

NOTIFICATION OF MEDICAL MALPRACTICE (TORT) CLAIMS TO INVOLVED PRACTITIONERS

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) directive describes the duty of Department of Veterans Affairs (VA) medical facility Directors to notify all staff whose care is the subject of a claim for medical malpractice. The notification requirements include licensed independent practitioners, licensed professional staff, e.g., nurses, pharmacists, contractors, trainees, and ancillary/unlicensed providers and staff, e.g., surgical technicians, nursing assistants.

2. SUMMARY OF CHANGES:

a. Major changes are as follows:

(1) Expansion of the notification requirement to include all staff identifiable by facility leadership based on the filed claim as involved in the episode of care that led to the claim. The previous directive required notification of licensed practitioners involved in the episode of care.

(2) Addition of sample notification letters to be used for different categories of staff to ensure standardization of key information provided.

(3) Amendment dated January 7 2021, updates paragraph 4 to add the VA health care provider's responsibilities. The content for this paragraph is from VHA Manual M-2, Clinical Affairs, Part 1, General, Chapter 28.01-04, Medical Review of Tort Claims, dated August 15, 1986, which will be rescinded by a VHA rescission notice.

3. RELATED ISSUES: VHA Directive 1099, VHA Medical Advisory Opinion Requests by General Counsel, dated April 22, 2020.

4. RESPONSIBLE OFFICE: The Office of Clinical Risk Management (17QM7) is responsible for the contents of this directive. Questions may be addressed to at VHA17QM7ClinicalRiskMgmtAction@va.gov.

5. RESCISSIONS: VHA Directive 2009-032, Notification of Medical Malpractice (Tort) Claims Against Licensed Practitioners, dated July 15, 2009 is rescinded.

6. RECERTIFICATION: This VHA directive is scheduled for recertification on or before the last working day of June 2022. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

June 14, 2017

VHA DIRECTIVE 1083(1)

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Acting Under Secretary for Health

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NOTIFICATION OF MEDICAL MALPRACTICE (TORT) CLAIMS TO INVOLVED PRACTITIONERS

1. PURPOSE

This Veterans Health Administration (VHA) directive describes the duty of Department of Veterans Affairs (VA) medical facility Directors to notify all staff identifiable by facility leadership based on a filed tort claim whose care is the subject of that claim for medical malpractice. The notification requirements includes licensed independent practitioners, licensed professional staff, e.g., nurses, pharmacists, contractors, trainees, and ancillary/unlicensed providers and staff, e.g. surgical technicians, nursing assistants. **AUTHORITY:** Title 38 United States Code (U.S.C.) 7301(b). **NOTE:** *This directive does not discuss disclosure of adverse events to patients or their families; that information is found in VHA Handbook 1004.08, Disclosure of Adverse Events to Patients, dated October 2, 2012, or subsequent policy document.*

2. BACKGROUND

VHA must report certain malpractice payments to the National Practitioner Data Bank (NPDB) and appropriate state licensing boards. These reports are required by the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11101-11152) which established the NPDB, and a Memorandum of Understanding (MOU) between VA and the United States Department of Health and Human Services (HHS). VHA's reporting requirements are set forth at Title 38 Code of Federal Regulations (CFR) Part 46, and are applicable to all VHA licensed health care practitioners involved in patient care who are employed, appointed, contracted for, or otherwise utilized under job titles listed in the NPDB document entitled "Occupation/Field of Licensure Codes." These regulations establish a malpractice payment reporting process, including a review panel which determines for whose benefit a claim for medical malpractice was made. Licensed practitioners are authorized to submit a written statement for consideration by the review panel. However, because the regulations do not address the pre-payment tort claim review process, some staff members have asserted that they do not receive timely notice of claims. VHA believes that the notification of all staff involved in the episode of care that a claim for medical malpractice has been made helps ensure the fairness of the claim resolution process. **NOTE:** *This directive does not discuss the tort claim post-payment review process that is administered by the VHA Office of Medical-Legal Affairs or NPDB reporting required following an adverse clinical privileges action against a physician or dentist (see VHA Handbook 1100.17, dated December 28, 2009).*

3. POLICY

It is VHA policy that each VA medical facility Director must provide written notification of a claim for medical malpractice to all staff, including contractors and trainees, who are identifiable by facility leadership based on a filed tort claim as involved in the episode of care on which the claim is based.

4. RESPONSIBILITIES

a. **VA Medical Facility Director.** The VA medical facility Director is responsible for ensuring that:

(1) Every staff member, including contractors and attending staff practitioners in a supervisory role, who is identifiable by facility leadership on the basis of a filed tort claim is given written notice when a claim for medical malpractice is filed which is based on care provided or supervised by the staff member.

(2) Trainees under the supervision of an attending staff practitioner who are identifiable by facility leadership on the basis of a filed tort claim are given written notice when a claim for medical malpractice has been filed which is based on care provided by the trainee.

(3) The required written notice of a claim for medical malpractice to individuals identifiable by facility leadership on the basis of the filed tort claim is provided within 30 days from the date a District Chief Counsel notifies the VA medical facility Director that a claim for medical malpractice has been filed under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671-2680).

(4) The notice consists of one of the attached standardized information statements (see Appendix A – D), as appropriate, supplemented with the information provided by District Chief Counsel as to:

(a) Claimant's name and address, as provided on the Standard Form (SF) 95, Claim for Damage, Injury, or Death;

(b) Date(s) the incident giving rise to the claim occurred;

(c) Incident described in the claim;

(d) Asserted basis of malpractice liability; and

(e) Name, telephone number, and e-mail address of the District Chief Counsel Office investigator assigned to process the claim, with encouragement to contact the investigator.

(5) A copy of the notice is electronically forwarded to the appropriate District Chief Counsel Office at the time notice originates to the provider.

(6) The staff member is provided with regular and periodic updates as relevant information becomes available, on the status of claim processing. Examples of claim status changes that should be communicated include notice of claim denial by District Chief Counsel, claimant request for reconsideration by the Office of General Counsel Torts Group and outcome of same, claimant files lawsuit in federal court, and/or payment of money damages by the government necessitating case review by the Office of Medical-Legal Affairs.

(7) Regular communication updates continue even if the staff member leaves VA employment or completes their training program, e.g., resident, intern.

(8) The staff member provides current contact information, e.g., home address, electronic mail address, and other locator information deemed pertinent to facilitate the notification process.

b. **VA Health Care Provider.** The VA health care provider is responsible for:

(a) Providing statements, testimony or medical expert opinions as accurately as memory permits to authorized VA representatives through interviews or formal depositions. **NOTE:** *Authorized VA representatives include Office of General Counsel and approved representatives from other government agencies (e.g., Department of Justice or outside Counsel).*

(b) Cooperating with a medical malpractice investigation by furnishing information and providing authorized VA representatives with all relevant information. **NOTE:** *VA health care employees include part time as well as full-time employees. It also applies to full-time VA residents and part time residents while on rotation at a VA medical facility, as well as medical students.*

5. REFERENCES

a. 28 U.S.C. §§ 1346(b), 2671-2680.

b. 42 U.S.C. § 11101-11152, The Health Care Quality Improvement Act of 1986.

c. Memorandum of Understanding between the Secretary of Veterans Affairs and the Secretary, Health and Human Services, effective October 1, 1990.

d. 38 C.F.R. Part 46. Policy Regarding Participation in the National Practitioner Data Bank.

e. VHA Handbook 1050.01, VHA National Patient Safety Improvement Handbook, dated March 4, 2011.

f. VHA Handbook 1100.17, National Practitioner Data Bank Reports, dated December 28, 2009.

g. VHA Handbook 1004.08, Disclosure of Adverse Events to Patients, dated October 2, 2012.

h. VHA Directive 1093, Delegation of Authority to Settle Tort Claims, dated July 17, 2014.

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APPENDIX A

SAMPLE LICENSED INDEPENDENT PROVIDER NOTIFICATION LETTER

**Department of
Veterans Affairs**

Memorandum

Date:

From: Risk Manager/Tort Claim Coordinator

Subj: Licensed Independent Practitioner (LIP) Notification of Filing of Claim for
Damage, Injury, or Death (Tort Claim)

To: (Licensed Independent Practitioner Name)

Thru: Chief of Staff

1. The purpose of this memorandum is to advise you that an administrative tort claim has been filed by (Claimant's name), (Address), regarding treatment at the (Name) VA Medical Center. The alleged negligence description was that (brief description) e.g., *"VA providers misdiagnosed cancer and subjected him to unnecessary chemotherapy and radiation when he did not have cancer, leading to pain and suffering"*. Care referred to in the tort claim was provided to the patient on or about (date).

2. When a claim for medical malpractice is filed with respect to the care provided by a VA practitioner, a complete review of the patient's medical record and case information is conducted. Based on that review, you were identified as a provider involved or one who participated in this patient's care during the period stated in the claim. *As a provider who is appropriately credentialed and privileged* with the (Name) VA Medical Center, unless you are a contractor, you are covered under the Federal Tort Claims Act for acts and omissions within the scope of your employment. Therefore, the tort claim is being brought against the United States Government and not against you individually.

The VA District Chief Counsel Office is conducting an administrative review of the claim and may contact you for information. You are encouraged to contact the assigned District Chief Counsel investigator, regarding your involvement in the care provided. It is the goal of the District Chief Counsel Office to complete its investigation and reach a decision within six months from receipt of the claim. Upon completion of the investigation, District Chief Counsel *may determine to deny the claim, settle the claim, or refer the claim for approval of a higher settlement amount*. Some claims may proceed to litigation without final action by the Office of General Counsel or after a denial. Information about the federal tort claims process can be found on the VHA Office of

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APPENDIX A

Quality and Patient Safety, Clinical Risk Management Frequently Asked Questions
intranet link at <https://vaww.qps.med.va.gov/divisions/qm/crm/crmFAQs.aspx>. **NOTE:**
This email site is internal to VA and is not available to the public.

If at any time you have additional questions regarding the claim, the status, or any of the procedures outlined above, please feel free to contact me at extension XXX or (Name), District Chief Counsel investigator at (Number).

Signature

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APPENDIX B

SAMPLE LICENSED PROVIDER NOTIFICATION LETTER

**Department of
Veterans Affairs**

Memorandum

Date:

From: Risk Manager/Tort Claim Coordinator

Subj: Licensed Healthcare Practitioner (excluding Licensed *Independent* Practitioners - LIPs) Notification of Filing of Claim for Damage, Injury, or Death (Tort Claim)

To: (Licensed Practitioner Name)

Thru: Chief of Staff

1. The purpose of this memorandum is to advise you that an administrative tort claim has been filed by (Claimant's name), (Address), regarding treatment at the (Name) VA Medical Center. The alleged negligence description was that (brief description) *e.g.*, "VA nurse provider administered incorrect dose of medication leading to a severe adverse reaction as well as pain and suffering". Care referred to in the tort claim was provided to the patient on or about (date).

2. When a claim for medical malpractice is filed with respect to the care provided by a VA practitioner, a complete review of the patient's medical record and case information is conducted. Based on that review, you were identified as a licensed healthcare practitioner involved or one who participated in this patient's care during the period stated in the claim. As a *licensed healthcare practitioner* with the (Name) VA Medical Center, unless you are a contractor, you are covered under the Federal Tort Claims Act for acts and omissions within the scope of your employment. Therefore, the tort claim is being brought against the United States Government and not against you individually.

3. The VA District Chief Counsel Office is conducting an administrative review of the claim and may contact you for information. You are encouraged to contact the assigned District Counsel investigator, regarding your involvement in the care provided. It is the goal of the District Chief Counsel Office to complete its investigation and reach a decision within six months from receipt of the claim. Upon completion of the investigation, District Chief Counsel may choose to deny the claim, settle the claim, or refer the claim for approval of a higher settlement amount. Some claims may proceed to litigation without final action by the Office of General Counsel or after a denial.

4. Information about the federal tort claims process can be found on the VHA Office of Quality, Safety & Value, Risk Management Frequently Asked Questions intranet link

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at <http://vaww.oqsv.med.va.gov/functions/mindfulness/rm.aspx>. If at any time you have additional questions regarding the claim, the status, or any of the procedures outlined above, please feel free to contact me at extension (number)XXX or (Name), District Counsel investigator at (Number).

Signature

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APPENDIX C

SAMPLE TRAINEE NOTIFICATION LETTER

**Department of
Veterans Affairs**

Memorandum

Date:

From: Risk Manager/Tort Claim Coordinator

Subj: Trainee Notification of Filing of Claim for Damage, Injury, or Death (Tort Claim)

To: (Trainee Name)

Thru: Chief of Staff

1. The purpose of this memorandum is to advise you that an administrative tort claim has been filed by (Claimant's name), (Address), regarding treatment at the (Name) VA Medical Center. The alleged negligence description was that (brief description) e.g., "VA surgical resident ordered incorrect pre-operative medication leading to a severe adverse reaction as well as pain and suffering". Care referred to in the tort claim was provided to the patient on or about (date).

2. When a claim for medical malpractice is filed with respect to the care provided by a trainee under the supervision of an attending staff practitioner, a complete review of the patient's medical record and case information is conducted. Based on that review, you were identified as a trainee who was involved with or participated in this patient's care during the period stated in the claim. *As a trainee under the supervision of a licensed independent provider (attending staff practitioner) who was appropriately credentialed and privileged* with the (Name) VA Medical Center, you and the attending staff practitioner are covered under the Federal Tort Claims Act for acts and omissions within the scope of your employment. Therefore, the tort claim is being brought against the United States Government and not against you or your assigned attending staff supervisor individually.

3. The VA District Chief Counsel Office is conducting an administrative review of the claim and may contact you for information. You are encouraged to contact the assigned District Chief Counsel investigator, regarding your involvement in the care provided. It is the goal of the District Chief Counsel Office to complete its investigation and reach a decision within six months from receipt of the claim. Upon completion of the investigation, District Chief Counsel may choose to deny the claim, settle the claim, or refer the claim for approval of a higher settlement amount. Some claims may proceed to litigation without final action by the Office of General Counsel or after a denial.

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4. Information about the federal tort claims process can be found on the VHA Office of Quality, Safety & Value, Risk Management Frequently Asked Questions intranet link at <http://vaww.oqsv.med.va.gov/functions/mindfulness/rm.aspx>. If at any time you have additional questions regarding the claim, the status, or any of the procedures outlined above, please feel free to contact me at extension XXX or (Name), District Chief Counsel investigator at (Number). In addition, the Designated Education Officer (Dr. name and number) is also available to answer any questions you may have and guide you through this process.

Signature

(DATE)

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APPENDIX D

SAMPLE EMPLOYEE NOTIFICATION LETTER

Department of
Veterans Affairs

Memorandum

Date:

From: Risk Manager/Tort Claim Coordinator

Subj: Employee Notification of Filing of Claim for Damage, Injury, or Death (Tort Claim)

To: (Employee Name)

Thru: Chief of Staff

1. The purpose of this memorandum is to advise you that an administrative tort claim has been filed by (Claimant's name), (Address), regarding treatment at the (Name) VA Medical Center. The alleged negligence description was that (brief description) e.g., "VA pharmacy technician dispensed incorrect dose of medication leading to a severe adverse reaction as well as pain and suffering". Care referred to in the tort claim was provided to the patient on or about (date).

2. When a claim for medical malpractice is filed with respect to the care provided by a VA practitioner, a complete review of the patient's medical record and case information is conducted. Based on that review, you were identified as an employee involved or one who participated in this patient's care during the period stated in the claim. As an employee at the (Name) VA Medical Center, unless you are a contractor, you are covered under the Federal Tort Claims Act for acts and omissions within the scope of your employment. Therefore, the tort claim is being brought against the United States Government and not against you individually.

3. The VA District Chief Counsel Office is conducting an administrative review of the claim and may contact you for information. You are encouraged to contact the assigned District Chief Counsel investigator, regarding your involvement in the care provided. It is the goal of the District Chief Counsel Office to complete its investigation and reach a decision within six months from receipt of the claim. Upon completion of the investigation, District Chief Counsel may choose to deny the claim, settle the claim, or refer the claim for approval of a higher settlement amount. Some claims may proceed to litigation without final action by the Office of General Counsel or after a denial.

4. Information about the federal tort claims process can be found on the VHA Office of Quality, Safety & Value, Risk Management Frequently Asked Questions intranet link at <http://vaww.oqsv.med.va.gov/functions/mindfulness/rm.aspx>. If at any time you have additional questions regarding the claim, the status, or any of the procedures outlined

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above, please feel free to contact me at extension XXX or (Name), District Chief
Counsel investigator at (Number).

Signature