

June 10, 2004

**NOTIFICATION OF MEDICAL MALPRACTICE (TORT) CLAIMS AGAINST
LICENSED PRACTITIONERS**

1. PURPOSE: This Veterans Health Administration (VHA) Directive describes the duty of Department of Veterans Affairs (VA) Medical Center Directors to notify practitioners whose care is the subject of a claim for medical malpractice. *NOTE: This Directive does not discuss disclosure of adverse events to patients or their families; that information is found in the National Ethics Committee (NEC) report on Disclosing Adverse Events to Patients (also see VHA Handbook 1050.1, Patient Safety Improvement).*

2. BACKGROUND: Under the provisions of Public Law 99-660, the Health Care Quality Improvement Act of 1986, which established the National Practitioner Data Bank (NPDB), and a Memorandum of Understanding (MOU) between the Department of Veterans Affairs (VA) and the Department of Health and Human Services (HHS), VHA must report certain malpractice payments and certain clinical privileges actions to the NPDB and appropriate state licensing boards. 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 "Field Licensure Codes." These regulations establish a malpractice payment review process, and authorize licensed practitioners, for whose benefit a claim for medical malpractice was paid, to submit a written statement for consideration by the review panel. However, since the regulations concern only the post-payment review process, many practitioners have asserted that they are unaware that a claim has been filed until such time as a recommendation to report them to the NPDB has been made. VHA believes that the notification of licensed practitioners at the time 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 or reporting required following an adverse action against a physician or dentist (VHA Handbook 1100.17, National Practitioner Data Bank Reports).*

3. POLICY: It is VHA policy that each medical center Director must provide written notification to all licensed practitioners, who were assigned to provide care to a patient, when such care results in a claim for medical malpractice, within 30 days from the date that a Regional Counsel notifies the Director that a claim for medical malpractice has been filed under the Federal Tort Claims Act (FTCA), Title 28 United States Code (U.S.C.) 1346(b), 2671-2680.

4. ACTION: Each medical center Director, or designee, is responsible for ensuring that:

a. Each licensed practitioner is given written notice when a claim for medical malpractice is filed with respect to care provided by such practitioner. The notice will state only the:

(1) Patient's name;

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

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(3) Incident described in the claim;

(4) Asserted basis of malpractice liability; and

(5) Name and telephone number of the Regional Counsel for the facility where the event occurred.

b. A copy of the notice is forwarded to the appropriate Regional Counsel office.

5. REFERENCES

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

b. Memorandum of Understanding between the Secretary of Veterans Affairs and the Secretary, Health and Human Services, dated November 19, 1990.

c. Title 38 CFR Part 46, as amended. Policy Regarding Participation in the National Practitioner Data Bank, 67 Fed. Reg. 19678 (April 23, 2002).

d. VHA Handbook 1050.1, Patient Safety Improvement.

e. VHA Handbook 1100.17, National Practitioner Data Bank Reports.

6. FOLLOW-UP RESPONSIBILITY: The Chief Consultant, Forensic Medicine Strategic Healthcare Group (11F), is responsible for the contents of this Directive.

7. RECISSIONS: None. This VHA Directive expires June 30, 2009.

S/ Arthur S. Hamerschlag for
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Acting Under Secretary for Health

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