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Newsletter of Physicians Reimbursement Fund, Inc.

PRF NEWS

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Covering Practice and Risk Management Issues for Physicians

CLAIMS, POTENTIAL CLAIMS, AND OTHER LEGAL MATTERS

How PRF Can Help You Manage Risk

BY JUNE RILEY, MBA

Each of the employees at Physicians Reimbursement Fund cares about providing PRF Insureds and their office personnel with the best service possible. Whether you have just recently become a member of PRF or have been with the company since its inception, you may not be aware of the many ways PRF staff members are available to assist you with both legal and administrative matters. This article explains the terms, issues, and processes associated with claims, potential claims, and other legal matters.

ADVERSE PATIENT OUTCOMES

It is never a pleasant call to make. The reason for the call may be anything from unfortunate to tragic. However, these things happen—even to the best of physicians and healthcare providers. If you have an adverse patient outcome, this is **the most important time** for you to pick up the phone and call the PRF office at (415) 921-0498. The sooner you contact us, the better. The PRF medical consultant, the PRF claims administrator and other staff members are here to be supportive and help you through this difficult time.

PRF CLAIMS ADMINISTRATOR

For an adverse patient outcome, the contact person is Sandy Souza, PRF's claims administrator. If Ms. Souza is out of the office, June Riley, PRF's executive director can help you. Also, PRF's medical consultant, Reuben A. Clay, Jr., MD, is available by phone to offer any needed assistance.

MANAGEMENT REPORT

Once you make the call, the claims administrator will ask you to complete a management report (MR). Handwritten MRs cannot be accepted. You may use your computer or a typewriter to complete the MR. The initial conversation and the written report are two sides of the same coin. PRF needs both to effectively help you. During your initial conversation with PRF staff, we will be able to assess if there is something that can be done to bring about a swift resolution amenable to all concerned. If the issue is more complex or serious, and you need legal counsel, this too can be immediately addressed. Your typed MR will provide a written record of the events from your perspective and in your

own words. The MR is not "discoverable," meaning that in the event of a legal claim it cannot be produced as evidence to be used against you. Ideally, you should complete the MR within 48 hours of the occurrence, or sooner if possible. The events will be fresh in your mind, and your report will therefore be more complete and more accurate. The MR itself tells the Insured what information to include. The report may be submitted by mail, email, or fax.

PATIENT DEMAND

A patient demand may be explicit, such as a demand for a specific amount of money to pay for specific damages, or vague—merely alleging negligence. A

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Inside PRF News

PRF aims to further the dialogue between PRF Insureds and staff members by encouraging Insureds to call the PRF office with just a simple question or to discuss a serious matter. To that end, in this issue PRF Executive Director June Riley addresses items associated with claims, potential claims and other legal matters.

demand may be conveyed verbally or in writing. In either case, call the PRF office immediately and ask for the claims administrator. She will work with you to seek the appropriate resolution. She will be pleased to meet with you in person at your convenience if you prefer. Each patient demand is unique and will be handled on a case-by-case basis. Early and clear communication between the PRF Insured and PRF claims administrator has the best chance of resulting in the most desirable resolution.

CODE GREEN

Code Green is a risk management program that PRF implemented in 1976. Code Green is intended to provide patients who have experienced adverse outcomes due to medical treatment with needed medical care and a swift resolution to the outcome. Frequently, patient demands—formal or informal—can be resolved by implementing Code Green. Here are a few examples of Code Green's successful use.

- A physician performs a circumcision on a newborn infant male. Shortly thereafter, the infant's pediatrician notes that a revision is needed either for aesthetic or medical reasons. The parents may want a different physician to perform the revision, and will need help with the additional medical expenses. The PRF physician offers to cover those additional expenses, the infant has the revision, the parents are reimbursed and the matter is resolved.
- During the course of a medical procedure the patient sustains a bowel

perforation. The surgeon does not immediately diagnose the perforation, and the patient suffers a prolonged, complicated recovery and ultimately requires a second procedure to repair the perforation. As a result, the patient has missed three months of work, has suffered lost wages and has required in-home health-care during the convalescence. In this situation, caring communication between the physician and patient is critical. The physician should disclose that the perforation occurred, offer his/her apology to the patient for the complication and the subsequent consequences, and offer restitution in the form of reimbursement for lost wages and out-of-pocket expenses associated with the second procedure and recovery.

These examples demonstrate how Code Green can be used to meet the patient's medical needs and compensate them for lost income and/or out-of-pocket expenses. **Please note that the PRF Insured should not offer his/her patient restitution until the Insured has discussed it with the PRF claims administrator.** Administratively, how the events unfold is unique to each case.

90-DAY NOTICE

The Medical Injury Compensation Reform Act of 1975 (MICRA)¹ mandated that patients, or their attorneys, provide a physician with "90-Day Notice" of intent to sue. Often this notice is an opportunity for the physician/medical malpractice insurer to seek an in-

formal resolution thereby averting litigation.

The PRF Insured should immediately inform the PRF staff that they have received a 90-Day Notice. PRF will ask the Insured to submit (1) a management report; (2) a copy of the signed arbitration agreement, if one exists; (3) the 90-Day Notice; and (4) all available medical records. Once PRF receives all these items, the matter will be reviewed internally. The next step will be based on the findings of the internal review and the Insured's opinion as to defending of the claim. If appropriate, the claims administrator will proactively contact the patient or patient's attorney (if the patient is represented by legal counsel) to discuss the claim. With the Insured's written Consent to Settle, the claims administrator may try to negotiate a pre-litigation settlement not to exceed previously agreed upon parameters. If the matter is deemed defensible, the claims administrator will inform the patient or the patient's legal counsel that PRF is prepared to defend the claim.

Approximately half of the 90-Day Notices received by PRF's Insureds have never resulted in a claim being filed. That is why it is important for the Insured to contact the PRF claims administrator immediately.

SUMMONS AND COMPLAINT

In spite of all our best efforts, there are times when a patient serves the physician with a Summons and Complaint. Regardless of whether or not an arbitration agreement exists, when a complaint is filed in the court system the defendant/insured generally has only **30 days from receipt of service to file a written response to the complaint**. If there is a signed arbitration



THINK YOU KNOW CODE GREEN?

If you don't know what Code Green is, and even if you think you do, please read this section very carefully. ■

¹ We encourage PRF Insureds to read more about MICRA, as it continues to be relevant to today's physicians. An excellent resource is Californians Allied for Patient Protection, (CAPP). Their Website is <http://www.micra.org/>.

agreement, your attorney will take the necessary steps to compel arbitration in response to the complaint. **Failure to respond before the deadline is very serious and could cause you to lose the case by default.**

When you receive a Summons and Complaint, you need an attorney, and **you must call PRF immediately to obtain legal representation. Do not attempt to contact the plaintiff or the plaintiff's attorney.** The attorney assigned to your case will handle all communication from this point forward. PRF has a roster of attorneys who specialize in medical malpractice. We will assign an attorney who will be compatible with you and knowledgeable about the type of claim in question.

DEMAND TO ARBITRATE

On rare occasions, a patient—either directly or through legal counsel—may bypass the Summons and Complaint with a written Demand to Arbitrate. A Demand to Arbitrate must be treated with the same consideration and importance as a Summons and Complaint. Contact the PRF office immediately, and a defense attorney will be assigned to represent you.

DEPOSITION SUBPOENAS

A Deposition Subpoena may be for “testimony only,” commanding attendance at a specific time and place to give sworn testimony, or for copying of medical records (also known as a *Subpoena Duces Tecum*), or for both.

- **Testimony Only - A Deposition Subpoena for testimony is a demand issued under the authority of the court or arbitrator compelling a witness**

to present him/herself for testimony. Any and all parties to an action, as well as parties not named in the action, may be compelled to give testimony. If you are a named party to an action, typically the date, time and place for your deposition testimony will be arranged by the attorneys involved, and you may never actually receive a Deposition Notice or Subpoena for oral testimony. It is more typical for a physician to receive a testimony only Deposition Subpoena when he or she is not a named party to the action but a treating physician in possession of factual or medical information relevant to the issues in the lawsuit.

It is imperative that you contact the PRF staff whenever you are served with a testimony only or testimony and document Subpoena. PRF will provide you with an attorney to meet with you before the deposition and to represent your interests at the deposition. If you are a party to the action, your defense attorney will most certainly represent you at the deposition. **It is noteworthy that deposition testimony is as important and significant to the defense of a claim as testimony given before a jury or an arbitration panel.** By contacting PRF you are ensuring that you will be well prepared and legally represented at the deposition.

Often the dates on a testimony only Deposition Subpoena are set arbitrarily. The attorney that PRF contacts to represent you will speak to the

plaintiff's attorney on your behalf and arrange a date and time to accommodate your schedule.

You may receive a seemingly casual phone call from a plaintiff's attorney seeking to arrange an interview or a testimony deposition. If you receive such a phone call, please contact the PRF claims administrator immediately. Legal counsel will be assigned to contact the plaintiff's attorney. Regardless of the circumstances of the case, it is not in your best interest to speak directly to a plaintiff's attorney.

By state law you are entitled to a fee for your time attending a deposition in a case in which you are not a party. The size of the fee is based on the amount you would customarily earn if you had been able to see patients in your office during the time you must spend in deposition. The attorney assigned to represent you will arrange in advance for this compensation which must be paid at the time of the deposition.

- **Document Only — Deposition Subpoenas** Your office may receive a Deposition Subpoena for documents only (*Subpoena Duces Tecum*), which requires that you make your entire medical record for a patient available for copying. This does not require a personal appearance—only a production of documents. Typically this request for records is accompanied by another document called a *Notice to Consumer or Employee*,
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CODE GREEN PRESENTATIONS

Physicians and their office staff need to understand the Code Green process. Toward that end, the PRF staff and medical director would like to meet with each of its Insureds and their office manager/personnel to discuss the details. **We will be contacting each of you soon to schedule a time for a Code Green presentation.** Please tell your office personnel to expect this call and take the time to attend this brief meeting, which will be scheduled at your convenience. ■



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Claims, Potential Claims and Other Legal Matters

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which allows the patient whose records are sought time to object to their release. It is important that you and/or your office staff do not release the documents before the date referenced in *Section 1* of the *Notice to Consumer or Employee*. If representatives of a copy service are calling or visiting your office requesting to make copies, you must advise them to return on or after the date noted in *Section 1*. Premature release of medical records may constitute a patient privacy violation under California law or HIPAA and result in a separate legal claim against you. So, call the PRF staff to ensure that you are in compliance with the *Notice to Consumer or Employee*. However, if the *Subpoena Duces Tecum* is accompanied by a signed Authorization to Release the Records, the records may be immediately copied and released.

When the Deposition Subpoena seeks both testimony and production of records, it is customary to bring the records or a copy of them to the deposition. The attorney assigned to represent you can assist and coordinate this process.

These are the most common types of Subpoenas. However, there are several

10 REASONS TO CALL THE PRF OFFICE

Always call the PRF office at (415) 921-0498 whenever you are aware of or receive any of the following:

1. Adverse patient outcome
2. Need to submit a management report
3. Patient demand (verbal or written)
4. Opportunity for Code Green
5. 90-Day Notice
6. Summons and Complaint
7. Demand to Arbitrate (in lieu of a Summons and Complaint)
8. Deposition Subpoena for testimony and/or documents
9. Inquiry from the Medical Board of California
10. Patient letter of complaint to healthcare provider

others. Whatever the source of the Subpoena and whatever type of Subpoena, be sure to contact the PRF claims administrator if you receive a Subpoena.

INQUIRY FROM MEDICAL BOARD OF CALIFORNIA

Call the PRF office if you receive a letter of inquiry from the Medical Board of California regarding one of your patients and/or a medical malpractice case. If there is a loss payout in the form of a settlement, judgment or award over the reporting limits,² as a medical malpractice insurer PRF is obligated to report the loss payout to the Medical Board (or other appropriate Board for non-physicians). With increasing frequency, the Medical Board will at the very least send the defendant physician a letter of inquiry. PRF and/or the attorney that represented you in the case will assist you in answering the letter of inquiry. Please note, these inquiries are usually time sensitive, so do not delay in calling the PRF office.

LETTER OF COMPLAINT FROM PATIENT TO HMO, PPO, OR OTHER HEALTHCARE INSURANCE PROVIDER

If you learn that a patient has submitted a letter of complaint about you to their healthcare insurance provider, call the PRF office and we will assist you in responding to the letter of complaint. Often these are not substantive complaints. Nevertheless, you must respond to the entity that received the letter of complaint from the patient. These are usually time sensitive, so do not delay in calling the PRF office.

QUESTIONS

If you have any questions about any part of this article please call the PRF office. If the question requires a legal opinion, we will seek legal counsel for an answer. PRF is here to assist you in limiting the potential risks associated with practicing medicine. Our goal is to provide you with excellent service and we are always pleased to take your call. ▲

*June Riley is executive director
of PRF.*

² For physicians the reporting limit is any amount over \$29,999. For oral surgeons or dentists the reporting limit is any amount over \$9,999. For a complete description of reporting limits see Business and Professions Code §800-809.9.