



**Emergency Medicine Professional Assurance Co.
Risk Retention Group**

AND



PRESENT

**Updated Professional
Liability Claims Procedure
Manual**

For

**SAMPLE EMERGENCY
MEDICINE GROUP Sample
Hospital
2233 Sample Road
Somewhere, USA**

Submitted by:

ESIS

35 Pinelawn Road, Suite 211

Melville, NY 11747

Tel: 678-858-0128

Email: caitlin.emanuel@esis.com

Table of Contents

Program Contacts	Section 1
Introduction	Section 2
Duties and Responsibilities of Sample EMG	Section 3
ProClaim Duties and Responsibilities	Section 4
A. File Establishment	
B. Reporting Criteria to Sample EMG	
C. Investigation Procedures	
D. Litigation Management	
E. Settlement Authority and Release	
Duties and Responsibilities of Defense Counsel	Section 5
A. File Establishment	
B. Reporting Criteria	
C. Discovery	
1. New Files	
2. Existing Files	
3. Pleadings and Hearings	
4. Experts	
D. Settlement Authority and Release	
E. Trials	
Attachments	
Update Claim/Incident Reporting Form <i>(to print as needed)</i>	
Sample Acknowledgement of Claim	
Sample Attorney Retention Letter	

Section 1

Program Contacts

**Client:**

Emergency Medicine Professional Assurance
Company Risk Retention Group 200 East
Robinson St #1180
Orlando, FL 32801
888-898-9560 or 407-898-9560
407-898-9570 fax
Daryl Williams, CEO
dwilliams@empacmanagers.com Director
of Administration
Shannon B. Nussbaum
snussbaum@empacmanagers.com

Insured:

Sample EMG Sample
Hospital 2233
Sample Road
Somewhere, USA Dr.
X
555-555-5555
drx@semg.org

**TPA:**

ESIS ProClaim
35 Pinelawn Road, Suite 211
Melville, NY 11747
800-771-9818
713-771-3500
713-771-7749 fax

Claims Specialist:

Ashley Arevalo
ESIS ProClaim
35 Pinelawn Road, Suite 211
Melville, NY 11747
631-247-4015
ashley.arevalo@esis.com

Claims Team Leader:

Megan Feinberg
ESIS ProClaim
35 Pinelawn Road, Suite 211
Melville, NY 11747
megan.feinberg@esis.com

Partnership Leader:

Caitlin Emanuel-Sedehi
ESIS ProClaim
11575 Great Oaks Way
Suite 200
Alpharetta, GA 30022
678-795-4368
caitlin.emanuel@esis.com

Section 2
Introduction

Emergency Medicine Professional Assurance Company Risk Retention Group (EMPAC) has established a self-insurance program for professional liability for its insured members. EMPAC has engaged the services of ProClaim to act as its claim-servicing agent for the management and investigative services of these claims. These services are subject to the terms and conditions that have been set forth in EMPAC's mutually executed Claims Service Agreement.

This Claims Procedure Manual is designed to answer many of your claims reporting questions as they relate to ProClaim acting as EMPAC's and its members' claim servicing agent and the relationship between EMPAC, and Proclaim.

This manual is not intended to take the place EMPAC's members own internal medical professional claim/incident reporting policies.

The Claims Procedure Manual is a guide to help facilitate the fullest possible cooperation between EMPAC, its insured members, and ProClaim.

Section 3
Duties and
Responsibilities of

Sample EMG

1. Immediately upon knowledge of an incident/event or receipt of a notice, send to ESIS (via email: empacrrgclaims@tnwinc.com; phone: 833-410-2659; fax: (470) 517-2992) a completed Claims/Incident Reporting Form (see page 13 or go on www.empacrrg.com) and all applicable supporting documents, including the original complaints, notice letters and all incident reports relating to the patient. If information is not applicable insert "N/A" in the provided blank.
2. Within five (5) business days, provide medical records to ESIS and defense council as needed.
 - 2.a. - Medical records will include high quality digital or hard copies of all x-rays, CT scans or other special studies performed in the patient's care.
3. Provide other pertinent correspondence to ESIS ProClaim, such as attorney representation letters, records requests and letters from family members.
4. Make physicians and staff available for interviews with ESIS ProClaim's investigator, and defense counsel.
5. If equipment or other physical evidence is involved in an incident, the evidence should (if possible and practical) immediately be tagged, codified, and secured in a safe place accessible to administrative personnel only. Under no circumstances should evidence be released to any parties except as authorized by ESIS ProClaim or defense counsel.
6. If appropriate under state law, within (10) business days of receipt of a complaint or notice letter, provide to ESIS a detailed medical chronology of care < timeline > to be forwarded to defense counsel.
7. If appropriate under state law, provide group representatives to attend quarterly meeting by phone or in person with EMPAC Managers, and ESIS ProClaim, if requested.
8. Physicians and staff will be made available to defense counsel, in counsel's offices, as necessary to effectively defend the case and prepare for trial.
9. Insured physicians will be made available to ESIS either by telephone, or in person thirty (30) days prior to trial for review of issues related to physician as a defendant.

Section 4

ProClaim's Duties and Responsibilities

ESIS ProClaim is responsible for analyzing each new matter received to ascertain if the matter warrants establishing a file. If a determination is made that an investigation is warranted, a file will be established and ESIS ProClaim will implement steps outlined in A below.

A. File Establishment

1. Establish a claim file for each reported event (incident, claim or lawsuit).
2. Determine dates of occurrence and the date of reporting solely for the purpose of determining that the file is in the correct policy year.
3. Make contact with claimant, or attorney when represented, within ten (10) working days of receipt of the case, when appropriate.
4. Make contact with insured physician and Sample EMG within forty-eight (48) hours of receipt of the new case.
5. ESIS ProClaim, in consultation with EMPAC Managers, will establish an initial reserve on all files within forty-eight (48) hours of receipt, which will be reviewed within thirty (30) days and revised as necessary.
6. Upon receipt of a lawsuit, we will coordinate with ESIS and/or insured physician and the insured groups representative, to select counsel. A sample of an Attorney Retention letter is included in the attachments. A complete copy of the ESIS ProClaim investigative and administrative file will accompany the Attorney Retention letter.
7. Complete the preliminary investigation within thirty (30) days from receipt of the necessary records.
8. Conduct state regulatory agency investigation and/or defense as necessary.

B. Reporting Criteria to EMPAC, and Insured Physician

1. Written acknowledgment of receiving an incident or notice will be sent to ESIS, EMPAC Managers, insured physician and Sample EMG. A sample of an Acknowledgment of Claim letter is included in the attachments.
2. Within thirty (30) days of receipt of necessary records, ESIS ProClaim will complete and provide to EMPAC Managers, insured physician and Sample EMG the preliminary investigation report. This report will include recommendations for additional investigation to be conducted.
3. ESIS ProClaim will provide written notice to, EMPAC Managers, insured physician and Sample EMG of all significant developments that impact the value or resolution of the case.
4. Where a case proceeds toward trial, defense counsel will provide ESIS ProClaim, EMPAC Managers, insured physician and Sample EMG with a complete evaluation outlining judgment potential, estimate of defensibility, estimated apportionment of liability and recommendations as to disposition. ESIS ProClaim will provide an evaluation and recommendations to the above.
5. Upon agreement of final resolution, ESIS ProClaim will notify EMPAC Managers, insured physician and Sample EMG.

C. Investigation Procedures

On professional liability matters where ESIS ProClaim determine's an investigation should be conducted, ESIS will:

1. In the event of a claim, establish claimant control within forty-eight (48) hours through contact with claimant/attorney.
2. Request theory of negligence from claimant/attorney.
3. Obtain medical records for the purpose of complete review.
4. Review the financial file to determine if monies are owed.
5. Identify personnel with knowledge of the case who can assist in collecting details not revealed in the chart.
6. If appropriate, review personnel files of employees involved in the claim/incident.
7. Interview material witnesses promptly, while details are fresh. Document essential facts of the interview for use thereafter. Notify material witnesses of the possible threat of a lawsuit in which their testimony will be important to the defense. Advise witnesses to immediately notify ESIS ProClaim if contacted by representatives of plaintiff, e.g., counsel, investigators, etc.
8. Obtain and review copies of all photographs (outside of the medical chart), autopsy reports, death certificates, x-rays and special studies.
9. If applicable, obtain photos of the site where incident occurred.
10. Evaluate the potential claim and assess the monetary exposure to EMPAC.
11. Complete the preliminary investigation within thirty (30) days of receipt of records. ESIS ProClaim will complete a factual synopsis of the case, to include recommendations for additional investigation to be conducted.
12. The merit of the claim will be assessed with ESIS, and if the claim lacks merit, consideration will be given to denial of the claim. A meritorious claim should be given consideration for prompt resolution. ESIS ProClaim will provide all letters of denial when necessary. All decisions to be made regarding denial will not be final until EMPAC Managers have given approval to said position.
13. In the event additional investigation is required, ESIS ProClaim will provide reports every ninety (90) days throughout the investigation until such time as the investigation is deemed complete. Upon completion of the investigation, ESIS ProClaim will make recommendations as to the disposition of the case.
14. Early resolution opportunities will be promptly brought to the attention of EMPAC, insured physician and Sample EMG. At such time that early settlement seems prudent, ESIS ProClaim will provide a summary of the case detailing the strengths and weaknesses as well as a recommended settlement dollar value. Recommendations will be made, brought to the involved parties and the Claims Committee of EMPAC.
15. If warranted, ESIS ProClaim will secure a demand from claimant/attorney and confirm in writing.
16. When an outstanding balance exists for a claimant, ESIS ProClaim will recommend to insured physician and Sample EMG that all collection efforts during active investigation and litigation of matters be put on hold. ESIS ProClaim will consider this amount in the ultimate settlement costs paid. The goal is to discount the settlement payout by the amount owed them.
17. Determine adequacy of notice, expert witnesses and statute of limitations.
18. ESIS ProClaim will request insured physician to prepare chronology of care report, if appropriate under state law.
19. ESIS ProClaim will coordinate responses to all informal pre-suit discovery requests with EMPAC, insured physician and Sample EMG.

D. Litigation Management

Litigation: Any service of legal process, including but not limited to, a Summons and Complaint or Petition, will be immediately brought to the attention of ESIS ProClaim by insured physician and/or Sample EMG.

The following procedures will be followed by ESIS, upon receipt of a Summons and Complaint or Petition:

1. Verify date and place of the service of process.
2. Verify the manner of process.
3. If suit is served, ESIS ProClaim will coordinate selection of defense counsel.
4. Provide investigative and administrative file to legal counsel at time of their retention.
5. Aid defense counsel in determining that the named defendants are appropriate. Instruct defense counsel to consider dismissal of inappropriately named defendants.
6. Direct and supervise defense counsel's activities (see Section 5, Duties and Responsibilities of Defense Counsel).
7. Persons sued or otherwise involved as material witnesses should be notified promptly and interviewed to determine what knowledge they have of the matter.
8. ProClaim will ensure that all discovery requests and responses are coordinated through insured physician and Sample EMG discovery liaison prior to filing with the court.
9. Settlement discussions should be coordinated by ESIS ProClaim. Defense counsel should not have settlement discussions directly with opposing counsel unless first directed by ESIS ProClaim. ESIS ProClaim will coordinate all settlement discussions with EMPAC.
10. Mediation attendance will be discussed with ESIS ProClaim, insured physician and Sample EMG at least one month prior to scheduled date. When appropriate, informal discussions will be held with opposing counsel prior to mediation in an effort to settle the case and avoid incurring the expense of a formal mediation. In the event of a formal mediation, ESIS ProClaim will be available to attend on behalf of the above, unless otherwise directed by EMPAC.
11. ESIS ProClaim and defense counsel must present case strategy to insured physician and Sample EMG sixty days prior to trial. ESIS ProClaim will ascertain defense counsel's readiness for trial and advise all parties.
12. Trial attendance by insured physician and/or Sample EMG representative shall be determined in discussions with ESIS ProClaim and defense counsel at least one month prior to commencement of the trial. Attendance at trial by insured physician is **mandatory**.

A. Settlement Authority and Release

ESIS ProClaim is responsible for reviewing all investigative findings and making appropriate recommendations regarding the disposition of files.

1. ESIS ProClaim has no authority to settle claims without obtaining prior written consent from EMPAC, and will discuss all claims with EMPAC prior to any settlement recommendations. ESIS ProClaim will provide a case summary that includes strengths and weaknesses of the case with recommended settlement authority.
2. If a timed demand is received from claimant/plaintiff's counsel, ESIS ProClaim will notify insured physician and Sample EMG of the deadline. ESIS ProClaim will either fax to, or E-Mail the above parties the demand package accompanied by ESIS ProClaim's summary and recommendation.
3. In the event a formal mediation is scheduled, EMPAC expects ESIS ProClaim to explore all possible creative settlement options, such as structured settlements, scholarships, donations, etc.
4. If possible, ESIS ProClaim, will request authority from EMPAC at least **three weeks** prior to mediation date.
5. ESIS ProClaim will review, evaluate, and process requests for settlement funds.
6. ESIS ProClaim or defense counsel will obtain executed settlement documents.

Section 5

Duties and Responsibilities of Defense Counsel

Defense attorneys are responsible for those matters that only a member of the bar can perform. These duties include: pleadings, motions, necessary depositions, and appearing in court. Generally, investigation of claims will be handled by ESIS ProClaim, unless otherwise directed by EMPAC. Defense counsel should be consulted throughout the investigative stage, but generally will be involved infrequently. Defense attorneys may not voluntarily undertake work that should be done by ESIS ProClaim without concurrence by EMPAC. This includes contacting witnesses, taking statements, securing reports, obtaining photos, securing results of medical examinations or records unless ESIS ProClaim, and counsel agree on other arrangements. Defense counsel shall recommend the course of action that will bring the best result. Ultimately, the facts of the case will dictate whether a case should be settled or tried.

A. File Establishment

1. Upon receipt of assignment of a case, defense counsel will acknowledge, in writing, the acceptance thereof to ESIS ProClaim within forty-eight (48) hours.
2. ESIS ProClaim and defense counsel must coordinate all investigation efforts. At time of assignment, ESIS ProClaim will provide a complete copy of its investigative and administrative file to defense counsel. Defense counsel must review this file thoroughly to determine the next step in investigation, and make recommendations to ESIS ProClaim, EMPAC, insured physician and Sample EMG.
3. If the claim is in suit, a timely response must be filed.

B. Reporting Criteria

1. Within thirty (30) days of assignment, defense counsel will provide ESIS ProClaim, insured physician and Sample EMG with a written initial evaluation of the case, based on available information, which outlines the facts, validity of the claim, and recommendations for additional investigation and/or disposition. A dollar evaluation for settlement and costs up to trial and cost to try case must be included, and defense counsel will review case with ESIS before issuing their report. When appropriate, the initial evaluation should include judgment potential, defensibility and likelihood of defense verdict and estimated apportionment of liability.
2. Defense counsel will provide a status report to ESIS ProClaim, EMPAC, insured physician and Sample EMG as needed or as requested by ESIS ProClaim, which will include a further analysis of the case based upon available information, including any changes in judgment/jury verdict potential, estimate of defensibility, estimated apportionment of liability and an estimate of and recommendations for additional investigation and/or disposition.
3. Defense counsel will copy EMPAC, insured physician and Sample EMG on case evaluations and correspondence that provides material information that significantly impacts the value or resolution of the case.
4. Forty-five (45) days prior to mediation, defense counsel will provide ESIS ProClaim, EMPAC, insured physician and Sample EMG with a case analysis detailing the strengths and weaknesses of the case as well as judgment/jury verdict potential, estimated percentage of possible defense verdict, and knowledge of the judge and venue where the case will be tried.

5. Ninety (90) days prior to trial, the case strategy and pre-trial report will be submitted to EMPAC, ESIS ProClaim, insured physician and Sample EMG. Strategy will include recommendations for the use of jury consultants, negotiation of high/low agreements with plaintiff counsel, lay and expert witnesses, need for physician counseling, and corporate representation.
6. Insured physicians will be made available to ESIS by either telephone or in person, thirty (30) days prior to trial for review of issues related to physician as a defendant.

C. Discovery

Defense counsel at all times will comply with EMPAC's Defense Counsel Litigation Discovery Guidelines listed below.

1. New Files

- a) Within five (5) days of assignment, attorney shall contact ESIS to arrange a conference call for introduction to the insured physician and/or Sample EMG. Receipt of copies of the medical records will be arranged.
- b) Copies of requests for admissions, interrogatories, and requests for production will be sent to insured physician and Sample EMG within five (5) to seven (7) days of receipt, with an outline of same, to include the responses requiring assistance. Also, include the dates the responses are needed and the dates the answer should be filed with the court. **DO NOT SEND** blank discovery requests to insured physician or Sample EMG..
- c) Final drafts of responses to admissions and interrogatories should be sent to insured physician and Sample EMG for review at least three (3) business days PRIOR to filing. Insured physician and Sample EMG will report results of review to defense counsel.
- d) Defense counsel will coordinate all depositions through insured physician and/or Sample EMG. Whenever possible, conferences and depositions will be held in offices of defense counsel.

2. Existing Files

- a) Forward outstanding discovery requests to insured physician and Sample EMG.
- b) Supplemental discovery requests should be directed to insured physician and Sample EMG.

3. Pleadings and Hearings

- a) Prior to filing any Motion for Summary Judgment or scheduling any out-of-state depositions, defense counsel will advise ESIS ProClaim.
- b) Defense counsel will provide ESIS ProClaim, insured physician and Sample EMG with a copy of all pleadings and responses filed.
- c) Defense counsel will provide to ESIS ProClaim, insured physician and Sample EMG a summary of all depositions taken or hearings held, within thirty (30) days.
- d) A complete transcript of any deposition or hearing held will be made available upon request.
- e) All depositions of plaintiff's physician experts should be forwarded to ESIS Proclaim.

4. Experts

- a) Upon approval by ESIS ProClaim, defense counsel will secure all experts to include, but not be limited to medical experts.
- b) All experts' fees must be pre-authorized by ESIS ProClaim.
- c) No expert's written report shall be submitted without prior approval by ESIS ProClaim and defense counsel.
- d) Before any expert is designated to testify at trial, prior approval from ESIS ProClaim will be obtained.

D. Settlement Authority and Release

1. As it is ESIS ProClaim's responsibility to negotiate settlements, no settlement negotiations shall be undertaken or offers of settlement extended without prior approval of ESIS ProClaim, and EMPAC. In cases where the defense counsel is in the best position to negotiate, exceptions can be made with the approval of ESIS ProClaim and EMPAC.
2. For cases where mediation is either mandated or agreed upon, defense counsel will work with ESIS ProClaim regarding mediation strategy and acceptable scheduling.
3. Upon agreement of a settlement, defense counsel will prepare an appropriate settlement agreement and release.

E. Trials

1. Six (6) months prior to trial, defense counsel will submit to ESIS ProClaim, insured physician and Sample EMG a complete evaluation to outline judgment potential, estimate of defensibility, apportionment of liability, recommendations as to disposition, and estimate of the cost of trial.
2. Ninety (90) days prior to trial, the case strategy will be submitted to ESIS ProClaim, insured physician and Sample EMG. Strategy will include recommendations for the use of jury consultants, negotiation of high/low agreements with plaintiff counsel, lay and expert witnesses, physician counseling, and corporate representation.
3. At a minimum of ten (10) days prior to trial, defense counsel will provide a list of witnesses and experts to be called during the trial.
4. After completion of each trial day, defense counsel will provide ESIS ProClaim with a verbal or written report outlining the progress of the trial.
5. After completion of a trial or hearing, defense counsel will provide ESIS ProClaim, EMPAC, insured physician and Sample EMG with a detailed analysis of the trial or hearing leading up to the disposition. The report will also contain recommendations for appeals as indicated.

F. Plaintiff's Experts:

1. As part of defense counsel's on going relationship with EMPAC, and ESIS ProClaim, defense counsel will provide the names, and upon request, copies of depositions and trial testimony of all plaintiff's Emergency Medicine experts involved in cases defended by the firm during the period of defense of EMPAC claims, and within reason, twenty Four (24) months before retention, and Thirty Six (36) months after case resolution.



Claim Reporting Form

Claim/Incident Reporting Form Instructions:

1. Complete pertinent blanks, if information is not applicable insert "NA" in the provided blank.
2. Email this form, and all supporting documentation, including when applicable, S&C, claim letter, etc. to: empacrrgclaims@tnwinc.com

I. Facility Data			
Group Name:			
Prepared by:		Email:	
Date of Completion:		Phone Number:	
Name of Group Admin/ Risk Manager:		Hospital were event occurred:	

II. Claimant Data			
Claimant Name (Patient/Visitor Involved):		Claimant Address:	
Claimant DOB:		Gender:	Male <input type="checkbox"/> Female <input type="checkbox"/> Other <input type="checkbox"/>
What was the Patients Diagnosis:		Was Patient Discharged:	
Was Patient Admitted:	Yes <input type="checkbox"/> No <input type="checkbox"/>	Admission Date:	
Did visit result in death?	Yes <input type="checkbox"/> No <input type="checkbox"/>		

III. Claim Information	
Event Type Description:	Incident / Event <input type="checkbox"/> Notice <input type="checkbox"/> Subpoena <input type="checkbox"/>
Is this claim in Litigation?	Yes <input type="checkbox"/> No <input type="checkbox"/>

IV. Claim Detail			
Date of Incident:		Date of First Report:	
Description of Incident:			
<i>**please include as many physicians as named in the alleged incident**</i>			
What is the Physicians Name?		Email:	
What is the Physicians Specialty?		Phone Number:	
Is there a second Physician Involved?		Email:	
What is the Physicians Specialty?		Phone Number	
What department did the Physician Work in at time of incident?	Emergency Department <input type="checkbox"/> Urgent Care <input type="checkbox"/> Other <input type="checkbox"/> Hospitalist <input type="checkbox"/> Occupational Health <input type="checkbox"/>		

V. Included Attachments	
<input type="checkbox"/> Summons & Complaint	<input type="checkbox"/> Other
<input type="checkbox"/> Records Request	<input type="checkbox"/> Patient Complaint
<input type="checkbox"/> Letter of Representation from Attorney	<input type="checkbox"/> Security Report
<input type="checkbox"/> Notice of Claim/ Intent to initiate Lawsuit	