



DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
7700 ARLINGTON BOULEVARD
FALLS CHURCH VA 22042

IN REPLY REFER TO
BUMEDINST 5830.1B
BUMED-M5
27 Sep 2017

BUMED INSTRUCTION 5830.1B

From: Chief, Bureau of Medicine and Surgery

Subj: HEALTH CARE INVESTIGATION PROCEDURES FOR SPECIALTY REVIEWS

Ref: (a) JAGINST 5800.7F, Manual of the Judge Advocate General, Chapter II
(b) DoD Manual 6025.13, Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS), 29 October 2013
(c) BUMEDINST 6010.18A
(d) 10 U.S.C. §1102
(e) BUMEDINST 5420.12E

Encl: (1) Sample Specialty Leader Appointing Letter to Specialty Reviewer
(2) Sample Specialty Reviewer Letter to Investigating Officer

1. Purpose. Timely, thorough, and unbiased clinical specialty reviews are essential for objective analysis of potential medical malpractice claims against the Navy. This instruction provides authority for all commanding officers convening litigation report investigations under reference (a) involving the delivery of health care to obtain appropriate clinical specialty reviews prior to endorsing the investigation. Adherence to this procedure will streamline the specialty review process and provide subject specific expertise to investigating officers and commanding officers.

2. Cancellation. BUMEDINST 5830.1A.

3. Scope. Applies to ships and stations having Navy Medical Department personnel.

4. Policy

a. In order to ensure a valid, unbiased, impartial review of the standard of care, the Bureau of Medicine and Surgery (BUMED) requires a clinical specialty review be prepared externally to the involved command. A complete, comprehensive review must state the standard of care (SOC) for any practices, procedures, policies, protocols, or systems involved in the incident and the basis which establishes that SOC. Reference (b) defines SOC as "Healthcare diagnostic or treatment judgments and actions of a provider generally accepted in the healthcare discipline or specialty involved as reasonable and appropriate."

b. The impartiality of specialty reviews is critical to any future evaluations of paid malpractice claims by BUMED per reference (c). Designated panels consider these reviews in determining whether involved providers should be reported to the National Practitioner Data Bank.

5. Responsibilities

a. Commanding Officer Responsibilities. When a commanding officer convenes a litigation report into a health care incident, all clinical specialties potentially involved are identified, and specialty leaders for every specialty identified in the case are notified and provided with a brief synopsis of the case. The synopsis identifies all significantly involved providers in the incident and their level of training. Any time a trainee (intern or resident) is identified, the attending staff will also be identified.

b. Specialty Leader Responsibilities

(1) Assign a specialty reviewer. The specialty leader, based on review, knowledge of the incident, and professional expertise, must assign a fully trained specialist to serve as the specialty reviewer using enclosure (1) format. This can be any medical department officer with the requisite credentials and competence necessary to analyze the incident and provide a professional specialty opinion on whether SOC was met, including providers assigned to operational platforms.

(2) Notify specialty reviewer. To expedite the process, the specialty leader must directly notify the specialty reviewer of the assignment in writing using the appointing letter format of enclosure (1) and provide copies to:

(a) Reviewer's commanding officer.

(b) Commanding officer convening the investigation.

(3) Review the completed specialty review. In any instance where SOC was not met, and the specialty leader has concerns about the quality of care being delivered, a copy will be forwarded to BUMED Risk Management. The intent is to identify issues as they are identified instead of only after a payment is made.

(4) Exception to Assigning a Specialty Reviewer. If the specialty leader determines that appointment of a specialty reviewer is unnecessary, based on the criteria below, he or she will provide the commanding officer or convening authority of the investigation with written notification of this decision. This correspondence will become an enclosure in the litigation report. The following exceptions do not require assignment of a specialty reviewer:

(a) When the incident is obvious malpractice and would not require specialized expertise on whether the SOC was met (e.g., surgical removal of the wrong limb).

(b) When the investigating officer is known by the specialty leader to possess the requisite demonstrated skills as a specialty reviewer to evaluate the event and is sufficiently removed from the matter to render an unbiased opinion. In this case, the investigating officer, acting as specialty reviewer, must provide a credible review with supporting documentation consistent with the format and details required by enclosure (2).

c. Specialty Reviewer Responsibilities

(1) The specialty reviewer will act as a consultant and must advise the investigating officer of relevant information required to conduct a thorough investigation and specialty review. The specialty reviewer is not responsible for compiling information or writing the investigative report.

(2) When the investigating officer has completed the "Finding of Fact" portion of the investigation, a copy, along with enclosures, must be sent to the assigned specialty reviewer for review. To provide a credible review with supporting documentation, the specialty reviewer must render a SOC analysis and determination in the format provided in enclosure (2). The original review is forwarded to the investigating officer, with a copy to the specialty leader. If there is insufficient information to render an SOC, the specialty reviewer will indicate why they are unable to render an SOC review.

(3) Specialty reviewers must be sensitive to investigative time requirements and must expedite reviews to ensure the investigation is completed in a timely manner. If the information provided by the investigating officer is insufficient to render an opinion, the specialty reviewer must advise the investigating officer as soon as possible. The specialty reviewer is not permitted to contact any involved providers or obtain information outside of the investigation. Specialty reviews must be returned to the investigating officer no later than 30 days after receipt of the investigation. Delays in specialty review completion should be reported to the cognizant specialty leader.

(4) If a specialty reviewer uses supporting staff to research literature or assist in any way, the specialty reviewer remains ultimately responsible for the professional specialty review and opinions provided to the investigating officer.

6. Investigating Officer and Commanding Officer's Responsibilities Regarding Opinions. The investigating officer must summarize all specialty review determinations in the "opinions" section of the investigation and include any specialty reviews as enclosure to the investigation. If desired, the investigating officer and commanding officer may comment on the opinions and suggestions made in the specialty reviews, but may not approve or disapprove the specialty review. The commanding officer may clarify disagreements with the specialty reviewer, but comments must be supported by evidence in the investigation.

7. Confidentiality

a. Specialty reviews conducted as part of a litigation report per reference (a) are created in anticipation of claims or litigation and are for the express purpose of assisting attorneys representing interests of the United States. As such, these investigations and specialty reviews are privileged as attorney work product. Specialty reviews for this purpose are not quality assurance documents under reference (d) and should not contain documents obtained from

quality assurance records and files. Guidance concerning this privilege may be sought from the Staff Judge Advocate or health law attorney at either the medical treatment facility or Navy Medicine Region.

b. Specialty reviews requested for specific quality assurance programs are covered under separate BUMED instructions.

c. Commanding officers are to take special care when issuing appointment letters to ensure the appropriate reference is used in identifying litigation reports vice quality assurance investigations.

8. Records Management. Records created as a result of this instruction, regardless of media and format, must be managed per SECNAV Manual 5210.1 of January 2012.

9. Review and Effective Date. Per OPNAVINST 5215.17A, this instruction will be reviewed annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, Department of Defense, Secretary of the Navy, and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction.



C. FORREST FAISON III

Releasability and distribution:

This instruction is cleared for public release and is available electronically only via the Navy Medicine Web site at: <http://www.med.navy.mil/directives/Pages/BUMEDInstructions.aspx>.

SAMPLE
SPECIALTY LEADER APPOINTING LETTER TO SPECIALTY REVIEWER

5830
Date

From: Specialty Leader
To: Specialty Reviewer

Subj: SPECIALTY REVIEW IN THE CASE OF (insert case name/identifiers from subject line of the investigation)

Ref: (a) BUMEDINST 5830.1B
(b) JAGINST 5800.7F, Manual of the Judge Advocate General, Chapter II

Encl: (1) Sample Specialty Reviewer Letter to Investigating Officer

1. You are appointed to provide technical assistance to the investigating officer by conducting a specialty review of the care rendered in the case under investigation. The investigating officer, (enter name), will provide you with a copy of the factual portion of the investigation and other documents needed to prepare your review. As indicated in reference (a), the purpose of your review is to assess the medical care provided in order to assist Government attorneys in the defense of an existing or anticipated medical malpractice claim.
2. Your review must be in the format provided in enclosure (1) and must discuss the standard of care at the time of the incident. You must objectively evaluate and state whether or not the standard of care was met based upon accepted medical practice and current professional literature. Your review should not include opinions concerning whether or not a claim should be denied or settled.
3. Your review is privileged as attorney work product per reference (b), and may not include any quality assurance documents or labels.
4. Your review should be completed within 30 day of receipt of the investigation from the investigating officer.

Your signature block
Rank, Corps, Service
Specialty Leader for

Copy to:
Reviewer's commanding officer
Commanding officer convening investigation

Enclosure (1)

SAMPLE
SPECIALTY REVIEWER LETTER TO INVESTIGATING OFFICER

5830
Date

From: Specialty Reviewer
To: Investigating Officer
Via: Specialty Leader

Subj: SPECIALTY REVIEW IN THE CASE OF (insert case name/identifiers from subject line of the investigation)

Ref: (a) Specialty Leader ltr 5830 of _____
(b) BUMEDINST 5830.1B

Encl: (1) Curriculum Vitae
(2) (Cite articles)
(3) (Cite investigative report)

1. Per references (a) and (b), this specialty review has been prepared to assess the care provided in the matter under investigation and assist Government attorneys in defense of an existing or anticipated medical malpractice claim.
2. Relevant Facts. (Set out the facts as they pertain to the matters under review, identifying providers involved, including their area of practice, training level, and employer.)
3. Standard of Care (SOC). (Describe, citing appropriate literature, the SOC at the time of the incident.)
4. SOC Determination. (Discuss how the SOC was met or breached. If the SOC was breached, identify and discuss how specific provider or specific systems or equipment deviated from the SOC.)
5. Injury/Causation. (Identify and discuss the nature, extent, and prognosis of any injury and it's relationship to the breach of SOC.)
6. Miscellaneous. (Identify and discuss any other relevant issues.)

Your signature block
Rank, Corps, Service

Enclosure (2)