



Overview of DoD Medical Malpractice and the Role of the Department of Legal Medicine: Information for DoD Risk Managers

This document gives an overview of the federal medical malpractice process, a brief history of medical malpractice data collection, a description of the role of the Department of Legal Medicine, and a summary of how the department uses CCQAS. This information is intended for DoD risk managers.

**Armed Forces Institute of Pathology
Department of Legal Medicine
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The Federal Medical Malpractice Process: An Overview

Introduction. The Office of the Assistant Secretary of Defense for Health Affairs (OASD)(HA)) has been analyzing medical malpractice cases for over twenty years. The process DoD uses for evaluating malpractice cases is complex with multiple legal and medical levels of review. *Figure 1* below outlines the stages through which medical malpractice cases proceed involving not only components of DoD but also the Department of Justice, the Department of the Treasury and the Department of Health and Human Services.

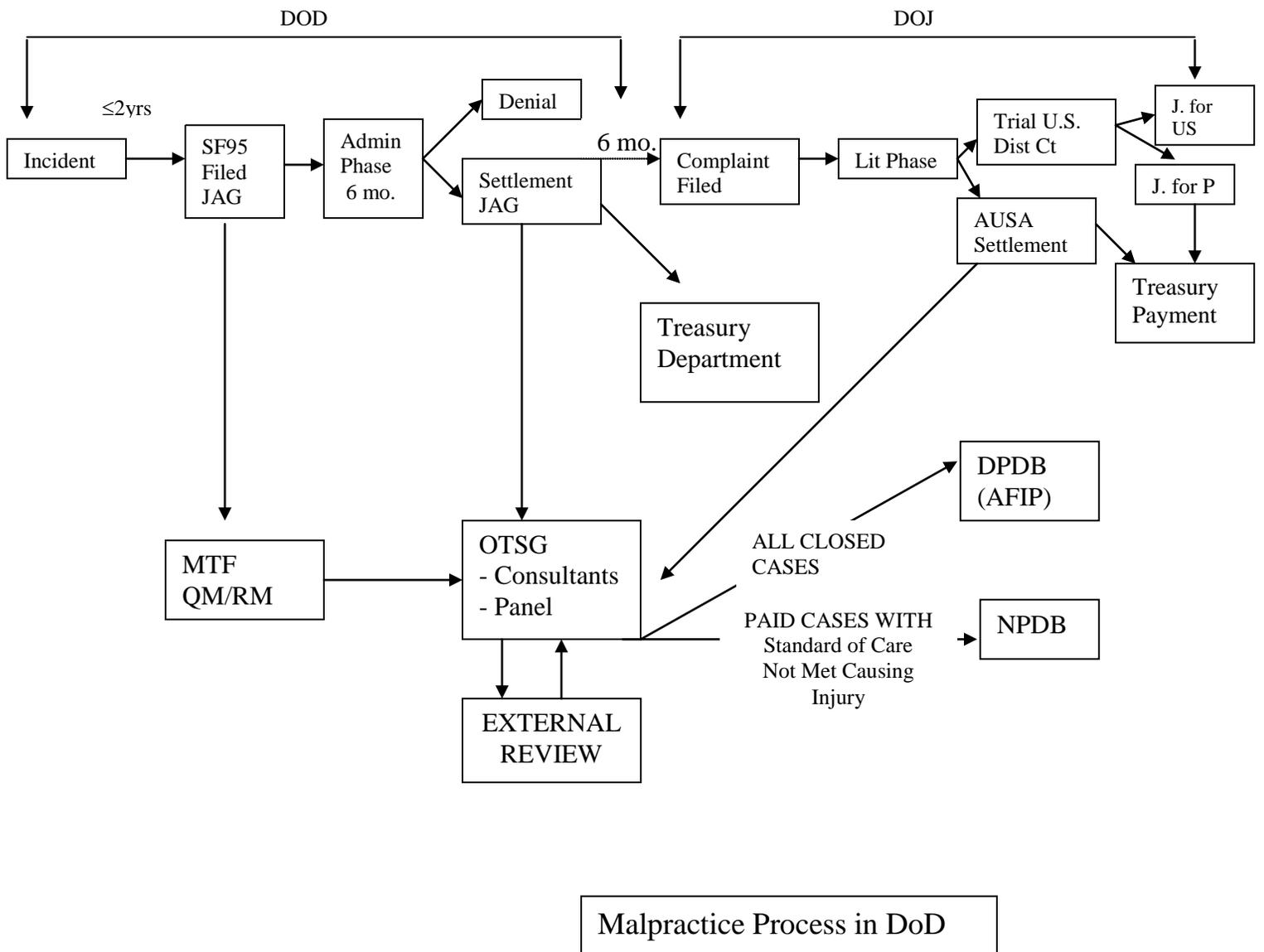
Administrative phase: After an alleged incident of malpractice, a claimant has two years to file a claim with *Standard Form 95*. Filing the form begins the medical malpractice claim and starts the six-month period during which the JAG claims office must dispose of the alleged malpractice case through settlement or denial. This phase is called the *administrative phase*. Army, Navy, or Air Force JAG Corps officers analyze the malpractice claim and decide to settle or deny the claim. If the case is settled during the administrative phase, a request is generally sent to the Financial Management Service of the Department of Treasury for payment of the claim. If no JAG administrative action occurs by the six-month date, the claimant should consider the claim denied. He or she may then file a complaint in U.S. District Court. If the claimant receives a formal denial letter from the JAG, he or she has six months to file a complaint in U.S. District Court. At this point, the claim is transferred to the Department of Justice and enters the *litigation phase*.

Litigation phase: In the litigation phase, a staff attorney in one of the regional offices of a U.S. Attorney manages the case. There are more than ninety regional U.S. Attorneys' Offices that defend malpractice cases representing the United States as the defendant. They may settle the case or it may go to trial. Only a minority of cases proceed to an actual trial in U.S. District Court before a judge. A judgment for the United States may be given with no liability or a judgment for the plaintiff can result in monetary damages. If the court judgment is for the plaintiff, or if the case is settled, the Treasury Department will pay the claim.

OTSG and MTF reviews: Each office of the Surgeon General (OTSG) for the three services has an elaborate process for analyzing claims with multiple reviews at the MTF and OTSG levels. The reviews usually include a decision by a panel of consultants. DoD contracts with an independent medical review entity to reviews record and legal documents for paid cases in which the initial OTSG determination is "standard of care met." After this external review, cases in which providers did not meet the standard of care causing an injury, according to the final determination by OTSG, are reported to the National Practitioner Data Bank (NPDB).

OTSG also releases all closed claims into the Defense Practitioner Data Bank (DPDB). The DPDB has been incorporated as an integral part of the *Centralized Credentials Quality Assurance System (CCQAS)*. It consists of closed malpractice cases, disability claims, and adverse actions that each OTSG releases to DoD.

Figure 1: Malpractice Process in DoD



History of OASD (HA) Medical Malpractice Data Collection

Overview: A brief history of DoD malpractice reporting is important for understanding the various databases used in analyzing malpractice cases in the Department of Defense.

In 1982, DoD began collecting adverse actions at the Service level. In 1987, a GAO report, *Better Use of Malpractice Data Could Improve the Quality of Care*, stated that a central database could improve the quality of medical care. At that time, the Tort 2 and Clin 2 databases were developed. The Tort 2 database used D-Base software and consisted of 63 data elements concerning all closed DoD malpractice cases. The Clin 2 database consisted of 36 data elements concerning all final adverse actions within DoD. These two databases comprised the Defense Practitioner Data Bank. In May 1988, DoD began collecting this information centrally. OASD(HA) transferred responsibility for analysis of these databases to the Department of Legal Medicine, Armed Forces Institute of Pathology, at the Walter Reed Army Medical Center in 1990.

In 1991, DoD (through a *memorandum of understanding* with the Department of Health and Human Services) began participating in the National Practitioner Data Bank, which had opened on 1 September 1990.

In 1998, DoD began external reviews of paid medical malpractice claims in which providers had met the standard of care. To improve capturing the cases settled by U.S. Attorney regional offices in the Justice Department, the Department of Treasury began sending monthly reports of closed malpractice payments to the Legal Medicine Department at AFIP. The Legal Medicine Department shares Treasury information with the three services to inform them about payments of malpractice cases.

In 2001, the Tort2 and Clin2 databases were terminated as legacy systems because the CCQAS Risk Management Module was being developed. The CCQAS claims management sub-module continues to undergo further development. An Active Duty Disability/Death module to capture cases referred from the MEB/PEB system and Armed Forces Medical Examiner's Office has also been developed. This module contains active duty injuries secondary to possible medical error. Beginning in 2004, data from the OTSG level have been released to the DoD level of CCQAS.

The Role of the Department of Legal Medicine

Location. The Department of Legal Medicine is a part of the Armed Forces Institute of Pathology located on the grounds of the Walter Reed Army Medical Center. The Department's office location is 1335 East-West Highway, Suite 6-100, Silver Spring, Maryland 20910 (the main telephone number is 301-295-7242 (DSN 295-7242), the toll free number is 1-800-863-3263, and the FAX number is 301-295-7217).

Activities: The Department of Legal Medicine maintains a close relationship with OASD(HA), the three military services, and the TriCare Management Activity. It provides important risk management information about DoD medical malpractice on a periodic basis. The department also plays a vital role in the DoD risk management program in a number of ways by:

- Participating on the DoD Risk Management Committee and the MHS Clinical Quality Forum and presenting periodic analyses of DoD risk management information.
- Producing aggregate reports from data contained within the CCQAS risk management module. **Note:** This information includes information in the claims management, adverse action, and the disability modules. The reports are used for quality improvement and answering various queries from the U.S. Congress, OASD(HA), the TriCare Management Activity, and the three military services.
- Maintaining a relationship with the Treasury Department, which sends a monthly report about recently paid medical malpractice cases **Note:** The Department of Legal Medicine shares these reports with each military service to inform them of recently paid malpractice cases.
- Participating in the DoD medical malpractice external review program by validating cases reviewed by an external reviewer to ensure that the reports comply with the statement of work including addressing the standard of care for each involved provider and issues of causation
- Maintaining a repository of closed malpractice cases at the WRAMC Forest Glen Annex. **Note:** This registry of closed cases has existed for approximately thirty years. It is vital for recovering case files for the military services when necessary and occasionally for medical malpractice research.
- Producing the annual *Legal Medicine Journal* **Note:** This journal contains many timely risk management and quality improvement-related articles which are of benefit to Department of Defense Health Care Providers. Continuing medical education credits may be obtained at no charge. Access the journal at www.AskAFIP.org.

Use of the *Centralized Credentials Quality Assurance System (CCQAS)* by The Department of Legal Medicine

CCQAS modules. When producing reports, the Department of Legal Medicine primarily uses the CCQAS claims management module. The three military services release cases in that module after final closure of the claim. The Department also examines the disability module for active duty cases in which there was possible substandard medical care.

Ad Hoc reports: The legal medicine department uses the fields listed below from the various tabs in the claims module. **Note:** To improve the quality of the data, it is important that all fields be populated completely and consistently to the extent possible at the MTF and/or OTSG levels before release to the DoD level.

Tab	Important Fields
Overview Tab	<ul style="list-style-type: none"> • For MTF • Allegation
Location Tab	<ul style="list-style-type: none"> • Care Location • Incident DMIS Code • Incident Unit
Patient Tab	<ul style="list-style-type: none"> • Age • Gender • Status • Injury Severity • Injury Duration • FMP Code • FMP Description
Claimant Tab	<ul style="list-style-type: none"> • Claim Number • Outcome • Amount Claimed • Amount Paid
Provider Tab	<ul style="list-style-type: none"> • Accession Code • Accession Description • Field Code • Field Description • Specialty Description • Specialty Level • Standard of Care • Panel Date • NPDB Report • NPDB Report Dare
Claim Assessment Tab	<ul style="list-style-type: none"> • Standard of Care • Assessment • Panel Date • Attribution of Cause: Human Factors • Attribution of Cause: Equipment • Attribution of Cause: System • Attribution of Cause: Facility
Diagnosis/Procedure Tab	<ul style="list-style-type: none"> • ICD Code • ICD Description • Priority • Procedure Type • Procedure Code • Procedure Description • Procedure Priority
Legal Tab	<p>Legal</p> <ul style="list-style-type: none"> • Claim Filed Date • Amount Claimed <p>Administrative</p> <ul style="list-style-type: none"> • Outcome • Denial Date • Settlement Date • Payment Date

	<ul style="list-style-type: none"> • Notification Date • Amount Paid • Payment Rationale <p>Litigative</p> <ul style="list-style-type: none"> • Outcome • Closed Date • Filed Date • Judgment Date • Payment Date • Notification Date • Amount Paid • Payment Rationale
OTSG Tab	<ul style="list-style-type: none"> • Evaluation of Care • Final Clinical Service Code • Final Clinical Service Description • Final Clinical Service Prioritization • Final Act or Omission Code • Final Act or Omission Description • Final Act or Omission Primary Y/N • Final Act or Omission Start Date
Admin Tracker Tab	<ul style="list-style-type: none"> • Case Summary or Executive Summary (a narrative that summarizes the allegation, medical facts of the case, legal outcome, legal reasons for the outcome, a description of service-identified errors made in the care, identified system issues that contributed to the error(s), and any subsequent corrective or preventive actions that may have occurred at the MTF or service level) • Closed Date

Standard reports: The legal medicine department also uses CCQAS standard reports to produce aggregate data. The following are available standard reports within the claims management module at the DoD level. **Note:** At this time, the services and MTFs do not have access to similar reports. It may be useful for the services and MTFs to have such access to facilitate comparison between the broader DoD-wide data and more specific facility or service level data.

- Claim Count
- Act or Omission Breakdown
- Amount Paid Breakdown
- Claims Filed by Fiscal Year Breakdown
- Legal Outcome Breakdown
- Top 10 Provider Specialties Breakdown

- Act of Omission (Substandard Care/Paid/Amount)
- Amounts Paid
- Attribution
- Claims Filed by Fiscal Year
- Injury Severity
- Legal Outcome (Substandard Care/Paid/Amount)
- Care Location
- Number of Claims Released to DoD
- OTSG Evaluation
- Patient Age
- Patient Gender
- Patient Status
- Physician Level of Training
- Top 20 Primary Diagnoses
- Top 20 Primary Procedures
- Primary Provider Specialty
- Primary Provider Standard of Care
- Primary Providers' Profession
- Top 10 Provider Specialties
- Clinical Service Codes
- Source of Accession
- Specific Diagnosis
- Specific Procedure
- Diagnostic Group

The Department of Legal Medicine continues to work toward refining *ad hoc* and standard reports for reporting information to senior leadership. This effort continues to evolve.

Please feel free to contact us or your Service Risk Manager with questions.