Amendment to Collected Rules and Regulations  
Section 490.020 Medical, Professional and Patient General Liability  
UM

The University of Missouri’s Collected Rules and Regulations Defense and Protection – Medical, Professional and Patient General Liability (CRR 490.020) governs the defense of medical professionals associated with The Curators of the University of Missouri. It addresses trust plan definitions, covered persons, limits of liability exclusions, and other coverage details.

Background

CRR 490.020 currently provides for the defense and protection of claims seeking damages due to injuries to a patient against University employed health care providers. In addition to malpractice claims, health care providers may be subject to administrative inquiries and complaints arising out of the same episode of care. The defense of the malpractice claim and administrative claim are frequently intertwined, involve many of the same issues, and require coordination. Accordingly, insurance offerings for individual providers and group practices often include defense coverage for administrative proceedings within appropriate limits.

Summary

The suggested amendment would provide employed health care workers defense coverage for disciplinary, licensure or similar administrative proceeding brought by a federal, state, or local government agency when approved by the General Counsel and Assistant Vice President of Management Services, when the proceeding arises out of acts or omissions that could have the potential to result in a damages claim otherwise covered under the Plan. Other coverage requirements are similar to those provided in the University’s general defense and protection rule (CRR 490.010). The cost of defense would be capped at $50,000 per proceeding and an aggregate limit of $100,000. Fines, penalties, and costs incurred by a provider in the proceeding other than defense costs are not covered. The cost of the coverage would be funded by the clinical entities.

A redline copy of the rule is attached.
Recommended Action - Amendment to Collected Rules and Regulations Section
490.020 Medical, Professional and Patient General Liability, UM

It was recommended by Vice President Rapp, endorsed by President Choi, recommended by the Finance Committee, moved by Curator __________ and seconded by Curator __________, that the following action be approved:

that Collected Rules and Regulations 490.020 Medical, Professional and Patient General Liability be amended to provide employed health care workers defense coverage for disciplinary, licensure or similar administrative proceeding brought by a federal, state, or local government agency, when the proceeding arises out of acts or omissions that could have the potential to result in a damages claim otherwise covered under the Plan. These proposed changes and the areas they would impact are reflected in the attached.

Roll call vote Finance Committee YES NO
Curator Brncic
Curator Chatman
Curator Layman
Curator Snowden
Curator Sundvold

The motion ______.

Roll call vote Full Board: YES NO
Curator Brncic
Curator Chatman
Curator Farmer
Curator Graham
Curator Layman
Curator Phillips
Curator Snowden
Curator Steelman
Curator Sundvold

The motion ______
Collected Rules and Regulations
Benefit Plans
Chapter 490: Defense and Protection

490.20  Medical, Professional and Patient General Liability

Bd. Min. 2-24-78, Amended Bd. Min. 5-26-78, Amended Bd. Min. 7-27-79; Revised 1-21-98; Revised 10-1-98, Amended Bd. Min. 11-22-02; Revised 1-31-14; Revised 12-11-14.

A. Article I: Definitions -- As used herein:

1. **Plan** -- The term "Plan" shall mean the University of Missouri Medical Professional and Patient General Liability Plan.

2. **Employer** -- The term "Employer" shall mean The Curators of the University of Missouri, a public corporation, including all its campuses, divisions, branches and parts and also including subsidiaries and affiliates of the University that are designated for coverage under this Plan by the Assistant Vice President.

3. **Injury** -- The term "injury" shall mean physical damage to or destruction of tangible property, bodily or mental injury, sickness or disease, including death, to which the Plan applies and resulted from an "occurrence" while the Plan was in effect. The term "injury" shall not be deemed to mean intentional torts.

4. **Damages** -- The term "damages" shall mean any monetary consideration due a claimant, including but not limited to money, services, waiver of amounts payable from patients and any other similar consideration approved pursuant to the Plan or the amount of a final judgment awarded by a court of competent jurisdiction.

5. **Covered Person** -- The term "covered person" shall mean any person or organization designated in the Covered Persons provision of the Plan.

6. **Occurrence** -- The term "occurrence" shall mean an "incident", including continuous or repeated exposure to conditions, which results in an "injury" neither expected nor intended from the standpoint of the covered person and/or neither expected nor intended from the standpoint of the claimant.

7. **Incident** -- The term "incident" shall mean any happening which is not consistent with the routine or commonly practiced care of a patient, including an accident or a situation which might result in an accident. An incident is also an actual or alleged injury arising out of the rendering or failure to render professional services by a "covered person" or by any person for whose acts or omissions the "covered person" is legally responsible, which resulted from or was attendant to a therapeutic or diagnostic procedure. Also included as an incident is a claim by or on behalf of a "patient" that there was a failure to obtain an informed consent from a
person or entity with the legal authority to provide such consent. An incident shall also include a claim of negligence in regard to the handling of or performing post-mortem examinations on human bodies or animal bodies.

8. **Director** -- The term "Director" shall mean the Director of Insurance and Risk Management, or the successor position thereto by whatever name it is entitled, a UM position.

9. **Medical Facility** -- The term "medical facility" shall mean any hospital, Student Health Service, School of Medicine, School of Dentistry, School of Pharmacy, School of Nursing, College of Veterinary Medicine and any other similar facilities owned or operated by the "Employer" approved for coverage by the "Assistant Vice President" or a facility to which "covered persons" have been assigned by the "Employer" or at which "covered persons" rendered professional services with the permission of the "Employer" where the health care and treatment of persons or animals are performed.

10. **Employee** -- Except as otherwise provided in this paragraph, the term "employee" shall mean a person whose services are secured by written agreement by "Employer" at a "medical facility" or a person employed by "Employer" at a "medical facility" or who has administrative or supervisory authority with respect to a "medical facility" or personnel thereof and at the time of an "occurrence" was in the performance of his or her regularly assigned duties as determined by the appropriate person having supervisory authority of the employee, including the performance of attending to emergency medical care (commonly known as Good Samaritan Service) and incidental and non-continuing medical service with the permission of the appropriate person having supervisory authority of the employee and shall also include non-employee volunteers rendering service at such "medical facility" as well as enrolled students of the University of Missouri pursuing courses of instruction at or under the direction or auspices of the "medical facility". The term "employee" shall not include medical residents employed by Employer as part of the residency program at the University of Missouri - Kansas City School of Medicine so long as professional liability coverage is provided to those medical residents by an entity other than the Employer or health care professionals jointly employed by Employer at the University of Missouri-Kansas City School of Medicine and any entity other than Employer.

11. **Plan Territory** -- The term "Plan Territory" shall mean:
   a. the United States of America (including its territories and possessions), Puerto Rico and Canada;
b. international water or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above, or

c. anywhere in the world if:
   i. the injury or damage arises out of:
      (1) goods or products made or sold by the University or covered persons in the territory described in a. above, or
      (2) the activities of any covered person permanently domiciled in the territory described in a. above, though temporarily outside such territory, and
   ii. the original suit for damages because of any such injury or damage is brought within the United States of America (including its territories and possessions), Puerto Rico or Canada.

12. **Incident and Claim Review Committee** -- The term "Incident and Claim Review Committee" (ICRC) shall mean any group or committee established at or for a "medical facility" and whose responsibilities under the "Plan" are to review incidents occurring at a "medical facility", resulting claims or suits brought, including recommendations on settlements of such claims or suits.

13. **Gender** -- Persons described or referred to in the masculine gender include females and persons described or referred to in the feminine gender include males.

14. **Patient** -- The term "patient" shall mean an animal or a natural person who is in or on the premises of a "medical facility" or in transit when in the care of a "covered person", for the purpose of receiving professional care or services rendered directly or indirectly by the "medical facility" or by a "covered person".

15. **Assistant Vice President** -- The term "Assistant Vice President" shall mean the Assistant Vice President for Management Services, or the successor position thereto by whatever name it is entitled, a UM System position.

B. **Article II: Effective Date** -- The effective date of the Plan shall be July 1, 1978.

C. **Article III: Covered Persons** -- Each of the following is a covered person under the Plan to the extent set forth below:
   - The Employer and any of Employer's administrative personnel;
   - Individual members of the Board of Curators of the University of Missouri and the Board of Curators of the University of Missouri; and
   - All employees.

1. Coverage shall not extend to a covered person while in the exercise of his
duties where an occurrence is within the provisions of the Federal Tort Claims Act as provided in 38 USC4116 or any other federal legislation or program. In the event the covered person does not come under the provisions of said Federal Tort Claims Act, the covered person shall come under the provisions of the Plan.

2. Coverage shall not extend to medical residents employed by Employer as part of the residency program at the University of Missouri - Kansas City School of Medicine so long as professional liability coverage is provided to those medical residents by an entity other than the Employer or to health care professionals jointly employed by Employer at the University of Missouri-Kansas City School of Medicine and any entity other than Employer.

3. The coverage afforded applies separately to each covered person against whom claim is made or suit is brought, except with respect to the limits of the Plan's liability.

D. Article IV: Coverage Agreement

1. The Employer, based on the provisions of the Plan and from the Plan Trust will pay on behalf of the covered person all sums which the covered person shall become legally obligated to pay as damages because of injury to the person or property of a patient arising out of the operations of a medical facility or because of injury arising out of the rendering of or failure to render, while the Plan is in effect, professional services by the covered person, or by any person for whose acts or omissions such covered person is legally responsible, performed in the practice of the individual covered person's profession including service by the individual covered person as a member of a formal accreditation or similar professional board or committee of a medical facility or professional society.

2. The Employer shall have the right and duty to defend any suit seeking such damages against the covered person, even if any or all of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and such settlement of any claim or suit as it deems expedient, but the Employer shall not be obligated to pay any claims or judgment or to defend any suit after the applicable limit of the Plan's liability has been exhausted by payment of judgments or settlements. In the event that a claim or suit is being defended at the time the applicable limit of the Plan's liability becomes exhausted, such defense shall continue as provided by Employer.

3. In the event that any covered person elects to employ his own legal counsel (see ARTICLE VI below) and declines legal counsel provided by Employer, there is no obligation under the Plan to pay any sum such covered person may become legally obligated pay, unless payment of settlement or judgment is approved by the Assistant Vice President (see ARTICLE VII below).

4. The Employer, upon the approval of the Assistant Vice President and General
Counsel or their designees, may provide the defense of any disciplinary, licensure or similar administrative proceeding brought against a covered person by a federal, state, or local government agency, subject to the following conditions and restrictions:

a. The proceeding must arise from the rendering or failure to render professional services to a patient which would otherwise be covered under the Plan.

b. Either:
   (1) The proceeding must be filed during or subsequent to the Employer’s defense of the covered person in a claim for damages arising from the same acts or omissions as such claim; or
   (2) The Employer, at its sole discretion, must determine a claim for damages is likely to be made against the covered person as a result of the same act or omission.

c. The covered person shall submit:
   (1) A brief description of the circumstances surrounding the incident giving rise to the administrative proceeding;
   (2) Documentation to verify that the named individual was acting within the scope of his or her official duties at the time of the incident; and
   (3) A copy of the summons or petition served on the named individual or any other information concerning the proceeding.

d. The Assistant Vice President and General Counsel or their designees have determined that the named individual was acting in good faith and within the scope of his/her employment or authority and that the rendering or failure to render professional services did not arise out of malfeasance or willful or wanton action or neglect of duty.

e. In determining whether to approve the defense of a disciplinary, licensure, or similar administrative proceeding, the Assistant Vice President and General Counsel or their designees may request a recommendation regarding coverage from the chief administrative officer or dean of the respective Medical Facility or their designees.

f. The employer will not pay more than Fifty Thousand and No/100 Dollars ($50,000.00) on behalf of a Covered Person for any single proceeding. Furthermore, the Employer will not pay more than One Hundred Thousand and No/100 Dollars ($100,000.00) on behalf of a Covered Person for all such proceedings covered under this program.

g. The Employer will not pay any fines, penalties, or other costs
incurred by or assessed against the Covered Person as a result of any such proceeding.

E. Article V: Exclusions -- The Plan does not apply:

1. To bodily injury to any employee of the Employer arising out of and in the course of his employment by the Employer;

2. To any obligation for which the Employer or any carrier as his insurer may be held liable under any workmen's compensation law, unemployment compensation law or disability benefits law, or under any similar law;

3. To medical residents employed by Employer as part of the residency program at the University of Missouri - Kansas City School of Medicine so long as professional liability coverage is provided to those medical residents by an entity other than the Employer or to health care professionals jointly employed by Employer at the University of Missouri-Kansas City School of Medicine and any entity other than Employer.

4. To the Nuclear Energy hazard as follows:

   a. Under any Liability coverage, to bodily injury or property damage;

      (1) With respect to which a covered person under the Plan is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

      (2) Resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the covered person is, or had the Plan not been established, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

   b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

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

      (1) The nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, a covered person or (b) has been
discharged or dispersed therefrom;

(2) The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a covered person; or

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

d. The provisions of Section 490.020 E.4.a, b and c above notwithstanding, this exclusion shall not apply to any covered person as respects his liability for injury arising from the treatment in a medical facility; provided however, this exclusion shall apply if such injury is otherwise covered by any other policy of insurance of the Employer and such other policy of insurance was in effect and the covered person under the Plan was a covered person under such other policy of insurance at the time of the occurrence.

5. As used in this exclusion:
   a. "Hazardous properties" include radioactive, toxic or explosive properties;
   b. "Nuclear material" means source material, special nuclear material or byproduct material;
   c. "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
   d. "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
   e. "Waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof;
   f. "Nuclear facility" means
      (1) Any nuclear reactor,
      (2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel, or (c) handling, processing or packaging waste,
(3) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

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

G. Article VII: Claims Adjustment

1. All claims adjustment activities shall be deemed to be carried out for the sole and only purpose of assisting the Office of the General Counsel in defending potential legal action, causes of action or litigation against the Employer or any covered person, and shall be closed meetings, records and votes.

2. Procedures for claims adjustment, including claim payments, denials and
suit settlements shall be as determined by the Assistant Vice President and shall include the duties of a medical facility Risk Manager of the ICRC and the Office of the General Counsel.

3. Since under the Plan written consent or approval in claim or suit settlement will not be required from an employee, input from any employee should be made to the ICRC.

4. The Assistant Vice President and the Director, shall after consultation with the General Counsel or his designee, notify the Director of the disposition to be made of each claim or suit. The Director will notify the medical facility Risk Manager of the disposition. The Risk Manager will be responsible for notifying the ICRC and other appropriate parties.

H. Article VIII: Payment of Claims and Suits

1. Subject to the provisions of ARTICLE VII and IX, the payment of the claims and suit judgments from the Trust Fund will be on certification to the Trustee by the Director.

2. Payments from a Trust Fund will be made in the order that claims or suit final judgments become payable, without regard to claim reserves previously established, date of incident, date of claim demand or date suit was filed.

3. The amount for a specific claim or suit judgment that can be paid from the Trust Fund will be determined by the Director based on the balance of the Trust Fund on the day such claim or suit judgment is payable. Any deficiency in the Trust Funds which would not permit full payment of such claim or suit judgment shall not impose any liability on the Employer.

I. Article IX: Limits of Liability

1. The Plan's Limits of Liability are as follows:

   - $7,500,000 per occurrence and $15,000,000 annual aggregate;
   - or the balance of the Trust Fund (see ARTICLE XI) as of the day a claim or suit final payment is due, whichever is less. Claim reserves will not be encumbered against the Trust Fund.

J. Article X: Plan Funding -- The Board of Curators instructs the administration to fund the Plan under the following guidelines:

1. The funding of the Plan shall be determined by the Board of Curators based on actuarial projections of an independent actuary employed by the Employer.

2. The level of amount of funding shall be sufficient to support or pay for actuarially projected costs of claims and Plan expenses such as claims adjustment, loss prevention and legal defense.

3. The amount of contribution to the fund will, within applicable fiscal constraints of HEW reimbursement regulations, consider the lag between the time a claim arises and when payment is to be made.

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4. To the extent that it can be actuarially projected, the level of funding for each medical facility for the period July 1, 1978 through June 30, 1979, shall be based on each facility's previous claim experience as modified and trended to account for anticipated current year incidents and cost, including shock-losses as actuarially determined.

5. Second and subsequent year funding levels determination shall include, where appropriate, the factors outlined in Section 490.020 J.4, but in addition will include the actuarial review of claim reserves established for each medical facility. Based on this review and the cost-trending to determine the estimated ultimate claim cost of each reserve and the anticipated year(s) in which payment or payments would be due, the level of funding for each medical facility will be determined.

6. The Director will advise the appropriate fiscal office(s) of the required level of funding, as determined above, for each medical facility in order that such amounts can be transferred to the Trust Fund.

7. To the extent that it can be determined by means of the above procedures, each medical facility will be ultimately charged only for its share of Plan expenses and the claim costs for which each medical facility is responsible and incurs.

8. The Medical Practice Income Plan, as the same has been approved and adopted by the Board of Curators, shall for the sole and only purpose of contributions and level of funding under this ARTICLE X and the possible return of contributions under paragraph 1 of ARTICLE XI (Section 490.020 K.1), be considered as a medical facility.

**K. Article XI: Trust Fund**

1. The Plan fund and all additions thereto shall be set aside and dedicated as a Trust Fund and so shall remain as long as any claim or expense payable under the Plan or any changes adopted thereto prior to its termination, may be outstanding and may become payable. Such Trust Fund shall be use solely for the purpose of payment of such claims and expenses and not be subject to diversion for any other purpose by the Board of Curators so long as said Trust shall exist. It is the intent of the Board of Curators that upon termination of the trust all funds not needed as specified above shall be returned proportioned to the various accounts of the University from which contributions were made.

2. The Plan fund shall be held by the Employer as Trustee or a bank or other financial institution as Trustee. Selection of the Trustee shall be by the Vice President for Finance and Administration, upon the recommendation of the General Counsel and approved by the Board of Curators.

3. The Plan Trust Fund shall be the sole source of all payments authorized by the Plan and in no circumstances shall any other funds of the Employer, any
member of the Board of Curators individually, employees of the Employer or any other covered persons of the Plan be liable or responsible therefor.

4. Employer's General Counsel shall prepare the required Trust Agreement and shall have same properly executed after the approval of the Board of Curators.

L. Article XII: Miscellaneous Provisions

1. Covered Person's Duties in the Event of Occurrence, Claim or Suit -- Upon the covered person becoming aware of an incident in which the covered person is involved resulting in any alleged injury to which the Plan applies, written notice containing particulars sufficient to identify the injured person and covered person and also reasonable obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the covered person to the Director as soon as practical.

If claim is made or suit is brought against a covered person, the covered person shall forward to the Director every demand, notice, summons or other process received by him or his representative as soon as possible.

The covered person shall cooperate with the Employer and, upon the Employer's request, assist in making settlements, in the conduct of suits and enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered person because of injury or damage with respect to which coverage is afforded under the Plan; and the covered person shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The covered person shall not, except as his own cost, voluntarily make any payment, assume any obligation or incur any expense. Failure of the covered person to cooperate with the Employer shall constitute a waiver of the coverage provisions provided by the plan.

2. Action Against the Plan -- No action shall be maintained by a covered person against the Employer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the Plan, not until the amount of the Plan's obligation to pay shall have been finally determined either by final judgment against the covered person or by written agreement of the Employer and the Claimant.

No person or organization shall have any right under the Plan to join the Employer as a party to any action against the covered person to determining the covered person's liability, nor shall the Employer be impeded by the covered person or his legal representative. Nothing in the Plan shall be construed as a waiver of any governmental immunity of the Employer, the Board of Curators of the University of Missouri nor any of its employees in the course of their official duties.
3. **Other Insurance of Covered Person** -- The coverage afforded by the Plan is primary coverage, except when stated to apply in excess of or contingent upon the absence of other insurance. When this coverage is primary and the covered person has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Plan's payment shall not be reduced by the existence of such other insurance.

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

a. **Contribution by Equal Shares** -- If all of such other valid and collectible insurance provides for contribution by equal shares, the Plan shall not be liable for a greater proportion of such loss than would be payable if the Plan and the insurance covering each covered person contributes an equal share until the share of each equals the lowest applicable limit of liability under any one policy or Plan or the full amount of the loss is paid, and with respect to any amount of loss not so paid the Plan and remaining insurance on covered persons then continue to contribute equal shares of the remaining amount of the loss until the Plan and each insurance policy on such covered person has paid its limit in full or the full amount of the loss is paid.

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

4. **Subrogation** -- In the event of any payment under the Plan, the Employer shall be subrogated to all the covered person's rights or recovery therefor against any person or organization and the covered person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The covered person shall do nothing after loss to prejudice such rights. Any such recovery by the Employer shall be used to adjust the next annual contribution to the Trust Fund from the medical facility on whose behalf the subrogation was effected.

5. **Changes in the Plan** -- All changes in the Plan subsequent to the first approval of the Plan by the Board of Curators on the date appearing on the Plan cover page, shall be prepared by the Assistant Vice President and forwarded to the ICRC for review and recommendation. After approval as to legal form by the General Counsel, the Assistant Vice President will submit the changes to the President of the Board of Curators. Changes shall
become effective on the date fixed by the Board of Curators.

6. **Assignment** -- The interest hereunder of any covered person is not assignable. If the covered person shall die or be adjudged incompetent or cease for any reason to be a covered person under the Plan, this coverage shall thereupon terminate, but shall cover the covered person's legal representative as the covered person with respect to damages previously incurred and to which this Plan applies.

7. **Cancellation** -- The Plan may be canceled by the Employer effective July 1 of any year, with notice of such cancellation being given to all covered persons at least ninety (90) days prior to the effective date of such cancellation.

8. **Plan Territory** -- The coverages provided by the Plan apply only to an occurrence within the Plan territory and then only when claim is made and suit is brought within the United States of America, its territories, or possessions, Puerto Rico or Canada.

9. **Plan Review** -- As of June 30, 1979, and each year thereafter that the Plan remains in effect, the Assistant Vice President will submit an evaluation report of the Plan to the President of the University. The report shall contain, but not be limited to, the following:
   a. Adequacy of coverage;
   b. Funding levels commensurate with desired limits of liability and actual claim experience;
   c. Investment income earned; and
   d. Plan changes under consideration. The ICRC may submit a report to the Assistant Vice President covering any or all of the above parts or covering any other part of the Plan, including recommended changes of the Plan.

10. **Plan Constitutionality** -- In the event that any part of the Plan is held to be unconstitutional or otherwise declared illegal, the other parts of the Plan will remain in full force and effect.
Collected Rules and Regulations

Benefit Plans

Chapter 490: Defense and Protection

490.20 Medical, Professional and Patient General Liability

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person or entity with the legal authority to provide such consent. An incident shall also include a claim of negligence in regard to the handling of or performing post-mortem examinations on human bodies or animal bodies.

8. **Director** -- The term "Director" shall mean the Director of Insurance and Risk Management, or the successor position thereto by whatever name it is entitled, a UM position.

9. **Medical Facility** -- The term "medical facility" shall mean any hospital, Student Health Service, School of Medicine, School of Dentistry, School of Pharmacy, School of Nursing, College of Veterinary Medicine and any other similar facilities owned or operated by the "Employer" approved for coverage by the "Assistant Vice President" or a facility to which "covered persons" have been assigned by the "Employer" or at which "covered persons" rendered professional services with the permission of the "Employer" where the health care and treatment of persons or animals are performed.

10. **Employee** -- Except as otherwise provided in this paragraph, the term "employee" shall mean a person whose services are secured by written agreement by "Employer" at a "medical facility" or a person employed by "Employer" at a "medical facility" or who has administrative or supervisory authority with respect to a "medical facility" or personnel thereof and at the time of an "occurrence" was in the performance of his or her regularly assigned duties as determined by the appropriate person having supervisory authority of the employee, including the performance of attending to emergency medical care (commonly known as Good Samaritan Service) and incidental and non-continuing medical service with the permission of the appropriate person having supervisory authority of the employee and shall also include non-employee volunteers rendering service at such "medical facility" as well as enrolled students of the University of Missouri pursuing courses of instruction at or under the direction or auspices of the "medical facility". The term "employee" shall not include medical residents employed by Employer as part of the residency program at the University of Missouri - Kansas City School of Medicine so long as professional liability coverage is provided to those medical residents by an entity other than the Employer or health care professionals jointly employed by Employer at the University of Missouri-Kansas City School of Medicine and any entity other than Employer.

11. **Plan Territory** -- The term "Plan Territory" shall mean:

   a. the United States of America (including its territories and possessions), Puerto Rico and Canada;
b. international water or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above, or
c. anywhere in the world if:
    i. the injury or damage arises out of:
        (1) goods or products made or sold by the University or covered persons in the territory described in a. above, or
        (2) the activities of any covered person permanently domiciled in the territory described in a. above, though temporarily outside such territory, and
    ii. the original suit for damages because of any such injury or damage is brought within the United States of America (including its territories and possessions), Puerto Rico or Canada.

12. Incident and Claim Review Committee -- The term "Incident and Claim Review Committee" (ICRC) shall mean any group or committee established at or for a "medical facility" and whose responsibilities under the "Plan" are to review incidents occurring at a "medical facility", resulting claims or suits brought, including recommendations on settlements of such claims or suits.

13. Gender -- Persons described or referred to in the masculine gender include females and persons described or referred to in the feminine gender include males.

14. Patient -- The term "patient" shall mean an animal or a natural person who is in or on the premises of a "medical facility" or in transit when in the care of a "covered person", for the purpose of receiving professional care or services rendered directly or indirectly by the "medical facility" or by a "covered person".

15. Assistant Vice President -- The term "Assistant Vice President" shall mean the Assistant Vice President for Management Services, or the successor position thereto by whatever name it is entitled, a UM System position.

B. Article II: Effective Date -- The effective date of the Plan shall be July 1, 1978.

C. Article III: Covered Persons -- Each of the following is a covered person under the Plan to the extent set forth below:

- The Employer and any of Employer's administrative personnel;
- Individual members of the Board of Curators of the University of Missouri and the Board of Curators of the University of Missouri; and
- All employees.

1. Coverage shall not extend to a covered person while in the exercise of his
duties where an occurrence is within the provisions of the Federal Tort Claims Act as provided in 38 USC4116 or any other federal legislation or program. In the event the covered person does not come under the provisions of said Federal Tort Claims Act, the covered person shall come under the provisions of the Plan.

2. Coverage shall not extend to medical residents employed by Employer as part of the residency program at the University of Missouri - Kansas City School of Medicine so long as professional liability coverage is provided to those medical residents by an entity other than the Employer or to health care professionals jointly employed by Employer at the University of Missouri-Kansas City School of Medicine and any entity other than Employer.

3. The coverage afforded applies separately to each covered person against whom claim is made or suit is brought, except with respect to the limits of the Plan's liability.

D. Article IV: Coverage Agreement

1. The Employer, based on the provisions of the Plan and from the Plan Trust will pay on behalf of the covered person all sums which the covered person shall become legally obligated to pay as damages because of injury to the person or property of a patient arising out of the operations of a medical facility or because of injury arising out of the rendering of or failure to render, while the Plan is in effect, professional services by the covered person, or by any person for whose acts or omissions such covered person is legally responsible, performed in the practice of the individual covered person's profession including service by the individual covered person as a member of a formal accreditation or similar professional board or committee of a medical facility or professional society.

2. The Employer shall have the right and duty to defend any suit seeking such damages against the covered person, even if any or all of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and such settlement of any claim or suit as it deems expedient, but the Employer shall not be obligated to pay any claims or judgment or to defend any suit after the applicable limit of the Plan's liability has been exhausted by payment of judgments or settlements. In the event that a claim or suit is being defended at the time the applicable limit of the Plan's liability becomes exhausted, such defense shall continue as provided by Employer.

3. In the event that any covered person elects to employ his own legal counsel (see ARTICLE VI below) and declines legal counsel provided by Employer, there is no obligation under the Plan to pay any sum such covered person may become legally obligated pay, unless payment of settlement or judgment is approved by the Assistant Vice President (see ARTICLE VII below).

4. The Employer, upon the approval of the Assistant Vice President and General

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Counsel or their designees, may provide the defense of any disciplinary, licensure or similar administrative proceeding brought against a covered person by a federal, state, or local government agency, subject to the following conditions and restrictions:

a. The proceeding must arise from the rendering or failure to render professional services to a patient which would otherwise be covered under the Plan.

b. Either:

(1) The proceeding must be filed during or subsequent to the Employer’s defense of the covered person in a claim for damages arising from the same acts or omissions as such claim; or

(2) The Employer, at its sole discretion, must determine a claim for damages is likely to be made against the covered person as a result of the same act or omission.

c. The covered person shall submit:

(1) A brief description of the circumstances surrounding the incident giving rise to the administrative proceeding;

(2) Documentation to verify that the named individual was acting within the scope of his or her official duties at the time of the incident; and

(3) A copy of the summons or petition served on the named individual or any other information concerning the proceeding.

d. The Assistant Vice President and General Counsel or their designees have determined that the named individual was acting in good faith and within the scope of his/her employment or authority and that the rendering or failure to render professional services did not arise out of malfeasance or willful or wanton action or neglect of duty.

e. In determining whether to approve the defense of a disciplinary, licensure, or similar administrative proceeding, the Assistant Vice President and General Counsel or their designees may request a recommendation regarding coverage from the chief administrative officer or dean of the respective Medical Facility or their designees.

f. The employer will not pay more than Fifty Thousand and No/100 Dollars ($50,000.00) on behalf of a Covered Person for any single proceeding. Furthermore, the Employer will not pay more than One Hundred Thousand and No/ 100 Dollars ($100,000.00) on behalf of a Covered Person for all such proceedings covered under this program.

g. The Employer will not pay any fines, penalties, or other costs
incurred by or assessed against the Covered Person as a result of any such proceeding.

E. **Article V: Exclusions** -- The Plan does not apply:

1. To bodily injury to any employee of the Employer arising out of and in the course of his employment by the Employer;

2. To any obligation for which the Employer or any carrier as his insurer may be held liable under any workmen's compensation law, unemployment compensation law or disability benefits law, or under any similar law;

3. To medical residents employed by Employer as part of the residency program at the University of Missouri - Kansas City School of Medicine so long as professional liability coverage is provided to those medical residents by an entity other than the Employer or to health care professionals jointly employed by Employer at the University of Missouri-Kansas City School of Medicine and any entity other than Employer.

4. To the Nuclear Energy hazard as follows:
   a. Under any Liability coverage, to bodily injury or property damage;
      (1) With respect to which a covered person under the Plan is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
      (2) Resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the covered person is, or had the Plan not been established, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
   b. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
   c. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if
      (1) The nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, a covered person or (b) has been
discharged or dispersed therefrom;

(2) The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a covered person; or

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

d. The provisions of Section 490.020 E.4.a, b and c above notwithstanding, this exclusion shall not apply to any covered person as respects his liability for injury arising from the treatment in a medical facility; provided however, this exclusion shall apply if such injury is otherwise covered by any other policy of insurance of the Employer and such other policy of insurance was in effect and the covered person under the Plan was a covered person under such other policy of insurance at the time of the occurrence.

5. As used in this exclusion:

   a. "Hazardous properties" include radioactive, toxic or explosive properties;

   b. "Nuclear material" means source material, special nuclear material or byproduct material;

   c. "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

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

   e. "Waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof;

   f. "Nuclear facility" means

      (1) Any nuclear reactor,
      (2) Any equipment or device designed or used for (a) separating the isotopes of uranium or plutonium, (b) processing or utilizing spent fuel, or (c) handling, processing or packaging waste,
(3) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
(4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,
(5) And includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

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

h. "Property damage" includes all forms of radioactive contamination of property.

F. Article VI: Legal Services

1. The furnishings of all legal services, including legal defense, shall be the responsibility of the Employer through its General Counsel. Required legal services may be provided by the General Counsel and his staff, or if outside legal counsel and services are needed, such may be engaged by the General Counsel.

2. Any covered person may request the employment of outside counsel, including recommending the desired counsel or law firm. Such request must be made in writing and forwarded through the ICRC to the General Counsel for consideration.

3. In the event a covered person desires, in addition to the legal services provided above through the General Counsel to employ legal counsel of his choice, such employment of legal counsel shall be at the covered person's expense. In the event that the covered person elects to employ his own legal counsel to assist the General Counsel or counsel hired by the General Counsel, the right to make all decisions in regard to the defense of the claim or suit shall remain the rights and the duty of the Employer and its General Counsel.

G. Article VII: Claims Adjustment

1. All claims adjustment activities shall be deemed to be carried out for the sole and only purpose of assisting the Office of the General Counsel in defending potential legal action, causes of action or litigation against the Employer or any covered person, and shall be closed meetings, records and votes.

2. Procedures for claims adjustment, including claim payments, denials and
suit settlements shall be as determined by the Assistant Vice President and shall include the duties of a medical facility Risk Manager of the ICRC and the Office of the General Counsel.

3. Since under the Plan written consent or approval in claim or suit settlement will not be required from an employee, input from any employee should be made to the ICRC.

4. The Assistant Vice President and the Director, shall after consultation with the General Counsel or his designee, notify the Director of the disposition to be made of each claim or suit. The Director will notify the medical facility Risk Manager of the disposition. The Risk Manager will be responsible for notifying the ICRC and other appropriate parties.

H. Article VIII: Payment of Claims and Suits

1. Subject to the provisions of ARTICLE VII and IX, the payment of the claims and suit judgments from the Trust Fund will be on certification to the Trustee by the Director.

2. Payments from a Trust Fund will be made in the order that claims or suit final judgments become payable, without regard to claim reserves previously established, date of incident, date of claim demand or date suit was filed.

3. The amount for a specific claim or suit judgment that can be paid from the Trust Fund will be determined by the Director based on the balance of the Trust Fund on the day such claim or suit judgment is payable. Any deficiency in the Trust Funds which would not permit full payment of such claim or suit judgment shall not impose any liability on the Employer.

I. Article IX: Limits of Liability

1. The Plan's Limits of Liability are as follows:

   □ □ $7,500,000 per occurrence and $15,000,000 annual aggregate; or the balance of the Trust Fund (see ARTICLE XI) as of the day a claim or suit final payment is due, whichever is less. Claim reserves will not be encumbered against the Trust Fund.

J. Article X: Plan Funding -- The Board of Curators instructs the administration to fund the Plan under the following guidelines:

1. The funding of the Plan shall be determined by the Board of Curators based on actuarial projections of an independent actuary employed by the Employer.

2. The level of amount of funding shall be sufficient to support or pay for actuarially projected costs of claims and Plan expenses such as claims adjustment, loss prevention and legal defense.

3. The amount of contribution to the fund will, within applicable fiscal constraints of HEW reimbursement regulations, consider the lag between the time a claim arises and when payment is to be made.
4. To the extent that it can be actuarially projected, the level of funding for each medical facility for the period July 1, 1978 through June 30, 1979, shall be based on each facility's previous claim experience as modified and trended to account for anticipated current year incidents and cost, including shock-losses as actuarially determined.

5. Second and subsequent year funding levels determination shall include, where appropriate, the factors outlined in Section 490.020 J.4, but in addition will include the actuarial review of claim reserves established for each medical facility. Based on this review and the cost-trending to determine the estimated ultimate claim cost of each reserve and the anticipated year(s) in which payment or payments would be due, the level of funding for each medical facility will be determined.

6. The Director will advise the appropriate fiscal office(s) of the required level of funding, as determined above, for each medical facility in order that such amounts can be transferred to the Trust Fund.

7. To the extent that it can be determined by means of the above procedures, each medical facility will be ultimately charged only for its share of Plan expenses and the claim costs for which each medical facility is responsible and incurs.

8. The Medical Practice Income Plan, as the same has been approved and adopted by the Board of Curators, shall for the sole and only purpose of contributions and level of funding under this ARTICLE X and the possible return of contributions under paragraph 1 of ARTICLE XI (Section 490.020 K.1), be considered as a medical facility.

K. Article XI: Trust Fund

1. The Plan fund and all additions thereto shall be set aside and dedicated as a Trust Fund and so shall remain as long as any claim or expense payable under the Plan or any changes adopted thereto prior to its termination, may be outstanding and may become payable. Such Trust Fund shall be use solely for the purpose of payment of such claims and expenses and not be subject to diversion for any other purpose by the Board of Curators so long as said Trust shall exist. It is the intent of the Board of Curators that upon termination of the trust all funds not needed as specified above shall be returned proportioned to the various accounts of the University from which contributions were made.

2. The Plan fund shall be held by the Employer as Trustee or a bank or other financial institution as Trustee. Selection of the Trustee shall be by the Vice President for Finance and Administration, upon the recommendation of the General Counsel and approved by the Board of Curators.

3. The Plan Trust Fund shall be the sole source of all payments authorized by the Plan and in no circumstances shall any other funds of the Employer, any
member of the Board of Curators individually, employees of the Employer or any other covered persons of the Plan be liable or responsible therefor.

4. Employer's General Counsel shall prepare the required Trust Agreement and shall have same properly executed after the approval of the Board of Curators.

L. Article XII: Miscellaneous Provisions

1. Covered Person's Duties in the Event of Occurrence, Claim or Suit --
Upon the covered person becoming aware of an incident in which the covered person is involved resulting in any alleged injury to which the Plan applies, written notice containing particulars sufficient to identify the injured person and covered person and also reasonable obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the covered person to the Director as soon as practical.

   If claim is made or suit is brought against a covered person, the covered person shall forward to the Director every demand, notice, summons or other process received by him or his representative as soon as possible.

   The covered person shall cooperate with the Employer and, upon the Employer's request, assist in making settlements, in the conduct of suits and enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered person because of injury or damage with respect to which coverage is afforded under the Plan; and the covered person shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The covered person shall not, except as his own cost, voluntarily make any payment, assume any obligation or incur any expense. Failure of the covered person to cooperate with the Employer shall constitute a waiver of the coverage provisions provided by the plan.

2. Action Against the Plan -- No action shall be maintained by a covered person against the Employer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the Plan, not until the amount of the Plan's obligation to pay shall have been finally determined either by final judgment against the covered person or by written agreement of the Employer and the Claimant.

   No person or organization shall have any right under the Plan to join the Employer as a party to any action against the covered person to determining the covered person's liability, nor shall the Employer be impeded by the covered person or his legal representative. Nothing in the Plan shall be construed as a waiver of any governmental immunity of the Employer, the Board of Curators of the University of Missouri nor any of its employees in the course of their official duties.
3. **Other Insurance of Covered Person** -- The coverage afforded by the Plan is primary coverage, except when stated to apply in excess of or contingent upon the absence of other insurance. When this coverage is primary and the covered person has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Plan's payment shall not be reduced by the existence of such other insurance.

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

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

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

4. **Subrogation** -- In the event of any payment under the Plan, the Employer shall be subrogated to all the covered person's rights or recovery therefor against any person or organization and the covered person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The covered person shall do nothing after loss to prejudice such rights. Any such recovery by the Employer shall be used to adjust the next annual contribution to the Trust Fund from the medical facility on whose behalf the subrogation was effected.

5. **Changes in the Plan** -- All changes in the Plan subsequent to the first approval of the Plan by the Board of Curators on the date appearing on the Plan cover page, shall be prepared by the Assistant Vice President and forwarded to the ICRC for review and recommendation. After approval as to legal form by the General Counsel, the Assistant Vice President will submit the changes to the President of the Board of Curators. Changes shall
become effective on the date fixed by the Board of Curators.

6. **Assignment** -- The interest hereunder of any covered person is not assignable. If the covered person shall die or be adjudged incompetent or cease for any reason to be a covered person under the Plan, this coverage shall thereupon terminate, but shall cover the covered person's legal representative as the covered person with respect to damages previously incurred and to which this Plan applies.

7. **Cancellation** -- The Plan may be canceled by the Employer effective July 1 of any year, with notice of such cancellation being given to all covered persons at least ninety (90) days prior to the effective date of such cancellation.

8. **Plan Territory** -- The coverages provided by the Plan apply only to an occurrence within the Plan territory and then only when claim is made and suit is brought within the United States of America, its territories, or possessions, Puerto Rico or Canada.

9. **Plan Review** -- As of June 30, 1979, and each year thereafter that the Plan remains in effect, the Assistant Vice President will submit an evaluation report of the Plan to the President of the University. The report shall contain, but not be limited to, the following:
   a. Adequacy of coverage;
   b. Funding levels commensurate with desired limits of liability and actual claim experience;
   c. Investment income earned; and
   d. Plan changes under consideration. The ICRC may submit a report to the Assistant Vice President covering any or all of the above parts or covering any other part of the Plan, including recommended changes of the Plan.

10. **Plan Constitutionality** -- In the event that any part of the Plan is held to be unconstitutional or otherwise declared illegal, the other parts of the Plan will remain in full force and effect.