An Introduction to Professional Liability in Graduate Medical Education
Overview

This booklet was compiled by the claims team in the UMass Memorial Claim Management Department, and is intended for the informational purposes of medical providers in Graduate Medical Education (GME) insured through the Self-Insurance Program (SIP). We hope that this guide provides an introduction to the basic structure of the insurance program, including both its benefits and requirements.

Although every attempt has been made to ensure that this guide provides accurate and pertinent information, please keep in mind that this guide is not intended to constitute legal or medical advice and will not replace the valuable guidance of your attorney or liability specialist in the event of a claim, suit, or other action.

The Claim Management Team at UMass Memorial consists of two liability specialists and a director with an average of 25 years of experience.

It is an often-unwelcome reality that the medical profession regularly intersects with judicial inquiry. A medical provider might be called upon to testify as a witness in a case tangential with medical care provided to a patient (such as a car accident) or, they may find themselves in the defendant’s seat following an adverse outcome. More rarely, the matter arises unexpectedly following a seemingly positive patient interaction. The question is often not an “if”, but a “when”, in terms of how these issues surface.

The Claim Management Department works in concert with a panel of defense attorneys to provide a comprehensive approach to the handling of professional liability cases. We are knowledgeable and dedicated to protecting your rights, reputation, and assets throughout the life of a claim or lawsuit. We strive to help you feel comfortable that you are in good hands, so that you can continue to learn and provide great care to your patients.
The Role of Insurance

The Self-Insurance Program*

CPAC:
Professional liability insurance is provided by Commonwealth Professional Assurance Company, LTD (CPAC), a wholly owned single captive insurance company of UMass Memorial Health Care domiciled in the Cayman Islands. Management of claims and suits is handled by UMMHC Claim Management in Worcester, Massachusetts. The following is a brief discussion intended to address the most common questions regarding policy coverage, and should not be construed an an exhaustive description of policy coverage.

Who is Insured?
This policy generally provides individual professional liability insurance to employed physicians; approved voluntary attending physicians who meet eligibility criteria for coverage; interns, residents and fellows from the University of Massachusetts Medical School; and any other employee, student or volunteer while acting within the scope of his or her duties at UMMHC. Many professionals also carry their own liability coverage, particularly nurses who may have concurrent coverage through Nurses Services Organization (NSO).

Limits of Insurance:
This policy of insurance provided by CPAC provides Professional Liability limits for each individual insured of $5,000,000 per individual for each medical incident, with an annual aggregate limit per individual of $10,000,000.

In general, these professional liability limits are in place to indemnify the insured for sums the insured is legally obligated to pay due to a claim made against the insured for injury arising out of a medical incident. Expenses and costs associated with defending a claim or suit are covered within the limits of the CPAC policy.

There is also limited coverage ($25,000) available for legal expenses related to licensing or professional conduct review by a regulatory authority, such as the Board of Registration in Medicine (see full explanation next page).

Tail Coverage:
If a physician or other insured retires or otherwise terminates insurance coverage through CPAC, he/she will continue to be covered for all claims made subsequent to their departure if those claims arise from services provided during their participation in the program. Claims related to services provided prior to coverage under the CPAC program should be referred to the policy of insurance carried by the individual at the time that the service was provided. (CPAC, LTD., 2016-2017)

*Disclaimer:
Disclosure of policy information within this brochure, including coverages and limits, does not constitute an exhaustive discussion of the policy language or coverage available in each individual case, and is not a substitute for a meaningful dialogue with your claim specialist or attorney for an understanding of the applicable coverage. Specifics of coverage can be found in the CPAC brochure and in the policy itself as a primary source, and questions regarding coverage should be directed to the Claim Management Department.
The Role of Insurance (con’t)

Regulatory Review*:
Coverage is available for reasonable legal and defense expenses required for the defense of an insured, while acting within the scope of his or her duties, in a licensing or professional conduct review by a regulatory authority in a civil proceeding, relating to rendering of or failure to render Professional Services. This coverage is limited to $25,000 per review and per policy year.

In the event an insured receives notice of a regulatory review as described above, it shall be reported to the Claim Management Department (see contact information on pages 4 & 5) as soon as possible, and at all times within 30 days of the notice. All notices, demands, summonses or any other process shall be forwarded at the time of the report to the Claim Management Department.

Upon receipt of the report, the liability specialist will review the case and appoint counsel based on the nature of the complaint. Our experience is that the best approach to a review by a regulatory authority is to retain an attorney who is familiar with the licensing board or regulatory agency conducting the review, and experienced in providing responses. This attorney will work with both the insured and the Claim Management Department to develop a good quality response, and will remained involved in the case until the matter is resolved. Payment for legal services is made from the $25,000 in available coverage (limited per review and per policy year).

Please note that this reimbursement does not extend to fines and/or penalties or assessments, settlements or judgments of any kind imposed by the same regulatory authority in a civil proceeding.

Your Obligations as an Insured*

Prompt Notice:
Any event or situation that results in an adverse outcome, injury to a patient or visitor, or damage to property should be reported to a Risk Manager, who will refer the matter to the Claim Management Department if appropriate. This includes but is not limited to requests for records or information from a patient’s attorney; threats of legal action or demands for compensation, receipt of a complaint or notice of investigation from the Board of Registration in Medicine or any other licensing agency or regulatory authority; or any other events from which a malpractice claim or suit may arise. All claims and suits should be reported directly to the Claim Management Department.

Cooperation:
The CPAC policy requires that insureds participate in the defense of their claims. This includes, but is not limited to, assisting in the investigation of an event, assisting in the conduct of suits including preparing required legal documents, and preparing for and attending legal proceedings. (Commonwealth Professional Assurance Company, LTD, 2016-2017)

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Risk Management

The UMass Memorial Risk Management Department focuses its attention on loss prevention, as well as minimizing the impact of losses in order to protect the organization’s assets. This department analyzes risks in patient care-related areas as well as other areas such as employee-related risks, property risks and other financial risks.

These risks are identified and analyzed by the Risk Managers through system occurrence reporting, individual employee concerns and analysis of claims. Event trends over time can be considered to help drive improvements such as changes to policy, workflows, equipment and education.

When a patient-related event occurs, Risk Management can conduct root cause analysis to help determine the factors which may have contributed to the outcome. This type of analysis can immediately help providers and departments make corrective changes to avoid the problem in the future. It can also identify issues which may require more global analysis and management, and identify cases which may need to be turned over to the Claims Management Department for further handling.

Risk Management serves as an invaluable resource to providers in the event of an adverse patient outcome. They are available to provide advice directly to providers when the issue occurs, and can assist with family meetings, including disclosure and apology, in order to support providers while they communicate information to the patient and/or their family. Risk Management can also make small monetary considerations and/or bill waivers as a matter of service recovery in some cases. It is hoped that this type of facilitated communication, as well as the ability to address some immediate financial concerns for patients, will help to reduce the number of cases which proceed to claims and lawsuits in the case of adverse events and similar issues.

The Risk Management Department also supports the Claim Management Department through the claim and litigation process by providing clinical information when needed. The Risk Management and Claim Management Departments work collaboratively to support patient safety initiatives throughout UMass Memorial Health Care.
Claim Management

The focus of the UMass Memorial Claim Management Department is to find resolution for those cases which have already occurred. The department becomes involved in cases when monetary compensation is demanded through a claim or lawsuit. The department is responsible for investigation and overall management of claims and suits, including managing licensing actions from regulatory agencies.

The assigned Claim Specialist is the primary person responsible for the investigation of the case. He or she will review and confirm applicable policy coverages and limits of liability, retain the appropriate attorney(s) to work on the case, facilitate obtaining relevant records for review, arrange interviews with involved staff, and retain experts and necessary vendors. The Claim Management Department will also coordinate resources as needed to provide emotional support to any physician or healthcare provider impacted by a claim or suit.

New cases, as well as cases which have had significant changes, are presented by Claim Management to the UMass Memorial Claim Committee on a quarterly basis. The Claim Committee is chaired by the Medical Director for CPAC and includes representation from The Office of the General Counsel, Risk Management, physician leaders, and nursing. The Committee discusses the cases, provides relevant input with regard to decision-making, and votes to provide reserve and settlement authority when requested by Claim Management.

The Claim Specialist works cooperatively with defense counsel throughout the case to achieve the best overall resolution. He or she will consider all information to decide if, at any point, the case should be resolved through settlement and if so, will take the necessary steps to try to resolve the case. In the event a case is tried in Court, the Claim Management Department will monitor the case on a daily basis. The Claim Management Department is also responsible for regulatory reporting in the event of a payment to a claimant or plaintiff.

The Claim Management Department also serves as a resource outside of handling individual claims and suits. Members of the department often participate in educational programs for medical providers throughout UMass Memorial Health Care, Inc in collaboration with the Risk Management Department. The department also provides valuable insight and feedback with regard to patient and visitor safety based on their collective experience and historical claim data.
The Claim Process

What constitutes a “claim”? According to Black’s Law Dictionary, the legal definition of a claim is:

“A legal assertion; a legal demand; Taken by a person wanting compensation, payment, or reimbursement for a loss under a contract, or an injury due to negligence.” (Blacks Law Dictionary Free 2nd Ed., 2017)

Essentially, a claim is made whenever a demand for compensation occurs. If you receive a letter from an attorney or a patient which demands compensation, this would qualify as a claim letter. Massachusetts statutory law has recently formalized this process, as detailed below. However, all claim letters should be taken seriously, whether they conform to the statute or not.

Massachusetts General Laws Chapter 231 § 60L (2013)

In 2013, Massachusetts imposed new procedural requirements mandating that a plaintiff give 182 days’ written notice to a health care provider before bringing an action against them in a court of law. This letter of intent must be sent to the last known professional or residential address of the provider subject to the claim. Less notice is required in circumstances where the statute of limitations is upcoming or when other providers have already received letters regarding the same case.

The letter is required to contain the factual basis for the claim, the alleged applicable standard of care, the manner in which the standard of care was breached, what should have been done differently and how the breach caused an injury. Any other care providers who will be involved in the action are also required to be disclosed in the letter.

Upon receiving the letter, the health care provider has 150 days to respond in writing. The response must state the factual basis for any defense, the applicable standard of care, the manner in which the provider either breached or complied with the standard of care, and the manner in which the provider’s actions did or did not result in the alleged injury. The plaintiff may initiate litigation in the event that the provider responds denying the allegations and/or refusing to settle the case, or in the event that no response is received.

Currently, more than half of the cases handled in the Claims Management Department begin with a claim letter submitted pursuant to MGL Ch 231 § 60L.¹

¹ Anecdotally, based on experience in the UMass Memorial Claim Management office.

This is not legal advice. Please speak to your attorney regarding the specifics of your case.
The Claim Process (con’t)

If You Receive a Claim Letter

In the event that you receive a claim letter, it is important that you notify the Claim Management Department as soon as possible, and forward a copy of the letter. The letter will be reviewed immediately and a liability specialist will be assigned to handle it. The liability specialist will determine if an attorney should be assigned and if so, will contact and retain an appropriate attorney to represent your interests.

Following receipt of a claim letter or lawsuit, please:

1. Avoid accessing the patient’s record unless it is necessary for current patient care,
2. Do not alter or destroy any records which are already created,
3. Do not discuss the details of the case with anyone other than your claim specialist, defense counsel, spouse, or therapist, and
4. Do not create any notes or diaries regarding the case.

The claim specialist and the assigned attorney will operate as a team to defend you. Together, they will conduct research from multiple angles in order to assess the defensibility of the case and formulate an appropriate response to the claim letter. They will contact you to set up a meeting to discuss the care of the patient, as well as ensure that you fully understand the process. They will also obtain any medical records which are necessary to understand the care of the patient.

Not every case begins with the receipt of a claim letter. In some circumstances, first notice of an action may be received in the form of suit papers (summons and/or complaint). If you receive a summons or complaint, you must notify the Claim Management Department immediately, as a response will be required within a short time frame. The initial process to research the case, however, remains the same. Your involvement will be required for certain court events and this will be discussed in detail with you in the initial meeting with your claim specialist and attorney.

This is not legal advice. Please speak to your attorney regarding the specifics of your case.
Taking Care of Yourself

As many of us know, the culture of medicine is not conducive to clinicians caring for themselves. However, taking steps to address stressors such as claims and litigation can be of great relief to you and may help to prevent the issue from affecting your clinical practice or your well-being outside of work. When an adverse outcome, claim, or lawsuit occurs, involved medical providers may find themselves experiencing a significant amount of stress, anxiety and even depression. This is becoming known as the Second Victim Phenomenon.

“Second victims are health care providers who are involved in an unanticipated adverse patient event, in a medical error and/or a patient related injury and become victimized in the sense that the provider is traumatized by the event. Frequently, these individuals feel personally responsible for the patient outcome. Many feel as though they have failed the patient, second guessing their clinical skills and knowledge base.” (Scott SD, et al., 2009)

In the fall of 2016, UMass Memorial’s Clinician Health and Well-Being Committee launched the Peer Support Program to offer support to clinicians involved in adverse events. The peer support program is based on a successful program at Brigham & Women’s Hospital, and has trained physician peer supporters from different departments throughout the system to offer support and collegiality from someone who has “been there.” No notes are kept and all information is strictly confidential and protected.

To access the Peer Support Program for yourself or a colleague, call 508-334-1425.

In the event that a provider feels they would benefit from further assistance in managing the stress and emotions related to an event, claim, or lawsuit than can be provided by a peer supporter, the Claim Management Department can also refer to additional clinical resources. Please contact your claim specialist to access these services.

Please note that specific case details should not be discussed during interactions with peer supporters or other clinical resources. However, you should feel free to talk about how the case is affecting you, personally and/or professionally, to the extent that you are comfortable.

“When a physician is sued, regardless of whether or not the allegations have merit, it is a personal assault on his or her honor. Unfortunately, the odds of facing litigation are against us. A study conducted by the New England Journal of Medicine in 2011 shows that by the age of 45, 36% of doctors in low-risk specialties and 88% of those in high-risk specialties have been subjected to a malpractice claim. By the age of 65, when most of us retire, those numbers jump to a staggering 75% for low-risk and 99% for high-risk specialties. The fact that being sued is nearly guaranteed and often described as the “price of practicing medicine” does little, if anything, to soften the blow when it occurs.” (Gorman MD, 2013)