



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 6300.3A
JAG 15
16 Dec 2005

SECNAV INSTRUCTION 6300.3A

From: Secretary of the Navy

Subj: MEDICAL MALPRACTICE CLAIMS AGAINST MILITARY AND CIVILIAN
PERSONNEL OF THE ARMED FORCES

Ref: (a) DOD Directive 6000.6 of 2 July 2004
(b) Title 10, United States Code, Section 1089
(c) Title 28, United States Code, Section 1346(b)
(d) Chapter II, JAGMAN

1. Purpose. This instruction implements reference (a) by assigning responsibility for administering the provisions of reference (b) to the Judge Advocate General.

2. Cancellation. SECNAVINST 6300.3.

3. Background. Prior to enactment of reference (b), some health care officials were immune from suit by the legal doctrine of official immunity; however, the outcome of any judicial decision on a particular fact situation could not be predicted with certainty. The intent of Congress in passing reference (b) was to insulate all Department of Defense (DoD) medical personnel from the expense of defending malpractice suits and the cost of paying judgments or settlements in such suits.

4. Persons Covered. All DoD health care providers performing health care functions under or associated with the Department of the Navy are covered by reference (b) so long as the alleged malpractice occurred while acting in the scope of official duties or employment. The term "DoD health care provider" includes any member of the Armed Forces, civilian employee of the DoD, or personal services contract employee under 10 U.S.C. § 1091 authorized to perform health care functions. The term does not include any contract provider who is not a personal services contract employee.

5. Scope of Employment. All officially assigned duties are considered to be in the scope of employment. This includes, among other things, health care performed by Navy personnel assigned to a civilian hospital pursuant to an external resource sharing agreement, training affiliation agreement, or other authorized arrangement. Scope of employment does not include employment of Navy personnel at civilian health care facilities during non-duty hours ("moonlighting").

6. Extent of Protection. Reference (b) extends coverage within the United States and its possessions by making suit against the

United States under the Federal Tort Claims Act, reference (c), the exclusive remedy for an injured party. The Secretary of Defense can either hold harmless or provide liability insurance to the health care provider who is liable for damages for personal injury or death as a result of the health care provider's act or omission in connection with his or her authorized activities in situations where the Federal Tort Claims Act does not apply.

7. Exercise of Delegated Authority. By reference (a), the Secretary of Defense delegated to the Secretary of the Navy the authority to hold harmless or provide liability insurance for Navy health care personnel. All persons referred to in paragraph 4 above and in subsection (a) of reference (b) are hereby held harmless for damages resulting from negligent or wrongful acts or omissions while acting within the scope of duties performing health care functions and assigned to duty in a foreign country, or detailed for service with other than a Federal agency, or if the circumstances are such as are likely to preclude remedy against the United States under the Federal Tort Claims Act, as provided by subsection (f) of reference (b).

8. Action

a. Defendant. Health care personnel of the Department of the Navy who are sued for Navy-related activities must immediately deliver all process and pleadings served upon them (or an attested true copy thereof) to the commander of the facility where they were attached at the time of the incident giving rise to the suit.

b. Commanding Officer.

(1) Upon receipt of process and pleadings as provided above, the commanding officer must promptly furnish copies to the appropriate United States Attorney, to the Attorney General, and to the Secretary of the Navy (Judge Advocate General).

(2) Upon receipt of process or pleadings, or upon notice of any claim or potential claim, a litigation report investigation conforming to reference (d) must be conducted promptly, and the commanding officer must report in the endorsement whether or not the acts giving rise to the claim were performed in the scope of official duties or employment.

(3) Upon learning that a claim or lawsuit has been filed, the Judge Advocate General (Claims, Investigation, and Tort Litigation (Code 15)) must be notified immediately by telephone at 202-685-4600. If no investigation was conducted, then an investigation will be started immediately. Certified copies of all claims, service of process, and pertinent papers must be forwarded by ordinary mail to the Office of the Judge Advocate General, 1322 Patterson Ave. SE, Suite 3000 (Code 15), Washington Navy Yard, DC 20374-5066.

c. Judge Advocate General. The Judge Advocate General will:

(1) Maintain liaison with the Attorney General and the appropriate United States Attorney.

(2) Provide the Attorney General adequate information upon which to base the scope of employment determinations required by reference (b).

(3) Monitor each case to ensure that, whenever appropriate, such cases must be transferred to the appropriate U. S. District Court and deemed a tort case against the United States.

(4) Arrange through the Department of Justice to defend actions brought against Navy health care personnel for acts performed in the scope of their duties or employment.

Gordon England

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