

# Risk Management – CPLIC Claims Handling Guidelines

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## **PROFESSIONAL LIABILITY/ MEDICAL MALPRACTICE FILES**

### **ACKNOWLEDGEMENT**

The claim should be acknowledged as promptly as possible upon receipt so that the party who has submitted the claim is aware that the claim has been received. Acknowledgement can be one of various forms, including typed acknowledgements, emails, fax, etc.

### **CONTACT TIME**

First of all, the information that was submitted with the claim should be thoroughly reviewed and an interpretation as to the issues in question should be determined. If there is insufficient information with the claim assignment, then the necessary parties should be contacted as promptly as possible and the additional information obtained. Contact with the insured should be within 24 hours and certainly no later than 48 hours. Contact is normally by telephone. If telephone contact is not possible, then a contact letter should be sent clearly indicating that telephone attempts or any other type of attempts have been made without success, and request that the party get back to the requesting party as soon as possible.

### **INVESTIGATION**

Professional Liability and/or Medical Malpractice files require a very different type of investigation than others in the claim management arena. In these cases, there is normally a claim alleging that there has been some professional violation, either in regard to the violation of law in a particular jurisdiction, or in the case of medical malpractice, an event by a medical provider that caused or contributed to the new or worsening medical condition to the plaintiff. In no case, in a claim of this type, should formal statements be obtained from the insured or insured's personnel due to the discovery provision applicable in most jurisdictions. A thorough review of the allegations made should be conducted and a good program scheduled for a complete and thorough investigation.

The parties against whom the claim is brought should be interviewed face to face. Copies of any and all pertinent documents involved in the alleged incident should be obtained. This would include, in the case of professional liability, copies of contracts, drawings, diagrams, etc. In the case of medical malpractice, it should be the complete medical chart as it relates to that provider's care of the person bringing the claim. If possible, medical records from other providers should also be obtained, and there are times when the person for whom the claim has been brought against will have records from other providers in his or her file. Care should be taken to make certain that there is no violation of the obtaining of such records, and particularly since the HIPAA provision is involved in all medical issues. Care must be taken to determine the statute as it relates to the timeframe for which a claim can be brought. In some jurisdictions, the statute is a certain number of years, but that can vary. Normally, in the event of minors, the statute begins to toll at the time the minor reaches age 18. In other cases, the statute begins to toll from the time the claimants knew or should have known that the problem for which they are alleging malpractice brought on the matter for which the claim has been brought.

During the course of the interview, a complete history regarding the background of the party to whom the claim has been brought against should be obtained with regard to all education, years in practice, experience, etc. Copious notes should be taken but should be kept to factual information. Personal impressions should be kept separate from any issues involving the professional involvement of the party to whom against the claim is brought.

## **EXPERT/CONSULTANT**

If the issue involves an issue in a specialized area, the use of an outside expert or consultant should be considered. An expert or consultant who may be considered should provide a complete history of the work done in the past, curriculum vitae, education, etc. An agreement between the client and the investigator should be obtained before retention of any expert/consultant. Once an expert or consultant, including defense attorney is engaged, clear direction should be given to each party as to what is expected, reporting timetable, format, etc. Care should be taken to make certain that the expert/consultant and/or attorney comply with the guidelines.

After all medical records from all applicable sources have been obtained; they should be reviewed, not only by the claim personnel but also by an independent physician who can be truly objective. This review should be done to determine whether or not there is in fact any evidence to indicate any malpractice on the part of the insured or any error or omission, in the event of professional liability against the insured. Client pre-approval may be necessary.

## **REPORTING**

Reporting should be done in a captioned format outlining all of the factual information. This would include names and addresses of the party who has had the claim brought against them. This would also include the information obtained at the time of the interview including education, and all professional information that has been obtained. The report should be free of personal comments. The report should be serious in nature and no effort should be made to minimize any fact of the investigation or to be humorous in the reporting format.

Initial report should be submitted within 15 to 20 days and absolutely no later than 30 days from the date the assignment was received. Follow-up reports should be on a time schedule agreed to between the client and the investigating facility.

Long-term files require a reporting schedule consistent with file activity. Respect the attorney client relationship.

## **OPPOSING COUNSEL**

Often times, the first notice of claim can be a letter from the opposing counsel. If this is the case, the letter should be acknowledged professionally. It should be brief and to the point indicating that the claim has been received and that an investigation is underway and that the attorney will be advised as to our position upon completion of the investigation. Any commitment made in that letter, which should be kept to a minimum, must be met to avoid any problem in the future.

Information given to the claimant attorney should be very carefully considered as to avoid providing any information to which the attorney may not be entitled.

## **DEFENSE ATTORNEY**

Defense attorney may be engaged by the carrier or a request may be made to the investigating company for recommendations. In all cases, the selection of the defense attorney should be carefully undertaken to make certain that the attorney has a great deal of expertise in the field with which the claim deals. The attorney should be advised as to exactly what is expected and there should be a reporting timetable established with the attorney.

There are times when the reporting is done directly between the investigator and the defense attorney to avoid discovery. If it can be determined that the investigator may have been secured by the defense attorney and there is no evidence of reports going to anyone than the defense attorney, often times the discovery problem can be avoided. This is a very involved situation and would need to be carefully explored before entering into any such agreement.

## **BILLING**

Files should be billed on a regular basis. Clients most often prefer billing on a regular basis rather than letting bills run for extremely long periods of time and incurring large invoices. Whenever a bill is submitted, it should be a fully itemized bill, which would clearly outline for the payor the work that was done and the amount charged accordingly.

Coding of work completed is not a good idea and should be avoided.

## **FILE STORAGE**

An agreement should be established with the client as to where the file will be sent for storage, and length of storage, upon completion of the investigation and resolution of the claim.

Files should be retained at a minimum for the length of time specified by local statute or law.