Public Risk Innovation, Solutions, and Management (PRISM)

Medical Malpractice Programs
Claims Handling Guidelines

This manual is intended to provide information to participants in the PRISM Medical Malpractice Programs regarding the Pooling program, the Program's third-party claims administrator, reporting requirements, and incidents and claims procedures as well as risk management services provided by Garrett Law LLP (Garrett Law). The contents of this manual should be provided to all management personnel involved in both member and facility/department risk management. Participating members are responsible for the communication of this manual's contents to appropriate personnel. A copy of the document can also be found on the PRISM website under the Resources section.

PRISM
MEDICAL MALPRACTICE PROGRAMS

I. Public Risk Innovation, Solutions and Management (PRISM)

Public Risk Innovation, Solutions, and Management (PRISM), formerly known as CSAC Excess Insurance Authority) was established in 1979 to provide excess pooling coverage, risk management, and self-insurance services to public entities in California. PRISM is a joint powers agency governed by a Board of Directors consisting of one board seat for each county member and ten public entity members which includes three public entity alternates.

The Medical Malpractice Programs provide professional and medical liability coverage to members and their hospitals, physicians, other providers, and health departments on a claims-made coverage basis. Program 1, established June 1, 1988, provides coverage for members with large hospital facilities. Program 2, established January 1, 1991, provides coverage for members with smaller hospital facilities and/or non-hospital healthcare facilities.

PRISM currently contracts with George Hills Company to provide claims oversight for Program 1 and claims administration services for Program 2 and contracts with Garrett Law to provide risk management services to the Medical Malpractice Programs' members. Should you have any questions regarding PRISM or the Medical Malpractice Programs, please contact:

PRISM
Heather Fregeau, Chief Claims Officer – Liability & Property
75 Iron Point Circle, Suite 200
Folsom, CA 95630
(916) 850-7300

Information about PRISM, and about its various programs, can also be accessed on the PRISM website at www.prismrisk.gov.

II. George Hills

George Hills provides claims services to the healthcare industry, and has extensive experience in all aspects of hospital and professional liability insurance, claims administration, and healthcare risk management. George Hills contracts with PRISM to provide services to the participating members in the Medical Malpractice Programs. These services are designed to assist in developing effective claims handling and risk management systems. A list of telephone numbers and contacts at George Hills can be found in Appendix A.

In order to better understand George Hill's role in the respective Medical Malpractice Programs, the contracted services are outlined as follows:

Medical Malpractice Program 1

Conduct audits of each Program 1 member's medical malpractice claims operation, every three years, to review the handling and status of all excess potential claims.

- Provide oversight and management of claims which have been reported as potential excess claims, including review each member's claims to assess any exposures which may affect the excess coverage, offering recommendations regarding settlement value and defense strategies and attendance at mediations/settlement conference as needed

Medical Malpractice Program 2

- Provide comprehensive first-dollar claims management and administration, including initial handling of claims filed under the Government Tort Claims Act (Government Code 900 et seq.), investigation, claims management, defense management, and settlement negotiations

- Provide members, the Medical Malpractice Program Committee, and PRISM with updated quarterly claims runs with reports to the reinsurers as directed; additionally, perform all mandatory state and federal reporting.

III. Incident Reporting

An incident is any alleged negligent act resulting in bodily injury or property damage, which involves allegations of medical malpractice, negligence, discrimination, defamation, or invasion of privacy, and occurs in connection with the operation or maintenance of member healthcare service facilities or extensions of such facilities. An incident also includes any other alleged injury to third parties, other than member's employees, which occurs in such facilities.

MANDATORY REPORTABLE INCIDENTS

Major incidents, as listed below, must be reported to George Hills:

- Death
- Brain damage
- Any injuries significantly affecting the capacity of sight, taste, smell, or hearing
- Amputation
- Any loss of use of limbs
- Any spinal cord damage and any real or suspected paralysis including paraplegia, quadriplegia or hemiplegia
- Disfigurement
- Reproductive organ loss or impairment
- Burns

- Any other serious type of bodily injury

Program 2 members additionally report any lawsuit related to medical malpractice.

All listed "major incidents" must be reported to George Hills, as well as the member Risk Manager, within 24 hours of notice. It is essential that an effective incident reporting system be in place.

Major incidents should be reported directly to the George Hills office using the Medical Malpractice Claim/Incident Report Form located on the PRISM website at www.prismrisk.gov and navigating to Resources/PRISM documents/Forms. Completed report forms should be sent to medmalclaims@georgehills.com.

Once George Hills receives the report of the incident, it will notify the appropriate parties to secure future coverage should the incident result in a claim.

Communication of the incident via telephone or encrypted e-mail, is a privileged communication protected by the attorney-client privilege and California Evidence Code 1157, et seq. Never provide copies of any incident report to a patient or claimant, and never place a copy of an incident report in the patient's chart.

IV. Incident Handling

Once a "major incident" has been brought to the attention of a member and reported to George Hills, the following actions should be taken within 48 hours to assure proper handling of the situation and to establish appropriate contacts and procedures for all future activity regarding the incident:

- Identify and interview all persons involved in the incident as well as any pertinent witness. Upon completion of the interviews, a brief and factual report on the circumstances of the incident and the role of each individual should be prepared. The report should be kept in the risk management file only, with a copy sent to George Hills. (Medical Malpractice Program 2 participants should contact George Hills directly to initiate these procedures.)

- Secure all involved parties. Each person interviewed should be instructed not to speak with anyone regarding the incident without prior approval of appropriate staff. This would include friends, relatives, co-workers, reporters, lawyers, adjusters, and investigators.

- Secure any physical evidence involved in the incident. This would include medications, instruments, bio-med electronics, x-rays, etc. The evidence should be tagged for identification and stored in a secure place designated by appropriate staff.

- Secure the medical record. Appropriate staff should review all pertinent medical records. (George Hills will review all pertinent medical records for

Program 2 participants.) The Medical Records Department should be instructed that records will remain in risk management lock-up and will not be released without written authorization from appropriate staff.

Additionally, appropriate staff should be notified immediately of any request for the records by employees, physicians, lawyers, investigators, or the patient.

V. Claims Reporting and Handling Guidelines

The mandatory reporting of claims to George Hills follows the same guidelines as the reporting of major incidents. In most cases, the claims reporting process will be accomplished through the member's Risk Manager's office since the claims will be filed against, and processed at, the member's administrative offices. Special separate updated guidelines for Program 1 and Program 2 participants are distributed to the participating members on a regular basis and are available on the PRISM website. A copy of each set of guidelines is also included in Appendices B and C of this manual.

It is important for all appropriate staff to be knowledgeable about the Government Tort Claims Act, specifically Government Code Sections 910, 910.8, 911.2, 911.3, 911.4 and 911.6 concerning contents of claims, insufficient claims, rejection of claims, and the filing of late claims. A summary of the pertinent provisions of the Government Tort Claims Act appears in Appendix D of this manual.

Healthcare risk management staff should also be familiar with general policies and recommended guidelines for claims handling and processing.

As a general rule, all claims should be rejected by sending a written notice to the claimant within 45 days, or by operation of law after 45 days, when prudent judgment indicates:

a. the issues of liability or damages are not clear,
b. further investigation is required,
c. there are other matters which need to be resolved, or
d. there is no known basis of liability against the member.

Please note: "Notices of Intent to Sue" filed under provisions of Code of Civil Procedure section 364 are sometimes sent to the member's administrative body, health department, hospital, and/or physicians. These "notices" are considered "claims" for purposes of the Government Tort Claims Act and should be treated as such. Similarly, informal notice of a potential claim should be treated as a formal claim for purposes of initial claims handling under the Government Code.

Reporting and Excess Claims Management: Program 1

Once a "major incident" or potential excess claim has been reported or filed with the member, it must be reported to George Hills. George Hills will determine if an incident report has been previously filed on the claim. If the claim is reserved at a level equal to

or greater than one-half of the member's self-insured retention or falls under the previously defined "major incident," George Hills will oversee management of the claim for purposes of the Pooling program and reinsurer/excess insurance coverage.

This management would include the following:

- Review of medical records pertinent to the claim direction of investigation activities
- Recommendations regarding appropriate consultant and expert reviews
- Coordination of defense counsel
- Representation of PRISM in all settlement negotiations

George Hills must be copied on all correspondence pertaining to excess claims that fall under the mandatory reporting requirements. The member's Risk Manager should therefore instruct all member counsel, defense counsel, and adjusters to copy George Hills, as well as provide George Hills full cooperation in their claims management efforts.

George Hills will have the ability to generate a claims run on all excess claims by member, and review the claims run quarterly with member's Risk Manager, as well as provide an annual summary to both the member and PRISM.

George Hills will also provide notification to the reinsurer/excess carrier on a timely basis as required to secure coverage.

The member's Risk Manager should be aware that California Health and Safety Code 1305 and Business and Professions Code (sections 801 et. Seq.) require the member, as a self- insurer, to report judgments and settlements involving health care issues and healthcare professionals to the State Department of Health Services and various licensing bodies (e.g. the Medical Board of California). Additionally, the National Practitioner Data Bank must be notified of any judgment or settlement made as a result of a claim or incident arising out of the conduct of any licensed health care practitioner. This reporting requirement is the responsibility of the member and a system to facilitate the reporting should be in place. For more information or assistance regarding reporting, please contact George Hills.

Reporting and Claims Management: Medical Malpractice Program 2

Program 2 members must report all claims, both the mandatory reportable major claims, plus all others, to George Hills so that prompt review and investigation may be initiated. George Hills will then make recommendations to the member on acceptance, rejection, timeliness or sufficiency of each claim. George Hills reviews the claim, obtains appropriate medical records, and discusses the case with appropriate member personnel to determine its recommendation to the member on acceptance, rejection, timeliness, or sufficiency of the claim. George Hills will input the claim, all pertinent information, and reserves into a computer system for Program 2 members.

Once a preliminary evaluation and/or recommendation have been established, George Hills will report to the appropriate member staff. This report will provide information necessary to formulate a plan for handling the claim. George Hills will implement authorized actions. This could include diary tracking of claims rejection, retention of consultant/expert review, settlement negotiation or defense counsel assignment and management.

George Hills will handle all reporting to the reinsurers/excess carrier, whether mandatory or voluntary. A Notification Form will be sent by George Hills to the Program's excess carriers/reinsurers along with all required documentation. All mandatory reportable incidents, as well as potential excess claims will be reported in accordance with the reinsurer/excess carrier contract applicable to the claim. All other incidents/claims are reportable on a discretionary basis by the individual member. These will only affect the aggregate of the year reported, and will not be carried over to a future year. This is a voluntary reporting, requested by the members, to trigger coverage.

Additionally, George Hills will handle all required federal and state reporting that is required by the National Practitioner Data Bank, Department of Health Services, and various professional Boards.

George Hills is committed to a proactive/hands-on claims handling process and believes that expedient handling of medical malpractice claims results in overall cost reductions. In order to facilitate early closure of claims, George Hills adheres to standard claims handling practices together with several additional procedures to assure effective claims management:

- Prompt and comprehensive incident reporting systems.

- In-house investigation processes involving the member's staff who have been identified and trained to conduct preliminary investigations. This assures accurate witness accounts, proper advice to involved personnel, secure storage of records and evidence, and prompt identification of a liaison within the facility for future handling of the claim.

- Preliminary physician review of records to provide an early assessment of liability, future medical expenses, potential need for experts, and defensible issues.

- Full compliance with the requirements of the Government Tort Claims Act (Government Code sections 910, et. seq.) and other related statutes. Initial investigation is designed to comply with the timetable for rejecting/accepting a claim.

Once a claim has been rejected or denied as late or insufficient, George Hills tracks all important statutory dates, keying in on timely closure of the file. Copies of all claims filed with the member's administrative body should be submitted to George Hills as soon as

possible, by encrypted email.

Mail to: George Hills Company
P.O. Box 278
Rancho Cordova, CA 95741
Email (encrypted): medmalclaims@georgehills.com

Active Defense Management

George Hills actively works with defense counsel to assure that the defense is comprehensive, but cost-effective. Defense Counsel Standards have been developed that set down criteria for reporting, discovery activity, setting of depositions, retention of experts, and settlements. This document can be found on the PRISM website under the resources area.

Active Participation in Settlement Negotiations

George Hills plays an active role in settlement negotiations and, when appropriate, alternative methods of settlement, such as periodic payments and reversionary trusts, are explored. When applicable, a liability appraisal system will be utilized as an integral part of the settlement.

VI. Risk Management/Loss Prevention Activities and Recommendations

PRISM and Garrett Law are committed to supporting effective risk reduction systems within the Medical Malpractice Programs. Garret Law offers the following services, that support those goals, to the members:

Medical Malpractice Program 1

- Two (2) web-based trainings are offered to each Program 1 member each coverage year, and typically include general medical-legal continuing education for clinical and administrative staff. Trainings may include medical consent law, minors and the law, confidentiality, ethics, and professionalism.

- Continuous ongoing risk management consultation via phone and email is offered on an as-needed basis.

- Prompt response to emergency issues is available for immediate guidance and support, as appropriate.

Medical Malpractice Program 2

- One (1) web-based training is offered to each Program 2 member every other coverage year. The training typically includes general medical-legal continuing education for clinical and administrative staff. The training may include medical

consent law, minors and the law, confidentiality, ethics, and professionalism.

- Continuous ongoing risk management consultation via phone and email is offered on an as-needed basis.

- Prompt response to emergency issues is available for immediate guidance and support, as appropriate.

Additionally, Garrett Law provides four (4) quarterly webinars on various risk topics during each coverage year for members of both Medical Malpractice Insurance Programs. These webinars are recorded by PRISM on its platform, and PRISM maintains these recordings so that they are accessible to the members.

Garrett Law also hosts an annual half-day virtual medical malpractice seminar. The seminar features information on current risk issues presented by knowledgeable professionals, often including representatives from the PRISM Medical Malpractice Program's excess insurance carriers.

Garrett Law supports the PRISM risk management guidelines provided throughout this manual, as they help create a strong foundation for hospital/healthcare services risk reduction.

The following basic guidelines should either already be in place, or a plan of action should be promptly developed to institute them by each member:

- An on-site hospital or healthcare services Risk Manager should be designated at each appropriate facility.

- A written hospital or healthcare services Risk Management Manual should be available in each facility, reflecting the facilities procedures, policies, and regulations.

- Each member Risk Manager, as well as the hospital/healthcare services Risk Manager, should be aware of the Joint Commission Standards and CMS regulations as they apply to quality, patient safety and risk reduction activities.

- Education that supports awareness of risk prevention for all hospital/healthcare clinical and administrative staff should be ongoing.

- An appropriate incident report form and incident response protocol should support the timely reporting of incidents, and the meaningful coordination of the activities of Risk Management and quality assurance.

Each member is encouraged to participate in all PRISM sponsored training programs and to involve those identified individuals in the healthcare services system who will benefit by attending these sessions.

Ongoing risk management education, incident response, and proactive quality assurance efforts, together with these guidelines, provide the foundation for an effective risk reduction program.

APPENDIX A

GEORGE HILLS COMPANY
P.O. Box 278 Rancho Cordova, CA 95741

Phone: (916) 859-4800 or (855) 442-2357

Email: medmalclaims@georgehills.com

Linda J. Garrett, Esq., Partner
Garrett Law LLP
415-924-4980
linda@garrett-law.com

Andrew J. Garrett, Esq., Partner
Garrett Law LLP
415-924-4980
andrew@garrett-law.com

Garrett Law LLP
120 Ward Street #1058
Larkspur, CA 94977
www.garrett-law.com
info@garrett-law.com

APPENDIX B

PRISM
MEDICAL MALPRACTICE PROGRAM 1

EXCESS CLAIMS/INCIDENT REPORTING GUIDLINES

I. Reportable Claims/Incident

All claims or incidents falling under the following criteria must be promptly reported to George Hills; these claims or incidents will then be immediately reported to the reinsurer/excess carrier. In order to properly trigger insurance coverage, it is essential that the member notify George Hills of incidents meeting the following criteria:

- Death
- Brain damage
- Any injuries significantly affecting the capacity of sight, taste, smell or hearing
- Amputation
- Any loss of use of limbs
- Any spinal cord damage and any real or suspected paralysis including paraplegia, quadriplegia of hemiplegia
- Disfigurement
- Reproductive organ loss or Impairment
- Burns
- Any other serious type of bodily injury

A. All claims must be reported to the reinsurer/excess carrier when the total combined amount reserved (loss and expenses) is 50% or more of the Pool Program Retention. George Hills will report these claims.

B. All other incidents/claims are reportable to the reinsurer/excess carrier on a discretionary basis. Reported claims will affect the aggregate of the year reported, and will not be carried over to a future year. This is a voluntary reporting requested by the members, through George Hills, to trigger coverage.

II. Reporting to Reinsurer/Excess Carrier

George Hills will handle all reporting, whether mandatory or voluntary. A Notification and all required documentation will be sent by George Hills to the Program's reinsurers/excess carriers.

III. "Occurrence Date"

The accepted occurrence date is the date that the incident/bad outcome occurred or the date that it was allegedly first discovered by the claimant.

APPENDIX C

PRISM
MEDICAL MALPRACTICE PROGRAM 2

CLAIMS HANDLING PROCESS – FIRST DOLLAR CLAIMS ADMINISTRATION

I. All Claims/Incidents

Step 1. All claims filed formally, or informally, with the member's administrative body or Governing Board, or with any other member department should be submitted to George Hills as soon as possible by secure e-mail (medmalclaims@georgehills.com).

Step 2. George Hills will review the claim, obtain appropriate medical records, and discuss the case with appropriate member personnel to determine the need for any immediate action, and to formulate a recommendation to the member on acceptance, rejection, timeliness or sufficiency of the claim.

Step 3. George Hills will input the claim, all pertinent information, and reserves into its computer data-base system for Program 2 members.

Step 4. George Hills, when appropriate, will conduct an investigation and/or request additional information in an effort to evaluate liability, damages, and further handling of claim.

Step 5. Once a preliminary evaluation and/or recommendation have been made, George Hills will report to the appropriate member contact. This report will include information necessary to formulate a strategy for managing the claim.

Step 6. George Hills will implement authorized actions such as diary tracking of claims rejection, retention of consultant/expert review, settlement negotiation, defense counsel assignment and management, and reporting.

II. Excess Claims/Incident Reporting

George Hills will handle all reporting, whether mandatory or voluntary. The Notification and all required documentation will be sent to the reinsurer/excess carrier by George Hills.

The "occurrence date" on all claims is the date that the incident/bad outcome occurred or the date that it was allegedly first discovered by the claimant.

All claims or incidents falling under the following criteria must be immediately reported to the reinsurer/excess carrier by George Hills in order to properly trigger insurance coverage (and therefore must be immediately reported to George Hills by the member):

Appendix C-1

- Death
- Brain damage
- Injuries significantly affecting the capacity of sight, taste, smell or hearing
- Amputation
- Any loss of use of limbs
- Any spinal cord damage and any real or suspected paralysis, including paraplegia, quadriplegia or hemiplegia
- Disfigurement Reproductive organ loss or impairment
- Burns
- Any other serious type of bodily injury

George Hills will report claims to the reinsurer/excess carrier in accordance with the applicable policy year contract. All other incidents/claims may be reported to the reinsurer/excess carrier on a discretionary basis. This is voluntary reporting, requested by the members, to trigger coverage. Reported claims will affect the aggregate of the year reported, and will not be carried over to a future year.

Appendix C-2

APPENDIX D

The Government Tort Claims Act

The Government Tort Claims Act was adopted by the California State Legislature in 1963. Under the claims provisions of the Act, a claimant must file a claim with a public agency before the claimant can file a lawsuit for money damages against that public agency. An exception to this requirement is that a claim need not be filed if a lawsuit alleges violations of federal or state constitutional rights (e.g., deprivation of due process or discrimination).

The legislature and various court decisions have stated that the purpose of the Act is to provide the public agency with sufficient information to enable it to adequately investigate a claim and to settle it, if appropriate, without the expense of litigation. To achieve this purpose, the Act requires a claimant to promptly present a claim to a public agency within a specific time after the accrual of the cause of action.

In medical malpractice claims, the cause of action accrues from the date of the claimant's actual or constructive discovery of the malpractice, and the claimant must file his or her claim within six months of that date. In a case of hidden malpractice, such as a missed sponge, the time does not start until the malpractice is actually uncovered, which may be several years later. In a case of obvious or suspected malpractice, such as operating on the wrong part of the body, the time starts to run immediately.

Claim Processing Steps under the Government Tort Claims Act

Normally, the following steps apply to the processing of a medical malpractice claim against a member:

Claimant files/delivers a claim to the Clerk, Secretary, or Auditor of the public entity, or mails it to the Clerk, Secretary, and Auditor or to the governing body at its principal office. A claim may take many forms, including a handwritten letter, attorney-drafted claim, public entity -supplied claim form, or a notice in the form of a Notice of Intention to Commence Action, under California Code of Civil Procedure section 364. Case law has established that any written correspondence from a potential claimant or an attorney which threatens the filing of a lawsuit against the public entity, or which seeks damages for alleged wrongdoing, should be treated as a claim against the public entity. (Government code sections 915 and 915.2).

The claim is immediately reviewed to determine if the information provided in the claim substantially complies with the legal requirements for claim content. (Government Code section 910).

If a claim fails to comply and is therefore defective, a written notice of "claim insufficiency" must be sent within twenty (20) days after the claim is delivered.

If a notice of insufficiency is not sent, any defense as to sufficiency of the claim is waived. (Government Code section 910.8 and 911.).

If a claim is late because it was not timely filed within six (6) months from the accrual date, a written "late claim notice" must be sent to the claimant within forty-five (45) days after the claim was presented. This forty-five day period applies whether or not a public entity sends out a notice of insufficiency. If no late claim notice is sent, any defense as to the timeliness of the claim is waived. (Government Code section 911.3).

During the forty-five (45) day time period following receipt of a claim, an investigation of the claim is undertaken to determine whether liability exists. Although the public entity is under no legal obligation to conduct such an investigation, it is prudent practice to conduct an investigation when a claim is first received, rather than later when a lawsuit is received.

Within forty-five (45) days after a claim is filed, a decision is usually reached to accept, reject or compromise the claim. Claims are usually rejected when any of the following apply:

- Issues of liability or damages are not clear, more information is needed, or
- There is no known basis of liability against the public entity. (Government Code section 912.6)

If no action is taken on a claim after forty-five (45) days, the claim is deemed to be rejected by operation of law. (Government Code section 912.4).

It is prudent practice to send out a written rejection notice whenever a claim is rejected. The claimant must file any lawsuit within six (6) months from date of rejection notice. If no written notice is given, the claimant has two (2) years from the accrual date to file any lawsuit. (Government Code section 913).

Other provisions of the Act which apply to the processing of medical malpractice claims include the following.

After the initial six (6) month period to file a claim or upon receipt of a "late claim notice," there is a further six (6) month period during which a claimant may file an application with the public entity for permission to file a late claim. (Government Code section 911.4).

Such an application must be accepted or denied within forty-five (45) days. (Government Code section 911.6).

If an application is denied, the claimant then has six (6) months from the denial date to petition the Superior Court for relief from the claims filing requirements altogether. (Government Code section 946.6).

Appendix D-2

Generally, after one (1) year from the accrual date, the claimant is barred from filing a claim or initiating any lawsuit against the **public entity**.

* Information on the Government Tort Claims Act was graciously provided by Santa Barbara County, Risk Management Department.

Appendix D-3