UNIVERSITY OF COLORADO SCHOOL OF MEDICINE

Guidelines for Ensuring Malpractice Coverage for Community Volunteer Activities and Student Career Development Activities in Clinical Settings

Background

As a public entity, the University of Colorado's defense and indemnity of its employees, students, residents and volunteers is outlined in state statute, the Colorado Government Immunity Act (CGIA). The CGIA provides that the University of Colorado will indemnify and defend its employees against claims or lawsuits arising out of any act or omission that occurs during the performance of that employee's duties and within the course and scope of the employee's employment, except where those acts are willful and wanton. The CGIA also provides that the University will indemnify and defend any health care practitioner-in-training (student, intern, resident or fellow) who is enrolled and matriculated in a University of Colorado program for acts or omissions that occur within the course and scope of the individual's responsibilities as a student or trainee. The CGIA also protects health care providers and others who provide authorized volunteer service to the University.

The University can neither defend nor indemnify employees for actions that are outside the course and scope of their approved job responsibilities, nor can it defend health care trainees for activities that are outside the scope of their academic program responsibilities as approved by the University. The University does not assume responsibility for any punitive or exemplary damages awarded against its employees or trainees.

While the language of the CGIA controls coverage provided by the University of Colorado Self-Insurance Trust ("Trust"), it does not always address the numerous situations and activities that involve students, residents, fellows and faculty. In general, it can be assumed that coverage by the University will be provided to employees whose activities are formally approved by their supervisors. Enrolled students will be covered to the extent that they are properly supervised, in activities that are approved by their academic CU program. However, *given the multiple fact situations and nuances, especially around "volunteering," all faculty members, administrators, students and residents should contact the Professional Risk Management Office (303-724-RISK [7475]) or the Office of University Counsel (303 315-6617), before assuming that CGIA and Trust insurance coverage apply.*

Faculty who are employees of Denver Health and Hospitals, the Veterans Administration Medical Center, National Jewish Health or another affiliated institutions should contact their respective legal offices for advice (See section on Affiliate Employees, below).

**Clinical Volunteer Activities by Faculty Who Are Employees of the University of Colorado**

Employees of the University of Colorado who participate in community-based clinical volunteer activities are covered by the University of Colorado Self-Insurance and Risk Management Trust ("Trust"), *if two conditions are met:*

- First, the volunteer clinical activities must fall within the course and scope of the employee's job duties; for volunteer activities to be deemed "within the course and scope of employment," there should be a written Memorandum of Understanding (MOU) or other
document that is signed by the individual faculty member’s department chair, setting forth that this work is within the course and scope of the faculty member’s job responsibilities.

- Second, the volunteer clinical activities should be performed at a location approved by the University Physicians, Inc., (UPI) Sites of Practice committee. For information about the approval process, go to http://intranet.upiconeo.org/upi_mkt_intranet/site_practice.htm.

**Notes:**

- If the clinical volunteer activities are performed during the work week, the employee should not take a vacation day.
- Examples of volunteer activities that are unlikely to be covered by the Trust: participating at a community health fair that is not a CU activity; acting as the physician for a charity bicycle event; or providing medical supervision for a high school sports team.
- Faculty members must understand that "moonlighting" is not permitted. That is, if a University employee (other than a resident or nurse) also has an outside health care practice in addition to his or her work for the University of Colorado, then the employee will not be covered by the Trust for any clinical activities, whether within or outside of the faculty member’s scope of employment.

**Volunteer Activities by Faculty Who Are Employees of Affiliate Institutions**

Denver Health’s malpractice and governmental immunity protections extend only to activities that Denver Health directs the physician to perform and that are carried out within the course and scope of the employee’s job duties. For more information, contact [Dave Kvapil (303-602-4936) or Tina Marie Castello (303-602-4938).]

The National Jewish Health (NJH) malpractice insurance policy covers all activities that faculty members perform on behalf of NJH, regardless of the location of services provided. The volunteer activities must be performed on behalf of, and authorized in writing by, NJH. For more information, contact Ron Berge, COO (303-398-1601) or Dr. Gary Cott, EVP (303-398-1084).

Veterans Administration employees are covered by the Federal Tort Claims Act (FTCA) only when acting within the scope of their employment. Volunteering at the University and treating non-veteran patients would be outside the scope of a VA physician’s scope of employment; in these circumstances, VA-employed physicians would not be covered under the FTCA. For more information, contact Ann Jodway (720-857-5027).

**Clinical Volunteer Activities by Residents and Fellows**

Only clinical volunteer activities that are within the course and scope of the individual’s responsibilities as a resident are covered by the Trust. The volunteer activities should be approved, in writing, by the Program Director, and the volunteer activities should count toward meeting the residency program requirements. Residents and fellows who do not have active Colorado medical licenses and active University of Colorado faculty appointments cannot serve as the primary supervisors for a volunteer activity, or they must have individual malpractice insurance.

**Clinical Volunteer Activities by Medical Students**

Clinical volunteer activities performed by medical students enrolled at CU are covered by the Trust if they fall within the course and scope of the individual’s responsibilities as a student.
In most circumstances, the volunteer activity will be a recognized activity within the approved curriculum, and course credit will be awarded to the student.

In situations where course credit is not given (for example, medical school “tracks,” “threads,” interest groups, advisory college programs and various community outreach activities), contact the Professional Risk Management Office (303-724-RISK [7475]) or the Office of University Counsel (303 315-6617) for guidance. All non-course credit volunteer activities should also be approved, in writing, by the Senior Associate Dean for Education or the Associate Dean for Student Affairs, or their designees. In determining whether a student volunteer activity will be covered by the Trust, consideration will be given to such factors as: a) whether the volunteer work is a structured part of the medical school curriculum; b) whether course credit is given; c) the level of faculty supervision provided to the student; and d) for offsite activities, whether approval has been granted by the UPI Sites of Practice Committee.

Student Career Development Activities

"Career development" includes activities designed to promote clinical skill acquisition or career exploration and are carried out under the supervision of physicians or other licensed health care professionals. Activities can be at the shadowing level (which entails only observation and no direct clinical involvement) or at the hands-on level (which entails clinical activities, such as history taking, physical examinations and procedures). To a large extent, students are responsible for engaging in career development activities during their medical school tenure.

Career development clinical activities performed by medical students enrolled at CU are covered by the Trust if they fall within the course and scope of the individual’s responsibilities as a student. When the career development activity is part of an approved SOM course, where credit is awarded, no further approval is required.

In many situations, course credit is not given (for example, career exploration activities in a clinic, office or operating room, medical school “tracks,” “threads,” advisory college programs, student interest group activities, or individually-arranged clinical activities). All non-credit career development activities, whether they take place during the academic year or during academic breaks, should be approved, in writing, by the Associate Dean for Student Affairs or a designee. For additional guidance, contact the Professional Risk Management Office (303-724-RISK [7475]) or the Office of University Counsel (303-315-6617). In determining whether a student career exploration activity will be covered by the Trust, consideration will be given to such factors as: a) whether the career development activity is a structured part of the medical school curriculum; b) whether the activity is linked to a medical school career development program; and c) the level of faculty or health professional supervision provided to the student.

Approval

These Guidelines were approved by the VOICE Committee: January 28, 2013. The Guidelines should be reviewed at least once every two years.