

2019 Malpractice Insurance

Policy Number 81330704

The 2019 policy booklet for Malpractice insurance
applies from January 1, 2019 to December 31, 2020

Issued by Aviva Insurance Company of Canada



9. GLOSSARY

"The Company" means Aviva Insurance Company of Canada (the insurer).

"Policyholder" means CDSPI

"Practising Status coverage" is described in the Master Policy Agreement on page 12.

"Non-Practising Status coverage" is described in the Master Policy Agreement on page 12.

"Extended Coverage" is described in the Master Policy Agreement on page 13.

The following definitions are for terms which appear in boldface when they are used. Headings are included for reference only and do not change the meaning of the terms of this Master Policy Agreement.

Dentist means a person who is licensed or possesses a certificate to practice **Dentistry** in a province or territory of Canada and "Dentist" includes, if specifically permitted under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction:

- (a) a person whose license or certificate is limited to the practice of dentistry for volunteer purposes; and
- (b) A student, in full time attendance at an accredited undergraduate dental educational program at a University in Canada who is participating in a Program sanctioned by such University while acting under the supervision of a person who is licensed or possesses a certificate to practice Dentistry in the province or territory of Canada where the Program is undertaken.

The **Period of Insurance** for Insureds with Practising Status or Non-Practising Status coverage is the time during which the Memorandum of Insurance is in force, subject to cancellation by either party during the term of coverage. The **Period of Insurance** for Insureds with Extended Coverage is the time during which the Company provides Extended Coverage under this Master Policy Agreement.

Dentistry means: Any treatment or procedure or any other act included as part of the permitted scope of practice of a person who is licensed or possesses a certificate to engage in the practice of dentistry as a **Dentist** under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction and "Dentistry" includes:

- (a) any treatment or procedure within the permitted scope of practice for charitable purposes when delivered by a person whose license or certificate is limited to the practice of dentistry for volunteer purposes if it is specifically permitted under the provisions of the applicable provincial or territorial statute regulating the practice of dentistry in the relevant jurisdiction; and
- (b) any treatment or procedure within the permitted scope of practice of a student, who is participating in a Program and acting as further described in the definition of "Dentistry".

Dental Services means: Any treatment or procedure or any other act included as part of the permitted scope of practice of a person who is licensed or certified as a dental hygienist, certified dental assistant, registered nurse or dental therapist under the provisions of the applicable provincial or territorial statute regulating the provision of such dental services in the relevant jurisdiction.

10. INSURING AGREEMENT

(a) Agreement of the Company

The Company will pay all amounts in excess of the deductible amount stated in the Memorandum of Insurance applicable to each claim for which the Insured is legally liable or for which the Insured is determined to have assumed liability under contract, for compensatory damages sustained by any person arising out of malpractice, error or mistake in providing or failing to provide professional services:

- (i) in the practice of **Dentistry** by the insured or any person for whose acts or omissions the Insured is legally responsible, or
- (ii) in the performance by the Insured or any person for whose acts or omissions the Insured is legally responsible of **Dental Services** in the office of or under the direction or supervision of a **Dentist**.

In order for the Company to be liable:

- (i) a claim for damages must be made against the Insured within the **Period of Insurance** and reported to the Company in accordance with Section 15 of this Master Policy Agreement; or
- (ii) the Insured must have notified the Company during the **Period of Insurance** of circumstances that may reasonably be expected to give rise to a claim and the Insured was not reasonably aware of such circumstances prior to the **Period of Insurance**.

The Company will also provide coverage for claims which arise from circumstances described below under the heading "**Duty to notify Company of Claims**".

11. ELIGIBILITY FOR INSURANCE

(a) Who is Eligible for Malpractice Liability Insurance?

Individuals may be eligible for Practicing Status or Non-Practicing Status coverage or may qualify for Extended Coverage under this Master Policy Agreement.

(i) Practicing Status Coverage

An individual is eligible for Practicing Status coverage if he or she is in one of the following categories:

- (1) a **Dentist** who is licensed or possesses a certificate to practice **Dentistry** in a province or territory of Canada;
- (2) a dental hygienist or certified dental assistant, or dental nurse, who is employed by, or under contract to, a **Dentist** described in Category I; or
- (3) a dental therapist who is employed by and under the direct supervision of a **Dentist** described in Category 1;

and has been approved by the Company. The Company's approval is evidenced by the issuance of a Memorandum of Insurance.

(ii) Non-Practicing Status Coverage

An individual is eligible for Non-Practicing Status coverage if he or she is a **Dentist** described in Category 1 above who, at the time of an event described in (A), (B), (C), (D) or (E) below was insured with Practicing Status coverage and who:

- (A) voluntarily and completely retires from the practice of **Dentistry** and surrenders his or her license to practice **Dentistry**;
- (B) moves to the Province of Ontario or Quebec and surrenders his or her license to practice **Dentistry** in all other provinces, the Yukon, Nunavut and the Northwest Territories;
- (C) moves to another country and/or surrenders his or her license to practice **Dentistry** in all provinces, the Yukon, Nunavut and the Northwest Territories; or
- (D) becomes disabled as a result of sickness (including treatment for drug or alcohol abuse), injury or complications due to pregnancy and is, as a result, unable to perform the whole of the duties of the practice of Dentistry, and surrenders his or her license to practice Dentistry in all provinces, the Yukon, Nunavut and the Northwest Territories;
- (E) or otherwise voluntarily surrenders his or her license to practice Dentistry in all provinces, the Yukon, Nunavut and the Northwest Territories;

The estate of any person described in Category 1, 2 or 3 in clause (a)(i) above who was insured with Practicing Status coverage on the date of his or her death is eligible to continue the deceased's coverage as Non-Practicing Status coverage.

If a named Insured with Practicing Status coverage or his or her legal representative declares in writing to the Company that the Insured has satisfied one of the conditions set out above as (A), (B), (C), (D) or (E) or that the Insured has died, the Insured will continue to be covered as an Insured with Non-Practicing Status coverage under this Master Policy Agreement and the limit of liability and the deductible set out in his or her Memorandum of Insurance on the date of the event described above will continue to apply until the earlier of:

- (1) the end of the event described above, and
- (2) the date the Company ceases to be the insurer for malpractice liability insurance for the Canadian Dentists' Insurance Program.

The Insured's Non- Practicing Status coverage under this Master Policy Agreement will only apply to acts or omissions which occur while the Insured is:

- (A) licensed to practice **Dentistry** or to perform **Dental Services**, and
- (B) insured with Practicing Status coverage.

Each Memorandum of Insurance issued to an Insured who is covered by these provisions will include the words "Non-Practicing Status".

(iii) Extended Coverage

An individual qualifies for Extended Coverage under this Master Policy Agreement if he or she satisfies all of the following conditions:

- (A) he or she is a **Dentist** who is currently or was formerly licensed to practice **Dentistry** in a province other than Ontario or Quebec or in the Yukon or in Nunavut or the Northwest Territories;
- (B) he or she does not have Practicing Status or Non-Practicing Status coverage under this Master Policy Agreement; and
- (C) he or she does not have any other malpractice liability coverage.

(b) Who is the Insured under this Master Policy Agreement?

The Insured is:

- (i) the named Insured identified in the Memorandum of Insurance, if the named Insured has Practicing or Non-Practicing Status coverage, **or** the individual who qualifies for Extended Coverage under this Master Policy Agreement as described above under the subheading "**Who is eligible for Malpractice Liability Insurance**";
- (ii) any interest owned, controlled or operated by the named Insured or such individual;
- (iii) any present or former partner, officer, director, employee, student, professional associate or shareholder of the named Insured or such individual with respect to acts performed, including any failure or omission to act, on behalf of the named Insured or such individual, respectively; and
- (iv) any present or former partner of the named Insured or such individual with respect to liability arising from the partnership.
- (v) any volunteer chairside assistant who is not an employee of the named Insured, who is acting under the direct supervision of the named Insured when the named Insured is engaged in the practice of dentistry, outside of his or her offices, for volunteer purposes; and

The names of the named Insureds are as shown in the records of The Policyholder.

12. **PERIOD OF INSURANCE**

(a) When coverage begins:

(i) Practicing Status Coverage

Unless a later date is requested by the applicant, the effective date of coverage for the initial **Period of Insurance** will be the date The Policyholder or CDSPI Advisory Services Inc., receives the application, either by mail or by electronic transmission.

This effective date of coverage for the initial **Period of Insurance** is shown on the Memorandum of Insurance issued to the named Insured.

(ii) Non-Practicing Status Coverage

The effective date for the initial **Period of Insurance** for Non-Practicing Status coverage will be shown on the Memorandum of Insurance issued to the named Insured or, in the case of the death of the named Insured, the personal representatives of the deceased named Insured.

(iii) Extended Coverage

Extended coverage for the initial **Period of Insurance** will take effect on the later of:

- (A) January 1, 2019 at 00:01 Eastern Standard Time at the address of the Policyholder; and
- (B) the date on which the Insured qualifies for Extended Coverage under this Master Policy Agreement.

(b) When the Period of Insurance ends:

The **Period of Insurance** will end on January 1, 2020 at 00:01 Eastern Standard Time at the address of the named Insured or, in the case of Extended Coverage, at the address of the Policyholder.

(c) Renewal periods - Practicing Status and Non-Practicing Status

As long as the named Insured continually maintains his or her Practicing Status coverage by paying the premiums when due, he or she will not be required to reapply each year for renewal coverage. Subject to the right of the Company and the Insured to cancel the Practicing Status coverage (as described below under the heading "**Termination of Insurance Coverage**"), the Practicing Status coverage, as described in the records of The Policyholder, will be renewed automatically upon The Policyholder's receipt of the premiums due as of January 1 in the year of the renewal. The named Insured will be sent an invoice for the renewal of the coverage. Following The Policyholder's receipt of the premiums paid by the named Insured, a Memorandum of Insurance confirming the renewal of the coverage will be sent to the named Insured.

Subject to the right of the Company and the Insured to cancel the coverage (as described below under the heading "**Termination of Insurance Coverage**"), an Insured's Non-Practicing Status coverage, as described in the records of The Policyholder, will be renewed automatically by the Company as of January 1 in the year of renewal for as long as the named Insured or his or her personal representatives continue to qualify for the coverage and the Company continues to be the insurer for malpractice liability insurance for the Canadian Dentists' Insurance Program. A Memorandum of Insurance confirming the renewal of the coverage will be sent to the named Insured.

13. EXCLUSIONS FROM COVERAGE

This Malpractice Liability Insurance coverage does not apply to:

Criminal acts

- injury arising out of the performance of any criminal act;

Acts committed without a professional license and other illegal or improper acts

- injury arising out of the knowing violation of any law or ordinance, including, without limitation, any acts committed by the Insured after his or her license to practice **Dentistry**, or if the Insured is not a **Dentist** his or her professional license, has been surrendered, canceled, suspended or revoked;
- injury arising out of any acts committed by the Insured which are prohibited by restrictions placed on the Insured by his or her applicable regulatory authority.

Acts committed outside the scope of practice or for other than a charitable purpose by limited licensee

- injury arising out of any act committed or omission made by an Insured whose license or certificate is limited to the practice of dentistry for volunteer purposes, if made while rendering any Treatment or Procedure in consideration of any fee or compensation;
- injury arising out of any acts committed by an Insured whose license or certificate is limited to the practice of dentistry for volunteer purposes if such acts are prohibited by his or her applicable regulatory authority through restrictions placed on the Insured or on the class of license or certificate held by the Insured;

Acts committed outside the scope of practice for Dental Students

- injury arising out of any acts committed by an Insured whose license or certificate is limited to the practice of dentistry as a student participating in a Program as contemplated in paragraph (b) of the definition of “*Dentistry*” if such acts are prohibited by his or her applicable regulatory authority through restrictions placed on the Insured or on the class of license or certificate held by the Insured.

Unauthorized acts by Dental Hygienists, Dental Assistants, Dental Therapists or Dental Nurses

- any claims arising out of malpractice, error or mistake committed by a dental hygienist, dental assistant, dental therapist or dental nurse:

- (i) while knowingly acting outside of the supervision requirements imposed by any applicable health discipline legislation, or
- (ii) while such person is not directed or supervised by a **Dentist**;
- any claims arising out of malpractice, error or mistake committed by a dental hygienist, dental assistant, dental therapist or dental nurse while performing **Dental Services** other than in the office of a **Dentist** unless such **Dental Services** are performed under the direction or supervision of a **Dentist**.

Abuse Exclusion

- “Claims or “actions” arising directly or indirectly from “abuse” committed or alleged to have been committed by an insured, including the transmission of disease arising out of any act of “abuse”.
 - (i) “Abuse” means any act or threat involving molestation, harassment, corporal punishment or any other form of physical, sexual or mental abuse.
 - (ii) Claims or “actions” based on your practices of “employee” hiring, acceptance of volunteer workers” or supervision or retention of any person alleged to have committed ‘abuse’.
 - (iii) Claims or “actions” alleging knowledge by an insured of, or failure to report, the alleged “abuse” to the appropriate authority(ies)”

Nuclear Energy Hazard

- any claims arising out of:
 - (i) liability imposed by or arising under any nuclear liability act, law or statute, or any law amendatory thereof;
 - (ii) **Bodily Injury** or **Property Damage** with respect to which an Insured under this Master Policy Agreement is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;
 - (iv) **Bodily Injury** or **Property Damage** resulting directly or indirectly from the **nuclear energy hazard** arising from:
 - (A) the ownership, maintenance, operation or use of a **nuclear facility** by or

on behalf of an Insured;

- (B) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**;
- (C) the possession, consumption, use, handling, disposal or transportation of **fissionable substances** or other **radioactive material** (except radioactive isotopes, away from a **nuclear facility**, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this Master Policy Agreement:

- The term **nuclear energy hazard** means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- The term **radioactive material** means uranium, thorium, plutonium, neptunium, their respective derivatives and the compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use of or application of atomic energy;
- The term **nuclear facility** means:
 - (i) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them
 - (ii) any equipment or device designed or used for
 - (A) separating the isotopes of plutonium, thorium and uranium or any one or more of them,
 - (B) processing or utilizing spent fuel, or
 - (C) handling, processing or packaging waste;
 - (iii) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the

isotope uranium 235, or any one or more of them if any at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material; and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- The term **fissionable substance** means any substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- The term **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- The term **Property Damage** means:
 - (i) Physical injury to tangible property, including all resulting loss of use of that property; or
 - (ii) Loss of use of tangible property that is not physically injured.

Claims of which Insured had prior knowledge

- claims the Insured:
 - (i) had knowledge of, or
 - (ii) could reasonably have foreseen would likely arise from the services provided, prior to the date of commencement of the initial **Period of Insurance** for the Malpractice coverage.

Reimbursement for fees

- claims for reimbursement of fees paid by the Claimant to the Insured for **Dentistry or Dental Services**.

Data Exclusion

- claims:
 - (i) for erasure, destruction, corruption, misappropriation, misinterpretation **of data**;
or
 - (ii) for erroneously creating, amending, entering, deleting or using **data**;
and any loss of use arising therefrom; or
 - (iii) arising out of the distribution or display of **data**, by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of **data**.

Data means representations of information or concepts in any form.

Terrorism Exclusion

- liability arising directly or indirectly, in whole or in part, out of **terrorism** or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate **terrorism**. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim.

Terrorism means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s), or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

Asbestos Exclusion

- liability, whether actual or alleged, in respect of any loss or losses, damage, cost or expense directly or indirectly caused by, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the claim, loss, damage, cost or expense.

Fungi and Fungal Exclusion

liability for:

Aviva: [Public](#)

- any other cost, loss or expense incurred by others, arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any **fungi** or **spores** however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of **fungi** or **spores**;
- any supervision, instructions, recommendation, warnings, or advice given or which should have been given in connection with the testing for, assessment, monitoring, removal, abatement, mitigation, treatment, detoxification or neutralization of, **fungi** or **spores**; or
- any obligation, whether imposed under statute or common law, to share damages with, to pay or repay someone else who must pay damages because of the claim, damage or activity referred to above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the claim, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the claim, damage, expenses or costs.

Spores includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any **fungi**.

Fungi includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, wet or dry rot, or bacteria whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any **fungi** or **spores** or resultant mycotoxins, allergens, or pathogens.

War Exclusion

- loss or damage caused by war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military power.

Services provided in Ontario or Quebec

- claims or liability arising out of professional services provided in the Provinces of Ontario or Quebec but this exclusion does not apply to dental hygienists, dental assistants, dental nurses and dental therapists in Ontario and Quebec who have purchased this Malpractice coverage.

Services provided outside Canada

- claims or liability arising out of professional services provided anywhere in the world outside Canada where there is an applicable government statute regulating the practice of **Dentistry**.

14. CONDITIONS OF COVERAGE

- (a) Amount of premium and when it must be paid

- (i) Practicing Status Coverage

The amount payable by the named Insured for Practicing Status coverage is set out in the invoice issued to the named Insured. Such amount includes the amount of the coverage premium (including administration fees) and, when applicable, a contribution to the Rate Stabilization Fund established and maintained by annual agreement between the Company and the Policyholder. Such amount is due on or before the effective date of the coverage for which the invoice is issued.

- (ii) Non-Practicing Status Coverage

If an Insured with Practicing Status coverage or his or her legal representative declares in writing to the Company that any of the events described under the subheading "**Non-Practicing Status Coverage**" in the subsection with the heading "**Who is Eligible for Malpractice Liability Insurance?**" has occurred, the Company will waive further premium charges and will refund to the Insured his or her pro rata share of the premium from the date such event occurred. Premiums will be waived until the earlier of:

- (A) the end of the event referred to above, and

- (B) the date the Company ceases to be the insurer for malpractice liability insurance for the Canadian Dentists' Insurance Program.

- (iii) Extended Coverage

There are no additional premiums payable for the Extended Coverage.

- (b) Amount of the deductible

- (i) Practicing Status and Non-Practicing Status Coverage

The amount of the deductible is set out in the Memorandum of Insurance issued to the named Insured. The deductible is not applicable to an Insured with Non-Practicing Status coverage who has voluntarily and completely retired from the practice of his or her profession or who has died.

(ii) Extended Coverage

There is a deductible amount of \$5,000 for each claim.

(iii) General

The deductible amount does not apply to expenses incurred by the Company to investigate and defend any claim. The terms of this Master Policy Agreement including those with respect to notice of claim and the Company's right to defend and make settlement of such claims apply irrespective of the application of the deductible amount.

(c) Amount of the Company's limit of liability

(i) Practicing Status and Non-Practicing Status Coverage

The Company's limit of liability for each claim and its annual aggregate limit of liability are set out in the Memorandum of Insurance issued to the named Insured. The annual aggregate limit is the most the Insurer will pay for all claims made against the Insured in any one calendar year.

(ii) Extended Coverage

The Company's limit of liability for each claim is \$2,000,000. The Company's annual aggregate limit of liability is \$2,000,000. The annual aggregate limit is the most the Insurer will pay for all claims made against the Insured in any one calendar year.

(d) Amount of partners' limits of liability

If a claim is made against an Insured who has Practicing Status or Non-Practicing Status coverage based solely on the laws of partnership and more than one Memorandum of Insurance provides coverage for such claim, the amount the Company will pay with respect to that claim under all applicable Memorandums of Insurance will not exceed the highest per claim limit shown in any one Memorandum of Insurance.

If a claim arises against an Insured who has Extended Coverage under this Master Policy Agreement and also arises against a partner of the Insured who has such Extended Coverage based solely on the laws of partnership, the amount the Company will pay with respect to that claim will not exceed \$2,000,000.

If a claim arises against an Insured and his or her partner(s), one or more of whom has Practicing Status or Non-Practicing Status coverage and one or more of whom has Extended Coverage, and the claim against the partner(s) is based solely on the laws of partnership, the amount the Company will pay with respect to that

claim will not exceed the highest per claim limit shown in any one applicable Memorandum of Insurance.

(e) Company's limit of liability - professional corporations

If a claim is made against a professional corporation which is an additional named Insured under a Memorandum of Insurance issued to a **Dentist** with Practicing Status or Non-Practicing Status coverage and more than one Memorandum of Insurance provides coverage for such claim, the amount the Company will pay with respect to that claim under all applicable Memorandums of Insurance will not exceed the highest per claim limit shown in any one Memorandum of Insurance.

(f) Action by one Insured against another Insured

The insurance provided by this Master Policy Agreement applies with respect to any claim or action brought by any one Insured against another Insured in the same manner and to the same extent as if a separate Memorandum of Insurance had been issued to each Insured. Any breach of a condition of this Section by any one Insured will not affect the protection given by this Master Policy Agreement to any other Insured.

(g) Territory

This Malpractice coverage applies to acts or omissions committed by the Insured:

- (i) in Canada (subject to the exclusion of professional services provided by **Dentists** in Ontario and Quebec) and
- (ii) in Haiti arising out of volunteer practices approved by the Company. The Company will indemnify the Insured for any losses covered by this Master Policy Agreement and occurring in this territory and
- (iii) anywhere else in the world where there is no applicable government statute regulating the practice of **Dentistry**. However, the Company is only liable for actions first brought in Canada to recover for such acts or omissions.

(h) Canadian Currency Clause

All limits of insurance, premiums, deductibles and other amounts set out in this Master Policy Agreement and the related Declarations and Premium Tables are in Canadian Currency.

15. NOTICE OF CLAIMS

(a) Duty to notify Company of claims

The Insured must notify the Company as soon as possible after:

- (i) a circumstance occurs which may reasonably be expected to give rise to a claim under this Malpractice coverage, or
- (ii) he or she receives a claim under this Malpractice coverage, including a demand, notice, summons or other process.

If, during the **Period of Insurance**, the Insured becomes aware of any circumstances which may subsequently give rise to a claim against the Insured under this Malpractice coverage, and the Insured notifies the Company of such circumstances during the **Period of Insurance**, any claim made against the Insured resulting from such circumstances will be deemed to be made during the **Period of Insurance**, regardless of when such claim is actually made.

- (b) How notice of a claim must be given

The Insured must give notice of a claim or potential claim under this Malpractice coverage to the Company or its adjusters or to The Policyholder or to CDSPI Advisory Services Inc. The notice given must contain all available information relating to the circumstances giving rise to the claim. If a claim is made against the Insured, the Insured must immediately forward to the Company copies of all demands, notices or pleadings received from the other party by the Insured or his or her representative.

16. HOW LEGAL PROCEEDINGS ARE TO BE CONDUCTED

- (a) Company's duty to defend actions

The Company will defend all claims, actions or other proceedings brought against the Insured at any time demanding damages arising from any circumstances or claims covered by the terms of this Malpractice coverage, even if such circumstances, claims, actions or other proceedings are groundless, false or fraudulent.

The Company may settle such claims as it deems expedient. However, the Company will not admit liability on behalf of the Insured without the consent of the Insured.

The Company has the sole right to and shall appoint legal counsel while carrying out its duty to defend.

- (b) Payments by Company in connection with any legal action

If an action is brought against the Insured seeking damages for which the Insured is covered under this Master Policy Agreement, except for the amount of the deductible, the Company will:

- (i) pay all judgments issued against the Insured and protect the Insured against any executions resulting from such judgments;
- (ii) pay:
 - (A) all expenses which the Company incurs in investigating, negotiating and defending any such claim or proceeding;
 - (B) all costs taxed against the Insured in any such proceeding;
 - (C) all premiums on bonds to release attachments and appeal bonds up to the Company's limit of liability under the Insured's coverage, provided that the Company does not have any obligation to apply for or provide such bonds;
 - (D) all interest accruing on the judgment from the date of the judgment until the date the Company pays its share of the judgment;
 - (E) for any expenses the Insured incurs to provide immediate medical or surgical relief to others at the time they sustain bodily injury; and
 - (F) for all reasonable expenses incurred at the Company's request; and
- (iii) reimburse the Insured if the Insured is required to attend at an examination for discovery, pre-trial, trial or appeal, to a maximum of \$400 a day and \$1,600 for each claim, provided that this reimbursement will not apply to dental hygienists, certified dental assistants, dental nurses or dental therapists unless the malpractice insurance is in their own name.

The Company will pay the amounts described in subparagraphs (B) and (C) above in addition to its limit of liability under this Master Policy Agreement.

If the Company is prevented by law or otherwise from defending the Insured in a claim, action or other proceeding, it will reimburse the Insured for defense costs and expenses incurred with the consent of the Company.

(c) Payment of deductible

The Company may pay all or part of the deductible amount in order to achieve a settlement of a claim. The Insured must immediately reimburse the Company for such amount.

(d) Assistance and cooperation of Insured

The Insured must cooperate with the Company, and if the Company requests, assist in:

- (i) making settlements;
- (ii) the conduct of actions; and

- (iii) enforcing any right of contribution or indemnity of any other person who may be liable to the Insured because of any injury or damage for which coverage is provided under this Master Policy Agreement.

The Insured must attend hearings and trials and assist in collecting and giving evidence and obtaining the attendance of witnesses.

- (e) Assumption of liability by Insured

The Insured will not voluntarily make any payment, assume any obligation or incur any expenses other than for first aid to others at the time of accident, except at his or her own cost. However, any activities carried out under the authority of any provincial or local society grievance committee or in compliance with the patient care management guidelines of the Insured's provincial licensing body are permitted without prejudice to the Insured's insurance coverage.

- (f) Other insurance

- (i) Practicing Status and Non-Practicing Status Coverage

If the Insured has other collectible insurance with another insurer covering a loss also covered by the Insured's Practicing Status or Non-Practicing Status coverage under this Master Policy Agreement, the Insured may collect under this coverage only after the limits of the other insurance have been exhausted. It is understood and agreed that coverage under this Master Policy Agreement is strictly excess to such other insurance.

- (ii) Extended Coverage

If other collectible insurance with any other insurer is available to any Insured who has Extended Coverage, such Insured has no coverage under this Master Policy Agreement.

- (g) Action by the Insured against the Company

The Insured can only bring an action against the Company if:

- (i) the Insured has fully complied with all the terms of this Master Policy Agreement;
- (ii) the amount the Insured is obligated to pay has been finally determined either by:
 - (A) judgment of a court following trial,
 - (B) written agreement of the Insured, the claimant and the Company;
and
- (iii) such action is brought within one year of the date of such judgment or written

agreement.

- (iv) Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the Insurance Act (for actions or proceedings governed by the laws of Alberta, British Columbia, and Manitoba), the Limitations Act, 2002 (for actions or proceedings governed by the laws of Ontario), or other applicable legislation.

Nothing in this Master Policy Agreement gives any person or organization any right to join the Company as a co-defendant of the Insured in any action to determine the Insured's liability.

- (h) Subrogation of Company to Insured's rights of recovery

If the Company makes any payment on behalf of the Insured, it will acquire all of the Insured's rights of recovery with respect to the amount of such payment against any third party, unless the amount of settlement exceeds the aggregate of:

- (i) any amounts paid by the Company under the Master Policy Agreement; and
- (ii) any other valid insurance which is collectible by the Insured.

In that case, the Insured retains all of its rights of recovery until it has received such excess amount. The Insured must execute all required documents and take all necessary actions in order to secure such rights of recovery.

17. TERMINATION OF INSURANCE COVERAGE

- (a) Cancellation of coverage at the request of the Insured

The named Insured may request the cancellation of his or her Memorandum of insurance at any time. Upon cancellation, the Company will refund to the named Insured his or her pro rata share of the premium for the remainder of the **Period of Insurance**.

- (b) Cancellation of coverage at the request of the Company

The Company may cancel a Memorandum of Insurance:

- (i) at any time, by giving the named Insured 90 days notice of cancellation by registered mail; and
- (ii) in the event of non-payment of premium, fraud or misrepresentation by the Insured, by giving the named Insured:

- (A) 15 days notice of cancellation by registered mail, or
- (B) 15 days written notice of cancellation personally delivered.

The notice period for cancellation by registered mail begins on the day after the registered letter is received at the post office to which it is addressed.

- (c) Non-renewal of coverage by Company

Subject to any other restrictions or requirements of this Master Policy Agreement, the Company may refuse to renew any individual Memorandum of Insurance because of underwriting considerations specific to the named Insured.

If the Company decides not to renew any individual Memorandum of Insurance it must:

- (i) first notify The Policyholder of its intention; and
 - (ii) then give written notice to the named Insured at least 90 days prior to the renewal date.
- (d) Optional Extended Reporting Period if Master Policy Agreement is terminated
 - (i) Practicing Status Coverage

If the Company cancels or does not renew the Master Policy Agreement for any reason other than non-payment of premium, the named Insured has the right to purchase an Optional Extended Reporting Period of 365 days following the effective date of cancellation or non-renewal. Coverage during the Optional Extended Reporting Period only applies to claims made for acts committed or alleged to have been committed prior to the effective date of cancellation or non-renewal.

The premium payable by the named Insured to extend the reporting period for his or her Practicing Status coverage is based on the annual premium for the named Insured's coverage in effect in the policy year which ends on the effective date of the cancellation or non-renewal.

In order to purchase the Optional Extended Reporting Period, the named Insured must:

- (A) give notice within 30 days of the effective date of cancellation or non-renewal; and
- (B) pay an additional premium of 75% of the annual premium for the named Insured's coverage as described above.

At the end of the first Optional Extended Reporting Period the named Insured may purchase one additional Optional Extended Reporting Period of 365 days.

In order to purchase the Additional Optional Extended Reporting Period, the named Insured must:

- (C) give notice within 30 days after the expiration of the first Optional Extended Reporting Period; and
- (D) pay an additional premium of 50% of the annual premium for the named Insured's coverage as described above.

The named Insured's purchase of the Optional Extended Reporting Period does not increase the Company's limit of liability under this Master Policy Agreement.

- (ii) Non-Practicing Status and Extended Coverage

The Optional Extended Reporting Period does not apply to Non-Practicing Status coverage or Extended Coverage.

18. GENERAL TERMS

- (a) Company's right of inspection

The Company has the right to inspect the Insured's premises and operations at any reasonable time during the **Period of Insurance**. The Company does not waive any of its rights under this Master Policy Agreement by either inspecting or not inspecting such premises and operations.

- (b) Notification of third parties of malpractice claims

The Company may provide information on claims made under this Master Policy Agreement to the Policyholder and CDSPI Advisory Services Inc. and, if requested, to the licensing body of the appropriate province or territory, except where prohibited by law.

- (c) Waiver

The policy terms may only be waived by a written agreement between the Insured and the Company. Knowledge of or notice to any person or agent does not cause a waiver or change of any term of this Master Policy Agreement.

- (d) Special Statutes

Terms of this Master Policy Agreement which conflict with the statutes of the province governing this Master Policy Agreement are hereby amended to conform to such statutes.

- (e) Assignment by the Insured

The Insured may only assign his or her rights under his or her coverage if such an assignment is consented to in writing by the Company, unless such assignment is a change of title by succession, death or proceedings under any bankruptcy act.

(f) Bankruptcy of the Insured

The Company remains liable for all of its obligations to the Insured under this Master Policy Agreement if the Insured or the Insured's estate becomes bankrupt or insolvent.



You can reach **CDSPI** or **CDSPI Advisory Services Inc.** at:

1.800.561.9401 or 416.296.9401

Fax: 1.866.337.3389 or 416.296.8920

E-mail: insurance@cdspi.com

www.cdspi.com