



Professional Liability

PROGRAM OF SELF-INSURANCE

Blanket Information Policy Statement for

- **Physicians**
- **Surgeons**
- **Nursing Staff**
- **Teaching/Research Faculty & Staff**
- **Non-Physician Professional Staff**
- **Graduate Medical Students**
- **Housestaff**
- **Medical Technologists**
- **Midwives**
- **Physician Assistants**
- **Medical Students**

NOTE: This document is not intended for use as a certificate of insurance and/or confirmation to any third party as proof of coverage; any such use without the express, written approval of Rowan University Office of Risk Management and Insurance and the Attorney General of the State of New Jersey will be considered null and void. Any liability and/or legal action arising as a result of any such misrepresentation will be the sole responsibility of the individual(s) so misrepresenting.

Confirmation of coverage, for the records of the protected person or for distribution to third parties, must be obtained from the Rowan University Office of Risk Management and Insurance. This office, in conjunction with the Attorney General of the State of New Jersey, is the sole authorized provider of confirmation of coverage with respect to both protected persons and the Rowan University School of Osteopathic Medicine.

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General Policy Statement

Faculty, Housestaff, Staff, or Enrolled Students protected by the ROWAN UNIVERSITY SCHOOL OF OSTEOPATHIC MEDICINE (University) Professional Liability Program of Self-Insurance (the Program) will be represented and indemnified for claims of personal injury which arise out of professional health care services performed solely within the scope of employment or enrollment at the University. The Program will provide legal representation and indemnification under the terms and provisions of the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. The Program shall have the right and duty to defend any such claim, even if any of the allegations of the claim are groundless, false or fraudulent, and after thorough investigation, may conclude the claim by settlement as deemed appropriate and authorized by Rowan University and the Attorney General of the State of New Jersey. The Program will pay the cost of duly authorized settlement or indemnification of claims. The cost of authorized legal counsel, court costs, investigation, etc., including authorized costs of appeal, if any, will also be paid by the Program.

The Program described herein is intended to function in accordance with the terms and provisions of the New Jersey Tort Claims Act for Faculty, Housestaff, Staff, and Enrolled Students of the University and does not amend, supersede or supplement the provisions of the Act.

This Policy Statement is intended to clarify the governing terms and provisions of coverage in light of special circumstances inherent in the University's mission of providing education, patient care, and research in health sciences.

Definitions

The following definitions are provided as a guide and do not amend, supplement or supersede any of the definitions or requirements of the New Jersey Tort Claims Act.

When used in this Policy Statement in reference to the Program:

“Affiliated Institution”: an institution which has an agreement with the University, approved in accordance with University policy, for participation of a Protected Person in education, patient care, research, or related activities.

“Claim”: a written demand for compensation or services made against a Protected Person related to the rendering of, or failure to render, professional health care services. Service of Suit, including Summons and Complaint or other formal legal demand, is included within this definition. Claim does not include any investigation by a government agency, the purpose of which is to consider licensure, sanctions, or criminal investigation.

“Coterminous Faculty”: a Faculty member employed by the University whose salary is funded in whole or in part by an Affiliated Institution through written contract with the University and whose employment by the University ends when the Faculty member's funding by the Affiliate Institution ends.

“Enrolled Students”: shall mean a Student who is enrolled in the Rowan University School

of Osteopathic Medicine. An Enrolled Student is eligible for protection with respect to third-party claims of personal injury arising as a result of the performance and completion of duly authorized professional health care educational endeavors performed at the direction of and under the control of the University in meeting its mission of providing education, patient care, and research in health sciences.

“Good Samaritan Emergency Care”: Pursuant to N.J.S.A. 2A:62A-1 et seq. and coverage under the Program, care rendered by a Full-Time Salaried Faculty Physician in good faith and without thought of consideration at the scene of an accident or emergency, or while transporting a victim for further treatment; also in a health care facility if the Full-Time Salaried Faculty Physician’s actual duty, including on call duty, does not require a response to a patient emergency situation. (See Scope of Coverage)

“Housestaff”: includes Interns, Residents and Fellows.

“Independent Contractor”: a person performing services for the University, but not on the University’s payroll. Example: a physician retained by the University through contract with another entity and paid according to the terms of the contract, but not on the University payroll, and not entitled to University benefits.

“Medical Incident”: any act, error or omission in the rendering of, or failure to render, Professional Health Care Services.

“Personal Injury”: bodily injury (including death at any time resulting therefrom), mental injury, mental anguish, shock, sickness, disease or disability.

“Professional Health Care Services”:

- a. Services performed by a Protected Person in the treatment and/or care of patients including, but not limited to:
 - Medical, surgical, osteopathic manipulations, nursing, therapeutic or other professional care or services to any person;
 - The furnishing of food, beverages, medications or appliances in connection with such services;
 - The furnishing or dispensing of drugs, blood, blood products and medical, surgical, supplies and appliances;
 - The handling of, or performing post-mortem examinations on, human bodies;
 - Research conducted by a Protected Person which results in personal injury caused or alleged to have been caused by a deficiency or defect in the conduct or the reported results of such research. This includes the design, conduct or implementation of a human or animal trial approved by the U.S. Food and Drug Administration, involving any drug, medical therapy, or device, including medical services in connection therewith.
- b. Service by a Protected Person, as a member of a formal accreditation, standards review, or similar professional board or committee of RowanSOM, or while charged with the duty of executing the directive of such professional board or committee, or while communicating information to such professional board or committee.

“Program”: shall mean the University’s Professional Liability Program of Self Insurance.

“Protected Person”: any current or former employed Faculty, Housestaff, Staff, or Enrolled Student participating in professional health care services while acting within either the scope of his/her employment or enrollment with the University.

“Punitive and Exemplary Damages”: compensation awarded by judicial decision in excess of actual damages as a form of punishment against the wrongdoer.

“Ultimate Net Loss”: all authorized costs and damages which a Protected Person becomes legally obligated to pay because of Personal Injury, with the customary exception of Punitive and Exemplary Damages, including but not limited to the costs of authorized investigation, legal counsel, court costs, and costs of appeal, if any.

Faculty and Staff Eligible for Coverage

Full-Time and Part-Time Salaried Faculty and Staff

Individuals currently or previously salaried on the University payroll providing professional health care services within the scope of employment with the University. Coverage is provided ONLY for said services performed within the scope of employment AND billed according to terms of the Faculty Practice Plan.

Coterminous Faculty

Coverage is provided ONLY for professional health care services performed within the scope of RowanSOM employment.

Volunteers

Individuals currently or previously participating in professional health care services related to the University’s mission, at the direction of the University, who are not University employees, students, or independent contractors, and who are not remunerated for this activity from any source and for which third party coverage is not available.

Scope of Coverage

Participation in professional health care services by a Protected Person SOLELY on behalf of, authorized by, and under the direction of the University. This shall include participation in such services:

- As part of an approved educational curriculum, including University approved rotations at Affiliated Institutions.
- Pursuant to the approved Faculty Practice Plan, provided such services are billed according to terms of the Plan, including University authorized professional health care services at Affiliated Institutions.

Coverage applies to participation in professional health care services within the scope of University employment or enrollment regardless of whether these services are provided at University owned or leased facilities, or Affiliated Institutions.

A Protected Person is entitled to the protection of the Program for acts or omissions occurring within the Protected Person's employment or enrollment regardless of whether a claim is brought during or subsequent to the person's course of employment or enrollment with the University. Coverage shall not apply to any professional health care services rendered before the commencement of University employment or enrollment, or after the termination of employment or enrollment.

As a matter of policy, the University encourages its Full-Time Salaried Faculty physicians to respond in emergency situations consistent with the provisions of the Good Samaritan Emergency Care Act N.J.S.A. 2A:62A-1 et seq. Therefore, the Program will provide Full-Time Salaried Faculty physicians, who participate in the University's Faculty Practice Plan and who maintain no other practice of medicine outside the Scope of University Employment, with defense and indemnification for claims arising from the rendering of Good Samaritan Emergency Care, provided there is no other policy of medical professional liability insurance which would be deemed primary coverage under New Jersey law (See Other Available Insurance). Please note this coverage does not extend to all Protected Persons.

It is understood that Full-Time Salaried Faculty physicians may occasionally be called upon to render incidental medical advice to individuals outside the hospital or professional office environment, where no formal physician-patient relationship exists and where there is no regular or continued course of treatment. Full-Time Salaried Faculty physicians are cautioned to exercise good judgment in rendering such advice as they may be held liable for damages resulting from the advice. Understanding, however, that such incidental practice may occasionally occur, the Program will provide Full-Time Salaried Faculty physicians, who participate in the University's Faculty Practice Plan and who maintain no other practice of medicine outside the Scope of University Employment, with defense and indemnification for claims arising from such uncompensated advice provided there is no other policy of medical professional liability insurance which would be deemed primary coverage under New Jersey law (See Other Available Insurance). Please note this coverage does not extend to all Protected Persons.

Limits of Liability

Coverage under the Program is governed by the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq. and funded for claims accepted under the Act. The University is prepared to represent to other institutions coverage of \$1 million per claim with a \$3 million annual aggregate provided through the University's Self-Insurance Fund. Subject to the terms and conditions of the New Jersey Tort Claims Act, the Program will provide coverage for the Ultimate Net Loss.

This document is not an insurance policy or certificate of insurance and should not be used as such. To respond to the requirement of many of the University's partners, including hospitals, that the University physicians submit certificates of malpractice insurance coverage as part of

their credentialing process, and in all other situations for which proof of coverage is required, please contact the University's Office of Risk Management and Insurance.

Defense Conditions

The Program shall, upon the written request of a Protected Person provide for defense and indemnification of a covered claim against such Protected Person EXCEPT that the Program may refuse to provide for such defense action if:

- The act or omission was NOT within the scope of employment or enrollment.
- The Protected Person fails to cooperate with the Program before or after a claim is brought in a manner consistent with the COVERAGE CONDITIONS.
- The Attorney General of the State of New Jersey determines the alleged acts or omissions constitute willful misconduct, fraud, malice, or crime.

Upon notification of a Claim or Medical Incident which may give rise to a Claim under the Program, exclusive control of the Protected Person's representation, defense and indemnification under the Program is assumed by the Attorney General of the State of New Jersey and the University's Office of Risk Management and Insurance. The Protected Person must first complete and sign a Formal Request for Legal Representation addressed to the Attorney General. Request forms are available from the Office of Risk Management and Insurance at the University.

The Attorney General and the University may provide for a defense pursuant to this Program by:

- Assigning the matter to an attorney from the Attorney General's staff.
- Retaining outside legal counsel from the panel of law firms designated and approved by the Attorney General as authorized service providers for the defense of malpractice litigation brought against Protected Persons.

The prerogative to select outside legal counsel does not rest with the Protected Person. However, as a matter of business practice the University and the Attorney General may give consideration to a Protected Person's preferred choice of legal representative from the panel of law firms authorized by the Attorney General as referenced above. Many other considerations are taken into account prior to the assignment of appropriate legal counsel. In any case, the final selection is not made by the Protected Person.

- Asserting the State's right under any insurance policy which requires the insurer to provide the defense. In some cases, primary liability may be contractually transferred to another institution or an insurance carrier.

The Program's responsibility to defend may extend to a cross-action, counterclaim, cross-complaint or third party action against a Protected Person or former Protected Person.

Coverage Conditions

Reporting of Claims:

Protected Persons must comply with the following requirements. If not, a Protected Person may not be entitled to indemnification pursuant to the Program herein.

- A Protected Person must initially give prompt verbal notification to the University's Office of Risk Management and Insurance of any covered Medical Incident which might give rise to a claim, wherever it occurs. Such notification must be given as soon as reasonably practical. For all cases involving Medical Incidents, all Protected Persons are expected to discuss such incidents with the University's Office of Risk Management and Insurance BEFORE communicating with anyone else.

Verbal discussion shall, to the extent practicable under the circumstances, include the following elements: time, place and circumstances of incident and/or circumstance which may give rise to claim, names and addresses of the patient or other claimant, names of witnesses (if known), and an overview of the estimated severity of the potential claim. In addition, if applicable, the discussion shall include an indication as to any malpractice insurance policies maintained by the Protected Person, including name of carrier, policy number, policy period, and limits of coverage.

- A Protected Person must give written notification to the University's Office of Risk Management and Insurance as soon as practical, and in no event later than ten days following the Protected Person's receipt or knowledge of any claim, summons and complaint, letter of intent to pursue litigation, process, notice, demand or pleading. Written confirmation of all malpractice insurance maintained outside of this program must also be provided at this time.
- Protected Persons must fully cooperate with Risk Management and the Attorney General's staff counsel and/or designated outside legal counsel appointed to represent their interests. Failure to cooperate may nullify the Program's obligations to the Protected Person. Any alteration of medical records or intentional misrepresentation or concealment of material facts by the Protected Person may constitute a violation of this provision and justify exclusion from the Program.
- Protected Persons shall provide full cooperation with the University and the Attorney General by attending depositions, hearings and trials and, also, by assisting in the securing of evidence and information as part of the claims investigation process when requested. This requirement applies whether or not the Protected Person is a named party in the action.

Authority to Settle Claims

A Protected Person who is provided a defense under the Program does NOT have the right or authority to approve any settlement, assume any obligation, or voluntarily make any payment. Authority to settle claims rests solely with the University and the Attorney General of the State of New Jersey.

Subrogation

In the event of any payment under this Program, the legal right to recover against any and all persons or organizations responsible for the loss becomes the sole prerogative of the Attorney General of the State of New Jersey and the University. The Protected Person shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The Protected Person shall do nothing before or after a loss to prejudice such rights.

The University and the Program under N.J.S.A. 59:9-2(e) are immune to any subrogation claims.

Interest of Protected Person in Event of Death, Non Assignability

Upon the death of a Protected Person, coverage described in this document shall apply only to the Protected Person's legal representative. The interests of any Protected Person are not assignable.

Coverage Territory

The Program's coverage is not limited or restricted to Personal Injury claims arising out of the Protected Person's professional health care services performed within the scope of employment being brought within the United States of America. Upon request to the University's Office of Risk Management and Insurance, and prior to commencement of said professional health care services, arrangement can be made for coverage of authorized professional health care services being provided outside the U.S.

Coverage Exclusions

The following exclusions apply to coverage under the Program:

Non-University Employment

Professional health care services provided by Faculty, Housestaff or Staff as part of employment by a third party entity or individual, or self-employment, for which compensation is received directly by the Faculty, Housestaff, or Staff and services are NOT billed according to the Faculty Practice Plan and are NOT part of approved University affiliation or joint Housestaff agreements are not covered by the Program. (Example: Moonlighting by Housestaff and Faculty)

Contractual Liability

This type of liability is not covered by the Program. Further information on contractual liability may be obtained from the University's Office of General Counsel.

Crimes, Actual Malice, Actual Fraud, or Willful Misconduct

Liability resulting from the performance of a criminal act by Faculty, Housestaff, Staff, and Students and/or arising in conjunction with conduct constituting fraud, malice, or willful misconduct is NOT covered by the Program.

Punitive and Exemplary Damages

Coverage for Punitive and Exemplary Damages is subject to the discretion of the Attorney General of the State of New Jersey. The Attorney General may provide coverage if it is determined that a Protected Person's actions or conduct do not constitute an intentional wrong, willful misconduct, fraud, malice, or a crime, and are not the result of professional health care services outside the scope of employment.

The Attorney General will not make a determination in this regard until the relevant litigation is concluded and the entire record of the matter is complete. If an award of Punitive or Exemplary Damages is entered against a Protected Person and, thereafter, the Attorney General determines not to indemnify the employee, those damages will be payable by the protected person personally.

Outside Partnership, Association or Corporation Professional Liability

Liability for partnerships, associations or corporations not authorized by the University or not constituted solely of individuals acting within the scope of their employment with the University is not covered by the Program. However, Full-time Faculty, Housestaff, and Staff, who have an association with a corporation, partnership or professional associate which has been approved in writing by an authorized University representative after consultation with the University's Office of Risk Management and Insurance, shall be a Protected Person, but only to the extent of any professional liability which arises from individual activities of the Full-Time Faculty, Housestaff and Staff performed within the scope of their employment.

Outside Directorships, etc.

Liability as a director, administrator, proprietor, superintendent or executive officer providing administrative services in any hospital, nursing home, sanitarium, clinic with bed and board facilities, laboratory or business enterprise, not owned by the University is not covered by the Program.

Other Available Insurance

Under New Jersey law, whenever a Protected Person is also covered by a policy of insurance in addition to this Program, that policy will be deemed primary coverage. New Jersey law makes clear that insurance companies which issue such a policy of liability insurance to public employees are thereby obligated to defend and indemnify such public employees, notwithstanding the Tort Claims Act and related statutes.

In such cases, the coverage provided by the Program shall apply only as excess coverage over all other valid and collectible insurance when the limits of coverage provided by all other valid and collectible insurance have been fully exhausted. The University's role as provider of excess coverage is contingent upon the Protected Person providing notification to the University in accordance with the terms and provisions of this Program. In addition, in order not to jeopardize eligibility for Program coverage, the Protected Person is obligated to provide the University's Office of Risk Management and Insurance with continuing information regarding the status of the claim, including a description of the claim, current and updated reserves, and any settlement demands and, in addition, any other information specifically requested by the University and/or the Attorney General. Any questions in this regard should be directed to the University's Office of Risk Management and Insurance.

Policy Changes

Coverage under the Program is governed by the New Jersey Tort Claims Act and shall not be changed or abridged except by Legislative Act. This Policy will be reviewed on an annual basis, at which time any necessary revisions will be implemented. In addition, this Policy may be reviewed, updated and reissued as necessary, in order to provide maximum continuity and understanding regarding the terms and provisions of coverage.

Risk Management Program Participation

Protected Persons will be required to participate in Risk Management and Loss Control Programs implemented by the University, such as The Advanced Practice Systems (APS) online Patient Safety & Clinical Loss Prevention Program and departmental risk management presentations.

Special Provisions

Limitations on Judgments: Under the New Jersey Tort Claims Act, N.J.S.A. 59-9-2, no judgment shall be granted against a public entity or public employee on the basis of strict liability, implied warranty or products liability. For the purpose of this section, a University Faculty, Housestaff, Staff, or Student member is treated as a public employee.

Compliance with the Laws of the State of New Jersey

This Policy Statement shall not be construed to affect, alter or repeal any provision of the New Jersey Workers' Compensation Act or the military and veterans laws existing in New Jersey, or the New Jersey Tort Claims Act.



Office of Risk Management & Insurance

40 East Laurel Road
Suite 1060, UEC Building
Stratford, NJ 08084

856-256-4370

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