

2001 Claims Training Course

MEDICAL MALPRACTICE INVESTIGATION

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I. INTRODUCTION.

A. A Tort is a Tort. Medical malpractice claims are just like all other tort claims. That is, they require **proof of duty, breach of duty, causation, and injury**. These claims differ only in that they involve medical professionals and the practice of medicine. The investigation of these claims, therefore, require specialized knowledge and the use of medical personnel to assist with the evaluation of the facts and evidence.

B. Potentially Compensable Events. A potentially compensable event (PCE) is any occurrence that may one day result in a claim. A PCE might arise from any medical procedure that resulted in an unfortunate, or unexpected outcome. Once a PCE has been identified, it should be treated as a claim and promptly investigated, before a claim is filed.

C. Evidence. Medical documentation (records, x-rays, diagnostic studies, pathology material, medical equipment, personal notes and letters) is admissible in evidence either as an official record or under the business entry rule. Thus it is imperative to **locate, retrieve, and safeguard** all data and items associated with the treatment of the patient as soon as possible.

D. Timeliness. It is the key to any thorough and complete investigation. With the passage of time, witnesses become forgetful or partisan in their view of the events or the role they might have played in the patient's treatment. As stated above, **timeliness in sequestering physical evidence is extremely important**.

E. Reference Materials. Your office should contain basic reference materials, which may include:

1. Legal Reference Material:

a. Federal Tort Claims Act (28 USC 1346(b), 2671-2680), and Military Claims Act (10 USC 2733).

b. Pertinent claims statutes for the states within your jurisdiction.

c. National Defense Authorization Act, Fiscal Year 2001 (Public Law 106-398, 106th Congress). Attachment A.

2. Military Publications:

- a. Army Regulation (AR) 27-20, Claims
- b. Department of Army Pamphlet (DA Pam.) 27-162, Claims..
- c. Army Regulation (AR) 27-40, Litigation.
- d. Army Regulation (AR) 40-3, Medical, Dental, and Veterinary Care.
- e. Army Regulation (AR) 40-66, Medical Record Administration.
- f. Army Regulation (AR) 40-68, Quality Assurance Administration.
- g. FTCA Handbook. This may be found on the JAGCNet.

3. Medical Literature: Remember to use the medical library located within your Military Treatment Facility (MTF) whenever necessary.

a. The Merck Manual. May also be found online at www.merck.com.

b. Medical Dictionaries (e.g., Taber's Cyclopedic Medical Dictionary; Dorland's Illustrated Medical Dictionary; or Stedman's Medical Dictionary; and Jablonski's Dictionary of Medical Acronyms and Abbreviations) (updated by publisher every three to four years).

c. Physicians' Desk Reference, or equivalent (updated by publisher yearly). May also be found online at www.pdr.net.

d. Anatomy text or atlas (e.g., Gray's Anatomy of the Human Body; or Grant's Atlas of Anatomy; and McMinn & Hutchings' Color Atlas of Human Anatomy) (updated by publisher as needed). Gray's Anatomy may be found online at www.graysanatomy.com. Another internet resource is "Human Anatomy Online" at www.innerbody.com/htm/body.html.

e. Dictionary of Medical Abbreviations (e.g., Medical Acronyms & Abbreviations or Medical Abbreviations or Dictionary of Medical Abbreviations: 14,000 Conveniences at the Expense of Communications and Safety). A list of abbreviations authorized by the U.S. Army Medical Command (MEDCOM) can be found in AR 40-66 (Medical Record Administration and Health Care Documentation).

f. The Internet offers a wealth of medical information. It may take some online searches, however, before you find the information pertinent to your investigation. A list of helpful websites to assist in your research is at Attachment B.

II. BASIC REQUIREMENTS.

A. Professional Relationships. Establish a working relationship with key hospital personnel at your local MTF. They can be a great source of medical knowledge and factual information and will alert you to PCE's. DA Pam 27-162, para 2-57a(2).

1. MEDCEN or MEDDAC. Together with your SJA, establish and maintain contact with the Medical Center (MEDCEN) or Medical Activity (MEDDAC) Commander.

2. Quality Assurance and Risk Management. Visit the Quality Assurance (QA [also known as Quality Improvement]) Coordinator and Risk Manager (RM) as often as necessary. At a minimum, these visits should occur on a weekly basis. The QA Coordinator and RM Manager have the "inside knowledge" on any PCE. Attend all Risk Management Committee and QA meetings. The Claims Judge Advocate should be a non-voting member of the committees.

(a) Serious adverse events. The Quality Assurance Administration Regulation (AR 40-68, para 3-5) requires that all serious adverse events¹ be reported and investigated, whether or not they are compensable. These events are to be reported on a Quality Assurance/Risk Management Document (DA Form 4106) (Attachment C). Screen all such incident reports and investigate as indicated. AR 40-68, para 3-5, also directs that all adverse events be entered on the Medical Record-Doctor's Progress Notes (SF 509).

(b) Sentinel Events. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) requires that hospitals inform patients when they have been subjected to medical errors that constitute a sentinel events (SE)². The SE must also be reviewed and reported to JCAHO within 5 days of its identification. The proposed AR 40-68, para 12-5, further requires that all SE's also be reported to MEDCOM within 72 hours of identification. Screen all such incident reports and investigate as indicated.

3. Patient Administration Division. The Patient Administration Division (PAD) is responsible for maintaining medical and dental records. It is also responsible for providing copies of those records to the appropriate parties in accordance with the

¹ An adverse event is defined as an occurrence in which a patient suffers any unintentional or unexpected negative result during medical treatment.

² A sentinel event is defined as an unexpected occurrence involving death or serious physical or psychological injury, or risk thereof.

Medical Record Administration Regulation (AR 40-66), as explained in paragraphs II.B.2(b)(1) and II.B.2(b)(2) below.

B. Secure All Relevant Evidence.

1. Medical Equipment. Most hospital supplies and some equipment items are designed to be discarded after a single use. A mislabeled or incorrectly dispensed drug container might be disposed of. Malfunctioning equipment is quickly replaced or repaired. The supplier or manufacturer should be immediately invited to participate in a joint inspection of the item in question. **Do not permit the hospital personnel to return the item to the manufacturer for inspection.**

2. MTF Medical Records. The most reliable evidence is the contemporaneous notes, special studies, and any other documents that were created at the time the treatment was provided. Determine which records are relevant to the incident that gave rise to the claim. Determine whether medical records that predate or postdate the incident are necessary to determine liability or damages. DA Pam. 27-162, Table 2-6, pages 107-109, contains a list of possible sources for medical records within an MTF.

(a) Securing Medical Records: AR 40-66, para 11-4b(1), requires medical or dental records involved in malpractice claims or litigation be maintained separately in locked filing cabinets or safes. Keep your MTF informed of any PCE or claim.

(b) Obtaining Copies of Medical Records.

(1) Release of Records. AR 40-66, para 11-4a, directs that PAD *will not* release medical records [pertinent to any PCE, administrative claim, or litigation] directly to the patient or the patient's authorized representative. PAD may provide copies of such records *only* to the Claims Attorney who will then be responsible for any further release. The Claims Attorney must make requests for original records, in writing.

(2) Psychiatric Records. Before releasing psychiatric records to a claimant, or his attorney, you must ensure that the claimant has not been denied access to that record. Paragraph 2-3a(2), AR 40-66, states that a patient may be denied access to information or documents from his own medical records if the information contained in those records could adversely affected his physical, mental, or emotional health.

(3) Authenticated Copies. Request authenticated [certified] copies from your PAD. PAD is the only office in an MTF that can make an authenticated (official) copy.

(4) Legible and Complete Copies. Ensure that you are provided with legible and complete copies. AR 40-66, para 11-4b, requires that PAD or DENTAC review the original medical or dental record for completeness and that it is assembled in the appropriate order prior to copying. It further requires that reproductions be legible, without any portion of a page missing, and numbered consecutively before copying.

(5) Multiple Copies. You should always request that your PAD provide you with multiple copies of all outpatient and inpatient records relating to treatment associated with the alleged injury. Some hospitals are more cooperative than others in providing copies. Remember that you will need a copy of the medical records for your claim file, as well as copies for USARCS, the Consultation Case Review Branch (CCRB), and the claimant.

(6) One-Sided Copies. You should also request that copies of medical records be copied only on one side of the paper. One-sided copies are much easier to read and greatly reduce the chance of inadvertently failing to copy the back side of a medical record.

(c) Retired Records. Retired medical records will have to be requested from the National Personnel Records Center, St. Louis, Missouri. Your PAD can assist in this process.

(d) Obtain Computer Printouts. All patient transactions at an MTF are logged-into that facilities' database. This tracking system is referred to as the Composite Health-Care System [CHCS]). Be sure to request copies of these computer printouts to get a complete picture of the claimant's medical history at your facility. CHCS information will include listings of all outpatient visits, inpatient admissions, laboratory reports, radiology, special diagnostic studies, and medication obtained through the pharmacy.

(e) Convenience Files. Some clinics maintain an abbreviated medical record for the physician's convenience. Be sure to routinely include such clinics (even though they may be physically located apart from the hospital, or may be at a satellite installation) when searching for medical records.

(f) Physician's notes and research files. Physicians often maintain documentation separate from both the patient's file and the convenience. Such documentation may include the following:

(1) Notes or memos which concern treatment or discussions with the patient or patient's family.

(2) Letters to and from other physicians.

(3) Photographs, slides, and video tapes of a procedure (e.g., video of endoscopy), as well as before and after treatment and conditions (e.g., photographs of plastic surgery).

(4) Computer files containing progress notes, personal notes, MFR's, or drafts of professional articles for publication.

3. Civilian Medical Records. Request that the claimant, or the claimant's counsel, provide all civilian medical record, as well as the names of civilian treating facilities and physicians. DA Pam 27-162, para 2-34i(6). Request a release to obtain such records, in the absence of compliance or a timely response. Coordinate with your Area Action Officer (AAO) at the U.S. Army Claims Service (USARCS) before requesting voluminous records from a civilian treatment facility, as it will involve a cost to the Government and any such expenditure must be pre-approved. A model release form is at Attachment D.

III. CONDUCTING THE INVESTIGATION.

A. Upon Notification. Once notified of either a medical malpractice claim or a PCE, you must perform the following tasks:

1. Notify USARCS. If claim involves more than one MTF, coordinate with your AAO to determine which Area Claims Office or Claims Processing Office is responsible for logging-in and investigating the claim.

2. Database. Enter the claim into Tort Claims Database.

3. Notify PAD. Notify your PAD and have them secure all of the patient's pertinent medical records, film, and pathology slides or specimens. Request that PAD make the appropriate number of copies of the claimant's medical records.

4. Provide Copies of Claim. Send a copy of the claim to each of the following: USARCS; the appropriate MTF commander; MEDCOM (ATTN: MCHO-CL-Q, 2050 North Road, Fort Sam Houston, Texas 78234-6000); and the Department of Legal Medicine, Armed Forces Institute of Pathology (6803 Colesville Road, Metro Plaza, Suite 860, Silver Spring, Maryland 20910-9813). AR 27-20, para 2-12e(2).

5. Contact Claimant's Attorney. Contact the claimant's attorney to discuss the allegations before your investigation begins, in order to insure what is being alleged will be investigated. DA Pam 27-162, para 2-57c.

B. Review and Organize Medical Records.

1. Review. Review the medical records to ensure that each page is legible and that the claim is complete. If the record contains illegible or missing pages, have the PAD provide better copies.

2. Organize. Arrange records so that outpatient records are separated from individual inpatient admissions. If medical records are not numbered, arrange the records in chronological order before attempting to interpret the records. Although this can be a time consuming task, it will save time in the long-run and will simplify the investigation.

process. If the records are numbered, an extra copy can be made and rearranged into chronological order.

C. Identify Health Care Providers (HCP's).

1. Status of HCP's. Determine the status of all HCP's by both employment status and medical specialty. The possible employment categories for HCP's include:

(a) Active duty military. Indicate which branch of the Armed Services. (e.g., Dr. (Cpt/Air Force) Jane Doe, Family Practice, Resident; 1LT (Army) John Smith, Registered Nurse).

(b) U.S. Government civilian employee.

(c) CHAMPUS Partner.

(d) Personal Services Contractor.

(e) Civilian Consultant.

(f) TRICARE Clinic Provider

(g) Volunteer.

2. Civilian Employees. It may take some investigation to determine the employment status of an HCP. Personal services contractors may be considered Government employees if their contract so provides. However, if a personal services contractor was contracted through a hiring agency, the agency may have liability insurance. If a non-Government HCP is involved, certain actions must be taken (DA Pam 27-162, para 2-57e(2)-(4)):

(a) Obtain Documents. Immediately obtain copies of the contract or partnership agreement; credentials file, and certificate of insurance. Ensure that the contract is for the correct period of time (when the malpractice allegedly occurred).

(b) Notify the Claimant's Representative. You should notify the claimant's representative, putting them on notice of the provider's independent contractor status, and that the health care provider is not a Federal employee. Be sure to inform the claimant's attorney as soon as possible, particularly before the applicable state statute of limitations has run.

(c) Notify the Provider's Insurance Company. Send written notification to the provider's insurance company of the claim and the Army's position that the United States is not liable for their insured's conduct pursuant to the independent contractor exception under the Federal Tort Claims Act.

D. Establish the Sequence of Events.

1. Determine the following:

- (a) When, where, and how the injury occurred.
- (b) What happened and who was present when the injury occurred?
- (c) Why did the injury occur?

2. Medical Chronology. Prepare a chronology of the medical treatment provided to the claimant. The usefulness and necessity of a well-organized chronology cannot be overstated. It provides a synopsis of treatment that can be quickly accessed. A sample medical chronology is at Attachment E.

E. Establish the Role of Each HCP. Was the HCP following orders of another, such as a more senior resident? There will often be a senior medical staff provider who will remain behind the scenes, but who is actually directing the treatment of the patient via the ward staff (i.e., intern, residents, fellows, medical students, registered nurses, etc.) Many times the senior medical officer will not write notes in the chart, and in the case of an operation, will not even be listed as being present in the operating room. DA Pam 27-162, para 2-57e.

F. Create a Witness List. Create a witness list that includes each person's present address, home of record, PCS or ETS date, and next of kin. Service and department chiefs, the QA Office, the Graduate Medical Education Office, relevant corps branch assignment offices (Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps) and various websites may prove helpful in locating witnesses (See Attachment B).

G. Use of QA and RM Investigations.

1. Obtain the QA review and use it as a starting point. U.S. military claims personnel have access to QA records because they are DOD employees whose duties require access. See 10 U.S.C. 1102, AR 40-68, and DA Pam 27-162, para 2-5e(2). A separate investigation is also necessary as the QA document cannot be released outside of the Army or used at trial. 10 USC 1102; DA Pam 27-162, para 2-57f.

2. Safeguard QA documents.

- (a) Properly mark and segregate all QA documents.
- (b) Do not disclose QA documents to claimants or their attorneys. Be aware, however, that documents are sometimes wrongly marked as a QA document (e.g., a medical record). Discuss such documents with your AAO prior to release.

(c) QA documents should not be provided to Assistant U.S. Attorneys on claims that go into litigation. If a specific request is made, the matter should be referred to the Torts Branch, Army Litigation Division.

3. AR 15-6 Investigations. As a general rule, AR 15-6 Investigations are protected from release only if the investigation is conducted as a QA investigation.

H. Use of Medical Experts. DA Pam 27-162, para 2-60.

1. Standard of Care.

(a) The investigation must establish whether the medical care provided to the claimant met the "standard of care." Standard of care is defined as those actions that are consistent with minimum safe professional conduct under specific conditions, as determined by professional peer organizations.

(b) Normally there are several valid medical treatments for a particular medical condition. Additionally, there is an acceptable failure rate for all medical procedures. A poor outcome due to the occurrence of a risk of the procedure might be defensible, if the risks of the procedure have been adequately explained by the physician. Similarly, a poor outcome due to substandard care may be compensable.

3. Medical Reviews at a Local Level. It can be extremely helpful to have HCP's at your local MTF (within the appropriate medical specialty) review medical malpractice claims for both standard of care and damages and prepare written opinions. The review should be viewed critically in light of the propensity of colleagues to avoid criticism of one another's work.

IV. INTERVIEWING HEALTH CARE PROVIDERS.

A. Preparation.

1. Facts. Do not interview a HCP until you understand both the allegations and the standard of care. Be familiar with the facts and have a general understanding of the medical treatment involved. For general guidance, see DA Pam 27-162, para 2-61, 2-62.

2. Medical Records. Have two copies of the records present during the interview. Use your medical chronology to ensure that all HCP treatment of the patient is identified.

3. Prepare HCP. Provide a copy of the pertinent records to the HCP prior to the interview, when possible. Allow the HCP to review the allegations (claim form) and any expert opinions the claimant has provided. Ask for the HCP's comments concerning the allegations and his opinion of the claimant's medical expert's opinion. The HCP may

have some valid points to make in the defense of the allegations and the claimant's medical expert's opinion which will assist in the overall defense of the claim.

B. Conducting the Interview. Obtain the HCP's curriculum vitae (CV). If there is no CV, find out the following:

1. When and where did he graduate from college?
2. When and where did he graduate from graduate training (i.e., medical school, nursing school, etc.)?
3. What are his medical specialties?
4. Is he board certified? If so, what was the date of certification in each specialty?
5. Does he hold a membership in any professional organization?.
6. What hospital privileges and type of privileges (list all hospitals) did he possess at the time of the incident.
7. What hospital staff position did he hold at the time of the incident? What positions did he hold prior to the incident (list all hospitals)?
8. List of pertinent publications and presentations.
9. What is his future plans or intended assignments (i.e., MEDCEN or MEDDAC staff, civilian fellow, private practice). Obtain a future address whenever possible.

C. Discuss the HCP's experience in the medical field involved, e.g., the number of procedures he or she had done (with and without assistance) prior to the incident.

D. The HCP's Involvement.

1. Have the HCP explain, in narrative fashion, his involvement with the patient and the medical care at issue. Ask him if he believes the claim should go to trial. Have a specific list of areas to discuss with the HCP and a specific list of questions. Questions should be open ended initially to obtain the HCP's overview and should cover the following issues:

- (a) What was the staffing during care? What was the interplay of staff during care?
- (b) What was the involvement of other HCP's during care?
- (c) What was the quality of the HCP's rapport with the patient?
- (d) What was the step-by-step care that the HCP provided to the patient?

(e) Clarify any responses whenever necessary.

2. Review the HCP's Account. After the HCP has discussed the case and answered your questions, review with him the data set forth in the medical records, such as:

(a) How often did he visit the patient?

(b) What was the HCP's day-to-day involvement with the patient?

(c) Were any visits not recorded? If so, why?

(d) What complaints did the patient have at each visit and were these complaints recorded in the records?

(e) Resolve any conflicts between what the HCP now states and what is in the contemporaneous records.

3. Informed Consent Issues (if indicated).

(a) Treatment Choices. Ask the HCP what treatment options were considered for the patient by the treating medical staff. Determine whether the advice of any other physicians was sought regarding the medical or surgical management of the patient. If so, ask what the recommendations were.

(b) Patient Counseling. Establish whether the patient received counseling for the treatment received and, if so, the quality of that counseling. Ask when the counseling was provided and by whom. Were optional treatment plans discussed? Were all risks of the procedure discussed? Was any of the counseling written in the medical record? Was an informed consent form signed?

4. Discussions with Patient. What, if any, discussions did the HCP have with the patient or family member after the injury occurred? If the patient is alleging that the HCP admitted liability, obtain his version of any conversation.

5. HCP's Notes. Ask the HCP whether he has any notes or research files on the patient in his possession, which are not in the official file.

6. HCP's Opinion of Care. Ask the HCP what his opinion is concerning the standard of care. Tell the HCP what his role would be, if the case were to go to trial.

7. HCP's Personal Health. Query the HCP about his own health or physical condition at the time he rendered treatment to the patient.

E. Prepare an MFR. Take notes during the interview and later prepare a memorandum based on your notes. Do **not** create a verbatim recording of the interview

or have the provider sign a written statement. Without the MFR, the interview is of little value. Have the HCP review the MFR for completeness and accuracy.

V. INTERVIEWING THE CLAIMANT.

A. Claimant Interview. The claimant interview is crucial to a complete claims investigation. For FTCA claims, the claimant has to volunteer to an interview. For MCA cases, a claimant's refusal to consent to an interview may be grounds for denial. AR 27-20, para 3-5b(3)(a). For guidance in the preparation and conduct of a claimant interview, see DA Pam 27-162, para 2-34i-n.

B. Preparation for the Interview.

1. Time Allotted. Allow adequate time to conduct the interview. Quality interviews cannot be performed in a hurry.

2. Site. If at all possible, arrange the interview to take place at the claimant's home. This way you are able to observe the claimant's life-style, interpersonal interactions with family members, and ability or inability to perform some of the basic activities of daily living.

3. Pre-Interview Homework.

(a) Obtain as many of claimant's medical, military, and financial records as possible.

(b) Prepare a medical chronology and relate that care to any key events in claimant's life of which you are aware (e.g., marriage, births, PCSs, retirement, etc.).

(c) Make a list of any matters which need clarification (e.g., contradictions in the records, or conflicts between the records and the allegations).

(d) Prepare a list of questions, or outline general areas, to discuss with the claimant. Be familiar with the checklist at Figure 2-23, DA Pam 27-162 (pages 111-112).

C. Participants in the Interview.

1. A claims attorney and investigator should conduct a claimant interview. If you do not have an investigator, you should try to take some other claims person with you to assist in taking notes.

2. In addition to the claimant(s), any family member should also be present who was present during the actual care received by the claimant.

3. If the claimant is unrepresented, a Claims Attorney may not need to be present. This, however, is a decision to be made with your AAO.

VI. CONDUCT OF CLAIMANT INTERVIEW.

A. **Do not admit liability.** Such an admission can be introduced at trial.

B. **Introductory Remarks.** Explain who you are, your role, and the purpose of the interview.

C. **Demeanor.** Do not take an adversarial position. The purpose is to find out as much as possible about the claimant, his family, and why he filed a claim. Try to believe what the claimant is saying. Ask for further clarification where indicated.

VII. CONTENT OF THE CLAIMANT INTERVIEW.

A. **Initial Questions.**

1. Your first questions should always be designed to elicit as much personal background information as possible. These questions should address issues such as date and place of birth; maiden name; social security number; education level (when and where he/she graduated from high school, college, graduate school); date of marriage (if applicable); how many marriages; how many children; how many siblings; general health; health of parents and siblings.

2. If the claimant's spouse is also present, make sure that you ask about his or her personal background. The spouse will inevitably influence the ultimate settlement decision.

3. The responses are invaluable in evaluating damages, particularly for structured settlements.

B. **Liability Issues.**

1. **Claimant's Medical History.** Ask the claimant about his or her past medical history. Obtain a complete history of the claimant's medical care and treatment prior to the incident. These questions are intended to discuss health issues that are unrelated to the claim and should include all major or chronic illnesses (i.e., diabetes, hypertension), any hospitalizations, and any long-term medication use.

2. Family Medical History. Obtain a complete history of the claimant's family (spouse, parents, and siblings) medical history. This may become especially important in larger cases when you may need to determine the life-expectancy of all parties.

3. Medical Care Giving Rise to the Claim.

(a) Have the claimant relate the incident as he recalls it. After the claimant is finished with his independent recollection, go back and review the same events with the claimant, with specific references to the medical records.

(b) Ask the claimant what records and documents he reviewed prior to the interview. If the claimant states that he did not review anything, ask the claimant when he *last* reviewed his medical records.

(c) Make certain that all patient visits are covered and that the pertinent medical records are complete. If the claimant is a poor historian, use appropriate references to medical records to jog his memory.

(d) As applicable to a particular case, go over the incident either month by month (e.g., delay in diagnosis of cancer), week by week (e.g., delay in diagnosis of an infected, nonhealing fracture), day by day (e.g., delay in diagnosis of an ectopic pregnancy), hour by hour (e.g., delay in diagnosis of meningitis, or minute by minute (e.g., delay in diagnosis of an anaphylactic reaction).

(e) Carefully explore any apparent contradictions between the medical record entries and the claimant's recollections of events.

(f) Make sure that the claimant accounts for all periods of non-treatment.

(g) Query the claimant about any discrepancies between his recollection of events and that of the treating physicians(s) who were previously interviewed.

C. Damages Issues. (See, generally, DA Pam 27-162, para 2-341).

1. Introductory Remark. Preface your questions on damages with an introductory remark regarding the need to ask all questions at a single interview. Clarify that you

have not yet determined whether liability exists in the case, but that you want to avoid subsequent inconvenience and/or delay in the event that liability is established.

2. Quality of Life. Ask the claimant how the alleged injury has impacted specifically on his ability to perform his job; conjugal duties; parental responsibilities; social responsibilities; leisure time activities; and the basic activities of daily living.

3. Day-to-Day Life: In serious injury cases, have the claimant describe a typical day or week in his life.

(a) Have the claimant relate the nature and schedule of any medication, therapy, or other medical appointments.

(b) If the claimant is alleging permanent pain and suffering, ask him to describe in detail the type and frequency of the pain. What actions or activities exacerbate or alleviate the pain? Use a scale of 1 to 10 when asking about degree of pain.

4. Photographs and Videotape.

(a) Request before and after photographs, if the damages include compensation for serious injuries.

(b) Request videotapes in cases involving gross motor deficits, or severe brain damage. In such cases, videotapes are extremely helpful in illustrating the nature and extent of the injured party's disabilities.

D. Conclusion of Interview. At the end of the interview, attempt to secure claimant's consent to be re-interviewed at a later date, if necessary. Also obtain the claimant's permission for you to talk to his employer, teacher, treating physicians, etc., if needed.

VIII. POST-INTERVIEW FOLLOW-UP.

A. Memorandum for Record. Both interviewers should draft a memorandum for record (MFR) of the interview as soon as possible. Provide a copy of the MFR to the claimant. Then, in a separate MFR, record your personal observations of the claimant, his home, his family, and his neighborhood, as well as your personal assessments of the claimant's credibility. This should not be provided to the claimant.

B. Additional Investigation.

1. Follow-up on any leads (e.g., additional witnesses to be interviewed and/or additional documentation to be obtained).

2. Discuss the nature of any permanent disabilities or the need for any future medical treatment with the claimant's treating physicians. You will need to obtain a medical release from the claimant, or his attorney, before speaking with any private physicians.

3. If the claimant is a minor, talk to his teachers, counselors, and therapists regarding his behavior, his communication ability, his interaction with his peers, and his learning potential. Some schools may require written permission from the child's parent before they will speak with you.

4. Talk to the claimant's employer, supervisor, and coworkers to determine his actual ability to perform his job, as well as to assess his future employment prospects. You may need permission from the claimant before employers and coworkers will speak with you. Such permission should not be required if the claimant is employed by the U.S. Government.

5. Conduct a neighborhood check if you are suspicious of the claimant's alleged disability .

IX. STATUTE OF LIMITATIONS INTERVIEW.

A. Where statute of limitations (SOL) is an issue, be sure to inform the attorney of the issue well in advance.

B. Interview all physicians or other witness with information relevant to the SOL issue before the claimant interview.

C. Allocate sufficient time to conduct the SOL interview in conjunction with the claimant interview.

D. Prepare a detailed chronology of events, as well as a detailed list of questions, with references to specific dates, events, and physicians.

X. RECAPITULATION:

A. Understand allegations and theory of liability set forth in the claim. Seek clarification from the claimant's attorney if necessary.

B. Locate, organize, and review all relevant medical records.

C. Provide action officer at USARCS with claim and medical records.

D. Prepare a chronology of medical care.

- E. Review medical literature on the subject of the claim.
- F. Consult with appropriate medical specialist in an effort to understand the standard-of-care issues involved.
- G. Interview HCP's.
- H. Coordinate independent expert review of medical issues with your AAO.
- I. Interview claimant.
- J. Discuss your position with your AAO and agree upon who will take final action on the claim.

XI. ATTACHMENTS.

- A. National Defense Authorization Act, Fiscal Year 2001
(Public Law 106-398, 106th Congress).
- B. List of websites.
- C. DA Form 4106.
- D. Sample medical release.
- E. Sample medical chronology.

Appendix A

NATIONAL DEFENSE AUTHORIZATION, FISCAL YEAR 2001

[[Page 114 STAT. 1654]]

*Public Law 106-398
106th Congress [30 Oct 00]

An Act

To authorize appropriations for fiscal year 2001 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

[...]

SEC. 742. PROCESSES FOR PATIENT SAFETY IN MILITARY AND VETERANS HEALTH CARE SYSTEMS.

(a) Error Tracking Process. The Secretary of Defense shall implement a centralized process for reporting, compilation, and analysis of errors in the provision of health care under the defense health program that endanger patients beyond the normal risks associated with the care and treatment of such patients. To the extent practicable, that process shall emulate the system established by the Secretary of Veterans Affairs for reporting, compilation, and analysis of errors in the provision of health care under the Department of Veterans Affairs health care system that endanger patients beyond such risks.

(b) Sharing of Information. The Secretary of Defense and the Secretary of Veterans Affairs.

(1) shall share information regarding the designs of systems or protocols established to reduce errors in the provision of health care described in subsection (a); and

(2) shall develop such protocols as the Secretaries consider necessary for the establishment and administration of effective processes for the reporting, compilation, and analysis of such errors.

[...]

SEC. 754. PATIENT CARE REPORTING AND MANAGEMENT SYSTEM.

(a) Establishment. The Secretary of Defense shall establish a patient care error reporting and management system.

(b) Purposes of System. The purposes of the system are as follows:

(1) To study the occurrences of errors in the patient care provided under chapter 55 of title 10, United States Code.

(2) To identify the systemic factors that are associated with such occurrences.

(3) To provide for action to be taken to correct the identified systemic factors.

(c) Requirements for System. The patient care error reporting and management system shall include the following:

(1) A hospital-level patient safety center, within the quality assurance department of each health care organization of the Department of Defense, to collect, assess, and report on the nature and frequency of errors related to patient care.

(2) For each health care organization of the Department of Defense and for the entire Defense health program, patient safety standards that are necessary for the development of a full understanding of patient safety issues in each such organization and the entire program, including the nature and types of errors and the systemic causes of the errors.

(3) Establishment of a Department of Defense Patient Safety Center within the Armed Forces Institute of Pathology, which shall have the following missions:

(A) To analyze information on patient care errors that is submitted to the Center by each military health care organization.

(B) To develop action plans for addressing patterns of patient care errors.

(C) To execute those action plans to mitigate and control errors in patient care with a goal of ensuring that

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the health care organizations of the Department of Defense provide highly reliable

patient care with virtually no error.

D) To provide, through the Assistant Secretary of Defense for Health Affairs, to the Agency for Healthcare Research and Quality of the Department of Health and Human Services any reports that the Assistant Secretary determines appropriate.

(E) To review and integrate processes for reducing errors associated with patient care and for enhancing patient safety.

(F) To contract with a qualified and objective external organization to manage the national patient

(d) MedTeams Program. The Secretary shall expand the health care team coordination program to integrate that program into all Department of Defense health care operations. In carrying out this subsection, the Secretary shall take the following actions:

(1) Establish not less than two Centers of Excellence for the development, validation, proliferation, and sustainment of the health care team coordination program, one of which shall support all fixed military health care organizations, the other of which shall support all combat casualty care organizations.

(2) Deploy the program to all fixed and combat casualty care organizations of each of the Armed Forces, at the rate of not less than 10 organizations in each fiscal year.

(3) Expand the scope of the health care team coordination program from a focus on emergency department care to a coverage that includes care in all major medical specialties, at the rate of not less than one specialty in each fiscal year.

(4) Continue research and development investments to improve communication, coordination, and team work in the provision of health care.

(e) Consultation. The Secretary shall consult with the other administering Secretaries (as defined in section 1072(3) of title 10, United States Code) in carrying out this section

Appendix B USEFUL WEBSITES

1. "Yellow Page" type websites: www.yellowpages.com, www.people.yahoo.com, www.switchboard.com, www.infospace.com, and www.altavista.com.
2. Locate physicians with www.docboard.org (Association of State Medical Board Executive Directors) and www.ama-assn.org (American Medical Association).
3. Determine whether a physician is board certified at www.abms.org (American Board of Medical Specialties) or whether a surgeon is a Fellow of the American College of Surgeons at www.facs.org.
4. A "Summary Table of State Medical Board Web Sites" can be found at www.citizen.org/documents/1506uptodate.PDF.
5. Locate lawyers with www.martindale.com and www.lawyers.com.
6. Locate military personnel using the World Wide Locator on the Enlisted Records and Evaluation Center's web site at www.erec.army.mil. Information on military personnel may also be found at www.militarycity.com.
7. Explore the Internet by subject matter if you are trying to obtain information on a particular medical condition, disease, treatment, or procedure. For example, cardiology information may be found at www.americanheart.org (the American Heart Association) and information on cancer may be found at www.nccn.org (National Comprehensive Cancer Network) and at www.nci.nih.gov (National Cancer Institute). A good place to start with your search is at Yahoo!Health at <http://health.yahoo.com>.

*NOTE: These sites can change location, URL, or be deleted for various reasons.

Appendix C
Omitted

Appendix D

[ADDRESS OF HOSPITAL/CLINIC]

SUBJECT: MEDICAL INFORMATION RELEASE

I, [CLAIMANT'S NAME], having filed a claim against the United States under the provisions of Title 28, United States Code, Section 2671, et seq., for the negligent infliction of personal injuries, do hereby authorize any person assigned to or acting on behalf of the

[NAME AND ADDRESS OF PERTINENT CLAIMS OFFICE] to examine, copy, or otherwise reproduce any record, memorandum, radiographic film, or other document in the possession or custody of any physician, dentist, nurse, therapist, or any other health care provider concerning my medical history and condition and to fully and openly engage in discussions with such physicians, dentists, nurses, therapists, and other health care providers regarding my medical history and condition to whatever extent necessary or convenient to properly investigate the pending claim. This release shall also extend to any present or former employer, school, the Workman's Compensation Commission, the Social Security Administration, and any other person or public and private agencies with information pertinent to my background, health needs, or medical conditions.

A photocopy of this Release shall have the same force and effect as an original. Unless sooner revoked in writing, this Release shall expire one year from the date of the last signature affixed below.

DATE: _____

NAME]

[CLAIMANT'S

Witness (Signature)

Witness (Printed Name and Date)

[ATTORNEY'S NAME], Attorney at Law

(Signature and Date)

Appendix E

Janie B. Goode (00-456-T001)
Medical Chronology

Significant Medical History:

DOB: 14 Jun 74

DOI: 21 Aug 00

19 Dec 92: Emergency low transverse cesarean section complicated by preeclampsia.

18 Mar 96: Emergency low transverse cesarean section.

21 Apr 96: Laparoscopic cholecystectomy

Date/Time	MTF/HCP	Synopsis of Medical Treatment	Page #
08 Nov 99	Campy Swampy Army Medical Hospital (CSACH) Primary Care Clinic Dr. (CPT) Suzy Queue	S: Urinary pain x 2 days A: Suprapubic discomfort, prob. Premenstrual.	12
12 Jan 00	CSACH Primary Care/Dr. Queue	S: May be pregnant Followed by Civ MD in Alabama A: Prob not pregnant, pt anxiety ↑. P: HCG	43
20 Nov 00	CSACH - ER Dr. John Smith	S: Pt dealing with family stressors, spouse in field, grandmother died. Not suicidal or homicidal. 22 y/o female says she has a history of depression. Feels depressed A: R/O depression	45

PRENATAL CARE

15 Apr 00	CSACH Blue Clinic Dr. Dudley Doowright	S: Stomach cramps A: First trimester pregnancy P: Pt instructed to f/u with Blue Team first thing Monday morning.	113
01 May 00	CSACH	Phone Con: Stomach pain-feels dehydrated- might have a bladder infection.	110
13 Jun 00	CSACH - Labor & Delivery (L&D) Dr. (LTC) José Cuervo	Presents to L&D @ 31-5/7 wks c/o pain that is constant in ↓ abdomen, also c/o uc's every 3-4 hr. Not sure if she is leaking fluid or not. Denies bleeding. Placed on Ext's x 2 FHR's 130's. CCUA to lab. Hx of pre- term delivery.	92

		A: 1) Intact membranes; 2) closed cervix; 3) reassuring _____. P: 1) Heat to area; 2) Reassurance	
02 Aug 00	CSACH - L&D Dr. J. Jekyll-Hyde	O: Amb to RR w/ c/o ↓ FM + ? ctxs, EFM [external fetal monitor] x 2 w/FHR 130's. + FM noted by nurse, pt on right side, UA to lab, Pt denies c/o bleeding, negative H2O__ d/c, states ↑ white discharge since 1 Aug 98. A: IUP C 38 w/	90
07 Aug 00	CSACH Dr. Cuervo	_____ @ 38-3/7 wks. Prior c/s x 2. S=D [illegible] See [illegible] Wants TOL. Counseled for VBAC risks. Labor [illegible] RTC 1 wk.	89
09 Aug 00 2000 hours	CSACH Dr. Cuervo	23 yr G4 P2, present to L&D per ambulation with c/o edema of ↓ ext. Denies H/A, blurred vision or epigastric pain. States having irreg ctx that come and go. Denies feeling ctx states "my back just hurts a little right now." C_____ to palpation. A: 1) IUP at ___ wks; 2) Hx of pre-eclampsia/c/x x2; 3) Not in labor. _____ if pre-eclampsia. P: 1) F/U w/_____ in 4 days; 2) Strict _____ & pre-eclampsia precautions.	77
17 Aug 00 1420 hours	CSACH Dr. Jekyll-Hyde	Pt arrives on L&D with c/o SROM @ 1200 - W/UC q 5 min. Pt denies bleeding and reports active fetal movement . . . O: SROM - Nitrazine ³ negative, Ø pooling, Ø ferning Cervix [illegible] A/P: 23 y/o G4 P2 @ 40-1/7 wks. Labor precautions, FKC's; Keep f/u appt.	23
20 Aug 00 0850 hours	CSACH Ms. Betty Lou, RN	Labor precautions given to pt. Pt verbalizes understanding. Pt instructed to rest until Second wears off. Pt accompanied by staff.	27

ADMISSION

³ Used in the diagnosis of ruptured membranes by analyzing the pH of the vaginal secretion.

21 Aug 00 0630 hours	CSACH Admit Note Dr. Cuervo	. . . presents with c/o continued ctx 2-3 days. Pt also reports leaking fluid w/coughing. Ø SOB Ø F__. Pt c/o lower pelvic pressure. A/P: . . . Pt likely in protracted latent phase of labor. Pt w/cervical Δ after __ walking. - Admit for Demerol rest b/c pt _____ - Routine admit labs - Continue expectant management - Dr. Jekyll-Hyde agrees w/above plan.	14
21 Aug 00 1030 hours	CSACH Dr. Jekyll-Hyde	. . . in latent labor - LTCS X 2 in past - now w/ctx's at 4-6 with little cervical ____ - continue to monitor progress - will recheck cervix at 1200 for re-eval.	34
21 Aug 00 1525 hours	CSACH Counseling Note Dr. Cuervo	Pt is a 24 yo G3 P2 A 40-5/7 wks by LMP. Pt w/Hx of c/s x 2. Pt w/admission to L&D for painful uterine ctx's w/cvx 2/75-3/vtx. Pt w/desire for TOL after reviewing risks/benefits this am. I ____ called to L&D to evaluated Pt secondary to inability to place FSE [fetal scalp electrode] on my exam. Fetus ____ w/large amount of BRB [bright red blood]. Pt counseled & consented for repeat c/s. Now to O2	37
21 Aug 00 1530 hours 1611 hours	CSACH Dr. Cuervo	Anesthesia is begun. Operation: Emergency repeat cesarean section. Postoperative Dx: Catastrophic uterine rupture, delivery of a stillborn male fetus, Apgars of 0, 4215 grams, secondary to uterine rupture.	53