

# UConn HEALTH

TO: All Faculty

FROM: Andrew Agwunobi, MD  
Executive Vice President for Health Affairs

Bruce Liang, MD  
Dean, UConn School of Medicine

DATE: January 2022

SUBJECT: **Professional Liability Protection**

This memorandum outlines our professional liability statutory coverage and reviews several important points that you need to understand. Please feel free to contact the UConn Health Office of the General Counsel, Risk Management Department at 1-860-679-2687 if you have any questions. If you would like a copy of the statute (C.G.S. § 5-141d), you can find it [here](#).

## **Coverage and Exclusions**

As a State of Connecticut (“State”) employee, you enjoy what is probably the best medical malpractice protection available: generally, you are immune from personal civil suit and liability, and indemnified from personal expense for activities undertaken within the scope of your State employment. These statutory protections have no dollar limit.

The location in which you are working does not affect your statutory protection, again provided that you are acting within the scope of your State employment. Teaching and consulting at other hospitals as part of your academic responsibilities are fully protected.

There are only two circumstances in which you would not be fully protected from civil liability: (1) you acted in a “wanton, reckless or malicious manner,” or (2) you were not acting within the scope of your employment as a State employee. These statutory protections also do not apply to alleged violations of criminal law.

## **What is Wanton, Reckless or Malicious?**

Wanton, reckless and malicious acts are statutory code words for instances in which the defendant is held to have acted with motives going beyond mere bad judgment. Most medical malpractice insurance policies include a similar exclusion. Any deliberate attempt to harm a patient could obviously lead to the charge that your motives were malicious.

## **When are you a State Employee?**

Clinical activities consistent with employment or faculty responsibilities and billed by UConn Health (whether JDH, UConn Medical Group or University Dentists) are fully protected.

A contractual arrangement in which another entity bills for your services and reimburses your school for your salary would also be protected, although the primary professional liability insurance may be provided by the other entity. This is determined by the contractual agreement underlying the arrangement.

Of course, if you are performing patient care in any location, you must maintain the appropriate credentials for that location (whether JDH or any other institution).

If you are performing UConn Health work not typically within the scope of your responsibilities, you must receive prior written approval from your department chair or, in the chair's absence, the Dean to document that this work is within the ambit of your state employment. To be clear, this work must be in furtherance of, and not conflict with, UConn Health's mission. Department chairs should contact the Office of the General Counsel with any questions.

Be aware that under any circumstances these statutory protections do not apply to non-State related work or to any independent practice or independent consulting activity that is beyond the scope of your State responsibilities.

### **a. Informal and Volunteer Activities**

You should be careful about performing professional favors for friends and relatives: refilling your mother-in-law's prescription is almost certainly not part of your duties here and, depending upon the circumstances, could be in violation of state law. The casual favors for which all health care providers are asked would, in the event of a suit, be held by the State to have occurred without protection. The only provision of free or discounted care that is protected is that which is performed through UConn Health – approved programs.

Be careful, also, about volunteer practice. Activities such as clinical or other support donated to a primary or secondary school sports team would not be activity protected through UConn Health's professional liability coverage nor would free care given in a clinic unless such activity: (i) is specifically considered part of your educational or clinical duties on behalf of UConn Health; and (ii) has received prior written approval from your Chairperson or the

Dean. Be sure to receive approval in writing before participating in such activities and maintain documentation of how the activity supports UConn Health's mission.

b. Consulting

Please review the current consulting policies, located [here](#). Individuals who engage in approved consulting activities, including the provision of expert testimony, and who retain fees, are not acting as State employees and are not protected.

c. Part Time and Volunteer Faculty

Part-time and volunteer faculty may be covered by statute if they are fully integrated into our patient care or teaching programs and if their appointment meets certain specific standards. If you are interested in that particular area, please contact the Risk Management Department and ask to review the Attorney General's opinion on this subject.

### **Medical Malpractice Defense Financing**

In 1987, when the Health Center discontinued commercial malpractice insurance, a self-insurance financing mechanism was established to cover medical malpractice claims brought against the State on UConn Health's behalf. Although no provider's individual finances can be threatened by large or multiple suits for activities within the scope of the provider's UConn Health employment and which are not wanton, reckless, malicious or otherwise unlawful, UConn Health's reputation and financial stability obviously could be so damaged. Depletion of the funds allocated to medical malpractice defense and indemnity payments could compromise UConn Health's ability to develop and fund new programs.

a. Claims Management

If you have any questions or concerns about an open case in which you are involved, please feel free at any time to contact Kimberly Sutton, Program Manager, Risk Management Department.

b. Incident Reporting

One of the most important elements of good claims management is effective incident reporting. To best serve our patients and appropriately protect both your and the State's interests, our Risk Management Department must know about any patient care incidents that could potentially give rise to a claim.

Who should report? The responsibility for reporting an incident rests with any UConn Health care provider, including faculty and house staff, who witness, discover or have direct knowledge of a reportable occurrence.

What should be reported? Events that should be reported as incidents include:

1. The facts of any bad outcome that a layperson might attribute to poor care. This includes cases in which you are certain that there was no problem with care. It is essential in these cases that we have the best possible documentation of the actual care provided, and that the documentation be limited to “facts only,” not opinion, conjecture or speculation.
2. The facts of any serious lapse in the quality of care regardless of outcome.
3. The facts surrounding any threat by a patient about suit.

How should a report be made? Any serious incident, such as a major complication resulting from a procedure or any threat by a patient regarding suit, should be reported as soon as possible by telephone (X2687) to the Risk Management Office (AG093) with facts of the incident reported through a UConn Health Safety Intelligence (“SI”) Electronic Report to follow. The facts surrounding other less serious reports can simply be filed electronically as an SI or in an email to the Risk Management Department.

Please remember that reporting through the SI mechanism must be fact-based and not include conjecture, opinion, diversions of blame or personal attacks. All SIs are reviewed and appropriately investigated through our continuous quality improvement and patient safety program. The starting point for those investigations should always be the facts known at the time, nothing more, nothing less. These SIs in and of themselves often become part of the process when a professional liability lawsuit is filed, and it is unfair to all parties when unsubstantiated facts and conjecture are included.

Also remember that we should timely hear about all incidents that may reasonably be viewed by a layperson as providing the basis for a legal action. Events in ambulatory practice or that involve our faculty practicing at other institutions should be reported as well as those which occur at UConn Health. As noted above, it may be that the other institution provides the professional liability coverage for such activity and that you have already reported the incident to that institution’s risk management department. We still track these matters and, in some cases, coordinate activity with the other institution due to the nature of the litigation process and the type of information we may need to provide as a part of the “discovery” process.

Full cooperation with the incident investigation process is important as well. Extensive questioning about an unanticipated, potentially adverse patient event can be very uncomfortable, but this investigation process is an essential element in advancing patient safety and quality, while also protecting you, UConn Health, and the State.

cc. Scott Simpson, Esq.  
Senior Associate Healthcare Counsel, UConn Health

Lynn Wittenbrink, Esq.  
Assistant Attorney General

Jeff Blumenthal, Esq.  
Chief Counsel, UConn Health

Kimberly Sutton  
Program Manager, Risk Management