carry liability insurance. Do not provide any information regarding your (ABMP's) liability insurance policy until you contact ABMP. Do not communicate with the client's legal counsel. Follow the above procedure for gathering facts and completing the claim form. Report the potential claim along with supporting documentation immediately to ABMP.
- In the event a request for records pursuant to a subpoena, a deposition on written questions, or a request from an attorney or a client occurs, notify ABMP immediately. ***Please do not release the records until you contact ABMP and are advised to do so. The "Report of Claim or Incident Form" is not required for records request. Please do not send the "Report of Claim or Incident Form" to anyone other than your ABMP Risk Management Coordinator.***

ABMP members are to communicate directly with an ABMP Risk Management Coordinator regarding any possible claims within three (3) business days. Send information as outlined to: ABMP Risk Management Coordinator, 25188 Genesee Trail Rd., Suite 200, Golden, Colorado 80401, or fax to 800-667-8260. For claims inquiries, call 800-458-2267.