

OFFICE OF PATIENTS' RIGHTS

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MEMORANDUM

TO: Patients' Rights Advocates

FROM: Office of Patients' Rights

RE: Claims against governmental entities under the California Tort Claims Act

DATE: March 31, 1999



I. Introduction

In California, before an individual may sue a governmental entity (the state, a county or local government) or a government employee, the individual must first file a **claim** meeting the requirements of the California Tort Claims Act (California Government Code §§ 810-996.6). With very limited exceptions, **no lawsuit may be brought against a governmental entity unless a written claim has been properly filed.** Therefore, even if the person injured by the government does not currently intend to sue, he/she should still file a claim in order to protect his/her rights and to keep options open.

The California Tort Claims Act specifies the procedures that must be followed in filing a claim against the government. The most significant procedures are summarized here. If after reading this memo you still have general questions about filing a claim, please feel free to call the Office of Patients' Rights at the above number.

The information in this memo is a general summary and is based on the laws in effect at the date of its writing. The laws, of course, are subject to change and the prospective claimant may need to consult with an attorney. Advocates who have specific questions regarding these matters should consult with legal counsel designated by the county to represent and/or advise the advocate (often this will be County Counsel).

II. When a claim is necessary

A person might choose to sue the government for a variety of reasons, such as when a governmental entity violates someone's rights or is responsible for someone's death, physical injury, or property damage. A claim must be filed in all cases where the claimant (generally the injured person) asserts that he/she is entitled to "money or damages" from the governmental entity. (Cal. Gov't Code §§ 905, 905.2.) Thus, if the governmental entity negligently or intentionally injured someone's person or property (possessions) the injured person must first file a claim in order to seek any money from the government.

III. Who may file a claim?

A claim against the government may be filed and signed by **either** the person who was injured **or** by someone acting on his/her behalf. (Cal. Gov't Code §§ 910, 910.2.) As discussed above, "injury" includes not only physical injury, but also damage to personal property (possessions) and violations of protected rights.

IV. How to file a claim

Claims against a **county or local government** are filed directly with the clerk of the entity, either by delivery or by mail. (Cal. Gov't Code § 915(a).) Claims against the **state or a state agency** are filed with the State Board of Control, either by delivery to any office or by mail to the main office. (Cal. Gov't Code § 915(b).) If delivered, the filing date is the delivery date. If mailed, the filing date is the mailing date rather than the reception date. If mailing a claim, it is advisable to use **certified mail with return receipt requested**. Some governmental entities provide their own claim forms. You may, but are not required to use such a form.

V. Contents of the Claim

A claim against a governmental entity must contain the following:

A. The name and address of the claimant;

- B. The address at which the claimant wishes to receive notices;
- C. The date, place, and circumstances of the occurrence giving rise to the claim;
- D. A general description of the injury, damage, or loss;
- E. The names(s) of the government employee(s) causing the injury, if known;
- F. The dollar amount claimed (including an estimate of future injury) and the basis for computation of the amount. (Cal. Gov't Code §910.)

VI. Timelines

The California Tort Claims Act sets out strict timelines that must be followed in filing a claim against a governmental entity. A claim for **personal injury** (that is, one based on death, physical injury, or damage to personal property) must be filed within **six months** of the date of the injury. (Cal. Gov't Code § 911.2.) If the reason for filing the claim was unknown to the claimant at the time of injury (e.g., medical malpractice), the six-month time period begins when the claimant becomes aware, or should have become aware, of the reason. (See, e.g., Whitfield v. Roth 10 C3d 874, 112 CR 540 (1974))

VII. Late claims

Sometimes a claimant waits longer than six months to file a personal injury claim. The law makes a distinction between **claims that are simply filed late** and **late claims that are accompanied by an application for late filing**.

If a claim for personal injury is not filed within six months of the date of injury, the claimant may apply in writing to the governmental entity for leave to file a late claim. (Cal. Gov't Code § 911.4(a).) The application must state the **reason(s)** that the claim was not filed within the six months from the date of injury and must be **accompanied by an actual claim**. (Cal. Gov't Code § 911.4(b).)

There are four valid reasons for a late claim: **mistake, minority** (the claimant was a minor during the entire six month period), **physical or mental incapacity, or death.** (Cal. Gov't Code § 911.6(b).)

The application for leave to file late must be made **within a reasonable time not to exceed one year** from the date of the injury. (Cal. Gov't Code § 911.4(b).) The “reasonableness” of the delay is determined on a case-by-case basis, and in any given case even a relatively short delay may be deemed unreasonable. Therefore, it is important to apply for leave to file a late claim **as soon as possible.**

VII. What happens to the claim once it is filed

Once a claim is filed, the board must respond (allow or reject the claim in whole or in part) within 45 days. If the board does not respond, the claim is deemed rejected on the 45th day. (Cal. Gov't Code §§ 912.4(C).)

IX. Suing the governmental entity if the claim is rejected

The board must notify the claimant of its action on the claim (or its rejection through failure to act). If the claim is rejected in whole or in part, the claimant has **six months from the date the notification is mailed to file suit** against the governmental entity. (Cal. Gov't Code §§ 913, 945.6(a)(1).)

If the board fails to notify the claimant of its action (or inaction), such failure amounts to a rejection of the claim (as discussed above) and the claimant has **two years from the date of the injury to file suit.** (Cal. Gov't Code § 945.6(a)(2).)

If the claimant is unable to file suit within the prescribed time period because he/she is in prison, he/she must file **within six months of regaining the right to do so** (i.e., being released). (Cal. Gov't Code § 945.6(b).)