

## **Public Hospital Districts and Non-Healthcare Related Tort Claims for Damages: Is Your District Meeting All of the Requirements?**

Legal Alert  
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Before a lawsuit for damages not related to injuries resulting from healthcare can be filed against a public hospital district in Washington State, a tort claim first must be presented to the District's agent. Once 60 days have passed, which gives the District the opportunity to evaluate the claim and determine whether settlement is appropriate, the claimant can then go to court, if he or she is dissatisfied with the District's response to the claim. If the claimant files a lawsuit against the District before the 60-day waiting period has passed, the District can seek dismissal of that lawsuit.

However, if the District fails to follow certain procedures, it will be unable to have a lawsuit dismissed, even though the lawsuit was filed before the 60-day waiting period had passed. [RCW 4.96.020](#) requires the District, among other steps, to: (1) appoint an agent by name - and not by title alone - who is to receive claims; and (2) record the "identity" and address of this agent with the auditor of the county or counties in which the District is located.

Amendments to this statute in 2009 also require the District to make available to claimants a tort claim form, along with instructions on how the form is to be presented to the District and the agent's name, address, and business hours. The amendments give the District the option of using the standard tort claim form developed by the Risk Management Division of the state Office of Financial Management (OFM) or developing its own form, which must conform to certain statutory requirements. Should the form developed by the District fail to conform or incorrectly list the District's agent, the District again would be unable to have a lawsuit dismissed even though the lawsuit was filed before the end of the 60-day waiting period.

A quick search of several county auditors' offices indicates that Districts either have not updated their agent appointments or have not filed them at all. The importance of losing the ability to raise a defense of "premature filing" was recently illustrated to a District in March.

In [Mavis v. King County Public Hospital District No. 2](#), the Washington Court of Appeals, Division I, overturned the ruling of a Superior Court judge, who had determined the claimant had filed her lawsuit prematurely and ordered dismissal of the case without a trial on the facts. In its decision, the Court of Appeals ruled the District could not raise the premature filing

defense because it had failed to record the appointment of a new agent with the county auditor.

In light of this case, we strongly recommend Districts take the following steps:

Be informed about the requirements of RCW 4.96.020;

Review the most recent Board resolution appointing an agent to determine whether the agent and address are up-to-date and adopt a new resolution, if necessary. Also consider appointing one or more “deputy” agents who can accept delivery in the absence of the agent;

Record the new resolution with the county auditor or auditors, as appropriate;

Be sure the District is using either the OFM standard [tort claim form](#) or a District-developed claim form, and if the latter, ensure the form meets all the requirements of RCW 4.96.020;

Make the claim forms available at the District’s main office;

Review with the agent and deputy agents the procedures to be followed once the claim form is submitted; and

Instruct your staff where to direct people making inquiries about obtaining or presenting tort claim forms.

For more information about legal issues affecting public hospital districts, please contact Dick Goldsmith or any of the other members of the GSB Healthcare Group.