

# UConn HEALTH

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## UConn JOHN DEMPSEY HOSPITAL

TO: All Faculty

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SUBJECT: **Malpractice Protection**

This memorandum outlines the current state of our professional liability coverage and reviews several important points which you need to understand. Please feel free to contact the Executive Director, Risk Management, UConn Health at 1-860-679-2687, if you have further questions. Copies of the law and the relevant opinions from the Office of the Attorney General are available upon request.

### **Coverage and Exclusions**

As a State employee, you enjoy what is probably the best medical malpractice protection available: you are immune from personal civil suit and liability, and indemnified from personal expense, with respect to actions taken while you are acting in your role as a State employee. These statutory protections have no dollar limit.

The location in which you are working does not affect your statutory protection provided that you are acting within the scope of your employment as a State employee. 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) if you were not acting within the scope of your employment as a State employee, or (2) if you acted in a "wanton, reckless or malicious manner." These

statutory protections do not apply to alleged violations of criminal law.

### **When are you an Employee?**

#### 1. Billing

Clinical activities consistent with employment or faculty responsibilities and billed by UConn Medical Group (a.k.a.) University Physicians 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.

#### 2. Credentials

##### A. Departments Other Than Family Practice

UConn Medical Group has elected to use the credentialing services of the Medical Staff Services Office of UConn Health as a quality control mechanism for all full-time medical school faculty with the exception of members of the Department of Family Practice and Burgdorf Pediatrics. All members of these departments must have their credentials approved by the Credentials Committee.

In practical terms, what this means is that if you are denied, or fail to obtain, privileges for a specific procedure through UConn Health's Medical Staff Services Office, you have no statutory protection if you perform this procedure at UConn Health or another institution. In the unusual case of procedures for which no privileges are delineated at UConn Health, all that is needed are credentials at the institution where you perform the procedure.

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

##### B. Family Practice

Members of the Department of Family Practice, whose primary hospital is St. Francis Hospital and Medical Center, must have privileges at that institution for any procedure which they perform, regardless of location.

#### 3. Informal and Volunteer Activities

You should be careful about performing professional favors for friends and relatives: refilling your mother-in-law's digitalis prescription is almost certainly not part of your duties here. 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 independent practice of medicine or dentistry, which is forbidden by University bylaws, would

similarly and obviously not be covered.

Be careful, also, about volunteer practice. Activities such as coverage donated to a primary or secondary school sports team or care given free in a clinic may be considered part of your duties only if your Chairperson or the Dean gave prior written approval of such activities as a part of your departmental responsibilities. Be sure to inform your Chairperson in writing of the intention to participate in such activities before you undertake them.

#### 4. Consulting

Check in E-Mail, Shared Folders for the current guidelines on consulting policies. 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.

#### 5. Part Time and Volunteer Faculty

Individuals who are not full time 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 Executive Director, Risk Management and ask to review the Attorney's General opinion on this subject.

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

Wanton, reckless and malicious acts are the statutory code words for instances in which the defendant is held to have acted on the basis of motives other than 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.

#### **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, UConn Health's collective financial stability obviously could be so damaged. Depletion of the funds allocated to medical malpractice defense and indemnity payments could compromise our ability to develop and fund new programs.

## 1. Claims Management

We have a contract with Sedgwick Claims Management Services, Inc. (Professional Liability Division) to serve in a limited capacity as our claims management firm. They are involved in collaborating with us and, indirectly, with our outside defense counsel on the delineation and status of existing cases. In order to obtain better control over the State's potential financial liability, we actively review all open cases and move to settle where appropriate. At the same time, we are prepared to vigorously defend against non-meritorious claims.

The primary process of review is occasionally carried out by the Clinical Affairs & Medical Peer Review and Claims Management Committee which is chaired by Dr. Kels, and includes a representative of the Office of the Attorney General. On an *ad hoc* basis this committee reviews facts and recommends to the Executive Director, Risk Management; the Clinical Risk Manager; and outside counsel what direction should be taken in managing certain cases.

If you have any questions or concerns about an open case in which you are involved, please feel free at any time to contact Barry Kels, Executive Director, Risk Management.

## 2. Incident Reporting

One of the most important elements of good claims management is effective incident reporting. Our Risk Manager must know about any incident involving a patient which could lead to suit if we are to provide you and the State with appropriate protection.

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

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

1. Any bad outcome which 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.
2. Any serious lapse in the quality of care regardless of outcome.
3. Any threat by a patient about suit.

How would 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 at once by telephone (X2687) to the Risk Management Office (LM041) with the UConn Health Safety Intelligence Electronic Report to follow. Other less serious reports can simply be filed electronically or in writing. Please

remember that we should hear about all incidents which would be covered. Events in ambulatory practice or which involve our faculty practicing at other institutions should be reported as well as those which occur at UConn Health.

Full cooperation with the process of investigation is important as well. Being interviewed in detail about an event with a patient which did not turn out well can be very uncomfortable. However, the investigation process is an essential element in protecting you and this institution.

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