

January 14, 2010

DELEGATION OF AUTHORITY TO SETTLE TORT CLAIMS

1. PURPOSE: This Veterans Health Administration (VHA) Directive establishes nationwide policy permitting Veterans Integrated Service Network (VISN) Directors and Department of Veterans Affairs (VA) medical facility Directors to consider, ascertain, adjust, determine, compromise, and settle any claim for \$2,500 or less that arises out of VHA operations and is asserted under the Federal Tort Claims Act.

2. POLICY: It is VHA policy to implement the revised Title 38 Code of Federal Regulations (CFR) 14.600 that was published in the Federal Register on August 30, 1999, effective from the same date.

3. ACTION

a. Settlement authority for Federal Tort Claims for \$2,500 or less and arising out of VHA operations for money claims filed under the Federal Tort Claims Act is extended to Network Directors and facility Directors. This delegation is enumerated under 38 CFR 14.600. It covers damage or loss of property or personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of the employee's office or employment.

b. Settlement authority for Federal Tort Claims for \$2,500 or less and arising out of VHA operations to reconsider final denial of a claim by a Network Director or facility Director is resident with the Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose. The denial letter needs to advise the claimant(s) of the right to request reconsideration by the Regional Counsel; it should also 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, Section 1346(b) and 2671-2680, which provides 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 (Title 28, United States Code, Section 2401(b)). If you do initiate such a suit, you are further advised that the proper party defendant is the United States, not VA." A copy of the denial letter, and a copy of the claim, should be provided to the Regional Counsel.

c. Regardless of the amount, information on medical malpractice settlements must continue to be reported to the Office of Medical-Legal Affairs (11ML) which is co-located at the VA Medical Center Buffalo, NY. Upon receipt of settlement notice, that office undertakes any necessary collection of additional evidence to support peer review and consideration of reporting to the National Practitioners Data Bank. A copy of a settled tort claim needs to be furnished to Regional Counsel and the Office of Medical-Legal Affairs (11ML).

THIS VHA DIRECTIVE EXPIRES JANUARY 31, 2015

VHA DIRECTIVE 2010-004

January 14, 2010

4. REFERENCE: None.

5. FOLLOW-UP RESPONSIBILITY: The Office of Patient Care Services, (11) is responsible for the contents of this Directive. Questions need to be addressed to 202-461-7590.

6. RESCISSION: VHA Directive 99-066 is rescinded. This VHA Directive expires January 31, 2015.

Gerald M. Cross, MD, FAAFP
Acting Under Secretary for Health

DISTRIBUTION: E-mailed to the VHA Publications Distribution List 1/22/2010