

10 JUNE 2003



Law

MEDICAL LAW

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

NOTICE: This publication is available digitally on the AFDPO WWW site at:
<http://www.e-publishing.af.mil>

OPR: AFLSA/JACT (Col R. Eric Rissling)
Supersedes AFI 51-302, 1 December 1995

Certified by: AFLSA/JAC (Col Evan L. Haberman)
Pages: 11
Distribution: F

This instruction implements Air Force Policy Directive 51-3, *Civil Litigation*, by setting guidelines and procedures for the Air Force Medical Law Program. It describes the functions, responsibilities, and activities of each program component. This instruction does not apply to the Air National Guard or the United States Air Force Reserve.

SUMMARY OF REVISIONS

This instruction substantially revises AFI 51-302, 1 December 1995. In particular, it clarifies the duties of the Medical Law Consultants (MLCs) and sets out the professional management of MLCs. It also realigns the bases within the MLC regions.

1. Medical Law Program. The purpose of the Medical Law Program is to have trained Air Force personnel provide medical law advice and support to medical centers and hospitals and clinics worldwide, and to manage medical malpractice claims and litigation. The Medical Law Program consists of two parts:

- 1.1. The Medical Law Branch, Tort Claims and Litigation Division, Air Force Legal Services Agency (AFLSA/JACT), Arlington, Virginia.
- 1.2. Twelve Medical Law Consultants. Ten are assigned to Air Force Medical Centers; one is assigned to the 882nd TRG, Sheppard Air Force Base, Texas; and one is assigned to the Surgeon General of United States Air Force Europe (USAFE/SG).

2. Responsibilities . The Judge Advocate General (TJAG) directs the Medical Law Program through the Medical Law Branch, AFLSA/JACT. The Air Force Surgeon General (SG) provides centrally managed manpower positions for the MLCs. HQ AF/JAX coordinates with AFLSA/JACT to select qualified MLC applicants and TJAG approves the assignments.

2.1. Chief, Medical Law Branch, AFLSA/JACT, and assigned personnel:

2.1.1. Guide, direct, and coordinate all Air Force medical law activities.

2.1.2. Evaluate, adjudicate, and settle medical malpractice claims processed under AFI 51-501, *Tort Claims*; report all closed claims to the Air Force SG; and provide assistance to AFMOA/SGZC for reporting to the National Practitioner Data Bank.

2.1.3. Take lead as Air Force point of contact for all medical malpractice cases in litigation; prepare litigation reports according to AFPD 51-3; assist with discovery; and direct the support provided by MLCs and base claims officers.

2.1.4. Oversee and instruct all Air Force medical law courses, conferences, and seminars; participate in other government health law programs.

2.1.5. Provide assistance and medicolegal advice to MLCs.

2.1.6. Cross feed information to Air Force medical and legal communities on medical malpractice and quality assurance issues.

2.1.7. Advise on all medicolegal, quality assurance, and other health law issues confronting the Air Force SG and staff.

2.2. MLCs have three primary responsibilities. They manage and review medical malpractice claims arising from facilities within their region; provide medicolegal advice to their Medical Treatment Facility (MTF) commander and staff; and, as appropriate serve as advisor on medicolegal matters to base claims officers, hospitals, and clinics within their region. (See [Attachment 2](#)) MLCs:

2.2.1. Review and evaluate medical malpractice claims filed within the MLC's region, using the format in [Attachment 3](#). MLCs do not review and evaluate medical malpractice claims arising from within their own MTF.

2.2.1.1. Participate on a rotation schedule to review medical malpractice claims filed against other MLCs' MTFs.

2.2.2. Advise regional base claims officers on how to investigate a medical malpractice claim and prepare a thorough and complete investigation file IAW AFI 51-501, *Tort Claims*.

2.2.3. Monitor all medical malpractice claims within the MLC's region to ensure they meet the time standards established by AFI 51-501; assist the base claims officers to complete their investigations as quickly as possible.

2.2.4. Assist, at the request of AFLSA/JACT, in providing litigation support in medical malpractice cases brought against the MLC's MTF. If the Assistant United States Attorney requests assistance directly to the MLC, first coordinate with the AFLSA/JACT staff attorney responsible for that case.

2.2.5. May negotiate settlements up to \$50,000.00 for medical malpractice claims they review. MLCs must first coordinate these negotiations and settlements with the Chief, Medical Law Branch, AFLSA/JACT. MLCs forward the case to AFLSA/JACT for final approval of settlement and to process payment of the settlement amount.

2.2.6. Advise the MLC's MTF commander and staff on all medicolegal matters. The MLC assigned to the 882nd TRG advises the 82nd Medical Group commander on all medicolegal matters.

- 2.2.7. Give medicolegal advice to MAJCOM SG's office on matters affecting the command, after coordinating with the MAJCOM Staff Judge Advocate (SJA). If MAJCOM SG requests advice about a facility in another MLC's region, the MLC also coordinates with that regional MLC.
- 2.2.8. Assist MAJCOM SG and MAJCOM SJA as needed in any Medical Incident Investigation (MII) within the command.
- 2.2.9. Prepare or review regulations, legal documents, or instruments necessary for administering the MLC's MTF.
- 2.2.10. Serve on committees as necessary to help improve the quality of medical care at the MTF and to help with administration of the MTF; participate in adverse privilege hearings, either as government representative or legal advisor.
- 2.2.11. Lecture at meetings, seminars and conferences on medicolegal matters.
- 2.2.12. Advise the MTFs within their region on all Training Affiliation Agreements IAW AFI 41-108, *Training Affiliation Agreement Program*, and Memorandum of Understanding entered into between the MTFs and civilian medical institutions.
- 2.2.13. Give legal assistance to hospital inpatients and those hospital staff members whose schedules prevent them from visiting the base legal office. MLCs will not normally see hospital outpatients unless special circumstances arise. Legal assistance shall be tracked IAW AFI 51-504.
- 2.2.14. Provide medicolegal advice to MTFs and base legal offices within their region.
- 2.2.14.1. Assist base claims officers in their role as legal advisors to their respective MTFs.
- 2.2.15. Consult with the base SJA to determine proper handling of all joint ethics regulation (JER) matters pertaining to the MTF.
- 2.2.16. Assist MTFs within their region as legal advisor in adverse privilege hearings. The MTF conducting the hearing provides funding.
- 2.2.17. Prepare and distribute medicolegal newsletters as appropriate, advising the MTFs and base legal offices within their region of medicolegal developments and trends.
- 2.2.18. Visit each MTF and base legal office within region at least once a year, or more often if needed, to lecture and teach on medicolegal matters, and assist, as necessary. The MTF to which the MLC is assigned funds these visits.
- 2.2.19. Submit periodic reports to the Chief, Medical Law Branch, AFLSA/JACT, as prescribed.
- 2.3. Except as provided in paragraphs **2.2.13.** and 2.2.15, MLCs are to refer all non-medicolegal matters pertaining to the MTF to the base SJA. MLCs will keep the base SJA apprised of important medicolegal issues concerning the base MTF. MLCs are to promptly brief the base SJA on all matters that are brought to the MLC's attention, where legal advice is sought, that are outside the medical law area. The base SJA furnishes professional legal services to the MTF commander on all matters that are outside the medicolegal area. MLCs will not advise the MTF commander and staff on matters pertaining to:
- 2.3.1. Military justice, including nonjudicial punishment, courts-martial, administrative discharge, and other administrative disciplinary action.

- 2.3.2. Labor issues, including unfair labor practice and Equal Employment Opportunity Office complaints, and adverse disciplinary actions taken against civilian personnel.
- 2.3.3. Contract claims and cases against the Air Force.
- 2.3.4. Fiscal law issues.
- 2.3.5. Environmental issues and MTFs' obligations under various environmental statutes.

3. MLC Supervision and Professional Direction. MLCs are judge advocates with specialty training who are assigned primarily to Air Force medical centers. When assigned to a medical center or to an MTF, all MLCs report to and are rated by the medical center commander or MTF commander. The Ramstein MLC is rated by USAFE/SG, and Sheppard MLC is rated by 882nd TRG/CC. In an office with more than one MLC, the senior MLC manages the office on behalf of the medical center commander and acts as the functional supervisor for that office.

- 3.1. AFLSA/JACT is the functional supervisor on all matters pertaining to medical malpractice claims and litigation, and provides assistance and advises MLCs on medicolegal issues.
- 3.2. MAJCOM SJA of the host base where the MLC(s) is assigned supervises and provides professional direction to that MLC, in the same manner and fashion as any JAG within the MAJCOM SJA's command. For example, the MAJCOM SJA:
 - 3.2.1. Coordinates on all MLC assignments, including all applications for MLC positions and assignments out of MLC positions.
 - 3.2.2. Coordinates on Conditional Reserve Status packages of MLCs.
 - 3.2.3. Provides career counseling.
 - 3.2.4. Encourages MLCs to attend Continuing Legal Education (CLE) to maintain proficiency in all areas of general law, including ethics, operational law, fiscal law, and environmental law. To the extent possible, central or MAJCOM funding shall be provided.
 - 3.2.5. Evaluates MLC nominations for professional awards.
- 3.3. The senior judge advocate at the MLC's installation should provide assistance to MLCs in OPR and PRF issues and other personnel matters, and provide MLCs career counseling as necessary.

4. Courses and Conferences. There are three annual courses/conferences pertaining to the medical law program.

- 4.1. MLC Medical Law Course. To the extent possible, each judge advocate selected for a medical law position will attend the MLC Medical Law Course (Course 50Z08816) before being assigned to the position of MLC. The Air Force SG funds MLCs attending this course. The MLC assigned to Malcolm Grow USAF Medical Center is the course director and coordinates the curriculum with the Chief, Medical Law Branch, AFLSA/JACT.
 - 4.1.1. The course objectives shall include briefings in relevant medical specialties, law, and related medicolegal training to include MLC student observation of a variety of surgical procedures.
- 4.2. Medical Law Consultant Conference. All MLCs shall attend the annual MLC conference conducted by AFLSA/JACT for an update on the law and medicolegal issues, and on current policies of

the Office of the Surgeon General, the Judge Advocate General Department, and the Department of Justice. The conference shall coincide with the MLC Medical Law Course so that the MLC students can also attend and benefit from the practical experience of the incumbent MLCs. The MLC's medical center or unit funds the MLC's attendance at the conference.

4.3. Medical Law Mini-Course. This course consists of a one-week course at David Grant Medical Center, Travis Air Force Base, California, to train claims officers and paralegals on the law and medicolegal issues arising in a number of medical specialties, and on how to investigate medical malpractice claims. Base legal offices nominate claims officers and paralegals and fund their attendance. The MLCs at David Grant Medical Center host the Mini-Course and coordinate the curriculum with the Chief, Medical Law Branch, AFLSA/JACT.

5. Forms Adopted in this Publication . Standard Form 95, *Claim for Damage, Injury or Death*.

6. Records . Ensure that all records created by this AFI are maintained and disposed of IAW AFMAN 37-139, Records Disposition Schedule.

THOMAS J. FISCUS, Major General, USAF
The Judge Advocate General

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

AFPD 51-3, *Civilian Litigation*

AFI 41-108, *Training Affiliation Agreement Program*

AFI 51-501, *Tort Claim*

AFI 51-504, *Legal Assistance, Notary and Preventive Law Programs*

Abbreviations and Acronyms

AFB—Air Force Base

AFLSA/JACT—Air Force Legal Services Agency/Tort Claims and Litigation Division

AFMOA/SGZC—Air Force Medical Operating Agency/Surgeon General Clinical Quality Assurance Division

CLE—Continuing Legal Education

HQ AF/JAX—Headquarters Air Force/Professional Development Division

IAW—In accordance with

JER—Joint Ethics Regulation

MAJCOM—Major Command

MII—Medical Incident Investigation

MLC—Medical Law Consultant

MTF—Medical Treatment Facility

OPR—Officer Performance Report

PRF—Promotion Recommendation Form

SF 95—Standard Form 95

SG—Surgeon General

SJA—Staff Judge Advocate

SOC—Standard of Care

TJAG—The Judge Advocate General

USAFE/SG—United States Air Force Europe/Surgeon General

Terms

Medicolegal—medical/legal

Attachment 2

MEDICAL LAW CONSULTANT REGIONS

A2.1. Malcolm Grow US Air Force Medical Center:

Andrews AFB, Maryland
Bolling AFB, District of Columbia
Dover AFB, Delaware
Lajes Field, Azores
Langley AFB, Virginia
McGuire AFB, New Jersey

A2.2. US Air Force Medical Center, Wright-Patterson:

Grand Forks AFB, North Dakota
Hanscom AFB, Massachusetts
Minot AFB, North Dakota
Pope AFB, North Carolina
Seymour Johnson AFB, North Carolina
Wright-Patterson AFB, Ohio

A2.3. US Air Force Medical Center, Scott:

Ellsworth AFB, South Dakota
Malmstrom AFB, Montana
McConnell AFB, Kansas
Offutt AFB, Nebraska
Scott AFB, Illinois
Whiteman AFB, Missouri

A2.4. David Grant US Air Force Medical Center:

Andersen AFB, Guam
Beale AFB, California
Edwards AFB, California
Eielson AFB, Alaska
Elmendorf AFB, Alaska
Fairchild AFB, Washington

Hickam AFB, Hawaii
Kadena AB, Japan
Kunsan AB, Korea
Los Angeles AFB, California
McChord AFB, Washington
Misawa AB, Japan
Osan AB, Korea
Travis AFB, California
Vandenberg AFB, California
Yokota AB, Japan

A2.5. US Air Force Medical Center, Keesler:

Barksdale AFB, Louisiana
Charleston AFB, South Carolina
Columbus AFB, Mississippi
Eglin AFB, Florida
Hurlburt Field, Florida
Keesler AFB, Mississippi
Little Rock AFB, Arkansas
MacDill AFB, Florida
Maxwell AFB, Alabama
Moody AFB, Georgia
Patrick AFB, Florida
Robins AFB, Georgia
Shaw AFB, South Carolina
Tyndall AFB, Florida

A2.6. Wilford Hall US Air Force Medical Center:

Brooks AFB, Texas
Cannon AFB, New Mexico
Davis-Monthan AFB, Arizona
Goodfellow AFB, Texas
Hill AFB, Utah
Holloman AFB, New Mexico

Kirtland AFB, New Mexico
Lackland AFB, Texas
Laughlin AFB, Texas
Luke AFB, Arizona
Mountain Home AFB, Idaho
Nellis AFB, Nevada
Randolph AFB, Texas

A2.7. 82nd Medical Group, Sheppard Air Force Base:

Altus AFB, Oklahoma
Buckley AFB, Colorado
Dyess AFB, Texas
F.E. Warren AFB, Wyoming
Peterson AFB, Colorado
Sheppard AFB, Texas
Schriever AFB, Colorado
Tinker AFB, Oklahoma
US Air Force Academy, Colorado
Vance AFB, Oklahoma

A2.8. US Air Forces in Europe:

Aviano AB, Italy
RAF Croughton, United Kingdom
Geilenkirchen AB, Germany
Incirlik AB, Turkey
Izmir AS, Turkey
RAF Lakenheath, United Kingdom
RAF Mildenhall, United Kingdom
Ramstein AB, Germany (and Sembach AB Clinic)
Rhein-Main AB, Germany
Spangdahlem AB, Germany (and Bitburg AB Hospital)
Stavanger AB, Norway
Upwood, United Kingdom (RAF Alconbury, UK)

Attachment 3

MEDICAL LAW CONSULTANT MEMORANDUM

MEMORANDUM FOR

FROM:

SUBJECT:

1. INTRODUCTION (Identify the statute under which the claim is being reviewed, and state recommendation to deny or settle claim. Identify the specialists and specialties that reviewed the case. Identify the report as attorney work product and quality assurance document)

2. CHRONOLOGY OF CLAIMa. Dates

(1) Alleged Incident Date(s):

(2) Date Claim Presented: (actual initial date received noted on Standard Form 95, *Claim For Damage, Injury, or Death*, or letter, no matter where received)

(3) Six-Month Date:

(4) Received at MLC Office:

(5) Medical Review Date(s)	<u>Specialty</u>	<u>Requested</u>	<u>Completed</u>
	(list specialty)	(date sent)	(date received)

(6) Date Litigation Filed: (only insert if applicable)

b. Reasons for Delay (if any)

(1) At Base:

(2) At MLC:

3. ALLEGATIONS

a. Liability: (brief summary of claimant's allegations, theory of negligence, and causation)

b. Damages: (amount demanded and injuries alleged)

c. Claimant: (name and address)

d. Claimant's Attorney: (name, address, phone and fax numbers)

e. Facilities and Medical Providers Significantly Involved: (list facilities, and each provider MLC-level reviewer identified as significantly involved, and for each provider listed, include the department, facility, and standard of care (SOC) determination)

4. FACTS

- a. Personal Information: (patient's age and status at time of incident and present, and sponsor's name, rank and social security number)
- b. Medical History: (if significant)
- c. Relevant Material Facts: (summarize facts in paragraph form, listing medical record page number(s) for each relevant factual statement)

5. MEDICAL ANALYSIS

- a. Medical Condition and Medical Terms: (give brief lay definition of relevant medical condition and medical terminology)
- b. Medical Reviewers' Opinions: (summarize and discuss each reviewer's opinion, including SOC determination for each significantly involved provider, causation and damages. Also include the reviewer's opinion as to the strengths and weaknesses of the government's and claimant's case. Ensure that the reviewer responds to each allegation set forth in the claim, and, if applicable, responds to each criticism identified by claimant's expert)
- c. Claimant's Expert Opinion: (if applicable, summarize the reviewers' opinion, including every area where the expert identifies a breach in the SOC)

6. DISCUSSION

- a. Legal Issues: (list and discuss the *relevant* legal issues, such as jurisdictional and other legal defenses, if any, and state law as to informed consent and causation, if applicable)
- b. Liability: (discuss SOC and proximate cause)
- c. Damages: (discuss state law on damages applicable to the case, such as damages for personal injury and wrongful death actions, damage caps, damages under loss of chance, and claimant's economic and noneconomic damages, etc.)

7. RECOMMENDATIONS

- a. Additional Work: (tasks to be completed by the base claims officer before sending claim to AFLSA/JACT)
- b. Quality Assurance Issues: ("lessons learned")
- c. Conclusion: (whether to deny or settle, and settlement range)