

DELEGATION OF AUTHORITY TO PROCESS TORT CLAIMS

1. REASON FOR ISSUE: This Veterans Health Administration (VHA) directive establishes nationwide policy that Veterans Integrated Service Network (VISN) Directors and Department of Veterans Affairs (VA) medical facility Directors may resolve any claim asserting damages of \$5,000 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act but does not allege medical malpractice.

2. SUMMARY OF MAJOR CHANGES: This revised directive increases the authority of VISN Directors and VA medical facility Directors to resolve non-medical malpractice claims asserting damages of \$5,000 or less.

3. RELATED ISSUES: None.

4. RESPONSIBLE OFFICE: The Office of Integrity (10E1) is responsible for the contents of this directive. Questions may be addressed to 202-461- 0807.

5. RESCISSIONS: VHA Directive 1093, Delegation of Authority to Process Tort Claims, dated July 17, 2014, is rescinded.

6. RECERTIFICATION: This VHA directive is scheduled for recertification on or before the last working day of May 2025. This VHA directive will continue to serve as national VHA policy until it is recertified or rescinded.

**BY DIRECTION OF THE OFFICE OF
THE UNDER SECRETARY FOR HEALTH:**

/s/ Gerard R. Cox, M.D., MHA
Deputy Under Secretary for Health
For Organizational Excellence

NOTE: *All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.*

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DELEGATION OF AUTHORITY TO PROCESS TORT CLAIMS

1. PURPOSE

This Veterans Health Administration (VHA) directive establishes policy that Veterans Integrated Service Network (VISN) Directors and Department of Veterans Affairs (VA) medical facility Directors may resolve any claim asserting damages of \$5,000 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act but does not allege medical malpractice. **AUTHORITY:** Title 38 United States Code (U.S.C.) 512 and 515; 38 CFR 14.600 et seq.

2. POLICY

It is VHA policy that VISN Directors and VA medical facility Directors consider, ascertain, adjust, determine, compromise, and deny or settle, as appropriate, any tort claim asserting damages of \$5,000 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act but does not allege medical malpractice.

3. RESPONSIBILITIES

a. **Under Secretary for Health.** The Under Secretary for Health is responsible for ensuring overall VHA compliance with this directive.

b. **Deputy Under Secretary for Health for Operations and Management.** The Deputy Under Secretary for Health for Operations and Management is responsible for:

(1) Communicating the contents of this directive to each VISN.

(2) Ensuring that each VISN Director has sufficient resources to fulfill the terms of this directive in all VA medical facilities within that VISN.

(3) Providing oversight of VISNs to assure compliance with this directive.

c. **Deputy Under Secretary for Health for Organizational Excellence.** The Deputy Under Secretary for Health for Organizational Excellence is responsible for supporting the implementation and oversight of this directive across VHA.

d. **Assistant Deputy Under Secretary for Health for Integrity.** The Assistant Deputy Under Secretary for Health for Integrity is responsible for ensuring that the Director, Clinical Risk Management Program provides guidance to VISNs and VA medical facilities in implementing this directive.

e. **Director, Clinical Risk Management Program.** The Director, Clinical Risk Management Program is responsible for:

(1) Providing guidance to VISNs and VA medical facilities in implementing this directive.

(2) Collaborating with the Office of General Counsel (OGC), Torts Law Group, to ensure that tort claim processing guidelines are followed and shared with OGC, Torts Law Group Attorneys.

f. **Veterans Integrated Service Network Director.** VISN Directors are responsible for ensuring compliance with the policies in this directive by all VA medical facilities under their jurisdiction.

g. **VA Medical Facility Director.** Each VA medical facility Director is responsible for ensuring:

(1) Persons who inquire about the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of VA acting within the scope of their employment, is provided a copy of Standard Form (SF) 95, Claim for Damage, Injury, or Death.

(2) A decision to settle or deny a claim filed under the Federal Tort Claims Act is issued to the claimant by a signed written communication.

(3) The VA medical facility maintains a record of all filed claims, including their disposition.

h. **VA Medical Facility Risk Manager.** The Facility Risk Manager is responsible for:

(1) Referring tort claims alleging medical malpractice submitted on a SF-95, Claim for Damage, Injury, or Death (or through other accepted means such as handwritten or typed information on bond paper so long as the information on SF-95 is addressed) to OGC Torts Law Group for processing, regardless of the settlement amount being sought or considered. ***NOTE: OGC Torts Law Group attorneys may be consulted for advice or guidance regarding non-medical malpractice claims but, except as provided in paragraph 4, do not have responsibility for processing and denying or settling such claims when they seek damages of \$5,000 or less.***

(2) Ensuring a decision to settle or deny a claim filed under the Federal Tort Claims Act is issued to the claimant by a written communication signed by the VA medical facility Director, or designee. The settlement or denial communication must be mailed by certified or registered mail, must advise the claimant(s) of the right to request reconsideration by OGC, Torts Law Group, and must include the following language: "In the alternative, if you are dissatisfied with the action taken on your claim, you may file suit in accordance with the Federal Tort Claims Act, Title 28, United States Code, 1346(b) and 2671-2680, which provide that a tort claim that is administratively denied may be presented to a Federal district court for judicial consideration. Such a suit must be initiated within 6 months after the date of the mailing of this notice of final denial as shown by the date of this letter (28 U.S.C. 2401(b)). If you do initiate such a suit, you are further advised that the proper party defendant is the United States, not VA."

(3) Ensuring a tracking system is used to document the mailing and receipt date of all correspondence related to the claim. The system must be in compliance with VA privacy requirements.

(4) Providing OGC, Torts Law Group Attorneys with notice of settled and denied tort claims. If a tort claim is denied, a copy of the denial letter must be furnished by the VA medical facility Director to Office of General Counsel, Torts Law Group, along with a copy of the claim. **NOTE:** *Information on non-medical malpractice settlements does not require reporting to the Office of Integrity, Office of Medical-Legal Affairs.*

(5) Ensuring Budget Object Code (BOC) 4220 is used for tort claims settled for \$2,500 or less for purposes of data accessibility in the event of an audit performed by the Office of Inspector General or VHA Office of Internal Audit.

(6) Ensuring that any tort claim settled for an amount in excess of \$2,500 is forwarded to Office of General Counsel, Torts Law Group, for payment through the Judgment Fund of the U.S. Treasury.

(7) Ensuring the VA medical facility maintains a record of all filed claims, including their disposition.

4. ROLE OF OFFICE OF GENERAL COUNSEL

OGC, Torts Law Group, or another approved designee of the OGC, upon request of a claimant, will:

a. Reconsider a denial of a non-medical malpractice claim by a VISN Director or VA medical facility Director within their service area.

b. Resolve any claim where medical malpractice is alleged, regardless of whether the claim is for \$5,000 or less. **NOTE:** *OGC Torts Law Group attorneys may be consulted for advice or guidance regarding non-medical malpractice claims but, do not have responsibility for processing and denying or settling such claims when they seek damages of \$5,000 or less.*

c. *Process for payment any settlement in excess of \$2,500 through the Judgment Fund of the U.S. Treasury.*

5. TRAINING

There are no formal training requirements associated with this directive. Training and reference material will be provided by the Clinical Risk Management Program.

6. RECORDS MANAGEMENT

All records regardless of format (e.g., paper, electronic, electronic systems) created in this directive shall be managed per the National Archives and Records Administration (NARA) approved records schedules found in VA Records Control Schedule 10-1. Questions regarding any aspect of records management, should be addressed to the appropriate Records Manager or Records Liaison. Documents and evidence related to FTCA claims must not be disposed of until after expiration of the

FTCA statute of limitations or until a final judgment is entered and the period for appeals has expired, whichever is later.

7. REFERENCES

- a. 28 U.S.C.1346(b), 2401(b), and 2671-2680
- b. 38 U.S.C. 512 and 515.
- c. 28 CFR part 14.
- d. 38 CFR 14.600 et seq.
- e. OGC Guidebook for Processing Small Claims under the FTCA:
http://vaww.ogc.vaco.portal.va.gov/Documents/Small_Tort_Claims.pdf. **NOTE:** *This is an internal VA Web site that is not available to the public.*