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July 15, 2009

**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 facility 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 VHA Directive 2008-002, Disclosure of Adverse Events to Patients.*
- 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 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 "Occupation/Field of Licensure Codes." These regulations establish a malpractice payment review process, and authorize licensed practitioners to submit a written statement for consideration by the review panel which will determine for whose benefit a claim for medical malpractice was made. However, because the regulations concern only the post-payment review process, some practitioners have asserted that they do not receive timely notice of claims. 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 (see VHA Handbook 1100.17).*
- 3. POLICY:** It is VHA policy that each facility Director provide written notification to all licensed practitioners when a claim for medical malpractice is filed with respect to care provided by that practitioner; such notification must be provided within 30 days from the date a Regional Counsel notifies the facility 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 facility 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 the practitioner. The notice forwards the information provided by the Regional Counsel as to:

THIS VHA DIRECTIVE EXPIRES JULY 31, 2014

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- (1) Patient's name and address, as provided on the Standard Form (SF) 95, Claim for Damage, Injury, or Death, claim form;
 - (2) Date(s) the incident giving rise to the claim occurred;
 - (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, effective October 1, 1990.
- c. Title 38 CFR Part 46, as amended. Policy Regarding Participation in the National Practitioner Data Bank, 67 Federal Register. 19678 (April 23, 2002).
- d. VHA Handbook 1050.01, VHA National Patient Safety Improvement Handbook.
- e. VHA Handbook 1100.17, National Practitioner Data Bank Reports.
- f. VHA Directive 2008-002, Disclosure of Adverse Events to Patients.

6. FOLLOW-UP RESPONSIBILITY: The Office of Patient Care Services (11) is responsible for the contents of this Directive. Questions may be addressed to the Director, Office of Medical-Legal Affairs (11ML) at 716-862-8521.

7. RECISSIONS: VHA Directive 2004-024, dated June 10, 2004, is rescinded. This VHA Directive expires July 31, 2013.

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

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