



## ENCLOSED ARE THE FORMS NECESSARY FOR APPLICATION

**Entity Coverage:** If you are a member of a multi-member professional association, partnership, etc. and desire coverage for the entity, an *Entity Application* should be completed and returned. If Prior Acts Coverage is needed for the entity, please complete the *Prior Acts Coverage* section of the application.

- Complete and sign the *Application for Coverage*.
- Complete the *Claim/Suit Information Addendum* if a professional liability claim or suit has **ever** been brought against the entity.
- Loss runs from your current insurance carrier. TMLT reserves the right to request historical loss runs if needed.
- Complete and sign the *Subscription Agreement for the Subordinated Surplus Deposit Certificate*.
- Review and sign the *Business Associate Agreement*.
- Enclose a check for the \$250 Surplus Deposit requirement along with your application. Your check must be received and your application approved prior to binding or effecting coverage.**

**Premium** may be paid on a monthly, quarterly or annual basis. Quarterly and annual payment options will be billed by invoice. If you choose the monthly payment option, you must complete, sign and return the enclosed *Authorization for Direct Bank Debit* along with a voided check on the account to be debited.

MasterCard/Visa/American Express payment options available. **Visit [www.tmlt.org](http://www.tmlt.org) for more information.**

If you have any questions, we will be happy to assist you. Call our toll free number listed below and ask for Sales.

**TEXAS MEDICAL LIABILITY TRUST**  
P.O. Box 160140 • Austin, TX 78716-0140  
901 Mopac Expressway South • Barton Oaks Plaza V, Suite 500 • Austin, TX 78746  
800-580-8658 • 512-425-5800 • fax: 512-425-5998  
email: [sales@tmlt.org](mailto:sales@tmlt.org) • [www.tmlt.org](http://www.tmlt.org)



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APPLICATION FOR ENTITY COVERAGE

PLEASE TYPE OR PRINT IN BLACK INK. ALL QUESTIONS MUST BE ANSWERED IN DETAIL.

POLICY NUMBER \_\_\_\_\_

(For Trust Use Only)

I. GENERAL INFORMATION

A. \_\_\_\_\_

Name of Entity (Professional Association/Partnership, etc.)

Other Name(s) Under Which the Group Practices (i.e. DBA)

Office Street Address

City County State Zip Code

Office Phone: Area Code Number Fax: Area Code Number Email

P.O. or other Address

City County State Zip Code

B. Preferred Mailing Address:

Office [ ] P.O. Box [ ] Other [ ]

C. President/Partner \_\_\_\_\_

Business Manager/Administrator \_\_\_\_\_

D. The Entity above is a:

Professional Association [ ] Limited Liability Partnership (LLP) [ ] Partnership [ ] Other [ ] (Describe)

\_\_\_\_\_

E. Date Entity was formed: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Month Day Year

## II. PROFESSIONAL LIABILITY COVERAGE

Entity coverage is available only if all shareholders/partners are covered by TMLT.

A. Requested coverage effective date 12:01 a.m. \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

In no event shall the effective date of the policy, if issued, be earlier than the date TMLT receives this application.

B. Professional Liability Coverage Please check type of coverage (**Occurrence or Claims-made**) and the limits of liability desired.

**Occurrence** (Limits indicated are the only limits available and are for Each Claim and All Claims)

\$100,000/\$300,000       \$200,000/\$600,000

**OR**

**Claims-made** (Limits indicated are Each Claim and All Claims)

\$100,000/\$300,000       \$200,000/\$600,000       \$300,000/\$900,000       \$500,000/\$1,000,000

C. Insurance History for Previous Three Years

	Current Year	First Prior Year	Second Prior Year
I. Insurance Company:			
Coverage Form:	<input type="checkbox"/> Claims-made <input type="checkbox"/> Occurrence	<input type="checkbox"/> Claims-made <input type="checkbox"/> Occurrence	<input type="checkbox"/> Claims-made <input type="checkbox"/> Occurrence
Policy Period:			
Limits of Liability Per Claim/All Claims:			

If your current insurance is written on a Claims-made form, it is necessary to purchase a Reporting Endorsement (tail coverage) from your present insurer or Prior Acts (nose coverage) from TMLT to reduce the chances of having a gap in coverage.

2. Have you purchased or are you planning to purchase a Reporting Endorsement (tail coverage) from your present insurer for all of your previous exposures?

Yes  No

If no, are you requesting Prior Acts (nose coverage) from TMLT?

Yes  No

### III. PRIOR ACTS COVERAGE

If you are not requesting Claims-made coverage, including Prior Acts, from TMLT, skip to page 4, Section IV.

NOTE: The following two questions in this section apply to your **past** Claims-made coverage and need to be answered for the entire time period following your retroactive date.

**A.** Have any of your physicians practiced outside the state of Texas? Yes  No   
If yes, please list below the physician(s) name(s), state(s), date(s) and the percentage of practice for each year.

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**B.** Has your Claims-made policy ever included coverage for any other Entity? Yes  No   
If yes, please explain below and attach a copy of any endorsement providing coverage for such other individual (including locum tenens) or Entity. Each is subject to separate underwriting consideration.

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**C.** Are you aware of any incidents (patient expressions of dissatisfaction or fee disputes resulting from treatment rendered by any of your associates or members) which you have reason to believe may lead to a claim or suit against your Entity? Yes  No

**D.** Have any incidents (which have not yet resulted in a claim or suit) been reported on behalf of the Entity to another insurance carrier? Yes  No

**E.** Have any incidents, claims or suits been reported to another insurance carrier by any of your current or former members or associates on their own behalf which have not been reported on behalf of the Entity? Yes  No

**F.** Has your Entity received any oral or written threats of legal action, attorney's request for patient records, subpoena, petition, complaint, summons, citation or other legal process or notification? Yes  No

**If you answered yes to C, D, or E above, you must provide details below. Report all incidents identified under C or E to your current insurance carrier. Doing so does not necessarily eliminate the need for the Reporting Endorsement (tail coverage).**

Patient Name	Date of Incident	Date incident report sent to insurance carrier (provide copies)
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

## IV. UNDERWRITING AND RATING INFORMATION

**A. List the names and medical specialties of all individual Physicians/Surgeons who are shareholders or partners.**

Physician Name	Medical Specialty
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____

**B. Does the Entity Employ  Supervise  Contract  with any other licensed physicians? (not shareholders/partners)** Yes  No

**C. Does the Entity Employ  Supervise  Contract  with midwives or any individuals who administer anesthesia, other than licensed physicians?** Yes  No

If yes to B or C, list below.

Name	Specialty	Insured By	Limits of Liability
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**D. Indicate number of professional licensed personnel in each category employed or supervised by the Entity.**

	Insured by	Limits of Liability
_____ RNs	_____	_____
_____ LVNs	_____	_____
_____ Lab/Radiology Techs	_____	_____
_____ PAs	_____	_____
_____ Nurse Practitioners	_____	_____
_____ LPTs	_____	_____
_____ Other	_____	_____

**E. Does the Entity own or operate any:**

- |   |  |
|---|--|
| <input type="checkbox"/> hospital                             | <input type="checkbox"/> laboratory                |
| <input type="checkbox"/> ambulatory surgery facility          | <input type="checkbox"/> x-ray facility            |
| <input type="checkbox"/> minor emergency clinic               | <input type="checkbox"/> sanatorium                |
| <input type="checkbox"/> clinic with bed and board facilities | <input type="checkbox"/> other business enterprise |

If yes, provide details on page 5.

**F. CLAIM INFORMATION**

How many professional liability claims have **ever** been brought against the Entity?

This includes notice of intent to sue, written demand from patient or lawsuit.

# \_\_\_\_\_

Complete the information for all claims/suits on page 6.

## V. AUTHORIZATION AND WARRANTY STATEMENT

We warrant and represent that the foregoing information in this application is true and correct. We understand that this application is not a binder or acceptance of coverage, and that if any policy is issued, this application and the statements therein, become part of that policy. We further understand and agree (1) that any policy shall be issued in reliance upon the warranties and representations made herein; (2) if this application contains any false statements, the intent to deceive will be presumed; (3) any false statement or concealment will void all coverage. Please be aware this application may be available for review by your opponent in any future legal proceeding.

All potential claims or lawsuits have been disclosed herein and have been reported to the applicable, prior professional liability insurance carrier. **We understand any policy issued by TMLT will exclude coverage for any claim or lawsuit which may arise out of any incident of which we are aware and have reason to believe may lead to a claim or suit.**

We authorize access by, and release to, TMLT any and all information of an underwriting and/or claims nature pertaining to the undersigned applicant in the possession, custody, or control of any of the following: Texas Medical Board; any other licensing agency; Texas Medical Association; any other state medical association or organization; any county medical society; any specialty medical society or organization; any hospital medical staff or committee; and any insurance carrier that has previously insured or been requested to insure the undersigned applicant with respect to Medical Professional Liability and/or Premises Liability Coverage. We further authorize TMLT and its representatives to contact such groups or any other group or individual for the purpose of discussing or obtaining information concerning underwriting or claims matters pertaining to the undersigned. We agree to provide any written authorization required to obtain this information. We recognize that such information may be otherwise privileged or confidential and we hereby release from liability all individuals and organizations who provide this information.

By submission of this application, or by acceptance of coverage from TMLT, we hereby release TMLT and its representatives from liability for any acts or omissions in connection with communications, investigations or underwriting decisions.

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Signature of President/Partner

Date Signed

### **THIS IS NOT A BINDER OR ACCEPTANCE OF INSURANCE**

**Coverage will not be considered until this application is completed, signed and dated.  
Failure to provide complete information/attachments as requested will cause delay.**

**ENCLOSE** a copy of your **Office Letterhead**, and a copy of your current  
Professional Liability **Declarations Page**.

## VI. ADDITIONAL INFORMATION Please use this area if additional space is needed for answers to any questions.

PAGE NUMBER	QUESTION NUMBER	ANSWER AND/OR DETAILS

## CLAIM/SUIT INFORMATION ADDENDUM

If additional space is required, please photocopy this form as needed. PLEASE TYPE OR PRINT IN BLACK INK.

Note: Additional documentation (office/hospital records) may be requested by the Underwriting Department.

### I. CLAIM/SUIT INFORMATION

Patient's name: \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_ Date of incident: \_\_\_\_\_  
Month/Day/Year

Insurance company defending your claim: \_\_\_\_\_

Location: City \_\_\_\_\_ State \_\_\_\_\_ Hospital \_\_\_\_\_

**ALLEGATIONS and narrative description of the medical facts and your involvement (attending, consultant, ER physician, primary surgeon, surgical assistant, resident, etc.) Please attach a second sheet of paper if additional space is required:**

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Co-defendants: \_\_\_\_\_

Claim settled without indemnity payment on your behalf? Yes  No

Claim is pending: Yes  No

Suit filed: Yes  No  If Yes: Month \_\_\_\_\_ Year \_\_\_\_\_

Court trial: Yes  No  Jury verdict: Yes  No

Settlement out of court: Yes  No  If Yes: Month \_\_\_\_\_ Year \_\_\_\_\_

Total amount paid to claimant on **your** behalf: \$ \_\_\_\_\_

Total amount paid to claimant for **all** defendants: \$ \_\_\_\_\_

### 2. CLAIM/SUIT INFORMATION

Patient's name: \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_ Date of incident: \_\_\_\_\_  
Month/Day/Year

Insurance company defending your claim: \_\_\_\_\_

Location: City \_\_\_\_\_ State \_\_\_\_\_ Hospital \_\_\_\_\_

**ALLEGATIONS and narrative description of the medical facts and your involvement (attending, consultant, ER physician, primary surgeon, surgical assistant, resident, etc.) Please attach a second sheet of paper if additional space is required:**

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Co-defendants: \_\_\_\_\_

Claim settled without indemnity payment on your behalf? Yes  No

Claim is pending: Yes  No

Suit filed: Yes  No  If Yes: Month \_\_\_\_\_ Year \_\_\_\_\_

Court trial: Yes  No  Jury verdict: Yes  No

Settlement out of court: Yes  No  If Yes: Month \_\_\_\_\_ Year \_\_\_\_\_

Total amount paid to claimant on **your** behalf: \$ \_\_\_\_\_

Total amount paid to claimant for **all** defendants: \$ \_\_\_\_\_



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## **SUBSCRIPTION AGREEMENT FOR SUBORDINATED SURPLUS DEPOSIT CERTIFICATE**

*Available Only to Residents of Texas*

WHEREAS, the Texas Medical Liability Trust (hereinafter called "TMLT") has been created pursuant to Article 21.49-4 of the Texas Insurance Code by the Texas Medical Association to insure and provide coverage, by contract or otherwise, to eligible physician members of that Association with respect to health care liability claims and related risks; and,

WHEREAS, TMLT is obtaining surplus, in connection with offering such coverage, by soliciting subscriptions for the purchase of Subordinated Surplus Deposit Certificates (hereinafter called "Certificates") to be issued and sold by TMLT at prices equal to the respective principal amounts of the Certificates; and,

WHEREAS, TMLT commenced writing such coverage as of January 1, 1979; and,

WHEREAS, the undersigned physician (hereinafter called "Subscriber") desires to purchase such coverage from TMLT and, as a condition of securing such coverage, to purchase from TMLT a Certificate

in the principal amount of \_\_\_\_\_

**Coverage may not be bound or effected until the Surplus Deposit is received. Please make your check payable to Texas Medical Liability Trust.**

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the undersigned Subscriber hereby enters into this Subscription Agreement with TMLT for the hereinabove described Certificate, including as a part hereof the representations and warranties hereinafter set forth.

1. Subscriber agrees to purchase such Certificate in the principal amount indicated. It is understood and agreed that such Certificate shall be issued and delivered by TMLT within a reasonable time after both of the following events have occurred: (a) acceptance by TMLT of Subscriber's initial application for insurance coverage submitted in connection herewith; and (b) receipt by TMLT of full payment of the principal amount of such Certificate.
2. Subscriber understands and agrees that:
  - a. Net proceeds from TMLT's sale of Certificates, including the Certificate purchased by Subscriber, will be treated by TMLT as surplus.
  - b. No interest, dividend or other profit will ever be paid by TMLT upon Subscriber's Certificate.
  - c. Whether or not Subscriber's Certificate will ever be repaid, in whole or in part, and under what circumstances or criteria, is a matter to be determined by TMLT's Governing Board, in its sole and absolute discretion, subject to applicable provisions of the law under which TMLT was created and appropriate regulation thereunder.
  - d. No repayment of all or any part of Subscriber's Certificate can ever be made except out of such surplus as may be in excess of surplus and reserves required of TMLT under sound insurance practices and/or applicable law and regulation.
  - e. Assuming availability of surplus for such purpose, TMLT's Governing Board initially intends to redeem only those Certificates held by physicians who cease practicing medicine in Texas and are no longer insured by the Trust, which criteria may be, from time to time, changed by such Board in its sole and absolute discretion.
  - f. In the event of liquidation or dissolution of TMLT, Subscriber's Certificate, if repaid at all, will only be redeemed after payment in full of all TMLT policy obligations and other liabilities (contractual or otherwise), and then only in accordance with applicable law, regulation and provisions of the Trust instrument.
  - g. At all times and under all circumstances TMLT's Surplus Deposit Certificates, including Subscriber's Certificate, shall be subordinated to all other debts and obligations (contractual or otherwise) of TMLT.

- h. Subscriber's Certificate cannot be sold, transferred, assigned, pledged, hypothecated or otherwise alienated (except to TMLT upon redemption, in whole or in part); and any such attempted or purported sale or transfer shall be void and of no effect; and a restrictive legend to this effect is to be placed on Subscriber's Certificate.
- i. This Subscription Agreement shall be irrevocably binding upon Subscriber and TMLT until and unless TMLT rejects Subscriber's initial application for coverage.

3. In order to induce TMLT to accept Subscriber's initial application for coverage and to sell and issue the Certificate forming the basis of this Subscription Agreement, Subscriber hereby expressly represents and warrants:

- a. That Subscriber (i) is duly licensed to practice medicine in the State of Texas; (ii) is a resident of Texas; and (iii) is a member of the Texas Medical Association.
- b. That Subscriber (i) has received a copy of TMLT's Offering Circular relating to Subordinated Surplus Deposit Certificates; (ii) either has read such Offering Circular or has voluntarily chosen not to do so; and (iii) either has been furnished all appropriate additional information requested by Subscriber from TMLT or has voluntarily chosen not to request any such additional information.
- c. That Subscriber is aware that the Certificates have not been registered under the Securities Act of 1933 or under the Securities Act of Texas in reliance on opinion of legal counsel that such registration is not required; that neither the Federal Securities and Exchange Commission nor the State Securities Board has approved or disapproved the Certificates, nor has either passed upon the accuracy or adequacy of such Offering Circular; and that no federal or state agency has made any finding, determination, recommendation or endorsement with respect to any of the Certificates.
- d. Subscriber's purchase of the above described Certificate involves a degree of risk, without possibility for interest, dividend or other income thereon or gain therefrom and without any assurance of repayment thereof, in whole or in part.
- e. That Subscriber is further aware that there is not now, and never will be, a public or private market for the Certificates; and that, unless redeemed by TMLT (pursuant to its Governing Board's sole and absolute discretion and subject to applicable law and regulation), it will not be possible to recover all or any part of Subscriber's payment for the Certificate.
- f. Subscriber is not purchasing the Certificate for investment or with a view for resale or distribution, but rather solely for Subscriber's own account and as a condition of purchasing appropriate insurance coverage from TMLT.

4. Subscriber finally agrees that:

- a. In the event that Subscriber is not a resident of Texas at the time this Subscription Agreement is executed and at such time as TMLT may issue the Certificate made the basis hereof, then this Subscription Agreement and such Certificate shall be null and void; and that TMLT's Governing Board, in its sole and absolute discretion, shall determine whether or not to return Subscriber's payment therefore, in whole or in part.
- b. In the event any one or more of the above stated representations and warranties (other than relating to Subscriber being a Texas resident) is false when made and/or at such time as TMLT may issue the Certificate made the basis hereof, then TMLT's Governing Board, in its sole and absolute discretion, may either affirm this Subscription Agreement as valid or declare it, together with such Certificate to be null and void, in which later event such Board shall determine, in its sole and absolute discretion, whether or not to return Subscriber's payment therefore, in whole or in part.

Executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

Signature of Physician Applicant: \_\_\_\_\_

**IMPORTANT: Please Note** The above physician who signs this agreement (Subscriber) will be the individual eligible to receive any return or repayment of surplus in the event TMLT's Governing Board, in its sole and absolute discretion, makes such a determination. In most instances an employer of the Subscriber will not be eligible to receive any such return or repayment of surplus.

PLEASE TYPE OR PRINT YOUR NAME AND RESIDENCE ADDRESS

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_



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# BUSINESS ASSOCIATE AGREEMENT

## Recitals

TMLT and the policyholder have an insurer/insured relationship by virtue of a professional liability policy issued by TMLT to the policyholder (hereinafter "Insurance Policy"). TMLT and the named policyholder are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Regulations") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Under the Privacy Regulations, the policyholder is a "covered entity," and, as defined by 45 CFR § 164.502(e) and 45 CFR § 164.504(e), TMLT is a business associate of the policyholder. TMLT must use and/or disclose Protected Health Information, as defined in 45 CFR § 164.501, in its performance of services under the Insurance Policy. TMLT agrees to abide by the assurances, terms, and conditions contained herein in the performance of its obligations. This Agreement sets forth the manner in which Protected Health Information, that is provided to, or received by, TMLT from the policyholder, or on behalf of the policyholder, will be handled. TMLT agrees as follows:

## SECTION I

### Obligations and Activities of Business Associate

- 1.1 Not to Use or Disclose Protected Health Information Unless Permitted.** TMLT may receive from policyholder health information protected under state or federal law, including Protected Health Information and/or electronic Protected Health Information (hereinafter both shall be referred to as Protected Health Information). TMLT agrees not to use, or further disclose, Protected Health Information other than as permitted or required by the Agreement or as required or allowed by law.
- 1.2 Use Safeguards.** TMLT agrees to use reasonable safeguards to prevent use or disclosure of the Protected Health Information other than as allowed by this Agreement or as otherwise required or allowed by law. TMLT acknowledges that the HITECH Act requires TMLT to comply with the security provisions in 45 CFR § 164.308, 164.312 and 164.316 as well as all additional security provisions of the HITECH Act as if TMLT were a covered entity.
- 1.3 Report Inappropriate Disclosures of Protected Health Information.** TMLT agrees to report to policyholder any use or disclosure of the Protected Health Information not permitted by this Agreement or by law of which it becomes aware. TMLT will comply with Section 13402 of the HITECH Act with respect to timeliness, method and content of the report.
- 1.4 Compliance of Agents.** TMLT agrees to require any agents, including subcontractors, to agree to the same restrictions and conditions that apply to TMLT through this Agreement provided that such agents perform a service that TMLT agreed to perform for, or on behalf of, the policyholder under the Insurance Policy, and to whom TMLT provides Protected Health Information.
- 1.5 Access.** To the extent that TMLT maintains an original Designated Record Set, as such term is defined in 45 CFR § 164.501, or a part thereof, TMLT agrees to provide access to the policyholder to Protected Health Information in the original Designated Record Set, during normal business hours, provided the policyholder delivers prior written notice to TMLT, at least five business days in advance, requesting such access but only to the extent required by 45 CFR § 164.524.
- 1.6 Amendments.** To the extent TMLT maintains an original Designated Record Set, or a part thereof, TMLT agrees to make Protected Health Information available for amendment to the policyholder and to incorporate any amendment(s) to Protected Health Information in the original Designated Record Set that the policyholder directs, pursuant to 45 CFR § 164.526.

- 1.7 Disclosure of Practices, Books, and Records.** Unless otherwise protected from discovery or disclosure by law or unless otherwise prohibited from discovery or disclosure by law, TMLT agrees to make internal practices, books, and records available to the policyholder or to the Secretary of the Department of Health and Human Services, hereinafter referred to as “Secretary,” for purposes of the Secretary determining the policyholder’s compliance with the Privacy Regulations but only to the extent such access is related to the use and disclosure of Protected Health Information received from the policyholder, or created or received by TMLT on behalf of the policyholder. TMLT shall have a reasonable time within which to comply with such requests and, in no case shall access be required in less than five business days after TMLT is in receipt of such request.
- 1.8 Accounting.** Pursuant to 45 CFR § 164.528, as amended by Section 13405 (c) of the HITECH Act and any related regulations or guidelines, TMLT agrees to maintain sufficient documentation of disclosures of Protected Health Information and information related to such disclosures as would be required for the policyholder to respond to a request by an Individual for an accounting of disclosures of Protected Health Information. The documentation of disclosures does not apply to disclosures necessary to carry out health care operations and Services, as defined in Section 2.1, and other functions necessary to perform these Services.
- 1.9 Release of Documentation of Disclosure.** TMLT agrees to provide to the policyholder information collected in accordance with Section 1.8 of this Agreement, to permit the policyholder to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

## **SECTION 2**

### **Permitted Uses and Disclosures by Business Associates**

- 2.1 Use of Protected Health Information for Specified Purposes.** Except as otherwise required by law, TMLT shall use PHI in compliance with 45 CFR § 164.504e. Under the Insurance Policy, TMLT provides the policyholder with insurance products and services (hereinafter “Services”) that involve the use and disclosure of Protected Health Information as defined by the Privacy Regulations. These Services may include, among others, the provision of professional liability insurance; receiving and evaluating incidents, claims, and lawsuits; quality assessment; quality improvement; loss prevention tools; outcomes evaluation; protocol and clinical guidelines development; reviewing the competence or qualifications of health care professionals; evaluating practitioner and provider performance; conducting training programs to improve the skills of health care practitioners and providers; credentialing, conducting or arranging for medical review; arranging for legal services; conducting or arranging for audits to improve compliance; resolution of internal grievances; placing stop-loss and excess of loss insurance, and other functions necessary to perform these Services. Except as otherwise specified herein, TMLT may make any uses of Protected Health Information necessary to perform its obligations under this Agreement and under the Insurance Policy, if such use of Protected Health Information would not violate the Privacy Regulations. Moreover, TMLT may disclose Protected Health Information for the purposes authorized by this Agreement: (i) to its employees, subcontractors, and agents, in accordance with paragraphs Section 2.2 through 2.4 of this Section below; or (ii) as otherwise permitted by the terms of this Agreement. All other uses not authorized by this Agreement are prohibited.
- 2.2 Use of PHI for Business Associate Management and Administration.** TMLT may use Protected Health Information for the proper management and administration of TMLT or to carry out the legal responsibilities of TMLT.
- 2.3 Disclosure Required by Law or With Reasonable Assurances.** TMLT may disclose Protected Health Information for proper management and administration and to carry out its legal responsibilities, provided that disclosures are required by law, or provided that the TMLT obtains the following reasonable assurances from the person or entity to whom the Protected Health Information is disclosed: 1) the Protected Health Information will remain confidential; 2) the Protected Health Information will be used or further disclosed only as required by law or for the purposes for which it was disclosed; and, 3) the person or entity will notify TMLT of any instances of which the person or entity is aware in which the confidentiality of the information has been breached. In compliance with Section 13405(b) of the HITECH act, TMLT will only disclose the minimum necessary to accomplish the intended purpose of the disclosure and, if applicable, to the limited data set as defined in 45 CFR § 164.514(e)(2).

- 2.4 Data Aggregation Services.** If necessary to provide services related to a policyholder's health care operations, TMLT may use Protected Health Information to provide data aggregation services to the policyholder as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- 2.5 Disclosure to Report Violations of Law.** TMLT may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

### **SECTION 3**

#### **Obligations of and Permissible Requests by Policyholder**

- 3.1 Notification of Limitation(s).** The policyholder shall notify TMLT of any limitation(s) in its notice of privacy practices of the policyholder in accordance with 45 CFR § 164.520, to the extent that such limitation may affect TMLT's use or disclosure of Protected Health Information.
- 3.2 Notification of Changes or Revocation.** The policyholder shall notify TMLT of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect TMLT's use or disclosure of Protected Health Information.
- 3.3 Notification of Restriction.** The policyholder shall notify TMLT of any restriction to the use or disclosure of Protected Health Information that the policyholder has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect TMLT's use or disclosure of Protected Health Information.
- 3.4 Permissible Requests.** The policyholder shall not request TMLT to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by the policyholder. This provision does not apply to TMLT's use or disclosure of Protected Health Information for data aggregation or management and administrative activities as is otherwise permitted by this Agreement.

### **SECTION 4**

#### **Term and Termination of Agreement**

- 4.1 Term.** The Term of this Agreement shall be effective beginning April 14, 2003 and shall terminate when all of the Protected Health Information provided by the policyholder to TMLT, or created or received by TMLT on behalf of the policyholder, is destroyed. Protected Health Information is securely retained and/or destroyed as designated by TMLT policies for retention and destruction of Protected Health Information. Protections are extended to such information, in accordance with the termination provisions in this section. This agreement shall supersede any existing business associate agreements issued in accordance with the Privacy Regulations under the Health Insurance Portability and Accountability Act of 1996.
- 4.2 Termination for Cause.** Upon the policyholder's knowledge of a material breach by TMLT of this Agreement, the policyholder shall either:
- (1) Provide an opportunity for TMLT to cure the breach or end the violation within a reasonable period of time. If TMLT does not cure the breach or end the violation within the reasonable period of time specified by the policyholder, the policyholder shall terminate this Agreement and the underlying Insurance Policy;
  - (2) Immediately terminate this Agreement and the underlying Insurance Policy if TMLT has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cure is feasible, the policyholder shall report the violation to the Secretary.
- 4.3 Effect of Termination.**
- (1) Due to the infeasibility of returning Protected Health Information to the policyholder, upon termination of this Agreement and/or the underlying Insurance Policy, for any reason, TMLT shall securely retain and/or destroy all

Protected Health Information received from the policyholder, or created or received by TMLT on behalf of the policyholder in accordance with TMLT's policies for retention and destruction of Protected Health Information.

- (2) TMLT shall limit further uses and disclosures to those purposes that make the return of the Protected Health Information infeasible. TMLT shall extend the protections of this Agreement to such Protected Health Information for so long as TMLT maintains such Protected Health Information.

## SECTION 5 Miscellaneous Provisions

- 5.1 Regulatory References.** A reference in this Agreement to a section in the Privacy Regulations means the section as in effect or as amended.
- 5.2 Amendment.** TMLT and the policyholder agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the policyholder to comply with the requirements of the Privacy Regulations and HIPAA.
- 5.3 Survival.** The respective rights and obligations of TMLT under Section 4.3 of this Agreement shall survive the termination of this Agreement.
- 5.4 Interpretation.** Any ambiguity in this Agreement shall be resolved to permit TMLT to comply with the Privacy Regulations.

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Policyholder signature

Date

### PLEASE PRINT THE FOLLOWING INFORMATION IN BLACK INK

Policyholder name:

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TMLT policy number:

---

Office phone number:

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John O. Alexander, CPCU, RPLU  
Senior Vice President  
Underwriting Services

# OFFERING CIRCULAR

## SUBORDINATED SURPLUS DEPOSIT CERTIFICATES NON-INTEREST BEARING

The Subordinated Surplus Deposit Certificates are not offered as an investment. See “Risk Factors” and “Speculative Aspects of the Trust and the Subordinated Surplus Deposit Certificates”, pages 3 & 4. Offers to purchase Subordinated Surplus Deposit Certificates are solicited from, and sales will be made only to, physicians who are bona fide residents of Texas. See “Repayment” and “Restrictions on Transfer” for policies restricting the repayment, resale and transfer of Certificates.

The Certificates have not been registered under the Securities Act of 1933 (Federal), or under the Securities Act of Texas, in reliance on opinion of legal counsel that such registration is not required. Neither the Securities and Exchange Commission nor the State Securities Board has approved or disapproved the Certificates or passed upon the accuracy or adequacy of this Offering Circular.

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No person has been authorized to give any information or make any representations other than those contained in this Offering Circular in connection with the matters discussed herein, and, if given or made, such information or representations must not be relied upon as having been authorized by the Trust. This Offering Circular does not constitute an offer to sell or a solicitation of an offer to buy a Subordinated Surplus Deposit Certificate in any jurisdiction other than the state of Texas.



### TEXAS MEDICAL LIABILITY TRUST

*“The only health care liability claim trust created and endorsed  
by Texas Medical Association”*

*Endorsed by the Texas Academy of Family Physicians*

901 MoPac Expressway South, Barton Oaks Plaza V, Suite 500, Austin, Texas 78746  
P.O. Box 160140, Austin, Texas 78716-0140  
800-580-8658 • 512-425-5800 • FAX 512-328-5637

## INTRODUCTION

The Texas Medical Association (the “Association”) has sponsored the organization of the Texas Medical Association Health Care Liability Claim Trust (the “Trust”). The Trust is organized under Article 21.49-4 of the Texas Insurance Code (Section 31.13 of the Medical Liability and Insurance Improvement Act of Texas, H.B. No. 1048, Chapter 817, Laws 1977, 65th Legislature, Regular Session). The Texas Medical Liability Trust is the operational name of the Trust. The purpose of the Trust is to provide professional liability insurance and office premises liability insurance as related to patients only. The Trust commenced writing insurance as of January 1, 1979. See *Insurance*.

Members of the Texas Medical Association are eligible to apply for purchase of contracts of insurance from the Trust. Association members purchasing contracts of insurance thereby mutually insure each other. Premiums and surplus deposits by policyholders provide a pool of assets to pay claims against the policyholders (to the extent covered by the contracts of insurance) and the expenses of the Trust.

The affairs of the Trust are directed by the Trust’s Governing Board. The Governing Board employs experienced professional insurance personnel to manage the operations of the Trust. See *Organization and Management of the Trust*.

The Trust is organized solely to offer professional liability insurance and office premises liability insurance, as related to patients only, to eligible physicians who are licensed to practice medicine and surgery in the state of Texas and whose practice is located in Texas, and who are members of the Association. Coverage is only available for periods during which the insured physician is an Association member and resident of Texas. See *Insurance—Eligible Physicians*.

Premiums have been established to cover anticipated losses. However, additional funds (“surplus”) are needed to maintain the financial stability of the Trust in the event that losses are greater than expected. For the purposes of developing necessary surplus and providing a sound financial base, the Trust is offering Subordinated Surplus Deposit Certificates for purchase by eligible physicians who are residents of Texas. See *Use of Proceeds*. Any eligible physician who is a resident of Texas and who desires to purchase insurance through the Trust is required to purchase an initial Subordinated Surplus Deposit Certificate in an amount related to the medical practice specialty classification, the limits of insurance applied for, and the geographic location of his or her practice. See *Description of Subordinated Surplus Deposit Certificates*. Non-resident physicians who are otherwise eligible, and institutions, such as hospitals or medical schools, which desire to purchase insurance for eligible physicians in their employ, will be required to pay an initial non-refundable surplus contribution in lieu of purchasing Subordinated Surplus Deposit Certificates.

The Subordinated Surplus Deposit Certificates are offered solely to provide surplus for the Trust and their purchase (except in the case of non-resident physicians and institutions), is a condition to obtaining insurance. They are not offered as an investment. The Certificates will not bear interest, are not

transferable, and while some repayments on principal have been made in the past, there is no assurance that such repayments will be made in the future. See *Description of Subordinated Surplus Deposit Certificates—Repayment*. The Certificates have not been registered under the Securities Act of Texas, in reliance on opinion of legal counsel that such registration is not required. Neither the Securities and Exchange Commission (Federal) nor the State Securities Board has approved or disapproved the Certificates or passed upon the accuracy or adequacy of the Offering Circular.

## RISK FACTORS

1. The Trust financial and business history began with the commencement of business January 1, 1979. See *Speculative Aspects of the Trust and the Subordinated Surplus Deposit Certificates*.

2. No assurance can be given that the future operations of the Trust will produce the surplus required under sound insurance practices to permit repayment in whole or in part of the Certificates. See *Description of Subordinated Surplus Deposit Certificates—Repayment*.

3. Certificates may not be sold or transferred. Thus, there will be no market for the Certificates. If physicians cease practice in Texas and qualify for redemption of their Certificates, redemption will be made only if surplus is judged to be adequate for the Trust's requirements. See *Description of Subordinated Surplus Deposit Certificates—Repayment and Restrictions on Transfer*.

4. In the past, the professional liability insurance business has experienced difficulty and financial losses. See *Speculative Aspects of the Trust and the Subordinated Surplus Deposit Certificates*.

5. Certain professional liability insurers who have continued to write coverage may decide to insure more selectively. They might sell insurance to physicians whose practices generate low risk exposures. This could mean that the Trust will receive a higher than normal number of applications from physicians in high risk specialties, although this has not been evident to date. The Trust's current underwriting standards do not make it mandatory to accept all applicants.

6. The Trust is not an insurance company or an inter-insurance exchange ("reciprocal") governed by the Texas Insurance Code. The Texas Department of Insurance, therefore, is not required to approve the policy forms used, or determine the premiums charged for coverage, or examine the Trust, or otherwise regulate it in accordance with customary statutory measures as would be the case of a licensed insurer. The law under which the Trust was created authorizes the Texas Department of Insurance to require that the Trust satisfy reasonable minimum requirements to ensure the capability of the Trust to satisfy its contractual obligations. See *Regulation of the Trust*.

7. The Trust has been in operation since January 1, 1979. Whereas the Trust has employed experienced insurance executives, the ultimate decision-making responsibility will remain with the Governing Board. No member of the Trust's initial Governing Board had ever participated in forming an insurance company. Certain members of the Governing Board may have limited experience in operating, directing, or advising insurance companies.

8. The matter of professional liability has been the subject of recent legislation in Texas and may be dealt with in the future on a state or national level. Legislative developments could have an adverse effect on the nature and extent of professional liability or insuring against that liability.

## **SPECULATIVE ASPECTS OF THE TRUST AND THE SUBORDINATED SURPLUS DEPOSIT CERTIFICATES**

The Trust began issuing insurance policies as of January 1, 1979. For reasons summarized elsewhere in this Offering Circular, each prospective policyholder and purchaser of the Subordinated Surplus Deposit Certificates offered hereby should realize that the Trust and its Certificates are speculative in nature and involve substantial risks.

The writing of medical professional liability insurance in Texas, as well as elsewhere in the United States, is a highly speculative and risky business. Profits of liability insurance companies historically have been influenced by several factors, including underwriting losses and investment income. Gains or losses derived from the underwriting of insurance are affected by underwriting losses experienced by the Trust on insured physicians. Investment income is affected by the nature of the investments made by the Trust and the performance of such investments in the marketplace. There can be no assurance that the Trust, because of the volatile nature of the medical professional liability business, will be profitable in the future. The experience of medical professional liability insurers over recent years has shown a tendency for increased frequency and severity of claims. These increases, in addition to overhead, legal and investigative expenses, have had a tendency to produce underwriting losses for established companies.

Even as the Trust's operations progress satisfactorily, conservative financial management will make it necessary that a relatively large amount of surplus be obtained and retained. The Trust believes that the proceeds from the issuance of the Subordinated Surplus Deposit Certificates will provide the Trust with adequate surplus, but no assurance with respect thereto can be given. Due to the absence of broad diversification of the risks being insured, the Trust is subject to the possibility of greater losses than other companies which have had more insurance in force in more general lines.

No assurance can be given as to whether the Trust will continue to develop sufficiently so that the Subordinated Surplus Deposit Certificates will be repaid in full.

## **USE OF PROCEEDS**

The net proceeds from the sale of Subordinated Surplus Deposit Certificates ("Certificates") will be treated by the Trust as surplus.

The Certificates are sold only by the Trust and no sales commissions are being paid. There are expenses involved in the sale of the Certificates including printing and mailing expense of the Offering Circular and other related documents. These costs, as well as other operating costs, will be defrayed from premium income. See *Organization and Management of the Trust*.

## **REGULATION OF THE TRUST**

The Trust is organized under Article 21.49-4 of the Texas Insurance Code. This Article provides that an association of physicians or dentists may create a Trust to self-insure its members and provide coverage, by contract or otherwise, against health care liability claims and related risks. The Trust is authorized to employ a professional staff and consultants for management and may purchase insurance, excess insurance, and reinsurance as the Trustees deem necessary. The Trust shall have the investment powers and limitations of a state bank with trust powers, and the Trust is required to adopt rules and regulations to guarantee contingent liabilities in the event of dissolution. The Article also provides that the Trust is not engaged in the business of insurance and the Texas Insurance Code does not apply to its organization and operations. However, the Texas Department of Insurance may require any trust created under the Article to “satisfy reasonable minimum requirements to ensure the capability of the Trust to satisfy its contractual obligations.” Thus, the Trust is not an insurance company organized under the Texas Insurance Code. However, the Trust began operations with capital significantly in excess of the minimal capital requirements by the Texas Department of Insurance. While the Texas Department of Insurance does not regulate the Trust, it may require that the Trust maintain certain reserves against claims and losses under the policies issued by the Trust. In anticipation of this requirement, the Trust has furnished the Texas Department of Insurance copies of proposed policies, premium rates, and other information. The Texas Department of Insurance has appointed an advisory committee to advise it on its responsibility under the Act. Also, the Trust must meet the investment requirements applicable to a state bank with trust powers.

The Trust is governed by the applicable provisions of the Texas Trust Act, the terms of the Trust Instrument creating the Trust and the Bylaws of the Trust as established by its Governing Board.

## **INSURANCE**

The Trust provides professional liability insurance and office premises liability insurance, as related to patients only, for eligible Texas physicians.

### **Eligible Physicians**

Physicians who are licensed to practice medicine and surgery in the state of Texas, and whose practice is located in Texas, and who are members of Texas Medical Association, are eligible to apply for insurance coverage from the Trust.

Physicians who are otherwise eligible and have completed applications both for membership in the Association and for professional liability insurance from the Trust, including payment of the appropriate amount for surplus, will be eligible for coverage when proper underwriting requirements are met.

### **Application Procedures**

To apply for insurance through the Trust, a physician is required to

complete and sign an application. Eligible physicians who are Texas residents must also subscribe for and purchase a Subordinated Surplus Deposit Certificate. Physicians not residing in Texas may not purchase a Subordinated Surplus Deposit Certificate but, in lieu thereof, will be required to pay an initial non-refundable surplus contribution. Institutions desiring to insure eligible physicians in their employ must have each physician complete and sign an application. Such institutions may not purchase a Subordinated Surplus Deposit Certificate but, in lieu thereof, will be required to pay an initial non-refundable surplus contribution.

A complete underwriting review will be made of each physician upon receipt of the application. A physician who is found to have an adverse claim history or above average risk potential may receive restrictive policy endorsements, reduced coverage limits, deductibles, or have coverage cancelled or refused by the Trust.

The Trust has implemented a plan for physician groups whose purchase of Subordinated Surplus Deposit Certificates is actually paid for by the group or Professional Association rather than each individual physician. This program allows the group entity to purchase a designated number of "Slot Positions" for which a Master Certificate is issued. Further details can be obtained from the Trust at its business offices in Austin, Texas.

### **Policy Forms**

The Trust issues policies which provide coverage for medical professional liability insurance and office premises liability insurance (as related to patients only).

### **Policy Periods**

Policies issued by the Trust will be effective as of the coverage date for a maximum period of twelve months.

All policies are subject to cancellation by the insured physician or the Trust pursuant to cancellation conditions stated in the policies.

### **Policy Premiums**

Professional liability premiums are based upon specialty classification or type of practice, limits of coverage purchased, and the geographic location of practice. Institutions which desire to purchase insurance for eligible physicians in their employ and physicians who are non-residents of Texas are prohibited from purchasing a Certificate. Therefore, such institutions and non-residents are, in lieu of such purchase, required to pay an initial non-refundable surplus contribution. See *Description of Subordinated Surplus Deposit Certificates*.

### **Non-Assessability**

The Trust issues only non-assessable policies. The initial surplus collected by the Trust is substantially in excess of the level of surplus required by the Texas Insurance Code in order to issue non-assessable policies if the Trust were to be qualified as an insurance company. In the event that losses in a given period are greater than anticipated, causing a reduction of surplus, it is the inten-

tion of the Trust to replenish surplus by adjusting premiums upon policy renewal. However, if at any time it is the judgement of the Governing Board that surplus has fallen to a level which would impair the financial stability of the Trust, it may be necessary to either discontinue issuing policies altogether or raise additional surplus from its policyholders. However, the Trust intends to maintain a surplus in excess of minimum levels as defined by accepted insurance financial principles and intends to cease issuing altogether or take appropriate actions prior to its surplus falling to such minimum levels.

## **Reinsurance**

The Trust has obtained reinsurance under which the Trust retains the liability on a policy up to a certain amount and the excess over that sum is insured by the reinsurer. A contingent liability exists on insurance passed on to the reinsurer which would become an actual liability to the Trust in the event that the reinsurer is unable to meet its obligation under the reinsurance agreement. The reinsurer's liability is limited to losses it assumes that are in excess of the portion retained by the Trust. The reinsurer is paid a portion of the Trust's premium for the risks it assumes.

## **Reserves and Investments**

The Trust has established and carries as liabilities, reserves to meet its obligations under the policies it issues. These reserves are calculated to meet the Trust's policy obligations as determined by the Trust based on generally accepted actuarial standards and as may be established by the Texas Department of Insurance. See *Regulation of the Trust*.

The Trust must invest and reinvest revenues and other assets in accordance with investment powers and limitations prescribed for state banks with trust powers. See *Regulation of the Trust*.

## **Dividends**

No dividends will be paid by the Trust at any time. The Governing Board intends to retain assets in the Trust so that, to the maximum extent possible, it will have sufficient reserves and surplus to deal with any reasonably foreseeable developments. The Trust shall be operated so that all funds received in excess of operating costs (including establishing and maintaining reasonable surplus and reserves) shall be used by the Trustees, in their discretion, for such reduction of premiums, increases in scope of coverage, creation and maintenance of stabilization reserves, and/or any similar or related means which the Governing Board determines will result in the most significant benefit to eligible participants.

## **Distribution of Assets on Liquidation**

If the Trust is liquidated (voluntarily or involuntarily), the assets remaining after payment of all liabilities (including repayment of the Subordinated Surplus Deposit Certificates if funds are available after payment of all liabilities) will be distributed to the persons who are policyholders at the time of such liquidation in accordance with the applicable provisions of the Trust Instrument. The distributions would be made in such proportions and form as the Governing Board determines.

## **ORGANIZATION AND MANAGEMENT OF THE TRUST**

The Trust Instrument, executed on June 3, 1978, by which the Association created the Trust, invested in the Trustees (Governing Board) all powers necessary for the administration and operation of the Trust. See *Additional Information*. The powers specified include the following:

- (a) To define requirements for eligibility for insurance and to accept or reject applications for insurance,
- (b) To issue policies of insurance to eligible participants,
- (c) To purchase reinsurance and excess insurance,
- (d) To create, finance, or utilize a stabilization fund or other suitable vehicle for excess coverage,
- (e) To pay, defend, settle, adjust, and take any other actions regarding insurance claims and losses,
- (f) To employ and retain appropriate professional staff and to retain consultants, to include attorneys, actuaries, accountants, physicians and other professional persons,
- (g) To develop and maintain "surplus" through appropriate contributions and other means in order to assure adequate capitalization for solvency and stability,
- (h) To invest the monies held by the Trust,
- (i) To develop and adopt a comprehensive plan of operation.

### **Governing Board**

When the Trust was established, the House of Delegates of the Association named an initial Governing Board consisting of nine members. The Governing Board members are now elected by voting participants, with staggered three year terms of office. Voting participants are those physicians who are policyholders at the time of the election. The Governing Board annually nominates three or more Trust participants for approval by the Association House of Delegates. Voting participants may also make nominations. All qualified nominees will be submitted to the voting participants for election by mail ballot. Election will be by a majority of the votes cast. No Governing Board member can serve more than nine consecutive years. The names of the current members of the Governing Board are available upon request.

### **Bylaws**

Bylaws have been developed by the Governing Board. They specify that the officers of the Board will consist of a Chairman, Vice Chairman, Secretary and Treasurer. The offices of Secretary and Treasurer may be held by one person. Terms of office are for one year.

The Chairman has all general powers and duties usually vested in the office of chairman of the board of directors of a business corporation. The Chairman presides at all Board meetings, executes documents on behalf of the Trust, is a spokesman for the Trust, and represents the Board in relating to Trust personnel and consultants to the Trust.

The Vice Chairman and Secretary and/or Treasurer have all general powers usually vested in those offices of a board of directors of a business corporation.

The Board holds regular meetings at a time and place set by the Chairman. Special meetings may be called by the Chairman, by any two other officers, or by any three Board members. Subject to the approval of at least five Board members, a meeting of the Board may be conducted by a telephone conference call. A minimum of five members will constitute a quorum for any meetings of the Board.

The Executive Committee consists of the officers of the Board. In the event of an emergency, the Executive Committee may, upon unanimous consent by all its members, take any action that the Board is empowered or authorized to take, subject to ratification of the action at the next Board meeting.

The Chairman may appoint, subject to ratification of the Board, such other committees as may be necessary for operation of the Trust.

The Board employs such professional insurance personnel as are necessary to administer and operate the Trust. The personnel consists of a Chief Executive Officer and such other staff as are required.

The Bylaws may be amended by affirmative vote of six Board members attending any meeting, provided that the proposed changes have been sent to the Board members at least twenty-eight days prior to the meeting. For informational purposes, the Board of Trustees of the Association will be provided with the proposed changes at the same time.

A copy of the Bylaws is available to any eligible applicant physician or participant upon request.

## **Financial Information**

The Trust began actual operation on January 1, 1979. Specifics of the Trust's financial position are provided in the Annual Report. Copies of the Annual Report are provided all policyholders annually and a copy of the current or any past report is available upon request.

## **Administration of the Trust**

During the implementation and early operational phases of the Trust's insurance program, the Trust hired professional insurance personnel with experience in the casualty insurance industry in jobs similar to the areas in which they were employed by the Trust. During that period, the Trust was supported administratively by a national consulting firm experienced in designing and implementing medical society sponsored professional liability companies.

The following firms have been retained by the Trust to provide professional services:

Brown, McCarroll & Oaks Hartline Austin, Texas	General legal services
Calhoun & Co., LLP Austin, Texas	Independent auditors
Deloitte & Touche	Tax accountants
Bickerstaff, Whatley, Ryan & Burkhalter; Milliman USA	Actuarial consulting services
General Re New England Asset Management, Inc.	Investment managers
Bank of America Austin, Texas	Commercial banking services

These organizations are subject to replacement, and other organizations or individuals may be engaged by the Trust to perform these or other services for it in the future.

## **DESCRIPTION OF SUBORDINATED SURPLUS DEPOSIT CERTIFICATES**

### **Principal Amount of a Certificate**

The principal amount of a Certificate required by a physician seeking insurance is based upon the risk classification of the individual physician, the limits of insurance applied for and the geographic location of the physician's practice.

The amount of surplus required from newly insured physicians as a condition for insurance will be established by the Trust at the same time as the premium rates for the application period are established. It is not expected, but there is a possibility that purchase of additional Certificates may be required as a condition of renewing coverage in the future.

A Certificate will not be issued until a physician's application for insurance has been accepted. If an application is not accepted, the total deposit will be refunded to the physician without interest. Certificates may only be purchased in accordance with the provisions of the Subscription Agreement accompanying this Offering Circular.

Those physicians who have made application to their County Medical Society and the Texas Medical Association are eligible to apply for insurance from the Trust. If membership in the Association is refused, the surplus payment will be refunded without interest and unearned premium will be returned on a

*pro rata* basis. A physician is eligible to remain a policyholder until his or her application for membership in the Texas Medical Association has been acted on or for a period of nine months from the date of said application, whichever event shall first occur.

## **Repayment**

Certificates will not bear interest. The Certificates only evidence a contingent promise to repay the amounts deposited and are subordinated to all other liabilities of the Trust.

The Certificates provide that no repayments of Certificates can be made except out of such surplus as may be in excess of the surplus and reserves required of the Trust under sound insurance practices. Additionally, the Certificates provide that no repayment may be made without the prior approval of the Trust's Governing Board. There can be no assurance that sufficient assets will ever be available to make such payments. The Governing Board will not approve such payments unless the Trust no longer requires the sums proposed to be repaid.

Currently, the Trust has been redeeming Certificates held by physicians who cease practicing medicine in Texas due to death, disability, retirement, or other cause. There is no assurance that this practice will continue.

## **Restrictions on Transfer**

The Subordinated Surplus Deposit Certificates are acquired subject to the following restrictions.

- (a) Each purchaser of a Certificate or member of a group purchasing a Certificate must be a physician licensed in Texas, a resident of Texas and a member of Texas Medical Association. Certificates will be registered only in the name of the physician or group of physicians signing the Subscription Agreement.
- (b) Before the sale of the Certificate is completed, the Trust must agree to insure the physician.
- (c) The Certificate may not be sold, transferred, assigned, or otherwise alienated except to the Trust upon ceasing medical practice in Texas, or as required by law, and any such attempted sale or transfer shall be void and of no effect.  
*See Description of Subordinated Surplus Deposit Certificates—Repayment.*
- (d) A legend setting forth the restrictions indicated in paragraph (c) above will be placed on each Certificate issued by the Trust.

## **Deferred Payment Program**

Applicants who wish to purchase the Subordinated Surplus Deposit Certificate by deferred payment may secure the current terms upon request.

## **ADDITIONAL INFORMATION**

Appropriate additional information concerning the Trust, including copies of organizational documents and certain statistical, contractual and other documents referred to elsewhere herein may be examined by Trust participants at the Trust business offices, 901 MoPac Expressway South, Barton Oaks Plaza V, Suite 500, Austin, Texas 78746.