

# **Clinician's Handbook on the Federal Tort Claims Act**



**Health Center  
FTCA**

# **Clinician's Handbook**

## **On the Federal Tort Claims Act – Edition II**

### **Acknowledgments**

Authorship of this handbook was commissioned by the Arizona Association of Community Health Centers, utilizing grant funds provided by the United States Public Health Service, Health Resources and Services Administration, Bureau of Primary Health Care's Quality Center. The Western Clinician's Network, an association of clinicians who are dedicated to community based care, provided project oversight and editorial guidance. The handbook was compiled in the winter of 1998 and spring of 1999, and updated in 2001. Many individuals from several organizations provided oversight, information, guidance, help, feedback, advice, coaching and editorial comment. These include:

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The "Clinician's Handbook on FTCA" is a descriptive document, not a *legal one*. It is intended to provide frontline Health Center clinicians with a basic understanding of FTCA malpractice immunity protection, the claim process, and its impact on clinicians. It should not be considered a comprehensive legal analysis of either FTCA or of medical malpractice. It is an interpretive reference, and should not be used as a guide for clinicians to contract or work directly with federal employees or agencies on FTCA matters - a role more appropriate for the Clinical Director or the Executive Director.

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# **Clinician's Handbook**

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### **Introduction - Background**

Over the course of a clinician's career it is likely that several patients will feel that they have been injured through acts of omission or negligence. The patient, or the patient's attorney, may decide to file a claim based on the alleged injury. Consequently, most clinicians eventually deal with a malpractice claim. Certain actions and omissions of some clinicians at federally funded Health Centers, however, are financially protected from medical malpractice claims.

In 1992 and 1995, Congress passed legislation that created a program designed to help certain United States government-funded clinics save money. The laws were titled the Federally Supported Health Centers Assistance Acts (FSHCAA) of 1992 and of 1995 (Pub.L. 102-501 and Pub.L.104-73, respectively). This program is more commonly called the Federal Tort Claims Act, or FTCA program. FSHCAA of 1992, and the subsequent 1995 reauthorization, make malpractice protection available for employees and certain contractors of clinics funded under Section 330 of the Public Health Service Act. These clinics must apply in order to be deemed a FTCA covered Health Center and receive the consequent protection for their employees. FTCA is the same protection that has been available for employees of the Federal Government (such as those employed in the Indian Health Service) for decades.

As of August 2001, there were over 585 Health Centers that had applied and received approval for FTCA protection. Approximately 7,000 clinicians provide care through Bureau of Primary Health Care-funded organizations. They treat approximately 9 million patients who visit the Health Centers more than 35 million times per year.

A Question/Answer section forms the main body of this handbook. It is composed of those questions that are most commonly asked by clinicians. Appendices include a case study, a glossary of FTCA and Public Health Service terms, and various contacts and sources of information. Appendix I contains a self-test for clinicians who may wish to perform a cursory review of their FTCA protection status on alleged or potential claims.

The "Clinician's Handbook on FTCA" is written for those Health Center clinicians who are (or will be) receiving Federal Tort Claims Act malpractice protection. The handbook is intended to provide you with a fundamental understanding of the Federal Tort Claims Act. It should be saved as a source for answering questions and identifying basic documents. Should further questions arise, talk to your Clinical Director, or Executive Director. Should a claim be made against you, immediately consult your Clinical Director or Executive Director.

## **Clinician's Handbook**

### **On the Federal Tort Claims Act – Edition II**

#### Introduction - Basic FTCA Definitions

The **Federal Tort Claims Act (FTCA)** is the federal legislation that allows parties claiming to have been injured by negligent actions of employees of the United States to file claims against the federal government for the harm they suffered. The FTCA also provides authority for the federal government to defend against such claims. Amendments to the Public Health Service Act in 1992 and 1995 provide that employees at deemed Health Centers are to be treated as employees of the United States for purposes of medical malpractice. These “employees” include board members, officers, employees and certain contractors of deemed Health Centers. “Employees” are given malpractice protection for actions within their scope of employment, and within the scope of project of a deemed Health Center.

**Health Centers** eligible for FTCA protection are those funded by the Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care under Section 330 of the Public Health Service Act. These grantees submit periodic applications to the Bureau of Primary Health Care as a condition of their funding. These periodic applications are called project period renewal grant applications.

**Deeming** is an application process that an eligible Health Center must undertake in order to activate and maintain its FTCA malpractice protection. The law allows only organizations funded through section 330 of the Public Health Service Act, to be deemed. The deeming process, while not onerous, does have some basic requirements. Health Centers that wish to participate must assure the Bureau of Primary Health Care that they conduct complete and thorough credentialing of their providers including a query of the National Practitioner Data Bank. Participating Health Centers must maintain clinical protocols, tracking systems, medical record reviews, and active quality assurance programs. Once deemed, participation is maintained through project period renewal grant applications and indicated on the Health Center's Notice of Grant Award.

A Health Center's **Scope of Project** is the domain described in certain segments of its grant application and approved by the Bureau of Primary Health Care. Those segments include a description of the Health Center's populations served, the list of services provided, list of service delivery sites, Health Center affiliations and work plan. A Health Center can change its scope of project throughout its project period by adjusting those fundamental documents and seeking approval for such change from the Bureau of Primary Health Care.

An individual's **Scope of Employment** is defined by the duties and responsibilities of an employee or contractor as identified by a written job description or contract, along with other related performance responsibility documents.

**Credentialing** – A process for verifying that a provider is appropriately licensed or certified, and for evaluating the quality of that provider's work history. Most health plans and hospitals credential providers that practice with or for their organization. The Federally Supported Health Centers Assistance Act of 1992 requires, and PIN 2001-16 reiterates, that **each deemed Health Center that participates in the FTCA must credential all its physicians and all other licensed or certified health care practitioners, set up a periodic privileging policies and procedures for those practitioners, and follow those policies and procedures.**

A glossary of additional definitions and terms is presented in the back of this book in Appendix B.

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Questions & Answers

**How is FTCA different from my individual malpractice policy?**

*Under FTCA you do not have an individual malpractice policy.*

If you have FTCA protection, you have financial protection from a malpractice lawsuit. The United States government would be substituted as the defendant in any malpractice claim for your activities, which are within your scope of employment and within the scope of project of a deemed Health Center.

**I am a dentist (radiologist, psychiatrist, pediatrician, neurologist, nurse, family physician, physician assistant, etc.). Does FTCA cover my profession?**

*Yes. FTCA malpractice protection applies to you and all other employees (and certain contractors) of appropriately deemed Health Centers.*

Malpractice claims protection is available for your discipline and all other disciplines. All types of clinicians, administrators, directors, nurses, and other personnel, who could be named partners to your Health Center-related clinical actions can receive malpractice protection. Malpractice protection is not available for Health Center volunteers. Malpractice protection is not available for students or residents training in a Health Center. Malpractice protection for these individuals should be provided through a means other than FTCA.

**How would I know if my service to the Health Center would be considered employment?**

*If you receive a W-2 from the Health Center, you are probably an employee.*

Determination of employment status of contractors can be complex. The Center for Risk Management and the Department of Health and Human Services Office of General Counsel may utilize the Internal Revenue Service definition (a 23-part test) to determine if you are an employee (see Appendix D "Organization Chart"). If you receive a W-2 income reporting form from the Health Center, you are likely to be considered an employee. If you receive a 1099 income reporting form from the Health Center, you are more likely to be considered a contractor.

As an employee you should have a job description and policies and procedures that clearly delineate your role, duties, responsibilities and tasks. These types of documents

define your scope of employment or those actions that you can undertake on behalf of the Health Center and under FTCA malpractice claims immunity.

### **What if I am a part-time employee?**

*You are protected.*

All employees of a deemed Health Center are eligible for FTCA malpractice protection. This includes employees hired for part time service and employees hired for short periods of time, such as locum tenens. This applies only to employees (including employed locum tenens). For information on independent contractors, see the following question.

### **Can I come under FTCA malpractice claims protection through a contract instead of as an employee?**

*Yes – in many instances.*

You must be appropriately credentialed, licensed and/or certified according to the standards of your profession and according to national, regional and local requirements in order to be eligible to come under FTCA protection through an independent contract.

All appropriately credentialed, licensed and/or certified full-time individual contractors are eligible for FTCA malpractice protection. You are protected if you are contracted for more than 32.5 hours per week and the Health Center is the entity that receives payer compensation for the services you provide. If contracted for less than 32.5 hours per week, protection eligibility will depend on the services you provide.

If you provide family practice, obstetrics/gynecology, pediatrics, or general internal medicine services, you can come under FTCA as either a full-time or a part-time contracted provider. The Health Center, however, must be the entity that receives payer compensation for the services you provide (except in those cases where the exceptions listed in PIN 2001-11 are met.) This usually means that the Health Center receives the compensation directly. In certain circumstances, however, FTCA malpractice claims protection is applicable when compensation is passed through you to the Health Center. If each of the following conditions are met, FTCA malpractice claims protection can remain intact when the Health Center does not receive direct compensation for the services you provide: 1) You report all of your billings to the Health Center. 2) The funds you receive for your billings are transferred directly to the Health Center within a reasonable period of time. 3) Your employment contract authorizes the billing arrangements described in steps 1 and 2.

If you are not providing family practice, obstetrics/gynecology, pediatrics, or general internal medicine services you must be a full time contractor (at least 32.5 hours per week) in order to be eligible for FTCA protection. If you are a part time *employed* dentist, for example, you are eligible for FTCA malpractice claims protection. If you are a part time *contract* dentist, however, you are not eligible for FTCA malpractice protection. In either case, the Health Center must be the entity that receives payer

compensation, directly or indirectly (see previous paragraph) for the services you provide.

As a contractor, you should have a formal and written contract that clearly delineates your role, duties, responsibilities, tasks, and mechanisms for your compensation, and which identifies the Health Center as the reimbursement payee. This contract and the organization's policies and procedures define your scope of contracted services or those actions that you can undertake on behalf of the Health Center and under FTCA malpractice claims immunity.

**Can I come under FTCA malpractice claims protection through a contract with my group, or my professional corporation ?**

*No.*

Health Center contracts must be with individual clinicians in order for them to receive malpractice protection. If a Health Center contracts with your group, then your group assumes its own liability. If a Health Center contracts with your professional, personal or private corporation, or any other entity, then that corporation or entity assumes its own liability. If you receive direct compensation from payers for the services you provide at the Health Center, you may not be eligible for malpractice claims immunity and protection for those services.

**Can I retain malpractice protection at any clinic that meets underserved community needs?**

*No.*

FTCA malpractice protection is only available to you as an employee or independent contractor of a deemed Health Center, acting within your scope of employment and within the scope of project of your deemed Health Center<sup>1</sup>.

**What is my coverage limit?**

*There is no monetary limit.*

If you come under FTCA malpractice protection, the Federal Government is the defendant for claims made against your Health Center-related actions or omissions. You have complete financial protection from malpractice related claims. FTCA settlements are the responsibility of the United States government.

## **Which of my Health Center and community-affiliated activities fall under FTCA malpractice claims protection?**

***All activities within your scope of employment, and which your Health Center has built into its approved scope of project – are covered<sup>1</sup>.***

Your activities are covered if they are within the scope of your employment, and if they are within the approved scope of project of a deemed Health Center. These activities could include (but are not limited to) clinical patient care, inpatient care, patient education, Health Center triage, clinical trials (where the patients are Health Center patients) and oversight of the Health Center-based clinical medical education of students, interns and residents.

Activities protected under FTCA include emergency room coverage or community call participation that are required in order to maintain admitting privileges --- if these are requirements placed on all community physicians, when these activities are within your scope of employment, and when admitting privileges are within your Health Center's scope of project.

Your activities are covered for services provided in all of your Health Center's sites, as long as the activities fall within your scope of employment and within your deemed Health Center's scope of project. This could include activities provided at a school-based clinic, in a mobile van, in a family planning clinic, or at a location that your Health Center has contracted to provide care for. Appendix J contains a simple self-test to help review FTCA protection status. You may wish to perform this cursory review with regard to alleged or potential claims.

## **Which of my activities may not be protected?**

***Those activities of yours that are not associated with a deemed Health Center, are not within the scope of project of a deemed Health Center, are not within your scope of employment, or are not clinical malpractice related – are not protected.***

FTCA malpractice protection does not apply to your actions undertaken while outside of United States borders.

FTCA malpractice protection does not apply to your activities to supervise non-Health Center employees and staff - such as serving as Medical Director for a Health Center contracted nursing home, or as Medical Director for the local emergency medical system.

FTCA malpractice protection does not cover your supervision of care provided by students or residents to non-Health Center patients, unless the patient is part of your required on-call scope of employment.

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<sup>1</sup> If you are unfamiliar with the terminology presented in this answer, review the Basic FTCA Definitions section at the beginning of this handbook.

FTCA malpractice protection does not apply to moonlighting or any other of your activities that are outside of your scope of employment or outside of the scope of project of your deemed Health Center.

FTCA malpractice protection may not apply to any of your activities for which you charge payers directly (see PIN 2001-11).

FTCA does not provide protection like general liability coverage, director's and officer's liability coverage, automobile and collision coverage, fire coverage, theft coverage, or any other non - malpractice coverage.

It would be prudent for your Health Center to obtain activity specific insurance products if you or the Health Center participate in the above activities, or other activities that do not come under FTCA malpractice protection. Your Health Center's Primary Care Association may offer advice on activity specific insurance carriers (see Appendix C).

FTCA malpractice protection does not provide coverage for non-Health Center related individuals or entities who might also be named in a malpractice claim against you (see "indemnification" in Glossary, Appendix B). FTCA protects only the employees and certain contracted clinicians of deemed Health Centers. Other organizations working with Health Centers, such as HMOs and hospitals, should obtain separate malpractice coverage. Indemnification can be addressed with specific insurance products.

FTCA does not provide malpractice protection for your acts that are considered criminal or illegal - such as sexual misconduct or willful physical abuse.

FTCA malpractice protection may not apply to community activities. These activities could include (but are not limited to); community call, hospital call, emergency room coverage, and services such as medical care for local events, or serving as a football sideline physician. If you are involved in community activities, it would be prudent for your Health Center to either work to make your community activities available for FTCA malpractice protection (see the following question), or purchase "gap" insurance protection. The National Association of Community Health Centers, and/or your Primary Care Association can offer advice on "gap" insurance (see Appendix C).

FTCA is a financial malpractice protection. FTCA does not protect you from the normal licensing, credentialing or peer review requirements or professional consequences in your state.

### **What must be done for my community activities to be covered?**

***Most activities can be covered. Discuss your community activities and obligations with your Clinical Director so that your Health Center can decide whether they should be brought under FTCA or covered with gap insurance.***

Community obligations and services are covered only if they fit within the Health Center's scope of project, and within your scope of employment.

Changes to your Health Center's scope of project, can be requested throughout the year. Have your Clinical Director contact the Field Office FTCA Coordinator (Appendix C) for information on changing your Health Center's scope of project. Changes to your scope of employment should be reflected in your contract with your Health Center, and in the job description for your position.

In addition, it is suggested that an identifiable relationship with the community entity/event be developed. Written affiliation agreements can serve to indicate and solidify the Health Center's relationship with the community entity/event. A sample affiliation agreement can be found in Appendix H. Indication of Health Center sponsorship of the community entity/event on event publications can also serve as proof of a relationship. It is a good idea to insist that entities/events note your Health Center's participation and use its logo in all of their event-related publications and advertisements.

### **When does my coverage start and end?**

***You are protected permanently – regarding those acts that occurred while you were under the cover of FTCA.***

This is similar to the kind of assurance that you might receive with an “occurrence” type individual malpractice policy. If you are under the cover of FTCA, you are protected from malpractice liability for those acts that occurred while you were under that cover - regardless of when a claim is made.

The FTCA has been made a permanent program with no sunset component, so the program is very unlikely to be discontinued. If it were discontinued, however, you would retain permanent protection for those acts that occurred while you were under the protection of FTCA.

Occasionally Health Centers lose their eligibility status for federal funding due to lack of community need, or for some other reason. It is possible (although unlikely) that an organization would decide to abandon its registration as a deemed Health Center. If the Health Center were to lose its federal funding status or lose its deemed status, you would still retain permanent protection for those acts that occurred while the Health Center was funded and deemed by the Bureau of Primary Health Care, and you were under the protection of FTCA.

### **How will FTCA impact my credentialing by outside organizations?**

***Your FTCA malpractice protection WILL be accepted by those credentialing organizations that wish to avoid federal penalty.***

Some credentialing organizations may inappropriately question the adequacy of your “coverage” if they are unaware of FTCA malpractice protection. Legislation from 1992, however, requires hospitals to accept FTCA as adequate for their coverage limits – or

face the possibility of losing the privilege of doing business with Medicaid and Medicare. Legislation from 1995 extends that requirement and comparable sanctions to HMOs and other managed care organizations (section 224 of the Public Health Service Act).

Appendix E is a Sample Verification Letter. A similar letter should be typed onto your Health Center's letterhead and shared with credentialing organizations in response to inquiries about your coverage. If this does not satisfy the organization, have them contact the FTCA Coordinator at your Field Office (listed on Appendix C) with both your name, and that of your Health Center.

## **What is the process if a malpractice claim is filed against me?**

### ***The federal government will assume responsibility.***

A malpractice claim is likely to start out naming you and your Health Center as defendants in state court. This is probably because the claimant is unaware that you have immunity protection, or because he/she believes that your conduct was not covered by FTCA. You will not remain the defendant for a FTCA - related malpractice claim.

Those controversies that fall under the jurisdiction of federal courts instead of state courts are defined in Article III, Section 2 of the Constitution. They include cases in which the United States government or one of its officers is being sued. FTCA makes you (as an employee or agent of a deemed Health Center, who is acting within your scope of employment and within the organization's scope of project) an "officer" of the federal government for issues of malpractice protection. Before a trial takes place, your case will be moved out of state court for lack of appropriate jurisdiction and the defendant will become the United States government.

United States Attorneys are the federal government's principal litigators under the direction of the Attorney General. There are US Attorney Offices located in the district of each federal District Court. One role of US Attorneys, according to Title 28, Section 507 of the US Code, is the defense of civil cases in which the United States is a party. The United States Attorney's Office is directed to appear in a state court for FTCA related malpractice actions within 15 days of being notified of the action.

The United States Attorney's Office will move the claim to Federal District Court (see Appendix D: "Organization Chart"). Plaintiffs are required to seek administrative remedy before they can sue for malpractice. If no administrative tort claim has been filed, the Federal District Court is likely to dismiss the claim. The plaintiff may then file an administrative claim with the Public Health Service Claims Office.

If an administrative claim is pursued, the Department of Health and Human Services will contact your Health Center requesting additional specific information. This information will be reviewed by a physician of appropriate specialty and by a claims panel composed of clinicians representing the Public Health Service. A recommendation will then be made to the Health and Human Services Office of the General Counsel on whether the standard of care has been met. If the claim is denied or a settlement is not reached, the plaintiff has up to six months to file suit in federal District Court.

If a satisfactory resolution to the claim is not reached and a lawsuit is filed, a Department of Justice US Attorney will defend the case. The Department of Justice defends all claims against the federal government. The Justice Department has experience defending malpractice claims filed against the Department of Defense, Veterans Administration, National Health Service Corps, and other federal departments and agencies

Your Health Center will receive a risk management quality improvement report based on an evaluation conducted by the Princeton Insurance Company. The report will be forwarded to your Health Center by the Bureau of Primary Health Care, and the Health Center will be expected to develop a work-plan, and organize a written response to the report.

Appendix A contains an example of a Health Center clinician's FTCA claims process experience. Reviewing this example may provide you with additional insight into the FTCA malpractice claims process.

## **What should I do if a malpractice claim is filed against me?**

### ***Inform your clinical director.***

If a suit is filed in state court, confer with your Health Center Clinical Director and ask him/her to inform your Executive Director (Appendix J contains a simple self-test to help you understand how Health and Human Services will review your FTCA protection status). Providing malpractice claim information to your Clinical Director should trigger a variety of activities that your Health Center administration will need to oversee:

- A. Your Health Center administration must immediately send the Summons and Complaint via overnight mail to<sup>2</sup>:

Chief, Litigation Branch  
Business and Administrative Law Division  
Office of General Counsel  
Department of Health & Human Services  
300 Independence Ave., S.W., Room 5362  
Washington, D.C. 20201  
Phone, 202-619-2155

- B. Your Health Center administration should call your Field Office FTCA Coordinator (Appendix C). It is important that your field Office FTCA Coordinator is contacted shortly after you have been summoned, in order to facilitate the process that protects you.

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<sup>2</sup> If an allegation is made against you, do not communicate with the US Attorney until the Department of Health and Human Services Office of the General Counsel has determined that your actions were protected by FTCA. Because you are either; 1) not the defendant, or 2) are the defendant and it is not a federal case, you may have no attorney-client privilege with the US Attorney. Information you provide the US Attorney prior to determination of your FTCA status could be disclosed to the plaintiff.

C. Your Health Center administration should document the details of the alleged incident, and prepare the following list of documents as required by the Department of Health and Human Services:

- 1) Two (2) copies of the complaint and summons.
- 2) Two (2) copies of a narrative summary regarding the facts of the alleged incident from the practitioner, the medical director and witnesses. Include the names, addresses and phone numbers of those contributing to the narrative summary, and follow the format provided by the Office of the General Council.
- 3) Copies of your job description, employment contract and wage statements for the period when the incident was alleged to have occurred. If you were an employee at the time of the alleged incident, send a W-2 wage statement. If you were a contractor at the time of the alleged incident, send a 1099 statement.
- 4) An affidavit verifying your employment at your Health Center (see Appendix G sample "Affidavit of Employment").
- 5) A copy of your professional license and DEA Certificate.
- 6) Two (2) copies of your Health Center's (or your own) insurance policies.
- 7) Four (4) copies of the relevant sections of the plaintiff's medical chart.
- 8) Two (2) copies of your Health Center's original deeming letter from the Department of Health and Human Services.
- 9) Two (2) copies of the section of the notice of grant award that verifies that your Health Center has been re-deemed.
- 10) A request for representation by the Department of Justice, and consequent removal of the case to federal jurisdiction (see Appendix F sample "Request for Representation").

D. Your Health Center administration should actively track progress of the claim by communicating with the Field Office FTCA Coordinator (Field Office contacts are identified in Appendix C).<sup>3</sup>

The Federal malpractice defense process is not likely to match your traditional malpractice defense expectations. Since you would not be the defendant, you could feel out of touch with the process. Asking your Health Center administration to actively track progress can help you stay in touch with the process.

E. The Bureau of Primary Health Care will forward a risk management quality improvement report, prepared by the Princeton Insurance Company, to your Health Center. Your Health Center will be expected to develop a work-plan, and organize a written response to the report.

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<sup>3</sup> If an allegation is made against you, do not communicate with the US Attorney until the Department of Health and Human Services Office of the General Counsel has determined that your actions were protected by FTCA. Because you are either; 1) not the defendant, or 2) are the defendant and it is not a federal case, you have no attorney-client privilege with the US Attorney. Information you provide the US Attorney prior to determination of your FTCA status could be disclosed to the plaintiff.

## **Would I have final approval over whether or not my case was settled out of court?**

*No.*

An FTCA claim, after being removed from state court, would not be your case; the Federal government becomes the defendant. While United States Attorneys may discuss plans to settle cases with the treating provider, they would not be compelled to seek your opinion. A claim, however, should not be settled without authorization from the Bureau of Primary Health Care's Center for Risk Management.

Traditional malpractice insurance programs may seek proxy from providers to settle when negotiated terms become favorable. Settlements can then occur for reasons that are not germane to the claim – such as the insurance program's desire to clear out a backlog of cases. There is no inherent reason, however, for the Bureau to settle cases they believe are defensible. They have not settled nuisance, or other cases, for medically trivial reasons, such as a desire to clear up a backlog.

## **When would my name be required to be placed in the National Practitioner Data Bank?**

*If and when a payment is made.*

Clinicians must be reported to the National Practitioner Data Bank whenever a payment is made, and the Public Health Service Quality Review Panel has determined that the standard of care was not met. The Health Resources and Services Administration is interested in promoting equitable quality care through Health Centers and their clinicians. The National Practitioner Data Bank, Health Centers and FTCA are all administered within the Health Resources and Services Administration. The Health Resources and Services Administration, the Bureau of Primary Health Care and all their divisions follow National Practitioner Data Bank requirements.

## **How can I reduce the likelihood of malpractice claims being made against me?**

*You can reduce the likelihood of malpractice claims, and improve the federal government's ability to defend against them, through careful risk management planning and implementation.*

You can manage and minimize malpractice risk by encouraging and assisting your Health Center in undertaking appropriate risk management, quality assurance and quality improvement programs. The likelihood of malpractice claims can be reduced, and the ability to defend them can be enhanced with carefully designed and implemented programs.

Health Centers have historically utilized various risk management strategies. The Bureau of Primary Health Care required quality assurance measure reporting for several years prior to the enactment of FTCA law. The Bureau also typically performed (and still does) periodic Health Center reviews that considered certain risk management criteria.

The Bureau of Primary Health Care has promoted an increased emphasis on risk management, quality assurance and quality improvement programs in the past few years. A “Quality Center” has been developed to facilitate the measurement and improvement of quality in Health Centers. The Quality Center has formed a joint venture with the National Association of Community Health Centers to improve risk management quality in Health Centers. The venture has adopted three main strategies to help Health Centers improve risk management:

1. Risk management training offerings. These are typically offered at state primary care association, clinician’s network and NACHC meetings. For information on upcoming risk management training, contact your primary care association (see appendix B), or Freida Mitchem at NACHC, 1-202-659-8008.
2. Advice offered through a NACHC/ProNational risk management hotline. The hotline can be accessed by calling 1-888-800-3772 (toll free).
3. An on-site risk management evaluation conducted by ProNational Insurance. BPHC/NACHC pay the ProNational’s consulting fees for the evaluation, but the Health Center must cover logistical expenses. For further information on a BPHC/NACHC risk management evaluation, contact Freida Mitchem, NACHC, 1-202-659-8008.

The Bureau of Primary Health Care Quality Center, State Primary Care Associations, State Primary Care Offices, your Health Center’s Field Office, and the National Association of Community Health Centers are all resources for developing formal quality assurance and risk management programs. For further information contact those entities identified in Appendix C, or call BPHC’s FTCA help line at 1-800-FTCA.

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Appendix A  
Dr. James FTCA Case Example

Most people in my Health Center know me as Dr. James.<sup>4</sup> I received an unpleasant surprise from a man who came into my office on January 28<sup>th</sup>, 1998. The courier handed me a document, and asked that I sign for receipt of a summons and complaint.

The complaint alleged that I had practiced outside of the community standard of care, and had failed to diagnose a cancerous skin lesion during a routine physical exam of a female patient in 1995. The patient had recently had the lesion removed by another physician. The summons and complaint said that the claimant suffered physically and emotionally from a facial scar, and from fear of further complications.

After the courier departed, I left a message on my Medical Director's answering machine, and went to pull the former patient's chart. The chart showed that the patient had come in for stomach cramps on the day in question. Health Center policy is to suggest a full physical exam for all patients over thirty years of age who have not been examined in the previous 18 months. The patient had refused the exam due to time constraints, but agreed to make an appointment to be seen in a subsequent week. The patient did not make an appointment and had not been seen in the Health Center since.

Later that day, our Medical Director dropped by – apparently to reassure me. The Director said that she had notified the Executive Director and the Regional Office FTCA Coordinator of the summons, and had asked her secretary to prepare several appropriate documents. The documents, she said, would be sent to the Office of the General Counsel of the Health and Human Services Department. The Medical Director asked that I write a description of the patient encounter, which would be included in that documentation.

The following day, January 29<sup>th</sup>, 1998, the Medical Director's secretary interviewed some people in my department. On February 17, 1998, a representative from the Office of the General Counsel called and asked me if a nurse had been present for the duration of the exam. I told the representative that a nurse had not been present.

On February 24<sup>th</sup>, 1998 an Assistant U.S. Attorney General from the local jurisdiction called and asked me some further questions. The attorney also corroborated

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<sup>4</sup> This case study utilizes fictitious names and events to describe a provider's role in the FTCA claims process.

information with others in the Health Center. Our billing department sent the attorney a record indicating that the patient had no further visits.

The U.S. Attorney told me it was not necessary to attend the hearing on March 11<sup>th</sup>, since the federal government was rightfully the defendant, but I attended anyway. The hearing lasted for just a few minutes. The federal government presented proof that I had malpractice immunity under FTCA and asked to have the case moved to federal court since the state court had no jurisdiction over the matter. The judge had the case moved to federal court.

I did not attend any further hearings, but was later informed that after the case was moved to federal court, it was dismissed because the plaintiff had not followed procedure. Alleged claims of malpractice, I am told, must be presented to the Public Health Service for an administrative review before they can go to litigation.

The Health Center received a risk management quality improvement report that had been prepared by Princeton Insurance. After word of the claim, Princeton did a risk management evaluation of my Health Center, and prepared suggestions for improvement. The report was apparently passed on to the Bureau of Primary Health Care, who forwarded it to our center. The Health Center is expected to respond to suggestions from Princeton. The suggestions make pretty good sense, and my Health Center is adopting the prescribed precautionary actions.

I have heard nothing of this case since, but have been told that this is not unusual. Sometimes cases that are moved to federal court and then dismissed for not following procedure are no longer pursued. It has been a great comfort to know that our Health Center's quality standards take such high priority in this organization. It has also been comforting to know that I am financially protected from medical malpractice liability because of the Federal Tort Claims Act. No cases, I am told, have been settled in administrative review where the undisputed standard of care has been met, and most cases do not even go as far as litigation in federal court.

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Appendix B – Glossary of Term Use

**Agent** – A person or organization that is authorized to act on behalf of, or represent, another person or organization.

**BPHC** – The Bureau of Primary Health Care is the entity under which Community and Migrant Health Centers, and other programs are organized. The Bureau's mission is "to increase access to comprehensive primary and preventive health care and to improve the health status of underserved and vulnerable populations." BPHC is organized under the Health Resources and Services Administration, Public Health Service, Department of Health and Human Services (see Appendix D Organization Chart).

**CHC** – Community Health Centers are non-profit, community based primary care centers in Medically Underserved Areas, which receive some of their funding from the Bureau of Primary Health Care. Community Health Centers have community/user based governing boards, sliding discounts for the uninsured, community needs-based service mixes, and strategies to improve community health measures through increased access to family practice, internal medicine, obstetrical, gynecological, pediatric, dental and mental health providers. Community governing boards are expected to consider the needs in their community and focus on primary care, prevention, education and public health strategies to improve the community's health. CHCs submit periodic applications as a condition of their funding, which are called project period renewal grant applications. These applications identify the needs of the community and propose a strategy and business plan to address those needs.

**Claims Made Policy** – A malpractice insurance policy that only covers the individual for those claims that are filed during the term of the policy. This is in contrast to an **occurrence policy** that covers acts and omissions that occur during the term of a policy regardless of when they are filed. Clinicians who were covered by a claims made policy prior to protection under FTCA should obtain "tail" coverage, because FTCA only covers those acts and omissions that occur while under the protection of the Act.

**Contractor** – An individual who performs work for a Health Center but is not an employee of that organization. Health and Human Services Office of the General Counsel may use the IRS (23 - part test) definition to differentiate contractors and employees. Essentially, if a Health Center issues a 1099 to an individual, then that individual is probably a contractor.

**Credentialing** – A process for verifying that a provider is appropriately licensed or certified, and for evaluating the quality of that provider’s work history. Most health plans and hospitals credential providers that practice with or for their organization. The Federally Supported Health Centers Assistance Act of 1992 requires, and PIN 2001-16 reiterates that **each deemed Health Center that participates in the FTCA must credential all its physicians and all other licensed or certified health care practitioners.** Specifically “A Health Center must verify that its licensed or certified health care practitioners possess the requisite skills and expertise to manage and treat patients and to perform the medical procedures that are required to provide the authorized services. It is incumbent on the Health Centers to assure their users that Health Center practitioners have met standards of practice and training that enable them to manage and treat patients and/or perform procedures and practices with a level of proficiency which minimizes the risk of causing harm. The organization must adopt its own policy that outlines specific privileging requirements and the periodicity of the review of privileges for all licensed or certified health care practitioners.” For further information see PIN 2001-16, contact your Primary Care Association, or your Field Office FTCA Coordinator.

**Deeming Process** - An application process that an eligible Health Center must undertake in order to activate and maintain its FTCA malpractice protection. The law allows only organizations funded under section 330 of the Public Health Service Act to be deemed. The deeming process, while not onerous, does have some basic requirements. Health Centers that wish to participate must assure the Bureau of Primary Health Care that they conduct complete and thorough credentialing of their providers, including a query of the National Practitioner Data Bank. Participating Health Centers must maintain clinical protocols, tracking systems, medical record reviews and active quality assurance programs. Once deemed, eligibility is maintained through project period renewal grant applications.

**Employee** - FTCA Administration utilizes the IRS definition (23-part test) of an employee. Essentially, if a Health Center issues a W-2 to an individual and pays all withholding taxes, then that individual is an employee.

**Field Office** – One of 10 regionally located offices of the Health Resources and Services Administration. Each of these offices has an individual who acts as a regional FTCA Coordinator.

**FTCA** -The **Federal Tort Claims Act (FTCA)** can be defined as the federal law that, among other things, enables malpractice protection for individuals who are acting within their scope of employment, and within the scope of project of a deemed Health Center.

**Gap Coverage** – In this handbook, gap coverage refers to a malpractice insurance policy that covers those clinical activities that are not provided malpractice immunity under FTCA (sometimes called wrap-around insurance).

**Health Center** – The term utilized in this book to identify an entity eligible for FTCA Protection. “Health Centers” are funded by the Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care, under Section 330 of the Public Health Service Act. These grantees submit a periodic application as a condition of their funding which is called the project period renewal grant application.

**Indemnification** - Legal exemption, for a third party, from attachment to a malpractice claim. FTCA does not provide a statutory basis for entities affiliated with Health Centers to be indemnified or “held harmless”.

**Malpractice** - A dereliction of professional duty through reprehensible ignorance or negligence – especially when injury or loss follows (Webster). The Public Health Service booklet “Medical Malpractice Claims”, states that negligence is the predominant theory of liability in medical malpractice litigation. Professional negligence occurs when a practitioner’s care falls below the standard of care established by the medical community. To meet the standard of care the provider must exercise the knowledge and skills that a reasonable practitioner would use under similar circumstances. National standards have become the benchmark.

The mere assertion of a claim or the fact that an injury or adverse complication resulted from a medical, surgical, nursing or dental procedure does not in and of itself constitute malpractice. The facts must prove that there was a deviation from the established standard of care required under the circumstances and that this departure directly caused the alleged injury.

**Malpractice Claim** – An assertion that a provider has not followed the standard for care, and that the claimant is therefore due compensation.

**Medically Underserved Areas** – An area that meets federal standards designed to indicate a need for primary care services. The complex index is a mix of morbidity, mortality, and primary care access measures.

**NACHC** – The National Association of Community Health Centers. NACHC is a membership organization that provides communication, education, training, consulting, networking, group purchasing and advocacy services at a national level for community based and Bureau of Primary Health Care supported clinics.

**National Practitioner Data Bank (NPDB)** - A federal clearinghouse to collect and release information concerning payments made on behalf of physicians, dentists and other licensed health care practitioners as a result of malpractice actions and claims and to maintain information concerning certain adverse actions regarding

their licenses and clinical privileges. Information is released only to those organizations legally entitled to receive it. Information in the NPDB is not released to the public.

**Occurrence Policy** – An insurance policy that provides coverage for actions and omissions that took place during the time of the policy – regardless of when the claim is made. This is in contrast to a **claims made** policy that covers the individual for those claims that are filed during the term of the policy.

FTCA malpractice immunity is similar to an occurrence policy. Those protected under FTCA are immune from malpractice liability for those acts that occurred while they were under protection – regardless of when a claim is made.

**PCA** – Primary Care Associations are state and regional membership organizations, which are supported, in part, by the Bureau of Primary Health Care. PCAs provide communication, education, training, networking, consulting, group purchasing and advocacy services at a state level for primary care, community based, Bureau of Primary Health Care supported clinics, organizations and clinicians.

**PCO** – Primary Care Offices are state government based cooperative agreements that receive funding from the Bureau of Primary Health Care. PCOs typically serve a variety of functions that promote primary care, community-based care and public health in their state. PCO functions could include (but are not limited to) liaison with federal offices, needs assessments, clinical recruiting, collection and reporting of morbidity and mortality data, oversight of state funding of primary care and administration of local National Health Service Corps programs.

**Peer Review** - A process where a Health Center's provider staff review the qualifications, outcomes and professional conduct of individual providers and provider applicants to that Health Center to determine whether the individuals reviewed should practice there, and to determine the parameters for doing so. Most states have given some form of immunity to participants in a peer review process and protect discussions, findings, decisions and reports of such reviews as information privileged from judicial disclosure. This protection can vary significantly from state to state.

**Privileging** – A process for authorizing a provider for a defined scope of clinical services based on an analysis of that provider's credentials, experience and performance. Most health plans and hospitals privilege providers that practice with or for their organization. The Federally Supported Health Centers Assistance Act of 1992 requires, and PIN 2001-16 reiterates that **each deemed Health Center that participates in the FTCA must credential, and subsequently privilege, all its physicians** and all other licensed or certified health care practitioners. In addition to credentialing, the Health Center “must adopt its own policy that outlines specific privileging requirements and the periodicity of the review of privileges

for all licensed or certified health care practitioners.” For further information see PIN 2001-16, contact your Primary Care Association, or your Field Office FTCA Coordinator.

**Scope of Employment** - The duties and responsibilities of an employee or contractor as identified by a job description or contract and other related performance responsibility documents.

**Scope of Project** - A Health Center’s scope of project is the Bureau of Primary Health Care approved domain described in certain segments of its grant application. Those segments include a description of the Health Center’s populations served, the list of services provided, list of service delivery sites, Health Center affiliations, and work-plan. A Health Center can update its scope of project by adjusting those fundamental documents and seeking approval for such change from the Bureau of Primary Health Care.

**Statute of Limitations** - The statute of limitations for filing a FTCA claim is two years.

**Sunset Provisions** – Scheduled periodic review for consideration of continuation of certain government programs, without which the program is discontinued. FTCA is an abiding program without a sunset provision.

**Tail Coverage** – A medical malpractice insurance product designed to cover individuals who move from a **claims made policy** to an **occurrence policy**. Clinicians who move from a claims made type of policy to FTCA should obtain tail coverage.

**Vicarious Liability** – Indirect legal responsibility that an entity has, concerning the acts of agents. Hospitals and HMOs, for example, may insure themselves against the vicarious liability that might result from a provider’s actions.

**Work Plan** – A section of the federal grant application on which Health Centers describe goals, objective, tasks, responsibilities and timetables for improving the health of their community.

**Wrap Around Policy** – A malpractice insurance policy that covers those activities of an employee (or agent) of a Health Center which are not provided malpractice immunity under FTCA. Also called gap insurance.

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Appendix C - Contacts & Sources for Additional Information

**Bureau or Primary Health Care's FTCA Help Line** – 1-800-FTCA-HELP. Triton Group, 227 Hamburg Turnpike, Pompton Lakes, NJ 07442. 1-973-831-8395 FAX, tritongp@optionline.net.

**Bureau of Primary Health Care's Policy Information Notice (PIN) web address** - <http://www.bphc.hrsa.dhhs.gov/pinspals/>

**Center for Risk Management, HRSA** – Martin Bree, Director, Center for Risk Management, Bureau of Primary Health Care, 150 W. Independence Hall West, Suite 1172, Philadelphia PA 19106-3499. **Ph. 215-861-4373.** FAX 215-861-4391. Susan Lewis, Risk Management Coordinator. **Ph. 215-861-4364.** June Little, Administrative Assistant. **Ph. 215-861-4362.**

**Field Offices of FTCA Coordinators, Public Health Service/HRSA:**

Region I – Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. FTCA Coordinator, Ed, Leeds, John F. Kennedy Federal Building, Rm. 1826, Boston, MA 02203. Ph 617-565-4825. FAX 617-565-1162.

Region II – New Jersey, New York, Puerto Rico, US Virgin Islands. FTCA Coordinator, Roberta Holder-Mosley, M.S., C.N.M, 26 Federal Plaza Rm. 3337, New York, NY 10278. Ph. 212-264-2771. FAX 212-264-2708.

Region III – Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Acting FTCA Coordinator, Richard Vause, 150 S. Independence Mall West Suite 1172, Philadelphia, PA 19106-3499. Ph 215-861-4375. FAX 215-861-4385.

Region IV – Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Kentucky. FTCA Coordinator, Kim Willaid-Jelks, M.D., 101 Marietta Tower Suite 1202, Atlanta, GA 30303. Ph 404-562-4110. FAX 404-562-7999.

Region V – Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. FTCA Coordinator, Nancy Egbert, R.N., 105 West Adams Street 17<sup>th</sup> Floor, Chicago, IL 60603. Ph 312-353-4204. FAX 312-353-3173.

Region VI – Arkansas, Louisiana, New Mexico, Texas, Oklahoma. FTCA Coordinator, Carol Sherman, D.D.S., 1200 Main Tower Building Room 1800, Dallas, TX 75202. Ph 214-767-3942. FAX 214-767-3902.

## Field Offices of FTCA Coordinators – Continued

Region VII – Iowa, Kansas, Missouri, Nebraska. FTCA Coordinator, Larry Walker, D.D.S., 601 E. 12<sup>th</sup> Street Room 501, Kansas City, MO 64106. Ph 816-426-5204. FAX 816-426-3633.

Region VIII – Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. FTCA Coordinator, Kathleen Hastings, T.N., J.D., 1961 Stout Street Room 498, Denver, CO 80294. Ph 303-844-7861. FAX 303-844-0002.

Region IX – Arizona, California, Hawaii, Nevada, Pacific Territories. FTCA Coordinator, Barbara Lee, 50 United Nations Plaza Room 307, San Francisco, CA 94102. Ph 415-437-8130. FAX 415-437-8052.

Region X – Alaska, Idaho, Oregon, Washington. FTCA Coordinator, Richard Rysdam, D.O., 2201 Sixth Avenue Mail Stop RX 23, Seattle, WA 98121. Ph 206-615-2263. FAX 206-615-2500.

**NACHC Information, Training and Workshops** – Freida Mitchem, NACHC’s Director of Systems Development. 1330 New Hampshire Ave. NW, Washington, D.C. 20036. **Ph. 202-659-8008 ex. 133.** FAX 202-659-8519. Email Fmitchem@nachc.com.

**NACHC/ProNational Risk Management Consultation Line** (a free service for non – FTCA risk management questions) – 888-800-3772. Risk management training is also available with this group (contact NACHC’s Freida Mitchem at 202-659-8008 ex 133).

**NACHC Publications and Issue Briefs** – Sharon Lowman, 1330 New Hampshire Ave. NW, Washington, D.C. 20036. **Ph. 202-659-8008 ex. 129.** FAX 202-659-8519. Email Fmitchem@nachc.com.

**Office of the General Counsel, Litigation Branch, Business & Administrative Law Division, Health and Human Services**, Cohen Building, Room 5362, 330 Independence Avenue, SW, Washington, D.C. 2020. **Ph. 202-619-2155.**

### Primary Care Association Phone Numbers

Alabama	334-271-7068	Alaska	907-272-6131
Arizona	602-253-0090	Arkansas	501-374-8225
California	919-440-8170	Colorado	303-861-5165
Connecticut	860-232-3319	Delaware	410-974-4775
District of Columbia	202-638-0252	Florida	805-942-1822
Georgia	404-659-2861	Hawaii	808-536-8442
Idaho	208-345-2335	Illinois	217-541-7305
Indiana	317-630-0845	Iowa	515-243-2000
Kansas	785-233-8483	Kentucky	502-227-4379
Louisiana	225-383-8677	Maine	207-621-0677
Maryland	410-974-4775	Massachusetts	617-426-2225
Michigan	517-381-8000	Minnesota	612-253-4715
Mississippi	601-352-2502	Missouri	573-636-4222
Montana	406-442-2750	Nebraska	515-243-2000

## Primary Care Association Phone Numbers – Continued

Nevada	775-887-0417	New Hampshire	603-228-2830
New Jersey	609-275-8886	New Mexico	505-880-8882
New York	212-870-2273	North Carolina	919-469-5701
North Dakota	701-221-9824	Ohio	614-224-1440
Oklahoma	405-424-2282	Oregon	503-228-8852
Pennsylvania	717-761-6443	Puerto Rico	809-758-3411
Rhode Island	401-944-8446	South Carolina	803-788-2778
South Dakota	605-357-1515	Tennessee	615-329-3836
Texas	512-329-5959	Utah	801-974-5522
Vermont	802-229-0002	Virginia	804-378-8801
Washington	425-656-0848	West Virginia	304-346-0032
Wisconsin	608-277-7477	Wyoming	307-632-5743

**Public Health Service Claims Office**, Office of Resource Management, Office of Management, Public Health Service, Parklawn Building Rm. 18-17, 5600 Fishers Lane, Rockville, Maryland 20857. **Ph. 301-443-1904.**

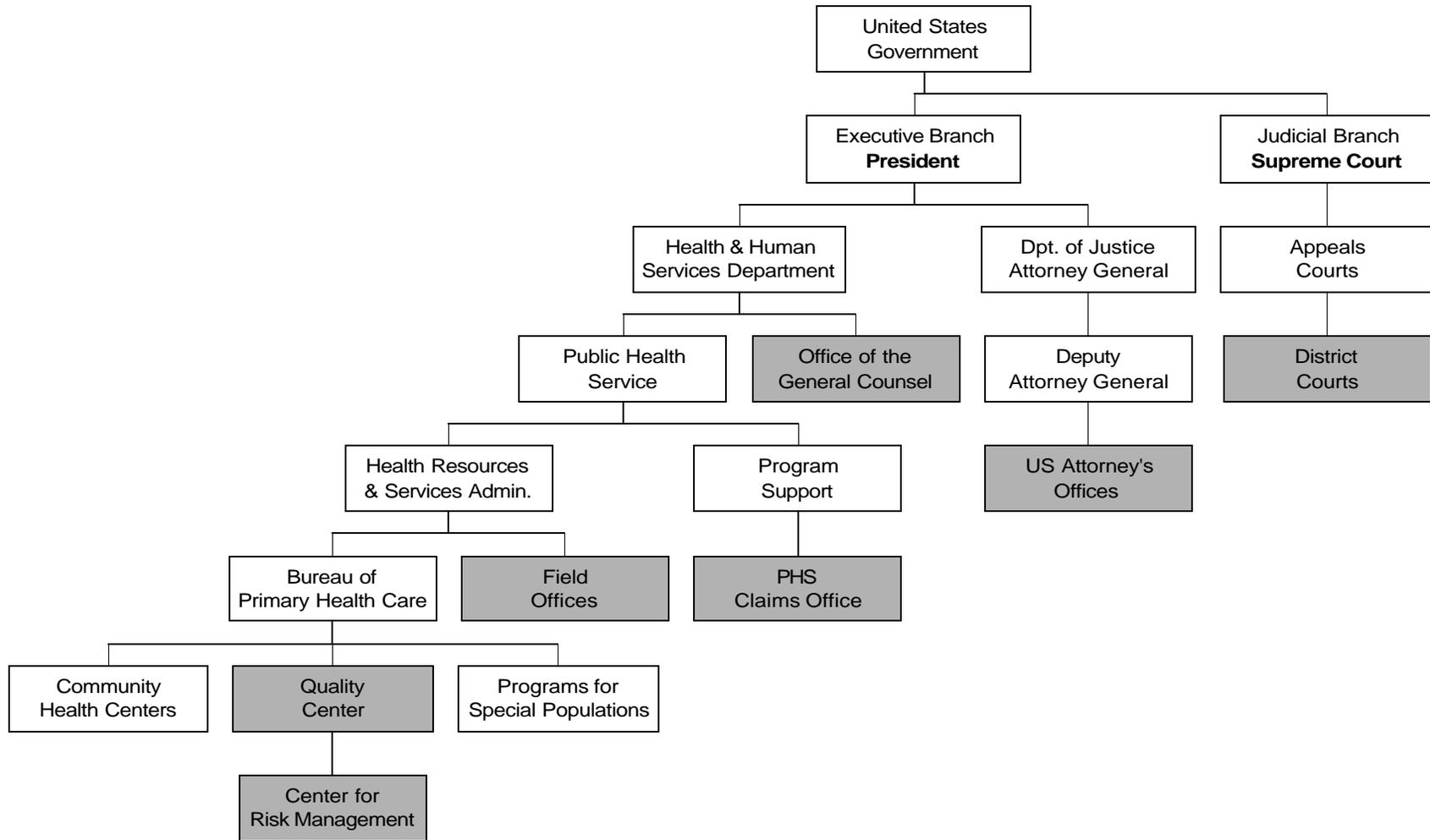
**Quality Center of the Bureau of Primary Health Care** – Francis Zampello, Director, 4350 East-West Highway, 11<sup>th</sup> Floor, Bethesda MD 20814. **Ph. 301-594-4119.**

**Triton Group** – 227 Hamburg Turnpike, Pompton Lakes, NJ 07442. **Ph. 866-382-2435.** FAX 972-831-8395. Email tritongp@optonline.net.

**Western Clinician's Network** c/o AACHC, 320 E. McDowell Rd. suite 225, Phoenix, Arizona 85004-4516. **Ph. 602-253-0090.** FAX 602-252-3620. Email aachc@primenet.com.

# Clinician's Handbook on FTCA - Appendix D

## Federal Entities Involved in the Health Center FTCA Claims Process - 2002



\* Shaded boxes are those involved in the Health Center FTCA

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Appendix E - Sample FTCA Malpractice Protection Verification Letter

# Clinical Quality Health Center

*October 12, 1999*

*Community Hospital & Health Plan  
Credentialing Department  
950 E. Irvine  
Phoenix, Arizona 85027*

To whom it may concern:

*Dr. Goodoc M.D.*, is an employee of *Clinical Quality Health Center*. As of 12:01 a.m., March 30, 1993, all clinicians employed by *Clinical Quality Health Center* are, for the purposes of malpractice protection, considered employees of the Public Health Service.

The Federally Supported Health Centers Assistance Acts of 1992 (P.L. 102-501) and 1995 (P.L. 104-73) specify that all employees of eligible Health Centers are covered for malpractice liability under the Federal Tort Claims Act (FTCA) as per Section 224 of the Public Health Service Act (42 U.S.C. 233). According to this Act, the US. Department of Justice will provide defense of malpractice claims concerning damage or personal injury resulting from the performance of medical, dental or surgical activities while acting within the scope of employment. Our scope of employment includes patient care services provided in the hospital as required by our federally supported Health Center. In addition, FTCA coverage includes payment to a plaintiff of any damages awarded as a result of a malpractice judgment or as a result of a settlement approved by the Attorney General of his/her designee. All organizations that receive funding from Medicare or Medicaid must accept this coverage or lose the privilege of participating in Medicare or Medicaid programs.

*One* malpractice claim has been filed against *Dr. Goodoc, M.D.*, during the time of his FTCA coverage with *Clinical Quality Health Center*.

If you should have any questions regarding this coverage, please feel free to contact me at 602-253-0090.

Sincerely,

*Cindy Sawit, M.D.  
Medical Director*

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Appendix F - Sample Notice of Complaint & Summons

# Clinical Quality Health Center

July 21<sup>st</sup>, 1999

Department of Health & Human Services  
Office of the General Counsel  
Business and Administrative Law  
Room 5362, Cohen Building  
330 Independence Avenue, SW  
Washington, DC 20201

RE: *Shawnee Gothurt vs. Cody Goodoc, M.D.*

The above referenced complaint and summons (previously sent to you by overnight mail) was served in *Maricopa County, Arizona on October 12, 1999*. The following documents are enclosed:

1. Two (2) copies of the complaint and summons.
2. Two (2) copies of a narrative summary regarding the facts of the alleged incident as provided by our practitioner, medical director and witnesses. The summary includes the names, addresses and phone number of those contributing to the narrative, and is in the format supplied by the Office of the General Council.
3. A copy of *Dr. Goodoc's* job description, employment contract and wage statements.
4. An affidavit verifying *Dr. Goodoc's* employment at *Clinical Quality Health Center*.
5. A copy of *Dr. Goodoc's* Arizona License and DEA Certificate.
6. Two (2) copies of our Health Center's other insurance policies.
7. Two (2) copies of the relevant sections of *Shawnee Gothurt's* medical chart.
8. Two (2) copies of *Clinical Quality Health Center's* deeming letter from the Department of Health and Human Services.
9. Two (2) copies of the section of *Clinical Quality Health Center's* latest notice of grant award signifying that we have been re-deemed for FTCA.
10. A request for representation by the Department of Justice and consequent removal of the case to Federal jurisdiction.

I have called the plaintiff's attorney and explained that this is a FTCA matter, and that some time may be required for the US Attorney General to respond. I have told the attorney that you will follow up, so please call him at 602-589-1000 as soon as you have received this notice. Should you require further information or need additional assistance, please do not hesitate to contact me at 602-253-0090.

Sincerely,

*Cindy Sawit, M.D.*  
*Medical Director*

Cc. w/o attachments  
Director of the Center for Risk Management  
*San Francisco Field Office FTCA Coordinator*

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Appendix G - Sample Affidavit of Employment Form

# Clinical Quality Health Center

AFFIDAVIT OF EMPLOYMENT

UNITED STATES DISTRICT COURT  
ARIZONA

*Shawnee Gothurt* (Plaintiff)

v.

*Cody Goodoc, M.D.* (Defendant)

)  
)  
)  
)  
)  
)

*Civil Action # 3*

AFFIDAVIT

RE: *Cindy Sawit, M.D.* (supervisor)

I, *Cindy Sawit*, am employed by the *Clinical Quality Health Center* as a *Medical Director*.

I have administrative and professional supervision over *Cody Goodoc M.D.*, who was named in the above action brought in the *Arizona Superior Court, Maricopa County*.

The summons and complaint were personally served on *Dr. Goodoc* on *October 12, 1999*. *Cody Goodoc, M.D.*, is an employee of *Clinical Quality Health Center of Phoenix Arizona*, a 330-e grantee of the Bureau of Primary Health Care. He has been employed here at *Clinical Quality Health Center* since *November 1, 1990*. During the period of time relevant to the incident that is the subject of this suit, *Dr. Goodoc* was acting within the scope of his employment in the capacity of *contracted* employee. *Dr. Goodoc* was not the recipient of reimbursement for services he provided to the plaintiff. He is a *Family Physician* who normally performs an average of at least 38 hours per week for our Health Center.

\_\_\_\_\_  
*Cindy Sawit* (supervisor)  
*Medical Director* (title)  
*Clinical Quality Health Center*  
*320 E. McDowell*  
*Phoenix, AZ 12345*

Subscribed and sworn to before me, a Notary Public, this 15th day of October 2000.

\_\_\_\_\_  
*Logan Swears* (Notary Public)  
My Commission Expires *1/28/01*

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Appendix H - Sample Affiliation Statement

# Clinical Quality Health Center

## Affiliation Statement

*Newark High is the primary high school serving the needs of some 1,500 students in the underserved North Central Neighborhood of Phoenix, Arizona. Newark High's mission is to prepare North Central Neighborhood students to improve themselves, their community, their country and the world. Many of these students are patients of Clinical Quality Health Center, and the school and clinic cooperate to serve their health care needs. Newark High competes in the Arizona High School Athletic Association Football League. The Arizona league requires that home teams provide a physician to oversee each football game.*

*Clinical Quality Health Center is a federally supported Community Health Center located in the underserved North Central Neighborhood of Phoenix, Arizona. Clinical Quality Health Center's mission is to improve the health of the North Central Neighborhood by spreading health information, providing health coordination, and improving access to primary care services. The Health Center employs three Board Certified, properly credentialed physicians.*

*Newark High School and Clinical Quality Health Center have missions which overlap and believe that certain affiliations could help both to become better partners in serving their communities:*

- *Clinical Quality Health Center agrees to provide an on-site physician to oversee each Newark High School home football game.*
- *Newark High School agrees to compensate Clinical Quality Health Center the set sum of \$100 for on-site physician services provided at each home game. Newark High School also agrees to recognize Clinical Quality Health Center at each home game, at awards banquets and on all printed public materials that are related to football, including game programs and the yearbook.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Principal of Newark High

\_\_\_\_\_  
Date

\_\_\_\_\_  
Executive Director of CQHC

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Appendix I – FTCA Clinician Protection Self-Test

This self-test is designed by the Bureau of Primary Health Care to help you perform a cursory FTCA protection evaluation. You can use this simple test to reassure yourself about FTCA protection for alleged incidents, or potential future alleged incidents.

To perform a cursory test of alleged or potential alleged incidents, review in sequence the statements listed below. If all five statements were true for you, then your Health Center activity would be protected under FTCA. If any statement is not true for you, then your activity might not be protected by FTCA. This is only a cursory test. For specific information review this Handbook, and talk with your Clinical Director.

1. The allegation against me is one of medical malpractice.  
False. Then, your activity would not be protected.  
True. Go to question #2.
  
2. I am: 1) an employee of a deemed Health Center, or 2) a licensed or certified contractor working at least 32.5 hours per week for a deemed Health Center, or 3) a licensed/certified contractor providing family practice, general internal medicine, general obstetrics/gynecology or pediatric services for a deemed Health Center.  
False. Then, your activity would not be protected.  
True. Go to question #3.
  
3. I have not directly billed the patient, or the patient's health coverage payer, for my activity that led to the allegation, or if I have, the billing meets requirements of PIN 1001-11.  
False. Then, your activity would not be protected.  
True. Go to question #4.
  
4. The incident giving rise to the claim occurred while I was acting within the scope of my employment with a deemed Health Center.  
False. Then, your activity would not be protected.  
True. Go to question #5.
  
5. The activity that led to the allegation against me was within the approved scope of project of my deemed Health Center.  
False. Then, your activity would not be protected.  
True. If 1-5 are true, your activity would be protected under FTCA.

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**Appendix J – State Boards of Medical & Dental Examiners**

	<u>Allopathic</u>	<u>Osteopathic</u>	<u>Dental</u>
Alabama	334-242-4116	256-356-9642*	205-985-7267
Alaska	907-269-8163	972-416-8727*	907-465-2542
Arizona	480-551-2700	480-657-7703	602-242-1492
Arkansas	501-296-1802	501-374-8900*	501-682-2085
California	916-263-2389	916-263-3100	916-263-2300
Colorado	303-894-7690	303-764-1198*	303-894-7761
Connecticut	860-509-7563	860-509-7563*	860-509-7648
Delaware	302-739-4522	302-764-1198*	302-739-4522
District of Columbia	202-442-9200	703-522-8404*	202-442-4764
Florida	850-245-4131	850-488-0595	850-245-4474
Georgia	404-656-3913	770-493-9278*	478-207-1680
Guam	011- 671-475-0251		
Hawaii	808-586-3000	808-831-3000*	808-586-2702
Idaho	208-327-7000	208-376-2522*	208-334-2369
Illinois	217-785-0800	800-621-1173*	217-782-8556
Indiana	317-232-2960	317-926-3009*	317-234-2057
Iowa	515-281-5171	515-283-0002*	515-281-5157
Kansas	785-296-7413	785-234-5563*	785-273-0780
Kentucky	502-429-8046	502-223-5322	502-423-0573
Louisiana	504-568-6820	800-621-1773*	504-568-8574
Maine	207-287-3601	207-287-2480	207-287-3333
Maryland	410-358-2252	410-664-0621*	410-402-8500
Massachusetts	617-727-3086	781-721-9900	617-727-7368
Michigan	517-373-6873	517-373-6873	517-335-1752
Minnesota	612-617-2130	763-433-0552*	612-617-2257
Mississippi	601-987-3079	601-366-3105*	601-944-9622
Missouri	573-751-0098	573-634-3415*	573-751-0040
Montana	406-841-2360	701-852-8798*	406-841-2390
Nebraska	402-471-2118	402-333-2744*	402-471-2118
Nevada	775-688-2559	702-732-2147	702-486-7044
New Hampshire	603-271-1203	603-224-1909*	603-271-4561
New Jersey	609-826-7117	732-940-9000*	973-504-6405
New Mexico	505-827-5022	505-476-7120	505-476-7125
New York	518-474-3817	800-841-4131*	518-474-3817
North Carolina	919-326-1100	800-621-1773*	919-678-8223
North Dakota	701-328-6500	701-852-8798*	701-258-8600
Northern Marianas	670-664-4811		
Ohio	614-466-3934	614-466-2580	614-466-2580
Oklahoma	405-848-6841	405-528-8625	405-524-9037
Oregon	503-229-5770	503-222-2779*	503-229-5520
Pennsylvania	717-787-2381	717-783-4858	717-783-7162
Puerto Rico	787-782-8989		787-723-1617
Rhode Island	401-222-3855	781-721-9900*	401-222-2827
South Carolina	803-896-4500	877-886-3672*	803-896-4599
South Dakota	605-334-8343	605-334-8343	605-224-1282
Tennessee	615-532-3202	615-532-3202	888-310-4650
Texas	512-305-7010	512-708-8662*	512-463-6400
Utah	801-530-6628	801-530-6628	801-530-6767
Vermont	802-828-2673	802-828-2373	802-828-2390
Virgin Islands	340-774-0117		340-774-0117
Virginia	804-662-9908	804-784-2204*	804-662-9906
Washington	360-236-4888	360-236-4943	360-236-4863
West Virginia	304-558-2921	304-723-4638	304-252-8266
Wisconsin	608-266-2112	262-567-0520*	608-266-0483
Wyoming	307-778-7053	307-778-7053*	307-777-6529

\* Representing State Affiliated Organizations

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