



# Federal Tort Claims Act

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# FTCA Background Information

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- ✦ Enacted by congress in 1946
- ✦ Prior to 1946 – government could not be sued
- ✦ 1988 – FTCA included tribal contractors
  - ◆ Billet description and scope of work
  - ◆ Key determinant
    - Does the PHS or tribe have the right and intent to control or supervise the activity?
    - Does he/she have a supervisor? Personal services contract...
- ✦ Coverage – performance of official duties
- ✦ Billet description and scope of work
- ✦ Key determinant
  - ◆ Does the PHS or tribe have the right and intent to control or supervise the activity

# Federal Tort Claims Act

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- ✦ Effective only under certain circumstances
  - ◆ Scope of work
  - ◆ Provider is privileged in writing for procedure
    - Local privileges document
  - ◆ Treating patients covered by federal government or tribal contract with the government
  - ◆ If provider is paid (by patient) in any way
    - Coverage is void
  - ◆ Final determination by Justice Department
    - Local administrators cannot guarantee coverage
    - borderline situations

# What Is Malpractice?

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- ✦ Duty / Breach of duty
- ✦ Necessary elements
  - ◆ Deviation from standard of care
  - ◆ Injury to the patient
  - ◆ Deviation directly caused injury
- ✦ Providers do cause injury
  - ◆ Operative, oral surgery...
  - ◆ Standard of care

# Standard of Care

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## ✧ Definition

- ◆ The knowledge and skills that a reasonable practitioner would use under similar circumstances.

## ✧ Not ideal care

## ✧ Standard of care

- ◆ Does not imply ideal outcomes
- ◆ Best to address expected “less than ideal outcomes”

# Informed Consent

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## ✧ Purpose

- ◆ Allows the patient to make an intelligent decision about what is done to his/her body.
  - ◆ Right to know what they are “getting into”
  - ◆ Uninformed consent = no consent
- ## ✧ Includes all patient contact that is documented
- ◆ Informed consent and other forms, notes ...
  - ◆ Documentation of any transfer of information

# Informed Consent

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## ✦ Elements

- ◆ Nature of the condition
- ◆ Nature of the proposed treatment
- ◆ Alternative to such treatment
- ◆ General risks involved with the proposed treatment/alternative treatment/no treatment
- ◆ Relative chance for success and failure

# Informed Consent

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- ✦ Informed consent will slow you down
- ✦ Tx without consent may be assault...
- ✦ If assault, may not be covered by FTCA
- ✦ If informed consent + problems = malpractice
- ✦ If no informed consent + problems = assault

# National Practitioner Data Bank

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## ✧ History

- ◆ State to state tracking
- ◆ Administered out of Rockville, Maryland
  - HRSA - Parklawn Building

## ✧ Who can be named?

- ◆ Licensed health professionals
- ◆ Dentists/dental hygienists

# National Practitioner Data Bank

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- ✧ Circumstances under which providers are named to the NPDB
  - ◆ Payments made on their behalf
  - ◆ Adverse licensure action by the state board
  - ◆ Adverse action by health care entity
    - Includes service units that restrict privileges for greater than 30 days
      - ◆ Must report to NPDB

# The process

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## ✧ Two stage

- ◆ 1) Patient request for money (up to 6months)
  - pending government response
- ◆ 2) If rejected, they have 1 year to file a claim
  - statutes vary by state
    - ◆ If minor
      - ◆ Up to one after age of majority
      - ◆ Up to 19 years of age
- ◆ Fortunately most go away after first stage

# Bullet of Process

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- ✦ Office of General Counsel (OGC)
- ✦ IHS Risk Management Coordinator
- ✦ Dental Chief
- ✦ OGC for legal review
- ✦ No Merit – case is disallowed
- ✦ Merit – negotiate financial settlement
- ✦ Claimant can file a suit against the government under the following circumstances
  - ◆ OGC fails to act on the claim within 6 months
  - ◆ Settlement is not acceptable
  - ◆ Case is disallowed
- ✦ Department of Justice

# Global Strategy

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- ✦ Try to prevent problems
  - ◆ Render quality care
  - ◆ Patient communications
- ✦ Try to prevent success of a claim if filed

# Typical review

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- ✦ Information received by reviewer
- ✦ Report generated...
- ✦ Format

# Peer Review Template

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✧ **ADMINISTRATIVE CONFIDENTIAL**

✧ Date of This Report:

✧ Refer to (claim #):

✧ HHS/IHS MEDICAL/DENTAL REVIEW

✧ Administrative Tort Claim of

✧ Claim originated from (Site):

✧ Provider(s) involved:

✧ Discipline or specialty of provider(s): General Dentist

✧ Medical/Dental Reviewer: Kip Martin, DDS

✧ Title: Advanced General Practice Residency, Director

✧ Organization: USPHS/IHS

✧ Specialty: General Dentistry

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✧ Allegation: "XX"

# Peer Review Template

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- ✦ Case Review
- ✦ Pertinent Interactions – consult with xxxxx.
- ✦ Overview of Case – Origination - present
- ✦ Dental Notes:
  - Date of Appointment:
- ✦ Follow-ups at: xxxxxxxxxxxxxx.

# Peer Review Template

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- ✦ Practitioner's Narrative (s)
- ✦ Quality of Documentation:
- ✦ Appointment by appointment review:
- ✦ Discussion:
- ✦ Institutional Policies To Improve Care:
- ✦ Conclusions:
- ✦ Reviewer's Signature:
- ✦ Date of review:

# Peer Review Template

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- ✧ Typically 6-10 page report
- ✧ Careful!!!
  - ◆ It looks worse on paper...

# Pearls

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- ✦ Scope of work
- ✦ Students/unlicensed providers always supervised
- ✦ If contacted for narrative
  - ◆ Dr. Blahut
- ✦ Do not contact patient or their lawyer
  - ◆ To “smooth it over”
  - ◆ If a claim has been filed

# Where to seek help???

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✦ See Handout

- ◆ NPDB

- ◆ IHS Risk Management

✦ Dr. Blahut

- ◆ Contact him first...



The End