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## **Accountability Report Fiscal Year July 1, 2007 – June 30, 2008**

### **Section I – Executive Summary**

The South Carolina Medical Malpractice Patients' Compensation Fund (PCF) is a state agency, which was created by the General Assembly in 1976 for the specific purpose of providing medical malpractice coverage in excess of South Carolina healthcare provider's basic or primary insurance coverage. The PCF is authorized by Sections 38-79-410 through 38-79-490 of the South Carolina Code of Laws. The PCF is self-supportive through annual member fees and assessments when appropriate. The PCF currently receives no federal, state or other funding. The PCF operates under the direction of a thirteen-member Board of Governors. The PCF contracts with the SC Joint Underwriting Association to provide a professional insurance brokerage and risk management services through the firm of Marsh USA, Inc. Marsh provides underwriting services, claims & legal services to the PCF and its Board of Governors.

The mission of the PCF is:

***“To provide excess medical liability coverage to its members who are South Carolina licensed healthcare providers at an affordable cost. The objective is to better serve the citizens of South Carolina through a viable and adequately funded malpractice program for physicians, dentists, hospital and other healthcare facilities. The PCF Board of Governors is committed to strengthening and preserving the Patients' Compensation Fund in order to assure that the licensed healthcare providers of South Carolina have adequate liability and litigation protection.”***

The PCF issues certificates of membership and collects membership fees. All South Carolina licensed health care providers may participate in the Fund and maintain the participation by

remitting to the Board the appropriate membership fees and deficit assessments as are required by the Board on or before the provider's membership anniversary date. Annual fees are set by the PCF Board of Governors on an annual basis effective June 1<sup>st</sup> of each year. Furthermore, the PCF monitors claims and lawsuits against its members, which are investigated, handled and defended by the basic insurance carrier. The PCF pays any portion of settlements and/or judgments that are in excess of the member's basic coverage up to the member's limits of coverage. The PCF affords the same liability coverage that is afforded by the member's basic insurance policy, except for the amounts of liability coverage, which vary depending on the requests of the members. The PCF statute requires members to maintain a minimum basic coverage with limits of \$200,000 per claim and \$600,000 annual aggregate of all claims.

The PCF continues to make many positive changes under the direction of the Board of Governors. These positive changes consist of the following:

- *Approval to hire Modus 21 for the development of the new PCF data base and workflow management system*
- *Approval of commissions to independent agents that write and give membership support to PCF members. Commissions were approved at a flat 5% commission of membership fees over \$1,000.00 and 10% of membership fees \$1,000 and under*
- *Created a limit of \$1,200,000/\$3,600,000 for members who are protected under the State Tort Claims Act and the Charitable Immunity Statute*
- *Continual updating of the PCF Manual of Rules and Rates and the PCF Plan of Operations*
- *Continual updating of PCF applications*
- *PCF now offers occurrence and claims made memberships with five different limits of coverage*
- *Shared limit endorsement which allows the individual practitioner and his professional association to share one limit with limits up to \$5million per claim/\$7million annual aggregate*
- *Approved 7% rate increase for the lower limits of coverage (1Million/3Million; 3Million/6million; and 5Million/7Million)*
- *Approved a 12.7% increase for 10Million/12Million and 13.2% for unlimited coverage (the lowest increase in seven years)*
- *Implemented membership payment, renewals and new membership applications through the PCF website ([www.scpcf.com](http://www.scpcf.com))*
- *Supporting partner of the 5 Million Lives Campaign*
- *Member of the South Carolina Chapter of the Association of Healthcare Risk Managers*
- *Approved the Risk Management Contract through the SC Hospital Association for risk assessments to PCF member hospitals*
- *Established a customer service survey published on the PCF website*
- *Continues to support customer focused service to all PCF members*

The PCF's vision is to be the premier provider of excess professional liability insurance and risk management services for the licensed healthcare providers of the state of South Carolina. Our values include:

- Focus on the needs of our members.
- Support and respect all healthcare providers and related relationships.
- Establish a culture of consistency and fairness in our performance.
- Provide leadership with knowledge-based decisions and operate with integrity.
- Embrace change through continuous improvement.
- Work together as a team.
- Make a difference in the community.
- Utilize best business practices.

The PCF provides customer services to its members through enrollment of new members, renewal of current members, collection of fees and assessments and payment of claims. It provides credentialing information to hospitals and managed care organizations in a prompt and accurate fashion.

With the passing of S.83 *The Medical Malpractice Tort Reform*, the responsibility of the management of the funds of the PCF has been transferred to the Board of Governors of the PCF. The funds are deposited into two accounts, a Treasury account and an Investment Account. The Operating Fund of the PCF remains with the State Treasurer. The Operating Fund with the State Treasurer holds the funds of the PCF Budget. All accounts are interest bearing accounts. The Board of Governors is charged with closely monitoring and managing all accounts.

### **Assessment**

The PCF Board of Governors again determined that a premium assessment was **not** necessary during this fiscal year. The last assessment was in June 2000. The statute grants the Board the authority to make assessments under Section 38-79-450 of the Code of Laws of South Carolina, 1976.

### **Rate Increase**

Following an actuarial review, which was conducted at the direction of the South Carolina Department of Insurance, the PCF Board of Governors voted to implement the following rate increases for the varying limits of coverage:

- \$1,000,000 per occurrence/\$3,000,000 annual aggregate – 7.0% increase
- \$3,000,000 per occurrence/\$6,000,000 annual aggregate – 7.0% increase
- \$5,000,000 per occurrence/\$7,000,000 annual aggregate – 7.0% increase
- \$10,000,000 per occurrence/\$12,000,000 annual aggregate – 12.7% increase
- Unlimited coverage – 13.2% increase

Approximately 5% of the increase for the unlimited coverage is to be apportioned to assist in reducing the PCF's deficit. This increase was based on the actuary's recommendation and was

approved by the PCF Board of Governors. The Board of Governors considered a number of factors in their deliberations for a rate increase, including reducing the PCF's deficit, competitive place in the commercial market, actuarial review and providing affordable protection for the healthcare providers in the State of South Carolina. Also included in the consideration of the rate increase this year was the potential future effect of Tort Reform. This increase represents the lowest increase in membership fees within the past 7 years.

The PCF Board continues to surcharge any licensed healthcare providers who have had issues with regard to their State Board licensing. This surcharge applies to loss of hospital privileges, criminal activity, sanctions, license revocation or restrictions of the physician's license to practice medicine. The surcharge will remain with the member for a ten (10) year period and is reduced after five (5) years assuming no additional issues arise during this time. An inquiry is made to the State Board of Medical Examiners on each new member who applies to the PCF.

The PCF Board of Governors continues to review the surcharge for experience rating. A member is surcharge based on frequency and amounts of settled claims. The length of time of the surcharge for experience rating remains for 10 years.

This past fiscal year the PCF Board of Governors approved using independent agents to assist the PCF in the underwriting of its members. Agency Commissions are based on 5% of the member fees in excess of \$1,000.00 and 10% of the member fees that are \$1,000 and less. The Board believes that establishing this relationship with help to serve its members.

## **Section II – Business Overview**

Effective April 1, 2007, the PCF Board of Governors elected James E. Mercer, DDS as the new Chairman of the Board for a two-year term. Dr. Richard Kennedy was re-elected to the position of Vice Chairman and Bruce MacKay was re-elected as Secretary-Treasurer.

The Patients' Compensation Fund now functions with a staff of five full-time equivalent employees. Included are two Administrative Assistants, one Program Coordinator, one Program Manager and the Executive Director.

At the close of the fiscal year, the PCF had a membership total of 5466. This includes one nursing home, 41 clinics, 4 hospitals, 555 professional associations, 3,460 physicians, 787 dentists and oral surgeons, 307 nurses and techs, 180 physicians' assistants, 108 CRNAs, 23 pharmacists and other healthcare providers. The PCF paid a total of \$28,545,318 for claims, settlements and judgments during the fiscal year. This is an estimated decrease of 32.6% from claims payments made during the prior fiscal year. The PCF collected \$38,198,148 in membership fees which constitutes an approximate decrease of 3% from last fiscal year.

The PCF is an organization that works extensively with legal counsel for claims defense, expert witnesses, and claims investigations, all in conjunction with the primary carrier. The effective selection, coordination and management of these professionals are critical to the success of the

PCF. It requires professionals with special skills and a high work ethic. For all of the PCF claims that went to trial this past fiscal year we have seen 95% of the claims result in defense verdicts. As previously stated our total claim payouts decreased 32.6%. This past fiscal year shows a downward trend in the total claims paid as well as severity. This appears to be in line with the national trend resulting in a soft market for Medical Malpractice insurance.

This year we have seen a 21% decrease in actual reported reserves. This along with the 32.6% decrease in claim payments has vastly improved the economic outlook of the Fund.

There has been a slight drop in our physician membership which we believe is due to the continuing practice of South Carolina hospitals purchasing physician practices and competitive pricing by other carriers coming into the state due to a soft market. This, along with the increasing number of members choosing lower PCF limits, accounts for the 3% decrease in membership fees. This decrease is smaller than the decrease experienced during the prior fiscal year.

The Board has engaged in extensive strategic planning efforts throughout the fiscal year, which included the continual review and revision of the PCF Plan of Operations, Underwriting Manual of Rules & Rates and claims handling procedures. The Board has reviewed and is considering legislative changes, which will allow for the more efficient operation and management of the Fund. The Plan of Operations details procedural information that provides for economic, fair and nondiscriminatory administration and for prompt and efficient provisions of excess medical malpractice insurance. The Plan contains other provisions including, but not limited to, assessment of all members for expenses, deficits, losses, reasonable underwriting standards, acceptance and cession of the reinsurance, appointment of servicing carriers and procedures for determining the amounts of insurance to be provided by the Fund. The Plan of Operation and any amendments to the Plan are subject to the approval of the Board.

With the passage of S.669 the PCF Board is beginning to work toward stabilizing the Fund by capping its exposure. S.669 clarified the PCF Board's authority to set limits of coverage. Unlimited exposure has resulted in excessively high Incurred but Not Reported statistics. At the end of this fiscal year the PCF memberships consisted of the following limits:

Unlimited	42%
10 Million per occurrence/12 Million annual aggregate	2%
5 Million per occurrence/7 Million annual aggregate	2%
3 Million per occurrence/6 Million annual aggregate	14%
1 Million per occurrence/3 Million annual aggregate	40%

Our goal is to reduce the unlimited exposure of the Fund. To do this we must move the unlimited members to lower limits. This can be achieved by education of our members and our independent agents, which we believe is critical to achieve this goal. This initiative will begin in this current fiscal year.

The Fund provides a high level of customer services to its members through enrollment of new members, renewal of current members, collection of fees and assessments and payment of claims. It provides credentialing information to hospitals and managed care organizations.

The Board has authorized the revision of the membership agreement and the development of applications to better serve its members. The Board continues to allow its members to pay their annual membership fee on a quarterly basis, with a small administrative fee.

Physicians and dentists that attend the South Carolina Medical Association and the South Carolina Dental Association Risk Management Seminar, which is sponsored by the South Carolina Medical Malpractice Liability Insurance Joint Underwriting Association (JUA), receive a discount in their annual membership fee. The discount is equivalent to a maximum of 25% of the base premium, up to a maximum of \$2,000. It is a one-time discount fee. The discount does not apply to a physician's professional association.

As previously stated, the PCF consists of five full-time employees. The Executive Director, along with the Board of Governors, closely monitors the staff's ability to meet the demands and needs of its members, which continue to increase. The PCF is a highly complex organization that works extensively with legal counsel for claims defense, expert witnesses and claims investigations, all in conjunction with the primary carrier. The effective selection, coordination and management of these professionals are critical to the success of the PCF. It requires a staff with special skills and a high work ethic.

### **Section III – Leadership**

The Board of Governors is composed of three physicians, two dentists, two hospital representatives, two insurance representatives, two attorneys, and two representatives of the general public, all appointed by the Governor. The appointed members serve a term of six years. Currently we are awaiting the replacement of one physician member and one at-large member. The Governor recently appointed the defense attorney member and one at large member.

The Board continues to amend its Plan of Operation and Manual of Rules and Rates for efficient administration of the Fund, consistent with the provisions of the Plan of Operations and Article 5 of the enabling legislation.

### **Strategic Planning**

A Strategic Planning Committee continues to meet for the purpose of extensive planning for the future of the PCF. The Strategic Planning Committee was established in April 2005.

The Board continues ongoing revisions to the Plan of Operation, Underwriting Manual of Rules and Rates and Claims Handling Procedures. The Board continues to review and consider legislative changes, which will allow for the more efficient operation and management of the

Fund. One initiative that the Board successfully supported is clarification and/or exclusion in the PCF Governing statute as it relates to the PCF's requirement to offer unlimited coverage to PCF members.

The Plan of Operation details procedural information that provides for the economic, fair and nondiscriminatory administration of claims and for the prompt and efficient provision of excess medical malpractice insurance. The plan contains other provisions including, but not limited to, assessment of all members for expenses, deficits, losses, reasonable underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers and procedures for determining the amounts of insurance to be provided by the Fund. The Plan of Pperation and any amendments to the plan are subject to the approval of the Director of the Department of Insurance or his designee.

### **Customer Focus**

The Fund provides excellent customer services to its members through enrollment of new members, renewal of current members, collection of fees and assessments, payment of claims and membership inquiries. It provides credentialing information to hospitals and managed care organizations. The Board is pleased to roll out the interactive portion of the PCF website to facilitate payment of membership fees (annual and quarterly), confirm coverage and apply for coverage through the PCF website.

The Board continues to authorize the revision of the membership agreement and the development of applications to better serve its members. The Board continues to allow its members to pay their annual membership fee on a quarterly basis, with a small handling fee.

Physicians and dentists that attend the South Carolina Medical Association and South Carolina Dental Association Risk Management Seminar, which is sponsored by the South Carolina Medical Malpractice Liability Insurance Joint Underwriting Association (JUA), receive a discount in their annual membership fee. The discount is equivalent to a maximum of 25% of the base premium, up to a maximum of \$2,000. It is a one-time discount fee. The discount does not apply to a physician's professional association.

The Healthcare providers are credentialed by hospitals, insurance companies and managed care organizations. In order to obtain hospital privileges and participate in managed care organizations, healthcare providers must show proof of professional liability insurance coverage, as well as any claims history. The PCF receives approximately 6,000 requests for this information annually and the PCF responds to these requests on behalf of its members with a sense of urgency. The PCF website now allows for approved hospitals, insurance companies and managed care individuals to confirm coverage through the website. Obtaining claims information continues to require a signed authorization from the PCF member.

Also provided to our members at no charge is Locum Tenens coverage for physicians who have to be away from their practice for up to 45 days per member year. This coverage extends the member coverage to their substitute physician.

## **Information and Analysis**

The Agency has upgraded its computers and technology equipment throughout the period. This includes the purchase of new computers, monitors, needed software and a new server. The Board approved moving our server back on-site. Also approved was the addition and control of email received at the PCF. This has greatly improved our efficiency in continuing to serve the PCF customers and eliminated some processing issues. The Fund continues to utilize the services of an independent vendor for programming purposes, which are critical to the ongoing service efforts based on customer needs.

The PCF continues to update its website with current information focusing on changes in the medical malpractice industry. The website can be accessed at [www.scpf.com](http://www.scpf.com). An important part of our website is the interactive portion that allows new members to apply on-line and current members to pay their membership fees on line and verify their coverage. It also provides access to hospitals and managed care organizations that require updated membership information. The PCF data is updated daily to provide members and other approved groups access to current PCF membership information.

The PCF entered into an agreement with SC Portal to facilitate the transfer of PCF funds from the PCF website to the PCF Treasury account. The SC Portal has been instrumental in establishing the sc.gov website. For a minimal charge (\$1.00 per transaction) to our members the SC Portal manages the fund transfers.

Approval has been given by the PCF Board for the development of a new PCF membership management system. This system will eliminate the problems that previously existed with “real time” reporting. This system will allow the staff to more quickly obtain correct data for year end reporting. Our current program is an access database and met the needs of the PCF when it was first developed. Because of the expansion of rating and policy processes we feel there is a need to change the platform for easier access, case management documentation and report processing. The PCF Computer Committee was responsible for selection of the software vendor and made the recommendation for the new software for full board approval. The new vendor chosen was Modus 21, a South Carolina based company.

## **Human Resources Focus**

As previously stated, the Agency now consists of five full-time employees. The Director has filled all vacant positions with current and/or part-time employees. She, along with the Board of Governors, continues to closely monitor the employees’ ability to meet the demands and needs of its members. All required OHR reporting is completed in a timely manner.

## **Management Controls**

Following the Legislative Audit Council’s report of January 2000, a new PCF Board of Governors was appointed. The PCF has implemented the following management controls to ensure the proper administration of the Fund:



- Written policies and procedures
- No longer grant retroactive coverage after a claim is filed
- All information from primary insurer is verified including proper documentation of loss dates, settlement amounts and coverage before payment is made by the Fund
- Controls implemented to ensure accuracy in its computer database
- Implementation of proper computer training to assure all employees have the necessary skills to service our members
- Proper procedures established to ensure timely reporting of claims by the basic carrier and its members
- PCF reports all claims to the National Practitioner Database as required
- PCF does not use proxies for voting and quorums. Confidential matters are discussed in Executive Session. Minutes are taken for all Board Committee Meetings
- One PCF Board members appointment is awaiting executive approval
- By statute, the PCF has the authority to determine amount of insurance to be provided. The PCF implemented variable limits effective July 1, 2003. The PCF continues to offer the option of unlimited liability to its members
- The promotion of the Program Manager to fill the position of Executive Director on September 4, 2003
- Approval of independent agents to assist in the underwriting of new and current members
- Although the PCF continues to offer the option of unlimited liability to its members, it has embarked upon an initiative to begin the elimination of unlimited coverage

### **New Initiatives**

The PCF continues to be involved in initiatives of the SC Hospital Association which include the 5 Million Lives Campaign, the Patient Safety Committee and the American Society for Healthcare Risk Management. Along with these initiatives, the PCF is involved with the development and improvement of Bariatric Surgery Guidelines.

A new initiative is the development and implementation of guidelines of the “Sorry Works” program which supplements the passage of the SC Unanticipated Medical Outcome Reconciliation Act. The PCF is working in a joint effort with the Palmetto Health Liability Insurance Program (PHLIP) and the SC Joint Underwriting Association to role out a Sorry Works program that conforms with the Reconciliation Act.

### **Business Results**

The principal challenge facing the PCF is to retain current members and at the same time, increase premiums appropriately to reduce the loss reserve liability. The other significant challenge is to manage the claims process effectively and coordinate with the primary carriers for satisfactory resolution of all claims. The PCF’s ultimate goal is to provide medical professionals with effective medical malpractice liability coverage, while ensuring that the PCF is in a financial sound position to pay all of its liabilities.

The South Carolina Patients' Compensation Fund shows an overall deficit on its books due to the fact that since 2001 it has recorded the actuarial liability for unpaid claims as well claims that are "incurred but not reported." Prior to 2001, the Fund's accounts did not reflect such reserves. During the current fiscal year, the PCF met all of its financial and legal obligations in a timely manner and reduced its net deficit by \$25,285,401. There are no pending judgments on appeal that affect the PCF. Coupled with the decrease of the deficit, this continues to show a positive trend in the PCF's overall financial outlook.

The Fund is not aware of any facts, decisions, or conditions that can reasonably be expected to have a material impact on the Fund's economic outlook during the fiscal year beginning July 1, 2008.