

prior to the inception dates of the Policies and that the “dental incidents”, including, but not limited to, the acts being investigated in connection with the Medicaid Fraud Investigation and complained of in the *Qui Tam* Actions, could result in, or had resulted in, a claim.

4. Coverage May Be Barred by Exclusion K(1) and/or Exclusion I

The Third Amended Petition alleges that the Defendants performed unnecessary and/or excessive sedation and that FORBA Holdings, FORBA Services, SSHC, and the Clinics routinely employed unqualified dentists and assistants.

Exclusion K(1) of the Policies bars coverage for a “dental incident” arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances by anyone without the appropriate license, registration, or certification. Thus, to the extent that sedation involved drug, pharmaceutical, or controlled substance, Exclusion K(1) bars coverage for “dental incidents” that were caused by “unqualified assistants.”

Exclusion I of the Policies bars coverage for a “dental incident” which involves the use of intravenous or intramuscular injections or “general anesthesia”. “General anesthesia” is defined to include deep sedation and to mean a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, produced by a pharmacologic or non-pharmacologic method or combination thereof. To the extent the Third Amended Petition’s allegations of excessive and improper administration of sedation constitute use of “general anesthesia” not administered by a licensed provider of anesthetic services, coverage is barred by Exclusion I.

To the extent allegations of improper or excessive sedation by unqualified individuals constitute “dental incidents”, National Union reserves all rights as to the application of Exclusion K(1) and/or Exclusion I to bar coverage for such “dental incidents.”

E. The Allegations of the Third Amended Petition Do Not Trigger Coverage Under the Billing Errors and Omissions Coverage Part of the Entities Policies

In addition to Professional Liability coverage, the Entities Policies each include coverage for Billing Errors and Omissions. Specifically, the Billing Errors and Omissions Coverage Part to each of the Entities Policies provides that National Union will pay those sums the insured becomes legally obligated to pay as “billing damages” resulting from a “wrongful act” to which the policy applies. “Billing damages” is defined as any monetary amount which the insured is legally obligated to pay as a result of a “billing claim”, including sums paid as awards, judgments, settlements, and civil fines and penalties imposed by a “government entity”. “Billing claim” is defined as: (1) a demand for money or services, brought by or on behalf of any “government entity” or commercial payor against the insured seeking “billing damages” for a “wrongful act”; (2) commencing an audit or investigation of a “wrongful act”; or (3) seeking injunctive relief on account of a “wrongful act”.

The allegations in the Third Amended Petition do not trigger a duty to defend under the Billing Errors and Omissions Coverage Part because they do not constitute a “billing claim”. The Third Amended Petition is not a demand for money or services brought by or on behalf of a government entity or

commercial payor; does not constitute the commencement of an audit or investigation of a “wrongful act” and does not seek injunctive relief on account of a “wrongful act”. Moreover, the Third Amended Petition does not seek “billing damages”, which is defined as any monetary amount in excess of the applicable limit of liability that the insured is legally obligated to pay as a result of a “billing claim”. Because the Third Amended Petition does not constitute a “billing claim”, there are no “billing damages” covered under this coverage part.

Accordingly, National Union has no duty to defend or indemnify SSHC, FORBA Holdings, FORBA Services, or the Clinics with respect to the Hernandez Class Action under the Billing Errors and Omissions Coverage Part of the Entities Policies.

F. No Coverage for Punitive Damages

The Third Amended Petition generally seeks an award of punitive damages. Punitive damages may not be insurable under applicable public policy and law. Therefore, and assuming coverage was not otherwise barred (as explained above), National Union reserves its rights as to whether or to what extent it has a duty to defend or indemnify the Defendants with respect to the punitive damages claim asserted in the Third Amended Petition.

G. Other Insurance

The Other Insurance clauses of the Policies provide that if other valid and collectible insurance is available to an insured for “damages” National Union covers under the Policies, then the Policies are excess over any other such insurance. When the Policies are excess over other insurance, National Union has no duty to defend against any “suit” if any other insurer has a duty to defend against that “suit”. However, if no other insurer defends, National Union will undertake the defense but will be entitled to the rights of the insured against all those other insurers. When the Policies are excess, National Union will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of the Policies. If other insurance is also excess, National Union will share the remaining loss with the other insurance.

Assuming coverage is not otherwise barred (as explained above), and to the extent there is other valid and collectible insurance that responds to the claims alleged in the Third Amended Petition of the Hernandez Class Action, the Policies arguably apply excess of such other insurance and National Union would have no duty to defend. Accordingly, National Union reserves its right as to the applicability of the Other Insurance clauses of the Policies.

H. The Rescission Action

As you know, on August 5, 2010, National Union commenced a declaratory judgment action against SSHC in the U.S. District Court for the Middle District of Tennessee captioned National Union Fire Insurance Company of Pittsburgh, PA. v. Small Smiles Holding Company, LLC (the “Rescission Action”). In the Rescission Action, National Union seeks the rescission of the Policies, or in the

alternative reformation of the Policies in conformance with the parties intent at the time the Policies were issued.

To that end, National Union alleges that prior to issuing, in 2008, and then renewing, in 2009, the Policies to SSHC, SSHC and/or its related entities knew of facts that were material to the risk that National Union was insuring but failed to disclose that information to National Union, including, but not limited to, the Medicaid Fraud Investigation. National Union further alleges that SSHC had a duty to disclose to National Union all information known to SSHC that was material to the risks SSHC sought to insure under the Policies, and that SSHC breached its duty by failing to disclose known material information to National Union that increased the risk of loss under the Policies. National Union would not have issued the Policies to SSHC had SSHC disclosed the material facts known to SSHC at the time SSHC sought to obtain or renew insurance coverage from National Union. Therefore, National Union asserts that it is entitled to a declaration that SSHC's failure to disclose material information to National Union entitles National Union to rescind and make void *ab initio* each of the Policies

Notwithstanding the allegations contained in the Rescission Action, National Union will continue to honor its contractual obligations under the Policies and afford a defense for the Small Smiles Defendants in connection with the Hernandez Class Action, as detailed above, until such time that the U.S. District Court for the Middle District of Tennessee declares that National Union is entitled to rescind the Policies. In that event, the Policies will be void *ab initio* and National Union will immediately withdraw its defense of the Defendants in the Hernandez Class Action. Therefore, if the Court authorizes National Union to rescind the Policies as sought in the Rescission Action, National Union will have no contractual obligations, whether as to a defense or indemnity, to the Defendants, or any of the insureds under the Policies, with respect to any claim that may otherwise be covered under the Policies, including the Hernandez Class Action.

National Union further specifically reserves its right to seek and obtain reimbursement of all defense costs expended and/or incurred by National Union on behalf of the Defendants with respect to the Hernandez Class Action in the event the Policies are rescinded.

REQUEST FOR INFORMATION AND DOCUMENTS

National Union requests that Small Smiles provide National Union with the following information in Small Smiles's possession or control in order to assist National Union with completing its coverage investigation:

1. All pleadings, discovery, and motion papers exchanged in the Hernandez Class Action.
2. All reports and/or correspondence prepared by defense counsel concerning the Hernandez Class Action.
3. All documents and/or communications maintained by Small Smiles referring or relating to the treatment of minor Aaliyah Esparza.

4. All documents maintained by Small Smiles referring or relating to Drs. Switzer, Pham, Scott, Quade, and Chang.
5. All correspondence and/or documents exchanged between Small Smiles and Maria Lorena Hernandez and/or Aaliyah Esparza, and/or any of their representatives.
6. All reports generated by Small Smiles referring or relating to any investigation as to the allegations in the Hernandez Class Action.
7. All manuals, written guidelines, written procedures, and/or documentation prepared by Small Smiles, or on its behalf, concerning dental operations and/or dental practices at any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
8. All documents and/or communications generated by Small Smiles referring or relating to patient care at any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
9. All documents and/or communication generated by Small Smiles referring or relating to billing guidelines at any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
10. All documents and/or communications generated by Small Smiles referring or relating to any type of quota or production goal, whether for treatment, billing, or otherwise, at any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
11. All documents and/or communications generated by Small Smiles referring or relating to the compensation, bonus, and/or salary structure in place at any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
12. All documents and/or communications generated by Small Smiles referring or relating to hiring practices at any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
13. All documents and/or communications generated by Small Smiles referring or relating to the management of any of the nationwide Small Smiles clinics, including CDC Oklahoma and CDC Portland.
14. A detailed description of the corporate, business, and/or other relationship between SSHC, FORBA Holdings, FORBA Services, CDC Oklahoma, CDC Portland, and the Dentists.
15. All documents and/or communications received by Small Smiles from and/or sent by Small Smiles to any of: (a) Affinity Insurance Services, Inc. ("AIS"); (b) Intercare Insurance Services, Inc. ("Intercare"); and (c) National Union referring or relating to

“dental incidents” or “claims” in connection with Small Smiles Dental Clinic of Oklahoma City, Small Smiles Dental Clinic of Tulsa, Children’s Dental Clinic of Oklahoma City, PLLC, Oklahoma Smiles Dental Clinic of South Oklahoma City, and/or Children’s Dental Clinic of Oklahoma City at Portland Plaza, PLLC.

16. Copies of all insurance policies issued to each of the Dentists that may potentially apply to provide coverage as to those defendants in the Hernandez Class Action and a statement as to whether any such policies provide or may provide coverage to those defendants for the Hernandez Class Action and whether any of the insurers issuing such policies have agreed to and/or are defending those defendants in that action.
17. All documents and/or communications which indicate that on or before September 26, 2008 Small Smiles was not aware of the Medicaid Fraud Investigation or any of the *Qui Tam* Actions and/or that Small Smiles was aware of Medicaid Fraud Investigation or any of the *Qui Tam* Actions but disclosed them to National Union and/or to AIS.
18. All documents and/or communications produced and/or provided on or before September 26, 2008 by Small Smiles to the DOJ, the HHS and/or any federal, state, and/or local government and/or agency in the course of and/or in connection with the Medicaid Fraud Investigation.
19. All documents and/or communications exchanged on or before September 26, 2008 between the plaintiffs in the *Qui Tam* Actions, the DOJ, the HHS and/or any federal, state, or local government and/or agency, on one hand, and Small Smiles, on the other hand, referring to, relating to or and/or in connection with all settlement agreements reached concerning the allegations made in the *Qui Tam* Actions.
20. All written statements taken on or before September 26, 2008 in the course of the Medicaid Fraud Investigation from any person.
21. All communications, correspondence, and documents exchanged on or before September 26, 2008 between the DOJ, the HHS, and/or any other federal, state, or local government and/or agency, on one hand, and Small Smiles, on the other hand, in connection with the Medicaid Fraud Investigation.
22. The names, addresses and telephone numbers of all current and/or former employees, officers, directors, contractors, subcontractors, and/or agents of Small Smiles interviewed on or before September 26, 2008 by the DOJ, the HHS and/or any federal, state, or local government and/or agency in the course of or in connection with the Medicaid Fraud Investigation.
23. All documents and/or communications produced on or before September 26, 2008 by any of the parties in any of the *Qui Tam* Actions.

24. All depositions transcripts and exhibits thereto, hearing transcripts, motions, pleadings, and orders in any of the *Qui Tam* Actions prepared on or before September 26, 2008.
25. All interview notes and interview transcripts from all interviews of Small Smiles personnel, whether currently or formerly employed by Small Smiles, prepared and/or taken on or before September 26, 2008 in connection with the Medicaid Fraud Investigation.
26. All electronic, video, and/or audio recordings of all interviews of Small Smiles personnel, whether currently or formerly employed by Small Smiles, prepared and/or taken on or before September 26, 2008 in connection with the Medicaid Fraud Investigation.
27. All reports generated on or before September 26, 2008 by Small Smiles, or on its behalf, referring or relating to the Medicaid Fraud Investigation.

Finally, please tell us whether Small Smiles has sought coverage, including defense and indemnity, from any other insurance carrier besides National Union with respect to the Hernandez Class Action and whether or not any such other insurance carrier has agreed to provide and/or has actually provided coverage to Small Smiles with respect to that action. In connection with this, please produce all other potentially applicable insurance policies and any correspondences between Small Smiles and any other insurance carrier with respect to the Hernandez Class Action.

Small Smiles, which is now seeking insurance coverage from National Union for the Hernandez Class Action, is obligated to provide the above-requested information pursuant to the Duty of Cooperation described in Section VII.A of each of the Policies. National Union has every expectation and hope that Small Smiles will comply with its duty to cooperate and provide the requested information.

RESERVATION OF RIGHTS/PARTIAL DISCLAIMER

As set forth above, National Union is continuing to investigate coverage with respect to the Third Amended Petition in the Hernandez Class Action under the Policies and therefore reserves all of its rights under the same, at law and in equity.

Accordingly, and as discussed above, with respect to the Third Amended Petition served in connection with the Hernandez Class Action, National Union agrees, subject to a full reservation of rights, to defend: (1) FORBA Holdings, FORBA Services, SSHC, and the Insured Clinics under the Professional Liability Coverage Part, only, to the 08/09 Entities Policy; and (2) the 08/09 Insured Dentists under the Professional Liability Coverage Part, only, to the 08/09 Individuals Policy. Furthermore, National Union disclaims coverage: (1) for the Non-Insured Clinics under the Policies; (2) for the Small Smiles Defendants under the 09/10 Policies; (3) for the Dentists, whether named as an insured or otherwise, under the 09/10 Individuals Policy; (4) for FORBA Holdings, FORBA Services, SSHC, and the Insured Clinics under the Individuals Policies; (5) for the Dentists under the Entities Policies; (6) as to Drs. Durst, Marriott, Watson, Heathcock, Poitevien, Cash, Sebourn, Turner, Hudson, Ortega, and Berg under the 08/09 Individuals Policy; and (7) for FORBA Holdings, FORBA Services, SSHC, and the Insured Clinics under the Billing Errors and Omissions Coverage Part under the Entities Policies.

Linda S. Zoeller
Small Smiles Holding Company
November 9, 2010
Page 24

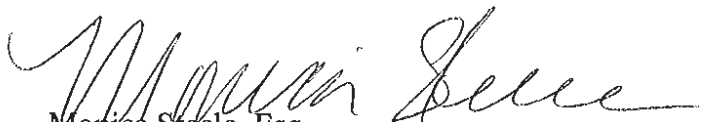
National Union's coverage position is based on the information presently available to us. This letter is not, and should not be construed as, a waiver of any terms, conditions, exclusions, or other provisions of the Policies, or any other policies of insurance issued by National Union or any of its affiliates. National Union expressly reserves all of its rights under the Policies, including the right to assert additional defenses to any claims for coverage, if subsequent information indicates that such action is warranted.

Should you have any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Also, if you are served with any additional demands or other amended petitions or pleadings, please forward them to us immediately, so that we can review our coverage position. If you wish to have your own personal counsel become involved in this matter, at your own expense, please feel free to do so, and we will cooperate fully with such counsel.

If you have any other insurance policies, which may respond to this claim asserted, you should notify that carrier immediately.

In closing, allow me to reiterate that we value you as a customer and encourage you to contact us should you have any questions or concerns regarding the contents of this letter. Thank you for your cooperation in this matter.

Sincerely,



Monica Steele, Esq.
Assistant Vice President
Chartis

cc:

Kathleen Cooper
Claim Manager
Intercare Insurance Services, Inc.
P.O. Box 52810
Bellevue, Washington 98015

Small Smiles Dental Clinic of Oklahoma City
c/o National Registered Agents, Inc. of OK
115 SW 89th Street
Oklahoma City, Oklahoma 73139

Small Smiles Dental Clinic of Tulsa
c/o National Registered Agents, Inc. of OK
115 SW 89th Street
Oklahoma City, Oklahoma 73139

Linda S. Zoeller
Small Smiles Holding Company
November 9, 2010
Page 25

Oklahoma Smiles Dental Clinic of South Oklahoma
c/o National Registered Agents, Inc. of OK
115 SW 89th Street
Oklahoma City, Oklahoma 73139

Dr. Monica Deaun Switzer
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Giang Binh Pham
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Megann Wakelee Scott
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Ronald Boston Quade
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Euna Kyong Chang
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Douglas David Durst
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Justin Kenneth Marriott
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Robert Bruce Watson
c/o Small Smiles Holding Company
618 Church Street, Suite 520

Linda S. Zoeller
Small Smiles Holding Company
November 9, 2010
Page 26

Nashville, Tennessee 37219

Dr. Erin Beth Heathcock
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Jimema Poitevien
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Stephen Ross Cash
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Joseph Paul Sebourn
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Lena Nicole Turner
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Michael Hudson
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Rosa Ortega
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

Dr. Mathew Arnold Berg
c/o Small Smiles Holding Company
618 Church Street, Suite 520
Nashville, Tennessee 37219

EXHIBIT 1

Pertinent Provisions of the Policies

Except where specified, the language of the provisions set forth herein is identical in each of the Policies.

DENTISTS LIABILITY

PROFESSIONAL LIABILITY COVERAGE PART

CLAIMS MADE

* * *

Throughout this Policy the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we”, “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section **III. WHO IS AN INSURED**.

* * *

I. COVERAGE AGREEMENTS

- A. We will pay on behalf of the insured those sums that the insured becomes legally obligated to pay as “damages” because of a “dental incident”, provided that:
 - 1. The “dental incident” occurs on or after the Retroactive Date shown in the Declarations and prior to the end of the “policy period”; and
 - 2. The “claim” for “damages” is first made against any insured, in writing, during the “policy period” or any Extended Reporting Period we provide under Section VIII. Extended Reporting Period.
- B. We have the right and duty to defend the insured against any “claim” to which this insurance applies, even if the allegations in such “claim” are groundless, false, or fraudulent. However, we have no duty to defend the insured against any “claim” to which this insurance does not apply.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **V. SUPPLEMENTARY PAYMENTS**.

* * *

- D. The amount we will pay for “damages” is limited as described in Section **IV. LIMITS OF INSURANCE**. We will not be obligated to defend any “claim” after the Limits of Insurance have been exhausted by the payment of judgments or settlements.
- E. This insurance applies to “damages” arising out of a “dental incident” that occurs anywhere in the world, provided that the “claim” is brought within the United States of America, its territories or possessions, Puerto Rico, or Canada.

II. EXCLUSIONS

This insurance does not apply:

- A. To a “dental incident” which occurred prior to the inception date of this policy if an insured knew or reasonably should have known, that the “dental incident” could result in, or had already resulted in, a “claim”.
- B. To a “dental incident” arising out of any dishonest, fraudulent, criminal, or knowingly wrongful act, error, or omission committed by or at the direction of any insured.

* * *

- I. To a “dental incident” which involves the use of intravenous or intramuscular injections or “general anesthesia”.

This exclusion does not apply:

- 1. When the intravenous or intramuscular injections or “general anesthesia” are administered by a licensed provider of anesthetic services, or
 - 2. To the use of intravenous or intramuscular injections to render “conscious sedation” in emergency situations where a life threatening or potential permanent injury exists.¹
- J. To a “dental incident” which occurs while an insured’s professional license as required by law is suspended, expired, canceled, revoked, or otherwise invalid.
 - K. To a “dental incident” arising out of the prescribing or dispensing of any drugs, pharmaceuticals, or controlled substances:
 - 1. By anyone without the appropriate license, registration or certification; or

¹ As amended by the General Anesthesia Endorsement contained in each of the Policies.

2. That are not approved for use in the treatment of human beings by the United States Food and Drug Administration.

* * *

- O. To a “dental incident” expected or intended by any insured or by any person for whose acts, errors or omissions an insured may be held liable.

* * *

III. WHO IS AN INSURED

- A. If you are shown in the Declarations as:

1. An individual dentist, you and your spouse are insureds, but only with respect to the conduct of your “dental business”;
2. A partnership or joint venture, you, your members and your partners and their spouses are insureds, but only with respect to the conduct of your “dental business”;
3. A limited liability company, you and your members are insureds, but only with respect to the conduct of your dental business;
4. A “dental corporation” or an organization other than a partnership, joint venture, or limited liability company, you are an insured but only with respect to the conduct of your “dental business”. Your executive officers, directors and shareholders are insureds, but only with respect to the conduct of your “dental business”.

* * *

No person, “dental corporation” or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

IV. LIMITS OF INSURANCE

- A. Subject to **B.** below, and regardless of the number of “claims” made or “suits” brought, the most we will pay for “damages” arising out of any one “dental incident” is the Limit of Insurance stated in the Declarations. This limit shall apply separately:

1. To each individual dentist shown as a Named Insured in the Declarations as stated in Subparagraph **A.1.** of **Section III., WHO IS AN INSURED**; and

2. To all Named Insureds and all additional insureds collectively, other than those subject to paragraph 1., above. This limit applies regardless of the number of insureds under the policy.

- B. The most we will pay for the sum of all "damages" to which this insurance applies is the Limit of Insurance shown in the Declarations as Aggregate.

* * *

- D. Subject to Paragraphs A. B., and C. above, all "claims" arising from one "medical incident" or a series of related "medical incidents" to any one person shall be deemed to have occurred at the time of the first "medical incident" regardless of the number of claimants, or the number of insureds against whom such claims are made.

* * *

VI. DEFINITIONS

* * *

- B. "Claim" means a "suit" or demand made by or for the injured person for "damages" to which this insurance applies.

* * *

- D. "Damages" means all the sums that the insured becomes legally obligated to pay. Damages do not include:

1. Administrative, civil or criminal penalties, fines or sanctions;
2. Payment for "professional services", including the waiver, return, withdrawal or reduction of fees paid to the insured or payment by the insured of fees for "professional services" provided by others.²

- E. "Dental Business" means operations or activities on premises used by you in the practice of your dental profession. "Dental business" includes operations necessary or incidental to those premises.

- F. "Dental corporation" means a professional service corporation organized under the corporation law of your state for the purpose of performing "professional services".

² As amended by the Tennessee Amendatory Endorsement contained in each of the Policies.

G. "Dental incident" means any act, error or omission in the rendering of or failure to render "professional services" by:

1. An insured; or
2. Any person for whose acts, errors or omissions you are held legally liable.

H. "General anesthesia" includes deep sedation and means a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

I. "Policy period" means the period starting on the effective date of this policy as shown in the Declarations. This period ends on the earlier of the expiration date shown in the Declarations or on the effective date of cancellation of this policy.

* * *

K. "Professional services" means dental services provided to others by a person trained and qualified to perform those services pursuant to a valid and unrestricted dental, dental hygiene, or dental assisting certificate or license. Such services include service as:

1. An officer or member of any committee of the American Dental Association or any of its committees or societies;
2. An officer or member of a formal accreditation, standards review or other professional board or committee related to a professional dental society or a hospital;
3. A consultant, including a consultant to an organization which provides or administers dental service payment plans.
4. An expert witness while giving testimony under oath.
5. The performance of or failure to perform autopsies.

"Professional Services" also include the writing of books, papers and articles on the technical aspects of a professional dentistry practice, if they are published or distributed by a recognized technical or professional publisher.

* * *

M. "Suit" means a civil proceeding in which "damages" to which this insurance applies are alleged. "Suit" includes:

1. An arbitration proceeding in which such "damages" are claimed and to which the insured must submit or does submit with our consent; or
2. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent.

* * *

VII. CONDITIONS

A. Duties In The Event Of A "Dental Incident", "Claim", or "Suit"

1. If during the "policy period", the first Named Insured shall become aware of any "dental incident" which may reasonably be expected to give rise to a "claim" being made against any insured, the first Named Insured must notify us in writing as soon as practicable. To the extent possible, notice should include:
 - a. How, when, and where the "dental incident" took place;
 - b. The names and addresses of any injured persons and witnesses; and
 - c. The nature and location of any injury or damage arising out of the "dental incident".

Any "claim" arising out of such "dental incident" which is subsequently made against any insured and reported to us, shall be considered first made at the time such notice was given to us.

Receipt by us of any incident report, including but not limited to variance reports, will not be considered a claim to us.

* * *

C. Other Insurance

1. If other valid and collectible insurance is available to an insured for "damages" we cover under this insurance, then this insurance is excess over any other such insurance. When this insurance is excess over other insurance, we will have no duty to defend against any "suit" if any other insurer has a duty to defend against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the rights of the individual dentist against all those other insurers.

When this insurance is excess over other insurance, we will pay, up to the applicable limits of insurance, the amount of the loss that exceeds the sum of the total amount that all such other insurance would pay for the loss in the absence of this insurance.

If other insurance is also excess, we will share the remaining loss with that other insurance.

2. If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

* * *

F. Representations

By accepting this policy, you agree that the statements and representations made in the application are true and are the basis for acceptance of the risk assumed by us. In the event that any material statement or representation made in the application is untrue, this policy in its entirety will be void at inception.

* * *

SCHEDULE OF NAMED INSURED

This endorsement modifies insurance provided under the following:

DECLARATIONS

Item 1. Of the Declarations is amended to include the following:

SCHEDULE

Named Insured

Retroactive Date

Per schedule on file with agent

Per schedule on file with agent

* * *

ADDITIONAL INSURED ENDORSEMENT³

This endorsement modifies insurance provided under the following:

PROFESSIONAL LIABILITY COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

EMPLOYMENT – RELATED PRACTICES LIABILITY COVERAGE FORM

³ This endorsement is contained only in the Entities Policy No. DNU3375848 for both the 2008-2009 and 2009-2010 policy years.

MEDICAL WASTE DEFENSE EXPENSES REIMBURSEMENT COVERAGE PART

ERISA FIDUCIARY LIABILITY COVERAGE PART

The **WHO IS AN INSURED** section is amended to include as an insured the person or entity shown in the Schedule below, but only with respect to their liability arising out of the conduct of your business

Schedule

Per Schedule on File with Agent

* * *

BILLING ERRORS AND OMISSIONS COVERAGE ENDORSEMENT⁴

NOTICE: THE LIMIT OF INSURANCE PROVIDED HEREIN IS IN ADDITION TO THE LIMITS OF INSURANCE FOR ALL OTHER COVERAGE UNDER THIS POLICY. HOWEVER, "BILLING DAMAGES" AND "CLAIM EXPENSES" REDUCE THE LIMITS OF INSURANCE PROVIDED HEREIN.

This Endorsement modifies insurance provided under the following:

DENTISTS PROFESSIONAL LIABILITY COVERAGE PART

I. The following is added to Section **I COVERAGE AGREEMENTS**

A. We will pay those sums the insured becomes legally obligated to pay as "billing damages" resulting from a "wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "billing claim" seeking those "billing damages". However, we will have no duty to defend the insured against any "billing claim" seeking "billing damages" because of a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "billing claim" that may result. But:

1. The amount we will pay for "billing damages" and "claim expenses" is limited as described in Section **IV – Limit of Insurance**;
2. The coverage and duty to defend provided by this policy will end when we have used up the applicable limit insurance for "claim expenses" or the payment of judgments or settlements.

* * *

⁴ This endorsement is contained only in the Entities Policy No. DNU3375848 for both the 2008-2009 and 2009-2010 policy years.

II. The following is added to Section **II. EXCLUSIONS**:

This coverage provided by this endorsement does not apply to any "billing claim":

- A. Relating to a "dental incident".
- B. Arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

* * *

IV. For the purposes of the coverage provided by this endorsement, the following definitions are added to Section **VI. Definitions**.

A. "Billing Claim" means:

- 1. a demand for money or services, brought by or on behalf of any "government entity" or commercial payor against the insured seeking "billing damages" for a "wrongful act";
- 2. commencing an audit or investigation of a "wrongful act"; or
- 3. seeking injunctive relief on account of a "wrongful act".

"Billing Claim" does not include:

- 1. any customary or routine audit/reconciliation conducted by or at the behest of a "government entity" or commercial payor; or
- 2. any criminal proceeding against an insured.

* * *

- C. "Billing damages" means any monetary amount not exceeding the limit of liability applicable to this endorsement which the insured is legally obligated to pay as a result of a "billing claim", including sums paid as awards, judgments, settlements and civil fines and penalties imposed by a "government entity".

"Billing damages" does not include the return or restitution of fees, profits, charges or benefit payments to any commercial payor or governmental health benefit payor or program.

"Government entity" means:

1. any department, agency, task force or other organization created by any federal, state or local law, executive order, ordinance or rule; or
2. any department, agency, task force or other organization operated, funded or staffed, in whole or in part, by the federal or any state, county or local government.