

# UC Business and Finance Bulletin BUS-9, Professional Medical and Hospital Liability Self-Insurance Program

November 1, 1999

\*\*\*\*\*

## I. REFERENCES

California Tort Claims Act, Government Code Section 810 *et seq*

Business and Finance Bulletin BUS-75, General and Automobile Liability Self-Insurance Program.

Regents' Policy on Indemnification of Employees for Punitive Damages, January 17, 1986.

Business and Finance Bulletin, BUS-63, Certificates of Insurance.

## II. INTRODUCTION

This policy describes the terms for University defense and indemnity coverage under its Professional Medical and Hospital Liability Self-Insurance Program provided to individuals within the course and scope of their employment.

The University's obligation to provide defense and indemnity to its medical school faculty and medical trainees arises from the California Tort Claims Act. The Act requires that the Regents of the University of California provide defense and indemnification with respect to claims resulting from acts or omissions of University employees, or former employees, when they are acting in the course and scope of University employment, except where the employee acted or failed to act, because of actual fraud, corruption or actual malice.

The campuses may develop more restrictive policies regarding matters not covered by the California Tort Claims Act with prior written approval of the University of California Office of the President (UCOP) Office of Risk Management and the Office of General Counsel.

### III. PROFESSIONAL MEDICAL LIABILITY

#### A. GENERAL CONDITIONS OF PROGRAM ELIGIBILITY

- 1) Physicians and trainees are covered if they are engaged in University duties or University directed activities that are within the course and scope of their employment or appointment. These duties include:
  - a) Education (including clinical services, teaching, and supervision);
  - b) Research (Institutional Review Board (IRB) approved); and
  - c) Public and University service (with appropriate approvals, as set forth in Sections III.C. Activities Eligible for the Program and III.E. Process).
- 2) Other licensees of the healing arts who are employees of the Schools of Dentistry, Nursing, Pharmacy, Medicine, Public Health, and Optometry, and students regularly matriculated in the programs of such schools who are treating patients in connection with a University course of study, so long as the other conditions of this policy are met.
- 3) To be qualified for the program, the physicians and medical trainees must meet the General Conditions of Eligibility described in Section III.A and be eligible under both of the two interdependent categories of Appointments (Section III.B.) and Activities (Section III.C). The determination process is further described in Section III.D. Exclusions and Section III.E. Process.
- 4) Direct or supervised patient care must be provided in accordance with the physician's credentials and privileges as granted by the organized medical staff of the health care facility. In addition, the care must be practiced within the physician's current competence and in compliance with the applicable policies and procedures of the University and the facility where the direct or supervised care is provided, including those applicable policies and procedures regarding trainee supervision and advancement. Good Samaritan activities, as listed in Section III.C.5 below, are excepted.
- 5) Patient care provided by medical trainees must be practiced within their credentials, training, experience and current competence. Physicians and medical trainees must comply with the applicable policies and procedures of the University and the facility where the care is given, including those policies and procedures regarding trainee supervision and advancement.

## B. APPOINTMENTS ELIGIBLE FOR PROGRAM

- 1) Faculty (full-or part-time, paid or volunteer);
- 2) Management and Senior Professional (MSP) positions, full-or part-time, as designated by Human Resources;
- 3) Medical, nursing, dentistry, pharmacy, public health, and optometry trainees, including fellows, residents, and medical students in a University sponsored or directed program, or as authorized pursuant to a University-approved affiliation agreement or placement;
- 4) Non-faculty physicians temporarily filling faculty positions;
- 5) Non-faculty physicians appointed to peer review or quality improvement committees, or other approved administrative activities at University facilities or programs;
- 6) Student Health Service Physicians (MSP or contract), (full-or part-time) in the course and scope of their University employment or activities.

## C. ACTIVITIES ELIGIBLE FOR THE PROGRAM

The following lists set forth those activities that are considered to be within the course and scope of University employment. Income from such faculty activities must be managed and deposited by members, in accordance with applicable compensation plan policies and procedures, into the University's health science compensation plans (e.g., the Medical School Clinical Compensation Plan, the General Health Sciences Compensation Plan, the Income Limitation Plan, or any future revisions of such plans). Volunteer faculty may be excepted from compliance with the compensation plan for non-University related employment. (Refer to Section III.C.11 of this policy.)

- 1) University defined and approved activities by physicians and trainees working in a University owned health care facility, or healthcare system, or enterprise. The clinical activities must be conducted primarily to serve a University duty as described in Section III.A.1 above;
- 2) Professional work by physicians and medical trainees who work in non University-owned health care facilities pursuant to written affiliation agreements approved by the University, executed in accordance with University policy;

- 3) Professional activities provided pursuant to either a service agreement, or an employment agreement, that has been approved as to legal form by the Office of General Counsel, the Dean, and the Medical Center Director in compliance with University policy. Service agreements must support the educational, research, and/or public service missions of the University and may include the delivery of unique physician services. Trainees may not perform duties pursuant to service agreements;
- 4) Healthcare services provided by physicians who qualify under Section III.B. above at non- owned or non-affiliated health care facilities, when they are providing clinically necessary follow-up care solely related to the condition of a patient who was recently treated at a University site or for patients referred for University care or consultation. The services must fulfill the University mission as listed in Section III.A.1 above. Services that involve groups of patients must be addressed in a service agreement;
- 5) Emergency or Good Samaritan activities, as described by California law, regardless of whether the activities occur in or outside of California;
- 6) Legal consultation, expert review and/or testimony by physicians, consistent with a written campus policy approved by the Dean of the School of Medicine, the income from which is paid to the University under the terms of the Medical School Clinical Compensation Plan, the General Health Sciences Clinical Compensation Plan, or any future revisions of such plans, or the income from which must be managed by another University plan;
- 7) Peer review and quality improvement activities conducted on behalf of University health facilities or University approved administrative activities;
- 8) Occasional, clinical or professional consultation, community or other activities that enhance the reputation and visibility of the University and have been approved by the Department Chairs. Written notice of such consultation must be given to the campus Risk Management office;
- 9) Clinical services and/or training experiences outside California and the United States that have been approved by the Department Chair. Prior written notice must be given to the Dean and campus department of Risk Management;
- 10) Activities by faculty who are elected or appointed to health related state and/or national boards or associations, subject to approval by the Dean of the School of Medicine.
- 11) Activities by volunteer faculty and part-time physicians only when engaged in University-assigned duties.

#### D. EXCLUSIONS FROM THE PROGRAM

Those activities not within the course and scope of University employment which are subject to exclusion from Program eligibility include the following:

- a) Professional activity not within the course and scope of employment, including unauthorized research;
- b) Activity that may lead to misdemeanor or felony criminal charges, or otherwise may result in the imposition of fines, penalties or forfeitures under state or federal law;
- c) Unethical behavior set forth in the Faculty Code of Conduct, the Medical Staff Bylaws, the American Medical Association (AMA) Code of Ethics, and the policies of other relevant professional medical groups such as, but not limited to, the American Psychiatric Association and the American College of Obstetrics and Gynecology;
- d) Activities that constitute a refusal to assist with the defense of a case against The Regents as may be required by The Regents;
- e) A physician or medical trainee who acted or failed to act because of actual fraud, corruption or actual malice;
- f) A physician or medical trainee whose defense of the action would create a specific conflict of interest between the University and the physician or trainee. For purposes of this section, specific conflict of interest means a conflict of interest, or an adverse or pecuniary interest, as specified by statute, rule or regulation.

Punitive damages are excluded from coverage under the Professional, Medical and Hospital Liability Trust Program; however, The Regents may approve, at its discretion, and in accordance with The Regents approved punitive damage policy, to pay such damages if an award of punitive damages has been entered against a University physician or trainee.

#### E. PROCESS

The following items set forth the manner in which information concerning eligibility for the Program is provided and documented for University physicians:

- 1) The Dean and Medical Center Director or their designee(s) shall review and document assignments and conditions of approval for participation in the Program every two years. On a yearly basis, a current list of the names of those physicians and medical trainees presumed to be able to participate in the Program for specific activities must be sent to UCOP Office of Risk Management to document their participation. New appointments will be listed in the year of their appointment and every two years thereafter.

- 2) The Dean and Medical Center Director or their designee(s) shall determine that the activities of the physicians are in compliance with the University of California Conflict of Interest Code regulations (State of California Political Reform Act of 1974).
- 3) Questions related to interpretation of the policy should be referred to the UCOP Office of Risk Management.

#### IV. PROGRAM COVERAGE FOR HOSPITAL PROFESSIONAL LIABILITY

##### A. GENERAL CONDITIONS OF PROGRAM ELIGIBILITY

1. Consistent with its obligations under the California Tort Claims Act, the University will provide defense and indemnity of hospital staff for liabilities arising in the course and scope of employment at University-owned hospital facilities. Liabilities include claims against hospital staff related to patient care and claims for property damage or personal injury resulting from the use of University hospital facilities by third parties.
2. The Program provides coverage for employment related claims brought by hospital employees against the University, including claims for discrimination and sexual harassment, subject to the exclusions in Section III.D. Such claims are handled under the General and Automobile Liability Self Insurance Program, (Business and Finance Bulletin BUS-75)

##### B. EXCLUSIONS FROM HOSPITAL PROFESSIONAL LIABILITY COVERAGE

1. The Hospital Professional Liability Program does not provide coverage for the following:
  - a. Employees working or stationed at healthcare facilities, but reporting to campus personnel, e.g. police officers. Those employees are covered by the General and Automobile Liability Program (BUS-75).
  - b. Claims covered by workers' compensation.
  - c. Veterinarian liability, which is covered in BUS-75.
  - d. Employees of the Schools of Medicine, Nursing, Dentistry, Optometry, Pharmacy, and Public Health who are considered campus employees and are covered under BUS-75, except where professional medical liability is alleged.
  - e. Fines, penalties, and sanctions.
  - f. Activities excluded from the Program as described in Section III.D.1.

- g. Punitive damages, except as provided in Section III.D.

V. RESPONSIBILITIES

A. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Provide indemnification and defense with respect to claims alleged to result from acts or omissions of University employees while in the course and scope of University employment, in accordance with the California Tort Claims Act.

B. DIRECTOR, RISK MANAGEMENT, UCOP

1. Reviews the Professional Medical and Hospital Liability Program on a continuing basis and determines the most effective and efficient manner in which to manage this risk.
2. Assists the Chancellors and Hospital Directors in the application of the Program and its coverage to specific situations.
3. Acts as the University's representative to the insurance industry.
4. Maintains the Professional Medical and Hospital Liability Trust.
5. Provides for the management of the funds held in trust by a selected trustee and administers the loss prevention and claims management aspects of the Program.

C. CHANCELLORS AND HOSPITAL DIRECTORS OR DESIGNEE  
(HOSPITAL/CAMPUS RISK MANAGEMENT COORDINATOR)

1. Insure that employees are informed of the professional medical and hospital liability coverage available under the Program.
2. Insure that all summonses and complaints and claim notices mailed to or served on employees are transmitted simultaneously to the UCOP Office of Risk Management, to the Office of the General Counsel, and to the University's claims administrator.
3. Issue certificates of insurance evidencing University professional medical and hospital liability coverage under the Program, in accordance with Business and Finance Bulletin BUS-63, Certificates of Insurance.