

OFFICE OF THE GENERAL COUNSEL: USF REGULATIONS

NOTICE: PROPOSED REPEALED REGULATION DATE: October 23, 2009

Regulation No: USF 9.018

Title: USF Health Sciences Center Self-Insurance Program

Summary:

The Florida Board of Governors Regulation Development Procedure (7-21-05) requires that the University Board of Trustees monitor the effects of new regulations and periodically review existing regulations to insure they are current and consistent.

As authorized by Section 1004.24, Fl. Statutes, the Board of Governors itself has adopted BOG Regulation 10.001, "Self-Insurance Programs" (6-18-09), establishing (among others) the University of South Florida Health Sciences Center Self-Insurance Program (USF SIP) to provide comprehensive general liability protection, including professional liability protection for the Board of Governors, the University of South Florida Board of Trustees, and other persons and entities as provided by law and as authorized by the Board of Governors, the University Board of Trustees or the USF Self-Insurance Program Council.

The Board of Governors' regulation implements Florida law and authorizes and recognizes the existence of the Self-Insurance Program at USF. USF Health has reviewed Regulation 9.018, USF Health Sciences Center Self-Insurance Program, and determined that it is redundant and no longer necessary in addition to the BOG Regulation and should, therefore, be repealed. USF SIP will continue to fulfill its reporting obligations to the Board of Governors and/or the USF Board of Trustees.

Repeal of this regulation has received approval from the Health Affairs Management Council, 10-22-09, and is pending approval by the Board of Trustees on December 3, 2009.

Following are USF Regulation 9.018 (to be repealed) and BOG regulation 10.001 (6-18-09).

End of Summary.

USF Regulation USF9.018

SUBJECT: USF HEALTH SCIENCES CENTER SELF-INSURANCE PROGRAM

(1) University of South Florida System ("University"/"USF") Self-Insurance Program.

(a) The University Health Sciences Center Self-Insurance Program (the "Self-Insurance Program") is established for the purpose of providing comprehensive general liability protection, including professional liability protection for the Board of Governors, the University of South Florida Board of Trustees and other persons and entities as provided by law and as authorized by the Board of Governors, the University of South Florida Board of Trustees or the Self-Insurance Program Council. The Self-Insurance Program shall be funded by contributions paid by or on behalf of protected persons and entities. There shall be no funds appropriated to the Self-Insurance Program. The assets of the Self-Insurance Program shall be deposited outside the State Treasury. The assets of the Self-Insurance Program shall be used only to pay the administrative expenses of the Self-Insurance

Program and any claim, judgment, or claims bill arising out of the activities for which the Self-Insurance Program was created.

(b) The Self-Insurance Program may not sue or be sued. The claims files of the Self-Insurance Program are privileged and confidential, exempt from the provisions of Section 119.07(1) Florida Statutes, and are only for the use of the Program in fulfilling its claims, underwriting and risk management duties.

(c) The Self-Insurance Program shall be administered by the USF Health Sciences Center Self-Insurance Program Council. The Council shall consist of the following officers of USF: Vice President for Health Sciences, who shall serve as Chair; two officers of the USF Health Sciences Center as designated by the Vice President for Health Sciences; four members of the faculty of the College of Medicine appointed by the Vice President for Health Sciences; the USF General Counsel (or his/her designee); the Self-Insurance Program Director; and such other persons as from time to time may be appointed to the Council by the University's President or Vice President for Health Sciences; and if the H. Lee Moffitt Cancer Center and Research Institute, Inc. participates in the Self-Insurance Program, the Center Director (or his/her designee).

(d) The powers and duties of the Self-Insurance Program Council shall be to:

1. Administer the Self-Insurance Program in accordance with the laws of Florida and any applicable rules of the Board of Governors, the Department of Insurance and the University.

2. Develop and implement a financial expenditure policy that recognizes the unique mission, duties, obligations and fiscal responsibilities of the Self-Insurance Program. The Council's financial responsibility policies shall ensure fiscal responsibility and accountability and, to the maximum extent possible, be consistent with recognized practices of the insurance industry.

3. Propose and submit an annual budget for the Self-Insurance Program through the University President to the University Board of Trustees, and if required, to the Board of Governors.

4. Develop and implement a Memorandum of Protection* which shall constitute the Self-Insurance Program's coverage document. The Memorandum of Protection shall contain the insuring agreements, exclusions, and other conditions applicable to persons and entities protected and shall be part of this Regulation by reference. The Council may extend by resolution the protections described in the Memorandum of Protection to persons and entities as authorized by statute and establish the levels of liability protection extended to such persons and entities.

5. Contract with an independent casualty actuary to establish funding requirements necessary to maintain the fiscal integrity of the Self-Insurance Program.

6. Appoint the Self-Insurance Program Director who shall carry out the policies and directives of the Council

7. Receive from the University such administrative and logistical support as the Council may reasonably request and to reimburse the University for the cost of such support.

8. Contract with professional consultants, including attorneys-at-law to represent the persons and entities protected by the Self-Insurance Program, and to perform services which further the interests of the Self-Insurance Program.
9. Establish committees and designate persons as necessary to assist in the performance of its duties, and authorize such committees or persons to act for and on behalf of the Council. In addition to any other committees it may elect to establish, the Council shall establish a standing committee or committees to conduct investigations and the settlement and defense of claims and actions against protected entities and individuals and to identify risk factors which cause or contribute to such claims and suits, and develop and implement risk management programs to reduce or eliminate those risk factors. The Council and such committee or committees shall conduct reviews pursuant to the provisions of Section 766.106, Florida Statutes, and shall be deemed a medical review committee or committees as defined in Section 766.101, Florida Statutes.
10. Participate in internal, local, regional, national and/or international risk management and loss prevention research programs and to develop risk management and loss prevention programs for use by both protected and non-protected entities under such terms, conditions and reimbursement rates as the Council may deem appropriate.
11. Purchase excess insurance on behalf of persons and entities protected by the Self-Insurance Program for claims which exceed the level of protection provided by the Self-Insurance Program including claims bills to award compensation in amounts which exceed the protection provided by the Self-Insurance Program or by commercial insurance; to assist entities not described in Section 768.28, Florida Statutes, which are authorized and approved as allowed by Florida laws to be protected by the Self-Insurance Program, in the procurement of insurance for losses which exceed the levels of protection provided by the Self-Insurance Program as established by the Council, but the Council is not authorized to purchase such insurance with Self-Insurance Program assets.
12. Participate in other self-insuring mechanisms such as Risk Retention Groups or group captive insurance companies independently or in association with other compatible entities, subject to the approval of the University Board of Trustees.
13. Establish an investment policy consistent with section 215.47, Florida Statutes which shall optimize income for the support of the Self-Insurance Program and its participants. The Council may direct that investment income that is in excess of that income necessary to ensure the long-term solvency of the Self-Insurance Program as established by a casualty actuary be used to defray the annual contributions paid into the Program by the entities and persons protected by the Self-Insurance Program.
14. Submit to the University Board of Trustees for its review, and if required, to the Board of Governors, an annual post-audit of the Self-Insurance Program's financial accounts conducted by an independent certified public accountant. The annual audit report shall include a management letter. Upon request of the University Board of Trustees or the Board of Governors, the Self-Insurance Program Council or its independent auditor shall provide any detail or supplemental data relative to the operations of the Self-Insurance Program.
15. Contract with other Self-Insurance Program Councils for the provision of insurance coverage and other services.

(2) Captive Insurance Company

(a) The Self-Insurance Program Council is authorized to establish as part of the Self-Insurance Program a captive insurance company to be named the University of South Florida Health Sciences Insurance Company (HSIC). The captive (HSIC) shall be wholly owned by the University Board of Trustees and established in a domestic or foreign domicile acceptable to the University Board of Trustees. The Articles of Incorporation and Bylaws of HSIC are subject to the prior written approval of the University Board of Trustees. HSIC shall insure the Board of Governors and the University Board of Trustees and may insure any other entity or individual who is authorized by statute to purchase liability protection from the Self-Insurance Program.

(b) HSIC shall provide liability protection as authorized by Section 1004.24, Florida Statutes. The limits of liability protection to be provided for the protected entities and persons shall be those described in Section 768.28, Florida Statutes, unless otherwise established pursuant to a written endorsement to the insurance policy issued by the HSIC. The limit of liability protection for insured entities and persons not described in Section 768.28, Florida Statutes, shall be as established by the HSIC Board of Directors.

(c) HSIC shall be managed by a Board of Directors, constituted as follows: the USF Vice President for Health Sciences (or his/her designee), who shall serve as Chair; two officers of the USF Health Sciences Center as designated by the Vice President for Health Sciences; the Dean of the USF College of Medicine (or his/her designee); the USF General Counsel (or his/her designee); the Self-Insurance Program Director, who shall serve as President and Chief Executive Officer; and such persons who from time to time may be appointed to the Board of Directors by the President of USF or the Vice President for Health Sciences; and if the H. Lee Moffitt Cancer Center and Research Institute (Moffitt) is insured, the Center Director of Moffitt (or his/her designee).

(d) The HSIC Board of Directors shall carry out the purposes of the entity in compliance with its Articles of Incorporation and Bylaws. The powers and duties of the HSIC Board of Directors shall include but not be limited to:

1. Issue policies of insurance protection which shall establish the perils and risks to be protected and the limits of liability protection in excess of those amounts described in Section 768.28, Florida Statutes, to be underwritten by HSIC. Such limits of liability protection may supplant or be in excess of those liability protections provided by the Self-Insurance Program.

2. Act as the underwriting committee.

3. Contract with the Self-Insurance Program for administrative, risk management, claims and other related services. The Self-Insurance Program and HSIC shall share equitably in the administrative costs of the self-insurance programs.

4. Annually assess and collect premiums from insured entities and individuals. All premium income shall be deposited in accounts and managed pursuant to HSIC's administrative and investment policies.

5. Propose and submit an annual budget through the University President to the University Board of Trustees, and if required, to the Board of Governors.

6. Establish an investment policy consistent with section 215.47, Florida Statutes which shall optimize income for the support of HSIC.
7. Transfer any risks protected by HSIC to commercial insurers through reinsurance, reciprocal or other risk sharing agreements with similar risk bearers.
8. Contract with an insurance management firm licensed in the selected domicile to serve as the registered office of HSIC and to provide such services within the domicile as may be required by the insurance code or law of the selected domicile.
9. Accept the transfer of any contingent losses and loss reserves from the Self-Insurance Program if requested by the Self-Insurance Program Council.
10. Contract a casualty actuary, as defined by the insurance code or law of the domicile of HSIC, to perform an annual review to recommend premium income levels to safeguard the fiscal integrity of HSIC.
11. Provide for an annual audit of HSIC's financial accounts by an independent certified public accountant approved by the selected domicile and the Board of Directors. The annual audit report shall include a management letter and shall be submitted to the University Board of Trustees, and if required, to the Board of Governors for review.

University Official Proposing Regulation: Dr. Stephen K. Klasko, V.P. Health Sciences.
Specific Authority: 1001.74, 1004.24, F.S., Art. IX, FL State Constitution and Resolutions issued by the FL Board of Governors. History-New 11/10/05.

*UNIVERSITY OF SOUTH FLORIDA HEALTH SCIENCES CENTER SELF-INSURANCE PROGRAM

Memorandum of Protection and Conditions of Participation

NOTICE: This Memorandum may not contain all conditions of participation established by the SIP Council.

SECTION A: INSTITUTIONAL PROFESSIONAL LIABILITY

The University of South Florida Health Sciences Center Self-Insurance Program (hereinafter "SIP"), will pay on behalf of the Florida Board of Governors and the University of South Florida Board of Trustees, hereinafter "Trustees", and any other Protected Entity and individual all sums subject to the conditions and exclusions and other terms of this Memorandum, excluding punitive damages, not exceeding the limits of protection hereinafter set forth or as otherwise established by the Council, which Trustees or any other Protected Entity shall become legally obligated to pay as damages or legislative claims bills because of Bodily Injury, Personal Injury, or Property Damage sustained by a patient arising out of the rendering of or failure to render, during the term of protection, Professional Health Care Services.

SECTION B: INDIVIDUAL PROFESSIONAL LIABILITY

In the event an employee or agent of a Protected Entity is not subject to the personal

immunity described in s.768.28(9), F.S., and performs Professional Health Care Services within the course and scope of employment or agency of a Protected Entity, SIP will pay on behalf of such individual subject to the conditions, exclusions, and other terms of this Memorandum, all sums excluding punitive damages, not exceeding the limits of protection established by the Council which the protected individual shall become legally obligated to pay as damages arising out of the rendering of or failure to render, during the term of protection, Professional Health Care Services and SIP shall have the duty to defend any suit against the protected individual even if any of the allegations of the claim or suit are groundless, frivolous, false, or fraudulent. SIP may make such investigation and such settlement of any claim or suit as it deems expedient, but SIP shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the SIP's protection as established by the Council and defined by an Endorsement to this Memorandum has been exhausted by payment of judgments or settlements.

Protection is extended as described in an Endorsement to this Memorandum to employees of Trustees who engage in Community Service that has been pre-approved by the Vice President for Health Affairs or the Dean of the requestor's college, and to employees of Protected Entities who engage in Community Service that has been pre-approved by the chief administrative officer of the Participating Entity that employs the requestor after consultation with the SIP Director.

It is further understood and agreed that the above protection includes all sums other than punitive damages, which the protected individual shall become legally obligated to pay as damages as a result of injuries from care extended as a Good Samaritan subject to the limitations of protection as established by the Council and described in an Endorsement to this Memorandum.

SECTION C: MANAGED CARE ERRORS AND OMISSIONS LIABILITY

SIP will pay on behalf of Trustees and any other Protected Entity all sums subject to the conditions and exclusions and other terms of this Memorandum, excluding punitive damages, not exceeding the limits of protection hereinafter set forth or as otherwise established by the Council, which Trustees or any other Protected Entity shall become legally obligated to pay as damages or legislative claims bills because of Bodily Injury or Personal Injury sustained by a patient arising out of the rendering of or failure to render, during the term of protection, the following services:

(1) Peer Review and Credentialing Activities

"Peer Review and Credentialing Activities" means the process of evaluating and credentialing, by members of a professional review board or committee, and any individual or entity for purposes of selecting, employment, evaluating or granting privileges to such individual or entity as a provider of Professional Health Care Services.

(2) Health Care Services Review

"Health Care Services Review" means the review of any proposed or actual medical services, including necessity of Professional Health Care Services, quality of Professional Health Care Services, utilization of Professional Health Care Services and interpretation and application of preconditions for coverage, such as precertification or second opinions.

SECTION D: GENERAL LIABILITY PROTECTION

The SIP will pay on behalf of the Trustees and any other Protected Entity as designated by the Council for General Liability Protection and/or Patient General Liability Protection all damages which the Trustees or any other Protected Entity shall become legally obligated to pay for Bodily Injury, Personal Injury, or Property Damage subject to the terms, conditions, and limitations as described in an Endorsement to this Memorandum. SIP shall have the right and duty to defend any suit seeking such damages from the Trustees or any other Protected Entity, even if any of the allegations of the claim or suit are groundless, frivolous, false, or fraudulent, and may make such investigation and settlement of any claims or suits as it deems expedient, but the SIP shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of SIP's protection described herein or as established by the Council has been exhausted by payment of judgments or settlements.

SECTION E: PATIENT PROPERTY PROTECTION

The Fund will pay on behalf of the Trustees and any other Protected Entity subject to the limitation of protection established by the Council and described in an Endorsement to this Memorandum for the destruction of or loss of property belonging to a patient and pursuant to an established protocol is entrusted to Trustees or a Participating Entity for safekeeping while such property is in the care, custody, or control of Trustees or any other Protected Entity or their respective employees/agents pursuant to established protocols and such loss or destruction is not the result of force majeure.

DEFINITIONS

1. Bodily Injury - Any Bodily Injury, sickness or disease or disability including death resulting therefrom, sustained by a natural person.
2. Community Service - Voluntary services performed by a Protected Individual for charitable purposes.
3. Council - The authority established pursuant to applicable Florida law, rule and University regulation to manage SIP.
4. Damages - When used in these sections, "damages" means all legally recoverable compensatory damages, including damages for death, because of Bodily Injury or Personal Injury or Property Damage causally arising from an Occurrence protected by this Memorandum. Punitive or exemplary damages are specifically excluded.
5. Good Samaritan - Any person, including those licensed to practice medicine, as defined in s.1768.13, Florida Statutes.
6. USF Health Sciences Center means the following units of the University of South Florida: College of Medicine; College of Nursing; College of Public Health; School of Physical Therapy.
7. Managed Care Incident - Any act, error or omission in the rendering of, or failure to render, Managed Care Professional Services by or on behalf of a Protected Entity as herein defined.
8. Occurrence - A single incident or a series of incidents unexpected or unanticipated by the

Protected Entity that singly or collectively results in Damages as defined. An Occurrence may be an act of commission or omission. All such Damages caused by one incident or series of incidents at a single or multiple Protected Entities contributing to the same condition shall be deemed to result from a single incident.

9. Patient - Any natural person who receives Professional Health Care Services on either an inpatient or outpatient basis from a Protected Entity. For purposes of Patient General Liability protection, "Patient" includes a person who is on the premises of a Protected Entity pursuant to an appointment for the purpose of receiving Professional Health Care Services, including emergency patients and "walk-in" patients who enter the premises of a Protected Entity or any operating unit thereof that normally accepts such patients. "Patient" is further defined to include those animals not owned by Trustees that are provided professional veterinary services.

10 Personal Injury - Any injury arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment or malicious mischief;
- b. The publication or utterance of libel or slander or other defamatory or disparaging material, or the publication or utterance in, violation of an individual's right of privacy (except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of a Protected Entity) or other invasion of privacy; or
- c. Wrongful entry or eviction or other invasion of the right of private occupancy.

11. Professional Health Care Services - Those services performed in the treatment and/or care of any patient by the faculty, residents, students and other professional employees and agents of Trustees and those provided by the professional employees and agents of any other Protected Entity, including

- a. Medical, surgical, dental, nursing, veterinarian, pharmaceutical and other professional care or services to any Patient;
- b. The furnishing of food and beverages in connection with such services;
- c. The furnishing or dispensing of drugs, blood, blood products and medical, surgical or dental supplies and appliances;
- d. The handling of, or performing post-mortem examinations on human bodies;
- e. Human research and development performed by a Protected Entity or Protected Individual in accord with an IRB-approved Protocol which results in injury caused by or alleged to have been caused by a deficiency or defect in the conduct or the reported values of such research or development;
- f. Service by a Protected Entity or Protected Individual, as a member of a formal accreditation, standards review or similar professional board or committee of the Protected Entity or while charged with the duty of executing the directives of such professional board or committee, or while communicating information to such professional board or committee; and

g. Those services provided by a volunteer of a formal volunteer organization or program of Trustees or other Protected Entity while acting within the course and scope of assigned duties.

12. Property Damage - Physical damage to tangible property, including the resulting loss of use of such property.

13. Protected Entity - The Trustees and any individual, corporation, or governmental unit authorized by law to be protected by SIP and designated by the Council to be a Protected Entity.

14. Protection Period - The period comprised of consecutive annual periods beginning each July 1 and ending June 30.

15. Self-Insurance Program or SIP - When used in these sections, "Self-Insurance Program" or "SIP" means the University of South Florida Health Sciences Center Self-Insurance Program.

16. Student - An individual who is enrolled as a student at a college or school of the USF Health Sciences Center while in an approved course of study or training program defined by such college or school.

17. Supplemental Payments - Those expenses incurred by SIP in the investigation and defense of a claim or action that are in addition to the per-claim limit of liability protection, including reasonable expenses and lost wages that are incurred by a protected individual.

LIMITS OF LIABILITY PROTECTION AND CONDITIONS OF PARTICIPATION

1. The limits of liability protection shall be as follows and as further described in Endorsements to this Memorandum:

a. Institutional Professional Liability

(i) The protection provided hereunder is limited to those risks for which sovereign immunity has been waived as described in s.768.28, F.S., and is further limited to those amounts described in s.768.28, F.S., or as otherwise established by the Council as described in an Endorsement to this Memorandum.

(ii) For any Protected Entity not described in s.768.28, F.S., the limit of protection shall be as established by the Council and described in an Endorsement to this Memorandum.

b. Individual Professional Liability - For protected individuals not described in s.768.28(9), F.S. and for individuals who are employees or agents of those Protected Entities described in s.768.28(2) who are outside the jurisdiction of the State of Florida, the limits of protection shall be as established by the Council and described in an Endorsement to this Memorandum.

c. General Liability - The protection provided, hereunder is limited to those risks for which sovereign immunity has been waived as described in s.768.28, F.S., or as otherwise established by the Council and described in an Endorsement to this Memorandum.

d. Patient Property Protection - The protection as described in an Endorsement to this Memorandum.

e. Limits of Liability, Multiple Claims and Claimants - The inclusion of more than one Protected Entity or the making of claims or the bringing of suits by more than one person or organization or under more than one section of the Memorandum shall not operate to increase SIP's maximum limit of liability per Occurrence as established by the Council. Two or more claims arising out of a single act, error, omission or Occurrence or a series of related acts, errors, omissions, or Occurrences shall be treated as a single Occurrence claim and shall be subject to the per-Occurrence levels of protection described in s.768.28, Florida Statutes or as established by the Council and described in an Endorsement to this Memorandum.

f. Aggregate Limits of SIP Protection - Regardless of the number of protected entities or claims under this Memorandum, in no event shall the total liability of SIP for all risks or exposures exceed those funds held by SIP as reserves and surplus. In the event those funds held by SIP as reserves and surplus are exhausted, protection hereunder shall cease.

2. Duties of Protected Entities and Individuals in the Event of a Patient Injury, Claim or Suit:

a. Upon becoming aware of an Occurrence written notice containing reasonably obtainable information with respect to the time, place, and circumstances of the Occurrence and the names and addresses of the injured person and of available witnesses, shall be given by or for the Protected Entity or Individual to SIP as soon as practicable.

b. The Protected Entity or Individual shall fully cooperate with SIP in all matters pertaining to the investigation of an Occurrence, losses, claims, or suits

c. The Protected Entity or Individual shall cooperate in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Protected Entity or Individual because of Bodily Injury, including death, Property Damage, or other loss with respect to which protection is afforded under this Memorandum. The Protected Entity or Individual shall attend hearings and trials, and assist in securing and giving evidence and obtaining the attendance of witnesses.

d. In consideration of the protection afforded herein, all Protected Entities or Individuals must provide resources, expertise, and assistance to SIP in the investigation and evaluation of Occurrences, claims, and suits for no cost or compensation.

e. In consideration of the protection afforded herein, Trustees and Protected Entities shall, upon written request of the Director, SIP, or his/her designee, waive, write-off, forgive, reimburse or take such other action which may be reasonable or appropriate to ensure patients and/or payors incur no expense for the health care upon which the injury, claim or suit is based, regardless of whether that care was provided by the Protected Entity or any other Protected Entity.

3. Duties of Protected Entities and Individuals to Cooperate in the Identification and Management of Clinical and Management Practices that if not Eliminated or Corrected are likely to Result in an Injury, Claim or Suit:

a. Upon becoming aware of an adverse incident that has caused a patient injury or a circumstance or practice that, if not eliminated or corrected, exposes patients to an unnecessary risk of Bodily Injury, written notice containing reasonably obtainable information with respect to practice or the time, place, and circumstances of the adverse incident, and the names and addresses of the injured person and of available witnesses, shall be given by or for the Protected Entity or Individual to the SIP as soon as practicable.

b. The Protected Entity or Individual shall fully cooperate with the SIP in its advancement, analysis and implementation of state and federal legislation and regulation related to patient care, claims and loss prevention/loss control.

c. The Protected Entity shall fully cooperate with the SIP in its investigation and analysis of Occurrences that expose Protected Entities and Individuals to claims and suits and in SIP's loss prevention/loss control initiatives and exposure data collection.

d. Prior to publication and/or release to the media, make available to SIP for its review all advertising and promotional materials.

4. Other Liability Protection - SIP shall not be liable for loss if at the time of loss there is any other valid and collectible insurance, self-insurance, or agreement for indemnification which would attach if this protection had not been effected, except that this protection shall apply only as excess protection and in no event as contributing "insurance," and then only after such other insurance, self-insurance, or agreement for indemnity has been exhausted.

5. Supplemental Payments - SIP will pay in addition to the applicable levels of protection as established by the Council:

a. All expenses incurred by SIP, all costs taxed against the Protected Entity in any suit defended by SIP and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before SIP has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of SIP's per-claim liability thereon;

b. Premiums on appeal bonds required in any such suit and premiums on bonds to release endorsement in any such suit, for an amount not in excess of the applicable levels of protection as established by the Council, but SIP shall have no obligation to apply for or furnish any such bonds; and

c. Investigations and legal expenses incurred on behalf of a Protected Entity or Individual arising from any formal action, hearing or proceeding before the Florida Department of Health or other governmental board or regulatory authority other than a Protected Entity for matters of licensure, quality assurance, regulation and professional conduct which arise from an Occurrence.

EXCLUSIONS

The protections described in this Memorandum do not apply:

1. To Bodily Injury to any employee of the Board of Trustees of the University of South Florida or any other Protected Entity arising out of and in the course and scope of his/her

employment by the Board of Trustees of the University of South Florida or any other Protected Entity; or

2. To any obligation for which the Trustees or any other Protected Entity or any entity as its insurer or self-insurer may be held liable under any workers' compensation, employment practices liability, unemployment compensation or disability benefits law, or under any similar law;

3. To claims regarding hours, wages and/or conditions of employment, including but not limited to performance appraisals, disciplinary actions, promotions, tenure, terminations, sexual harassment, and illegal discrimination, arising from any employer-employee, master-servant or similar relationship;

4. Any claim for punitive damages or any other damages arising from or attributed to "Intentional misconduct" or "Gross negligence" as defined in s.768.72 F.S., or to actions of bad faith, malicious purpose or the wanton and willful disregard of human rights, safety, or property as described in s.768.28(9)(a) or such damages assigned to a Protected Entity arising from or attributed to such acts and omissions on the part of its employees or agents;

5. To any person while engaged in voluntary Community Service activities which are outside the course and scope of employment or agency of Trustees or other Protected Entity subject to the activities and protection afforded by SIP being approved in writing by the Chairman of the Council or the deans of the colleges or schools comprising the USF Health Sciences Center for their respective faculty, students, and employees, or the chief administrative officer of a Protected Entity for its employees, after consultation with the SIP Director or his/her designee;

6. To liability of an otherwise Protected Entity while acting in the capacity of a proprietor, superintendent, employee, agent, or executive officer of any hospital, sanitarium, clinic with bed and board facilities, laboratory, or any business enterprise other than a Protected Entity;

7. To Bodily Injury, Personal Injury, or Property Damage expected or intended from the standpoint of Trustees or a Protected Entity;

8. To Bodily Injury, or Property Damage arising out of the ownership, maintenance, operation or use, loading or unloading, of any licensed land vehicle or aircraft;

9. To any Property Damage to property owned, occupied, or in the care, custody, or control of the Protected Entity except as described in Section E of this Memorandum and as may be described in an Endorsement to this Memorandum;

10. To Property Damage to work performed by or on behalf of the Protected Entity arising out of the work or any portion thereof, or out of materials, parts, or equipment furnished in connection therewith;

11. To liability related in any way to nuclear energy;

12. Vicarious liability coverage is expressly excluded for clinical services imposed against Trustees or a Protected Entity based upon agency, joint venture or other such relationship and established solely through the contract by which the clinical services were provided,

unless such contract was reviewed and approved by either the Director, SIP, or the Council prior to the delivery of those services;

13. To liability of Trustees or a Protected Entity created by a contract for clinical service, unless such contract was submitted for risk management review and approved by the SIP or specifically underwritten by the Council; but, this exclusion shall not apply to any liability which, in the absence of such contract or agreement, would otherwise have been protected by the SIP;

14. To any loss as to which the Trustees or any other Protected Entity has released any other person or organization from his or its legal liability;

15. To any claim or action against a Protected Individual resulting from the rendering of, or failure to render Professional Health Care Services while such Protected Individual is under the influence of alcohol or drugs;

16. To Bodily Injury or Personal Injury sustained by any patient as a result of a claim or suit involving, or exposure to any of the following conditions:

- a. fire, lightning or explosion
- b. windstorm or hail
- c. riot or civil commotion
- d. smoke
- e. vandalism or malicious mischief
- f. building collapse
- g. act of terrorism.

CLARIFICATION CLAUSE

It is the intention of Trustees that this Memorandum shall not be a waiver of the immunity afforded all State agencies and subdivisions and their officers, employees, and agents as defined in s.768.28, F.S. Any terms or conditions of this Memorandum or actions of the Council which conflict with this express intention are null and void.

SUBROGATION

In the event of any payment under this Memorandum, Trustees acting as SIP shall be subrogated to all the Protected Entity's rights of recovery therefore against any person or organization, and the Protected Entity shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Protected Entity shall do nothing after a loss or an Occurrence to prejudice such rights.

INTERPRETATION OF PROTECTIONS AFFORDED

The arbiter of any conflict or disagreement by a Protected Entity or Individual or any other party at interest as to the applicability or interpretation of the terms of the Memorandum or any Endorsements attached thereto shall be the Council.

OCCURRENCE PROTECTION

All liability protections afforded by SIP shall be on an Occurrence basis. Protection is in effect for Occurrences that occur during the Protection Period, notwithstanding the date that an Occurrence is first made known to SIP, subject to the good faith compliance with the Duties of Protected Entities and Individuals.

COUNCIL AUTHORITY

The Self-Insurance Program Council shall modify the terms and conditions of this Memorandum as it deems necessary and/or prudent to meet exposure and loss contingencies.

BOG Regulation 10.001 Self-Insurance Programs.

(1) (a) The University of Florida J. Hillis Miller Health Center Self-Insurance Program, the University of South Florida Health Sciences Center Self-Insurance Program, Florida State University College of Medicine Self-Insurance Program, the University of Central Florida College of Medicine Self-Insurance Program, and the Florida International University College of Medicine Self-Insurance Program are established for the purpose of providing comprehensive general liability protection, including professional liability protection, for the Board of Governors, the University of Florida Board of Trustees, the University of South Florida Board of Trustees, the Florida State University Board of Trustees, the University of Central Florida Board of Trustees, the Florida International University Board of Trustees, and other persons and entities as provided by law and as authorized by the Board of Governors, the University Boards of Trustees or the Self-Insurance Programs Councils. The Self-Insurance Programs shall be funded by contributions paid by or on behalf of protected persons and entities. There shall be no funds appropriated to a Self-Insurance Program. The assets of the Self-Insurance Programs shall be deposited outside the State Treasury and shall be used only to pay the administrative expenses of the Self-Insurance Program and any claim, judgment, or claims bill arising out of the activities for which the Self-Insurance Program was created.

(b) The Self-Insurance Programs may not sue or be sued. The claims files of the Self-Insurance Program are privileged and confidential, exempt from the provisions of Section 119.07(1) Florida Statutes, and are only for the use of the Program in fulfilling its claims, underwriting and risk management duties.

(c) The Self-Insurance Programs shall be administered by the following Councils.

1. The J. Hillis Miller Health Center Self-Insurance Program shall be administered by the J. Hillis Miller Center Self-Insurance Program Council. The Council shall consist of the following officers of UF: Senior Vice President for Health Affairs, who shall serve as Chair; the Senior Associate Dean and Associate Vice President for Health Affairs, who shall serve as Vice Chair; the Vice President for Administrative Affairs; the Dean, College of Medicine; the Dean, College of Dentistry; two Gainesville based members of the faculty of the College of Medicine appointed by the Dean, College of Medicine and two Jacksonville based faculty of the College of Medicine, appointed by the Associate Vice President or Health Affairs/Jacksonville; the University of Florida Vice President and General Counsel; and the Self- Insurance Program Director; and such other persons as from time to time may be appointed to the Council by the Senior Vice President for Health Affairs or the President of UF; and if Shands Teaching Hospital and Clinics, Inc. (Shands Hospital), participates in the Self-Insurance Program: the Chief Executive Officer; the Senior VP and General Counsel and three members of the administrative staff of Shands Hospital to be appointed by the Chief Executive Officer, one of whom must be from the Jacksonville campus;

2. The USF Health Sciences Center Self-Insurance Program shall be administered by the USF Health Sciences Center Self-Insurance Program Council. The Council shall consist of the following officers of USF: Vice President for Health Sciences, who shall serve as Chair; two officers of the USF Health Sciences Center as designated by the Vice President for Health Sciences; four members of the faculty of the College of Medicine appointed by the Vice President for Health Sciences; the USF General Counsel or his/her designee; the Self-Insurance Program Director; and such other persons as from time to time may be appointed to the Council by the Vice President for Health Sciences or the President for USF; and if the H. Lee Moffitt Cancer Center and Research Institute, Inc. participates in the Self- Insurance Program, the Center Director (or his/her designee); and

3. The FSU College of Medicine Self-insurance Program shall be administered by The Florida State University College of Medicine Self-Insurance Program Council. The Council shall consist of the following officers of FSU: Dean of the College of Medicine, who shall serve as Chair; Associate Dean for Academic Affairs of the College of Medicine; Director of Community Clinical Relations of the College of Medicine; the FSU General Counsel or designee; and such other persons as from time to time may be appointed to the Council by the Dean of the College of Medicine.

4. The UCF College of Medicine Self-Insurance Program shall be administered by the UCF College of Medicine Self-Insurance Program Council. The Council shall consist of the following: Dean of the College of Medicine, who shall serve as Chair; one appointee of the Chair of the UCF Board of Trustees; one appointee of the President; the Provost or designee; the UCF Vice President for Administration and Finance or designee; the College of Medicine Associate Dean for Administration and Finance; two or more College of Medicine clinical faculty appointed by the Dean; the UCF General Counsel or designee; the Self-Insurance Program Administrator; and such other persons as from time to time may be appointed by the Chair of the Board of Trustees or the President of UCF.

5. The FIU College of Medicine Self-Insurance Program shall be administered by the FIU Self-Insurance Program Council. The Council shall consist of the following officers of FIU: Senior Vice President for Medical Affairs and Dean of the College of Medicine; Executive Associate Dean for Clinical Affairs of the College of Medicine; Executive Associate Dean of Finance and Administration of the College of Medicine; four faculty members appointed by the Dean of the College of Medicine; the General Counsel or his or her designee; and the Self-Insurance Program Administrator; and such other persons as from time to time may be appointed to the Council by the Senior Vice President of Medical Affairs or by the President of FIU.

(d) The power and duties of each council shall be:

1. To administer the Self-Insurance Program in accordance with the laws of Florida, and the regulations of the Board of Governors;
2. To develop and implement a financial expenditure policy that recognizes the unique mission, duties, obligations and fiscal responsibilities of the Self- Insurance Program. The Council's financial responsibility policies shall ensure fiscal responsibility and accountability and, to the maximum extent possible, be consistent with recognized practices of the insurance industry;
3. To propose and submit an annual budget for the Self-Insurance Program through the University Board of Trustees to the Board of Governors;
4. To develop and implement a Memorandum of Protection which shall constitute the Self-Insurance Program's coverage document. The Memorandum of Protection shall contain the insuring agreements, exclusions, and other conditions applicable to persons and entities protected and shall be part of this regulation by reference. The Council may extend by resolution the protections described in the Memorandum of Protection to persons and entities as authorized by statute and establish the levels of liability protections extended to such persons and entities;
5. To contract with an independent casualty actuary to establish funding requirements necessary to maintain the fiscal integrity of the Self-Insurance Program;
6. To appoint the Self-Insurance Program Director who shall carry out the policies and directives of the Council;
7. To receive from the University such administrative and logistical support as the Council may reasonably request and to reimburse the University for the cost of such support;
8. To contract with professional consultants, including attorneys-at-law to represent the persons and entities protected by the Self-Insurance Program and perform services which further the interests of the Self-Insurance Program and perform services which further the interests of the Self-Insurance Program;
9. To establish committees and designate persons as necessary to assist in the performance of its duties, and authorize such committees or persons to act for and on behalf of the Council. In addition to any other committees it may elect to establish, the Council shall establish as a standing committee or committees to conduct investigations and the settlement and defense of claims and actions against protected entities and individuals and to identify risk factors which cause or contribute to such claims and suits and develop and implement risk management programs to reduce or eliminate those risk factors. The Council and such committee or committees shall conduct reviews pursuant to the provisions of Section 766.106, Florida Statutes, and shall be deemed a medical review committee or committees as defined in Section 766.101, Florida Statutes;
10. To participate in internal, local, regional, national and/or internal risk management and loss prevention research programs and to develop risk management and loss prevention

programs for use by both protected and non-protected entities under such terms, conditions and reimbursement rates as the Councils may deem appropriate;

11. To purchase excess insurance on behalf of persons and entities protected by the Self-Insurance Program for claims which exceed the level of protection provided by the Self-Insurance Program, including claims bills, to award compensation in amounts which exceed the protection provided by the Self-Insurance Program or by commercial insurance; to assist entities not described in Section 768.28, Florida Statutes, which are authorized and approved as allowed by Florida laws to be protected by the Self-Insurance Program, in the procurement of insurance for losses which exceed the levels of protection provided by the Self-Insurance Program as established by the Council, but the Council is not authorized to purchase such insurance with Self-Insurance Program assets;

12. To participate in other self-insuring mechanisms such as Risk Retention Groups or group captive insurance companies, independently or in association with other compatible entities subject to the approval of the Board;

13. To establish an investment policy consistent with Section 215.47, Florida Statutes, which shall be approved by the Board of Governors, and to maintain an investment account which shall optimize income for the support of the Self-Insurance Program as established by a casualty actuary be used to defray the annual contributions paid into the Program by the entities and persons protected by the Self-Insurance Program;

14. To submit to the Board of Governors for its review an annual post-audit of the Self-Insurance Program's financial accounts conducted by an independent certified public accountant. The annual audit report shall include a management letter and shall be submitted to the Board of Governors for review. Upon request of the Board of Governors the Self-Insurance Program Council or its independent auditor shall provide any detail or supplemental data relative to the operations of the Self-Insurance Program; and

15. To contract with other Self-Insurance Program Councils for the provision of liability protection and administrative, risk management, claims and other related services.

(2) Captive Insurance Companies.

(a) The Council defined in (1)(c)1. is authorized to establish as part of the Board of Governors' Self-Insurance Program a captive insurance company to be named the University of Florida Healthcare Education Insurance Company (HEIC) and the Council defined (1)(c)2. is authorized to establish a captive insurance company to be named the University of South Florida Health Sciences Insurance Company (HSIC). Each captive (HEIC and HSIC) shall be wholly owned by the Board of Governors and established in a domestic or foreign domicile acceptable to the Board of Governors. The Articles of Incorporation and Bylaws of each captive are subject to the prior written approval of the Board of Governors. Each captive shall insure the Board of Governors and the University Board of trustees and may insure any other entity or individual who is authorized by statute to purchase liability protection from a Self-Insurance Program created pursuant to this Regulation.

(b) Each captive shall provide liability protection as authorized by section 1004.24, Florida Statutes. The limits of liability protection to be provided for the Board shall be those described in section 768.28, Florida Statutes, unless otherwise established pursuant to a written endorsement to the insurance policy issued by the captive. The limit of liability protection for insured entities and persons not described in Section 768.28, Florida Statutes, shall be as established by the respective Board of Directors of the captive.

(c) Each captive shall be managed by a Board of Directors.

1. HEIC shall be managed by a Board of Directors, constituted as follows: the Senior Vice President for Health affairs of UF, who shall serve as Chair; the Dean of the College of Medicine; the Senior Associate Dean Jacksonville; the General Counsel of UF; the Self-Insurance Program Director who shall serve as President and Chief Executive Officer; and such persons who from time to time may be appointed by the Senior Vice President for Health Affairs or the President of UF; and if Shands Teaching Hospital and Clinic, Inc. (Shands) is insured, the Chief Executive Officer and three appointees of the Chief Executive Officer one of whom shall be from the Jacksonville campus.

2. HSIC shall be managed by a Board of Directors, constituted as follows: the USF Vice President for Health Sciences of USF (or his/her designee), who shall serve as Chair; two

officers of the USF Health Sciences Center as designated by the Vice President for Health Sciences; the Dean of the USF College of Medicine (or his/her designee); the USF General Counsel (or his/her designee); the Self-Insurance Program Director who shall serve as President and Chief Executive Officer; and such persons who from time to time may be appointed to the Board of Directors by the Vice President for Health Sciences or the President of USF; and if the H. Lee Moffitt Cancer Center and Research Institute (Moffitt) is insured, the Center Director of Moffitt or his/her designee.

(d) The Board of Directors of each captive shall carry out the purposes of the entity in compliance with its Articles of Incorporation and Bylaws. The powers and duties of the Board of Directors shall include but not be limited to:

1. To issue policies of insurance protection which shall establish the perils and risks to be protected and the limits of liability protection in excess of those amounts described in Section 768.28, Florida Statutes, to be underwritten by the captive. Such limits of liability protection may supplant or be underwritten by the captive. Such limits of liability protection may supplant or be in excess of those liability protections provided by the Self-Insurance Program(s);
2. To act as the underwriting committee;
3. To contract with the Self-Insurance Program(s) for administrative, risk management, claims and other related services. The Self-Insurance Program(s) and the captive shall share equitably in the administrative costs of the Self-Insurance Programs;
4. To annually assess and collect premiums from insured entities and individuals. All premium income shall be deposited in accounts and managed pursuant to the captive's administrative and investment policies;
5. To propose and submit an annual budget through the University Board of Trustees to the Board of Governors;
6. To establish an investment policy consistent with section 215.47, Florida Statutes, which shall be approved by the Board of Governors, and to maintain an investment account which shall optimize income for the support of the captive;
7. To transfer any risks protected by the captive to commercial insurers through reinsurance, reciprocal or other risk sharing agreements with similar risk bearers;
8. To contract with an insurance management firm licensed in the selected domicile to serve as to serve as the registered office of the captive and to provide such services within the domicile as may be required by the insurance code or law of the selected domicile;
9. To accept the transfer of any contingent losses and loss reserves from the Self-Insurance Program(s) if requested by the Self-Insurance Council(s);
10. To contract with a casualty actuary, as defined by the insurance code or law of the domicile of the captive, to perform an annual review to recommend premium income levels to safeguard the fiscal integrity of the captive;
11. To provide for an annual audit of the captive's financial accounts by independent certified public accountant approved by the selected domicile and the Board of Directors. The annual audit report shall include a management letter and shall be submitted to the Board of Governors for review.

Authority: Section 7(d), Art. IX, Fla. Const., History—Former BOR Rule 6C-10.01, 1-6-88, 10-15-90, 5-30-93, 3-16-95, 11-27-95, 6-22-06, 9-25-08; 6-18-09.

AUTHORITY TO ADOPT/AMEND/REPEAL REGULATION(S):

Art. IX, Sec. 7, Fla. Constitution, BOG Regulation 1.001.

UNIVERSITY OFFICIAL INITIATING PROPOSED

AMENDMENTS/ADOPTION/REPEAL OF REGULATION(S): Stephen K. Klasko, M.D., M.B.A., V. P. USF Health.

**WRITTEN COMMENTS CONCERNING THIS PROPOSED REGULATION
MAY BE SUBMITTED WITHIN 14 DAYS AFTER THE POSTING DATE OF
THIS NOTICE TO:**

Dee Brown, Agency Clerk
Office of the General Counsel
University of South Florida System
4202 East Fowler Avenue, Suite ADM 250
Tampa, FL 33620-6250
Phone: (813) 974-7150; FAX: 813-974-5236; E-MAIL: USFLEGAL@ADMIN.USF.EDU