



C A L I F O R N I A
DEPARTMENT OF JUSTICE

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November 12, 2024

BY E-FILE

The Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797

RE: *Francisco Gutierrez v. Uriel Tostado et al.* (Case No. S283128)
Letter Brief Filed at the Invitation of the Court by the State of California Insurance
Commissioner

Dear Chief Justice Guerrero and Associate Justices:

Ricardo Lara, in his capacity as Insurance Commissioner of the State of California, thanks the Court for its September 4, 2024 invitation to comment as *amicus curiae*. The issue presented is whether the one-year statute of limitations in the Medical Injury Compensation Reform Act (MICRA) applies to a personal injury claim alleging the plaintiff's vehicle was struck by a negligently driven ambulance. The Commissioner respectfully informs the Court that he takes no position on this question, as the scope of the question extends beyond the core areas of the Commissioner's subject-matter expertise: the availability and affordability of insurance. And the Department of Insurance does not support either party to this action.

The Court's invitation to file as an *amicus curiae* also referred to questions raised below by Justice Bromberg's dissenting opinion—in particular, whether traffic accident claims involving ambulance drivers are covered by medical malpractice insurance, and if covered, whether such claims have a material impact on medical malpractice rates. (*Gutierrez v. Tostado* (2023) 97 Cal.App.5th 786, 798 (dis. opn. of Bromberg, J.)) The Commissioner provides the following information regarding medical professional liability insurance to assist the Court.

In 1988, voters passed Proposition 103, now known as the Insurance Rate Reduction and Reform Act (the Act). (Ins. Code, § 1861.01 et seq.; see *Villanueva v. Fidelity National Title Co.* (2021) 11 Cal.5th 104, 121, fn. 10.) The Act was designed to ensure, among other things, that “insurance is fair, available, and affordable to all Californians.” (*Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82, 88, citations omitted.) Consistent with that purpose, the Act requires insurers to file insurance rate applications with the Commissioner for approval (with exceptions for certain lines of insurance). (Ins. Code, §§ 1851, 1861.01, subd. (c), 1861.05.) The Act is applicable to

liability insurance, including professional medical malpractice insurance. (See Ins. Code, §§ 1861.05; 108; see also 10 Cal. Code. Regs. § 2360.1.) Under Proposition 103, rates that are excessive, inadequate, unfairly discriminatory, or otherwise violate the Act are prohibited. (Ins. Code, § 1861.05, subd. (a); see, e.g., *Mercury Ins. Co.*, *supra*, 35 Cal.App.5th at pp. 89, 101.)

Additionally, the Department licenses Insurance Advisory Organizations, authorized by the Legislature to develop common policy forms as a means for consumers to more easily comparison shop. (Ins. Code, § 1855.1.) Before such policy forms may be distributed and used by an advisory organization’s participating insurers, they must be approved by the Commissioner. (Ins. Code, § 1855.5.) With respect to professional medical liability policies, the Department has approved forms submitted by Insurance Services Office (ISO), which is an advisory organization. (See, e.g., Exhibits 1 [Hospital Professional Liability Coverage Form], 2 [Physicians, Surgeons and Dentists, Professional Liability Coverage Form] attached hereto).¹

It appears to the Commissioner that the ISO medical malpractice policy forms would not categorically cover traffic accident claims like the one in this case just because they involve a collision with an ambulance. (See, e.g., Exhibit 1, Section I, Paragraph 2(f) [excluding “[i]njury arising out of the ownership, maintenance, use or entrustment to others of any aircraft, ‘auto’ or watercraft. . . . However, this exclusion does not apply to loading or unloading of patients from any ‘ambulance’.”].) Moreover, in the Commissioner’s experience, medical malpractice professional liability policies are often limited to acts and omissions in the performance of professional duties. (See, e.g., Exhibit 2, Section 1, Paragraph (3)(b); Section V, Paragraphs 2, 7 [defining incidents as acts or omissions “arising out of the providing of or failure to provide professional [] services.”].)

That being said, the Commissioner cannot comment here on any particular insurance policy—whether implicated by this case or otherwise. Insurance policies are contracts, and absent any declarations of public policy or statutory requirements, parties may contract for specific terms of insurance coverage, and ordinary rules of contractual interpretation apply. (Ins. Code, § 380.) Even if an ISO policy form is used, the parties to the contract may modify its terms, including through the use of endorsements or riders. (See, e.g., *Adams v. Explorer Ins. Co.* (2003) 107 Cal.App.4th 438, 451.) [“Endorsements on an insurance policy form a part of the insurance contract, and the policy of insurance with the endorsements and riders thereon must be construed together as a whole, bracketed text omitted”].) Accordingly, coverage under a particular policy will necessarily depend on the language used in that policy. So the Commissioner cannot speak generally about all policies, or specifically about any particular policies that may be relevant to the facts and circumstances in this case. And, while the Commissioner can assess the rate impact of a specific policy’s provisions (or the impact of any modifications to such a policy) in the context of an insurer’s specific rate application, without extensive study over an extended period of time, the Commissioner is not able to opine generally on the impact that coverage for certain events may have on rates. The Commissioner appreciates the opportunity to provide the Court with this information.

¹ Forms submitted to the Commissioner for consideration and approval are available for public inspection. (Ins Code., § 1855.5, subd. (a).)

Sincerely,

/s/ Andrea M. Schoor-West
ANDREA M. SCHOOR-WEST
Deputy Attorney General

For ROB BONTA
 Attorney General

EXHIBIT 1

HOSPITAL PROFESSIONAL LIABILITY COVERAGE FORM

Various provisions in the policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGE

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of injury to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for injury to which this insurance does not apply. We may at our discretion investigate any "medical incident" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to injury only if:

- (1) The injury is caused by a "medical incident" that takes place in the "coverage territory";

- (2) The injury occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of a "medical incident" or claim, knew that the injury had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the injury occurred, then any continuation, change or resumption of such injury during or after the policy period will be deemed to have been known prior to the policy period.

- c. Injury which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of a "medical incident" or claim, includes any continuation, change or resumption of that injury after the end of the policy period.

- d. Injury will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of a "medical incident" or claim:

- (1) Reports all, or any part, of the injury to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the injury; or
- (3) Becomes aware by any other means that injury has occurred or has begun to occur.

2. Exclusions

This insurance does not apply to:

a. Criminal Acts

Injury arising out of a criminal act, including but not limited to sexual abuse or molestation or fraud, committed by or at the direction of the insured.

b. Contractual Liability

Injury for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

c. Violation Of An Antitrust Law

Any claim for damages arising out of the violation of an antitrust law.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employers' Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligations to share damages with or repay someone else who must pay damages because of the injury.

f. Aircraft, Auto Or Watercraft

Injury arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft. Use includes operation and loading or unloading.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "medical incident" which caused the injury involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

However, this exclusion does not apply to loading or unloading of patients from any "ambulance".

g. War

Injury, however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;

- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

3. Supplementary Payments

We will pay, with respect to any claim we investigate or settle or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- f. All interest on the full amount of the judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the Limits of Insurance.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members and partners and their spouses are also insureds, but only with respect to that member's or partner's liability as such.

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers", directors, trustees and governors are insureds, but only with respect to their duties as your officers, directors, trustees or governors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Your "employees" are also insureds, but only for acts or omissions within the scope of their employment by you or while performing duties related to the conduct of your business.
 3. If an insured dies or is adjudged incompetent, this insurance will terminate for that insured. But the insured's legal representative will be an insured for any "medical incident" previously committed and covered by this policy.

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

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all damages because of injury.
3. Subject to the Aggregate Limit, the Each Medical Incident Limit is the most we will pay for all damages because of all injury arising out of any one "medical incident".

All related "medical incidents" arising out of the providing of or failure to provide professional health care services to any one person shall be considered one "medical incident".

The limits of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of A Medical Incident, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of a circumstance which may result in a claim. To the extent possible, notice should include:

- (1) Specific circumstances surrounding the "medical incident";
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury arising out of the "medical incident".

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **b.** below.

b. Method Of Sharing

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

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Ambulance" means any aircraft, "auto" or watercraft equipped for transporting the sick or injured.
2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada; and
 - b. All parts of the world if the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph **a.** above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
7. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
8. "Medical incident" means any act or omission:
 - a. In the providing of or failure to provide professional health care services to your patients, including:
 - (1) The providing or dispensing of food, beverages, medications or medical supplies or appliances in connection with such services; and
 - (2) The handling or treatment of dead bodies, including autopsies, organ donation or other procedures.
 - b. Arising out of the service by any person as a:
 - (1) Member of a formal accreditation, standards review or equivalent professional board or committee of the Named Insured; or
 - (2) Person charged with executing the directives of such board or committee.
9. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

 - (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
10. "Suit" means a civil proceeding in which damages because of injury to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
11. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

EXHIBIT 2

PHYSICIANS, SURGEONS AND DENTISTS PROFESSIONAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

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

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

1. Coverage A – Insuring Agreement – Individual Professional Liability

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of injury to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for injury to which this insurance does not apply. We may at our discretion investigate any "medical incident" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to injury only if:

- (1) The injury is caused by a "medical incident" that takes place in the "coverage territory";

- (2) The injury occurs during the policy period;
 - (3) The injury arises out of the individual insured's profession as a physician, surgeon or dentist; and
 - (4) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of a "medical incident" or claim, knew that the injury had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the injury occurred, then any continuation, change or resumption of such injury during or after the policy period will be deemed to have been known prior to the policy period.
- c. Injury which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of a "medical incident" or claim, includes any continuation, change or resumption of that injury after the end of the policy period.
- d. Injury will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of a "medical incident" or claim:
- (1) Reports all, or any part, of the injury to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the injury; or
 - (3) Becomes aware by any other means that injury has occurred or has begun to occur.

2. Coverage B – Insuring Agreement – Partnership, Limited Liability Company, Association Or Corporation Professional Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of injury to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for injury to which this insurance does not apply. We may at our discretion investigate any "business entity incident" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

b. This insurance applies to injury only if:

- (1) The injury is caused by a "business entity incident" that takes place in the "coverage territory";
- (2) The injury occurs during the policy period;
- (3) The injury is caused by any person for whose acts or omissions the professional partnership, limited liability company, association or corporation, named in the Declarations, is legally responsible; and
- (4) Prior to the policy period, no insured listed under Paragraph 2. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of a "business entity incident" or claim, knew that the injury had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the injury occurred, then any continuation, change or resumption of such injury during or after the policy period will be deemed to have been known prior to the policy period.

c. Injury which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 2. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of a "business entity incident" or claim, includes any continuation, change or resumption of that injury after the end of the policy period.

d. Injury will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 2. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of a "business entity incident" or claim:

- (1) Reports all, or any part, of the injury to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the injury; or
- (3) Becomes aware by any other means that injury has occurred or has begun to occur.

3. Exclusions

This insurance does not apply to:

a. Criminal Acts

Injury arising out of a criminal act, including but not limited to sexual abuse or molestation or fraud, committed by the insured or any person for whom the insured is legally responsible.

b. Contractual Liability

Injury for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

c. Rendering Of Or Failure To Render Professional Services By Others

Injury arising out of the rendering of or failure to render professional services by any other person for whose acts or omissions the insured may be held liable as a member, partner, officer, director or stockholder of any professional partnership, limited liability company, association or corporation.

This exclusion does not apply to Coverage B – Partnership, Limited Liability Company, Association Or Corporation Professional Liability.

d. Liability Arising Out Of Hospitals Or Other Enterprises

Injury for which the insured may be held liable as proprietor, hospital administrator, officer, stockholder or member of the board of directors, trustees or governors of any hospital, sanitarium, clinic with bed and board facilities, nursing home, laboratory or other enterprises not named in the Declarations.

e. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

f. Employers' Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligations to share damages with or repay someone else who must pay damages because of the injury.

g. War

Injury, however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

4. Supplementary Payments

We will pay, with respect to any claim we investigate or settle or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

c. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.

d. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

e. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

f. All interest on the full amount of the judgment that accrues after the entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the Limits of Insurance.

SECTION II – WHO IS AN INSURED

1. For Coverage A, if you are an individual, you are an insured.

2. For Coverage B, if you are:

a. A partnership, you are an insured. Your partners are also insureds, but only with respect to the acts or omissions of others in the providing of professional services for which they are held liable as a partner.

b. A limited liability company, you are an insured. Your members and managers are also insureds, but only with respect to the acts or omissions of others in the providing of professional services for which they are held liable as members or managers.

c. An association or corporation, you are an insured. Your "executive officers", directors, trustees, governors and stockholders are insureds, but only with respect to the acts or omissions of others in the providing of professional services for which they are held liable as "executive officers", directors, trustees, governors and stockholders.

3. If an insured dies or is adjudged incompetent, this insurance will terminate for that insured. But the insured's legal representative will be an insured for any "medical incident" or "business entity incident" previously committed and covered by this policy.

No person is an insured with respect to the conduct of any current or past partnership or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Individual Professional Liability Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, subject to Paragraph 6. below.
3. The Partnership, Limited Liability Company, Association or Corporation Professional Liability Aggregate Limit is the most we will pay for the sum of all damages under Coverage **B**.
4. Subject to Paragraph 2. above, the Each Medical Incident Limit is the most we will pay for all damages under Coverage **A** because of all injury arising out of any one "medical incident".

All related "medical incidents" arising out of the:

 - a. Providing of or failure to provide professional medical or dental services to any one person; or
 - b. Serving as a member of a formal accreditation, standards review or equivalent professional board or committee in connection with a single person or organization

shall be considered one "medical incident".
5. Subject to Paragraph 3. above, the Each Business Entity Incident Limit is the most we will pay for all damages under Coverage **B** because of all injury arising out of any one "business entity incident".

All related "business entity incidents" arising out of the providing of or failure to provide professional medical or dental services to any one person shall be considered one "business entity incident".
6. Under Coverage **A**, the Aggregate Limit and the Each Medical Incident Limit apply separately to each Named Insured.

The limits of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of A Medical Incident, Business Entity Incident, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of a circumstance which may result in a claim. To the extent possible, notice should include:

- (1) Specific circumstances surrounding the "medical incident" or "business entity incident";
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury arising out of the "medical incident" or "business entity incident".

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b.** To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured, and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

This insurance is excess over other insurance covering an individual physician, surgeon or dentist's acts or omissions arising out of their service as a member of a formal accreditation, standards review or equivalent professional board or committee. When this insurance is excess over other insurance, we will have no duty to defend the individual physician, surgeon or dentist against any "suit" if any other insurer has a duty to defend that individual physician, surgeon or dentist against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the rights of that individual physician, surgeon or dentist against all those other insurers.

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

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

c. Method Of Sharing

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

5. Premium Audit

- a.** We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b.** Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period, we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.
- c.** The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a.** The statements in the Declarations are accurate and complete;
- b.** Those statements are based upon representations you made to us; and
- c.** We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits Of Insurance, and any rights or duties specifically assigned in the Coverage Part to the first Named Insured, this insurance applies:

- a.** As if each Named Insured were the only Named Insured; and
- b.** Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

10. When Your Business Or Profession Changes

The first Named Insured must notify us of any change which might affect the terms of this insurance, including a change in:

- a. Members, partners, officers, directors, stockholders or medical professional "employees"; or
- b. Medical specialty.

SECTION V – DEFINITIONS

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Business entity incident" means any act or omission arising out of the providing of or failure to provide professional medical or dental services by:
 - a. Any of your partners (if you are a partnership), members or managers (if you are a limited liability company), or directors, "executive officers", governors, trustees or stockholders (if you are an association or corporation);
 - b. Your "employee"; or
 - c. Any person acting under the personal direction, control or supervision of:
 - (1) A partner (if you are a partnership);
 - (2) A member or manager (if you are a limited liability company); or
 - (3) A director, "executive officer", governor, trustee or stockholder (if you are an association or corporation).
3. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada; and
 - b. All parts of the world if the insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in Paragraph a. above or in a settlement we agree to.
4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
7. "Medical incident" means any act or omission:
 - a. Arising out of the providing of or failure to provide professional medical or dental services by:
 - (1) The insured; or
 - (2) Any person acting under the personal direction, control or supervision of the insured.
 - b. Arising out of the insured's serving as a member of a formal accreditation, standards review or equivalent professional board or committee.
8. "Suit" means a civil proceeding in which damages because of injury to which this insurance applies are alleged. "Suit" includes:
 - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

DECLARATION OF SERVICE BY TRUEFILING & UNITED STATES MAIL

Case Name: *Francisco Gutierrez v. Uriel Tostado et al.*
Case Number: *S283128*

I am employed by the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. My business address is 300 South Spring Street, Suite 1702, Los Angeles CA 90013-1230.

On November 12, 2024, I electronically served the attached **Letter Brief at the Invitation of the Court by the State of California Insurance Commissioner** by transmitting a true copy via this Court's TrueFiling system as follows:

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Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on November 12, 2024, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General as follows:

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Clerk of the Supreme Court
California Supreme Court
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 12, 2024, at Los Angeles, California.

Dora Mora
Declarant

/s/Dora Mora
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **GUTIERREZ v. TOSTADO**

Case Number: **S283128**

Lower Court Case Number: **H049983**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Andrea.Schoor@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/12/2024

Date

/s/Dora Mora

Signature

Schoor-West, Andrea (222068)

Last Name, First Name (PNum)

California Department of Justice

Law Firm