
Chapter: Fiscal & Business Services

Modification No. 001

Subject: **Professional Liability**

Claims Procedures for Members of the Board of Trustees

- I. The Board member shall give written notice to the College of any act or occurrence involving a claim, demand or other item of cost sought to be indemnified, within one working day after the occurrence of such act or after the Board member should reasonably have knowledge of the occurrence of such act, or as soon as practicable thereafter, whether or not a claim or demand has actually been made against the Board member or the College.
- II. The College, subject to the conditions specified and only to the extent such coverage is declined by the Montgomery County Self-Insurance Program, will indemnify and save harmless the members of the Board of Trustees from any and all liability, loss or damage which said members may suffer as a result of claims, demands, costs or judgments, including but not limited to attorney's fees, which may arise from actions performed within the scope of their official duties as members of the Board of Trustees, except for such acts by members which are found to be either fraudulent, or criminal in nature, or committed in bad faith, or malicious or acts which are found to be committed for personal profit or advantage, or are grossly negligent.
- III. The Board member shall provide any and all assistance requested by the College to recover any monies so expended from the Montgomery County Self-Insurance Program.
- IV. This indemnification shall not be binding on the College in any respect, if either a claim or action is compromised or settled without the express written consent of the College or if a member of the Board is found to have committed an act which is either fraudulent or criminal or committed in bad faith or malicious, or committed for personal profit or advantage or is grossly negligent. In such circumstances the Board member shall reimburse the College any money expended in legal defense.

Board Approval: November 27, 1980.

Chapter: Fiscal & Business Services

Modification No. 002

Subject: **Professional Liability**

I. Definitions

- A. Professional liability - liability arising out of acts or omissions, actual or alleged errors, misstatements or misleading statements, or neglect or breach of duty by members of the Board of Trustees or employees in the discharge of their duties.
- B. Punitive Damages - damages over and above what will compensate for the plaintiff's actual loss. Such damages are intended to punish the defendant for his/her behavior and to solace the plaintiff for his/her loss.
- C. Interagency Insurance Panel - a panel consisting of one representative each from Montgomery College, various county agencies, the City of Rockville and other public entities. The panel oversees the affairs of the Montgomery County Self-Insurance Fund.

II. General

- A. Montgomery College holds professional liability insurance for the protection of the members of the Board of Trustees and College employees. That insurance, which provides for punitive damage claims as well as professional liability claims, is provided through the Montgomery County Self-Insurance Program in which the College participates. Montgomery College is required by the Montgomery County Interagency Insurance Panel to publish internal procedures for processing professional liability claims.
- B. Professional liability coverage under the self-insurance program is extremely broad and provides coverage for all claims that would have been covered under the College's commercial insurance policy which existed before the College entered the self-insurance program. Additionally, the coverage provides for punitive damage and other broadened aspects of professional liability as specified by agreement between Montgomery County and Montgomery College. There will be no indemnification for claims based upon or attributed to the gaining in fact of any personal profit or advantage by members of the Board of Trustees or employees, or for claims resulting in a judgment or final adjudication based upon a determination that acts of fraud or dishonesty were committed by members of the Board of Trustees or employees. In addition, there will be no indemnification in cases of wanton or malicious wrongdoing, or for actions falling outside the scope of employment or taken in bad faith.

III. Claims Procedures for College Employees

- A. An employee shall give written notice to the General Counsel, through the appropriate administrative supervisor(s), of any act or occurrence involving a claim, demand or other item of cost sought to be indemnified, within one working day after the occurrence of such act or after the employee should reasonably have knowledge of the occurrence of such act, or as soon as practicable thereafter, whether or not a claim or demand has actually been made against the employee or College. The General Counsel will provide details to the Director of

College Benefit Programs who is the College's representative on the Interagency Insurance Panel. The Director of College Benefit Programs will provide full particulars to the agency which processes claims for the Montgomery County Self-Insurance Fund.

- B. If the claims processing agency doubts that an employee should be indemnified, it refers the issue to the Montgomery County Interagency Insurance Panel for final determination. If the Interagency Insurance Panel requests a recommendation from the College with regard to the claim, a committee consisting of the Director of College Benefit Programs, the General Counsel and the administrative supervisor(s) of the employee will make a recommendation to the Interagency Insurance Panel. The Director of College Benefit Programs serves as chairperson of that committee. If the indemnification involves a claim for punitive damages, the recommendation will include full particulars concerning whether the employee was within the scope of his employment at the time in question, whether the employee acted willfully, wantonly or maliciously and whether any College policy or procedure governs the conduct in question.
- C. If the committee's recommendation is that an employee not be indemnified, the committee informs the employee of that recommendation and of his/her appeal rights. If the employee disagrees with the recommendation of the committee, the employee may appeal to the Interagency Insurance Panel and may appear personally before the Panel to do so. The Panel will make final determination of the issue by majority vote.
- D. Employees are expected to provide any assistance requested by either the College or the Montgomery County Self-Insurance Program in connection with any claim.

Administrative Approval: July 8, 1981; July 12, 1997.