



HIPAA BUSINESS ASSOCIATE CONTRACT

WHEREAS, the undersigned dentist ("Dentist") and/or any clinic in which said Dentist performs professional services is a "health care provider", and, therefore, a "covered entity" as those terms are defined in the Restated HIPAA (Health Insurance Portability and Accountability Act of 1996) Privacy Rules (45 C.F.R., Parts 160-164, hereinafter the "Privacy Rules");

WHEREAS, the Dentist has provided to current, or will provide to all new patients, or their duly authorized representatives, the "Notice" required under the Privacy Rules describing how medical information and/or protected health information ("PHI") may be used and disclosed and how patients can get access to that information as required by the Privacy Rules;

WHEREAS, the Privacy Rules define "business associate" to include a person or entity which assists the Dentist as a health care provider and covered entity in any function or activity described in the Privacy Rules which involves the use or disclosure of individually identifiable health information for such functions as, but not limited to, claims processing or administration, data analysis, utilization review, billing, benefit management or practice management or for an entity or person which provides legal, actuarial, accounting, consulting, management, administrative or other such functions.

WHEREAS, the Dentists Professional Liability Trust (of Colorado) ("Trust") provides professional liability coverage to the Dentist through the "Coverage Agreement" and the Dentist is a "Participant" in the Trust;

WHEREAS, the Trust is administered by the Dentist Professional Liability Benefit Plan, Inc. and its Board of Directors (the "Plan") or its contract administrator, Berkley Risk Administrators Company, LLC, d/b/a Berkley Risk Services of Colorado (hereinafter "BRS");

WHEREAS, the Trust, the Plan, BRS and their employees and agents are "business associates" to the Dentist and any clinic in which said Dentist performs professional services and need to be provided PHI from time to time to carry out their business associate functions;

WHEREAS, it is important to the Dentist that its business associates which may create or receive protected health information act to fully comply with HIPAA and the Privacy Rule requirements;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Dentist, the Trust, the Plan and BRS, collectively referred to herein as the "Parties" agree as follows:

1. Permitted Uses and Disclosures.

The Trust, the Plan and BRS and their employees and agents, hereinafter collectively referred to as the "Business Associates" are permitted or required to use or disclose protected health information from the Dentist which the Dentist creates or receives from or related to the dental practice only as follows:

- a. The Business Associates are authorized and entitled to use the PHI for the necessary and proper management and administration of the Trust and the Coverage Agreement in which the Dentist is a Participant, including, expressly, but not necessarily limited to, any and all risk management functions; the defense of, handling of, and any other activities related to, any claim submitted by any patient or patient representative against the Dentist for which the Coverage Agreement provides coverage to the Dentist as a Participant in any judicial or administrative proceeding initiated against the Dentist as a Participant in the Trust and the Coverage Agreement; the handling of responses to administration of or other activities related to any dental incident or other incident or wrongful act alleged against the Dentist as a Participant in the Trust and which is covered as provided for by the Coverage Agreement; cooperation with the Trust in any and all of the Trust's representatives including defense counsel, claims administrators or expert witnesses related to the defense or settlement of any notice or claim or dental incident or wrongful act; the enforcement of any right of contribution of the Trust against any other person or entity who may be liable to the Dentist because of any damages to which the Coverage Agreement applies; assistance in securing and giving evidence and obtaining of witnesses in defense of any proceeding against the Dentist; the investigation, settlement or defense of any claim; and the assistance and cooperation with the Trust in the event any need exists in the judgment of the Trust to assist in or investigate any regulatory proceedings including, but not limited to, any such proceedings brought by the Colorado Board of Dental Examiners (subject to the express conditions and terms of the Coverage Agreement).

- b. The Business Associates may also use any such PHI related to the functions and activities set out in the prior paragraph in association with information they have and in their capacities as Business Associates with defense counsel, Trust and/or coverage counsel, or expert witnesses as required by the circumstances or such activities as set forth in the prior paragraph for which coverage is provided for under the Coverage Agreement.
- c. In the event that defense counsel, Trust and/or coverage counsel or expert witnesses need such PHI, the Business Associates or any of those who are involved in the issue at that time will obtain written and reasonable assurances from such person or organizations ("affiliated parties") to which the Business Associates or any of them are obligated to or will disclose such PHI to assure that the person, entity or organization will protect and hold such PHI in confidence and limit use or further disclosure only for the purposes for which the Business Associates have disclosed it as required by the Privacy Rules.

2. Prohibition on unauthorized use or disclosure.

The Business Associates and any of their affiliated parties as mentioned herein will neither use nor disclose PHI which they obtain or receive from the Dentist or the dental practice except as required and permitted by this contract, the Privacy Rules or as otherwise required by law.

3. Disclosures for Judicial and Administrative Proceedings.

The Dentist and the clinic may disclose such PHI and the Business Associates and any of employees or agents or their affiliated parties may disclose PHI in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal provided, expressly, that such PHI is only such information as is expressly authorized by such order or is in response to a subpoena, discovery request or other lawful process provided:

- a. reasonable efforts are made to ensure the individual who the subject of the PHI is subject to the protection of a "Qualified Protective Order" as that term is defined and used in the Privacy Rules which, inter alia, prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested or obtained and the order requires the return to the Dentist or dental practice or the destruction of the PHI (including all copies made) that are not part of the court records at the end of the litigation or proceeding.

4. Exemption from Accounting of Disclosures of PHI.

The Parties understand and agree that the disclosures anticipated hereunder are exempt from the accounting required by the Privacy Rules, § 164.528 of 45 C.F.R. in that the disclosures anticipated and contemplated and to be transmitted hereunder are exempted under the provisions of the Privacy Rules exempting health care operations.

5. Inspections of Books and Records.

The Business Associates will, to the extent lawful, necessary and appropriate, make their internal practices, books and records available to the Dentist and to the Department of Health and Human Services whenever necessary during regular business hours and upon reasonable request, to determine compliance with 45 C.F.R., Parts 160-64 or this contract but shall not provide such information to other parties except as expressly required by order of law or legal process.

6. Breach of Obligations.

The Business Associates will report to the Dentist any use or disclosure of PHI which has not been permitted by this contract. Any report of such inappropriate disclosure or use will be made within 24 hours after any of the Business Associates learn of such non-permitted use or disclosure and will:

- a. identify the nature of the non-permitted, violating or use or disclosure;
- b. identify the PHI used or disclosed;
- c. identify who made the non-permitted or violating use or receive the non-permitted or violating disclosure;
- d. identify what corrective actions the Business Associates took or will take to prevent further non-permitted or violating uses or disclosures;
- e. identify what was done to mitigate any deleterious effect of the non-permitted or violating use or disclosure and;
- f. provide, as the Dentist or the dental practice may reasonably request, such other information including a written report as necessary.

7. Termination of Contract.

- a. This contract may be terminated by mutual agreement between the Parties.
- b. The Dentist may terminate this contract if the Dentist determines in his or her sole discretion that the Business Associates have breached any provision of this contract and will do so by providing written notice of termination stating the breach and effective date.
- c. In the event of termination of this agreement, cancellation, expiration or other conclusion of the contract, Business Associates will, if and to the extent feasible, return to the Dentist or destroy all PHI in whatever form it is contained. Such destruction or return of documents shall take place no later than 30 days after the effective date of the termination, cancellation, expiration or conclusion of this contract.
- d. The Business Associates will identify any such PHI created or received for or from the Dentist that cannot be feasibly returned or destroyed and will

limit any further use or disclosure of such PHI or destroy such PHI. In the event of the return or destruction of any such PHI, the Business Associates will certify upon oath and in writing to the Dentist that such return or destruction has been completed and will deliver to the Dentist the identification of any PHI for which such return or destruction is infeasible and that for such PHI it will not use or disclose that information for any purposes.

- e. It's understood that the obligation to protect the privacy of the PHI created or received from the Dentist will be continuous and will survive termination, cancellation, expiration or any other conclusion of the contract.

8. Amendments.

This contract may not be amended except by written agreement executed by the Parties. This contract will be amended in the event that there are required changes due to any amendments of the governing law or the Privacy Rules or in order to conform with any other obligations set forth in those Privacy Rules.

9. Applicable Law.

The terms and conditions of this contract shall be interpreted pursuant to Colorado law when state law is applicable and otherwise shall be subject to and interpreted under the applicable federal laws and, in particular, any applicable elements of the Privacy Rules or HIPAA.

IN WITNESS WHEREOF the Dentist and the Business Associates have executed this contract and duplicate originals to effective on the last date set forth below.

DENTISTS PROFESSIONAL LIABILITY TRUST
(of Colorado)

and

DENTISTS PROFESSIONAL LIABILITY BENEFIT PLAN, INC.

By: Richard W Raab 13 March 2006
Richard W. Raab, DDS, President Date

BERKLEY RISK ADMINISTRATORS COMPANY, LLC
d/b/a Berkley Risk Services of Colorado
By: David A. Daugherty 13 March 2006
David A. Daugherty, President Date

DENTIST

X _____
Signature

X _____
Date

X _____
Print Name