

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.

TABLE OF CONTENTS

Introduction	2	Dividends	7
Risk Factors	3	Distribution of Assets on Liquidation	7
Speculative Aspects of the Trust and the Subordinated Surplus Deposit Certificates	4	Organization & Management of the Trust	8
Use of Proceeds	4	Governing Board	8
Regulation of the Trust	5	Bylaws	8
Insurance	5	Financial Information	9
Eligible Physicians	5	Administration of the Trust	9
Application Procedures	6	Description of Subordinated Surplus Deposit Certificates	10
Policy Forms	6	Principal Amount of a Certificate	10
Policy Premiums	6	Repayment	11
Non-Assessability	6	Restrictions on Transfer	11
Reinsurance	7	Deferred Payment Program	11
Reserves and Investments	7	Additional Information	12

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

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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.