

MANUAL: Personnel  
Chapter Series CC--Commissioned Corps Personnel Manual  
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
Public Health Service

Chapter CC29--Officers' Relations, Services and Benefits  
Sub-Chapter CC29.9--Miscellaneous

Personnel INSTRUCTION 6--Defense of Suits Involving Charges of (1) Medical  
Professional Liability or Negligence, or (2) Liability  
or Negligence Incident to Operation of a Motor Vehicle

SECTION A. PURPOSE AND SCOPE

The purpose of this INSTRUCTION is to explain the protection provided by the Government in the defense of suits filed against officers or employees for damages resulting from the officer's or employee's official performance of medical, surgical, dental or related functions, or operation of a motor vehicle. This INSTRUCTION also provides procedures to be followed in notifying the appropriate officials of such suits or claims and obtaining assistance.

SECTION B. BACKGROUND

1. Under earlier provisions of the Federal Tort Claims Act, the Government could be held liable for property damage or personal injury caused by the negligence of its officers or employees in the performance of official duties (28 U.S.C. 2671-2680.)
2. In addition, it was also possible for an individual officer or employee to be personally liable for a negligent act. In order to negate this possibility as far as Government drivers were concerned, the Act was amended to provide that the remedy by suit against the United States under the Federal Tort Claims Act resulting from the operation by any officer or employee of the Government of any motor vehicle while acting within the scope of his/her office or employment was exclusive of any other civil action or proceeding, by reason of the same subject matter, against the employee or his estate whose act or omission gave rise to the claim (28 U.S.C. 2679(b)).

3. The above provision related only to Government drivers and did not render any other officers or employees immune from personal suit. In 1970, the same immunity against personal liability was extended to Public Health Service Commissioned Officers and civilian employees against suits for damages for personal injury, including death, resulting from the performance of medical and related duties (42 U.S.C. 233(a)).

SECTION C. OFFICERS PERFORMING FEDERAL FUNCTIONS

The 1970 statute (42 U.S.C. 233(a)) provided that an action against the United States under the Federal Tort Claims Act, or for alternative benefits provided by the United States which precludes a remedy under that Act, is the injured claimant's exclusive remedy "for damage for personal injury, including death, resulting from the performance of medical, surgical, dental or related functions, including the conduct of clinical studies or investigation, by any Commissioned Officer or employee of the Public Health Service while acting within the scope of his/her office or employment."

SECTION D. OFFICERS ASSIGNED TO FOREIGN COUNTRIES, DETAILED TO STATES  
OR POLITICAL SUBDIVISIONS THEREOF, OR DETAILED TO NONPROFIT  
INSTITUTIONS

1. Under the provisions of 42 U.S.C. 233(f), the Department Claims Officer will hold harmless and, in exceptional circumstances, provide liability insurance for any officer or employee of the Public Health Service for damages for personal injuries negligently caused under all of the following conditions:
  - a. The individual is acting within the scope of employment in the performance of medical or related functions, and
  - b. was assigned to a foreign country, or detailed to a state or political subdivision thereof, or a nonprofit institution, and
  - c. there is no remedy against the United States under the Federal Tort Claims Act.
2. The above provision affords a means of protecting medical personnel under circumstances in which they would not otherwise be covered by the basic immunity provision discussed in SECTION C, above.

SECTION E. REQUIRED NOTICE AND PROCEDURES

1. Any suit brought against a Public Health Service officer for damages arising out of the operation of a vehicle, or resulting from the performance of medical, surgical, dental or related functions, while acting within the scope of the officer's office or employment, will be transferred from the individual by the Attorney General and deemed a court action brought against the United States.
2. An officer of the Public Health Service against whom a law suit is brought for damages for personal injury, including death, or who receives information that such action will be brought, should deliver all proceedings and pleadings served upon him/her, or an attested true copy thereof, to the immediate supervisor or to whoever is designated by the head of the PHS organization to receive such papers.
3. The officer's supervisor should immediately advise the Public Health Service Claims Officer through established channels (Room 5B09 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, 301-443-1904). The supervisor should forward all documents and pertinent information concerning whether or not the officer was acting within the scope of his/her office or employment at the time of the incident out of which the suit arises.
4. In the event there is not sufficient time to follow the normal procedure, advice may be requested directly of the local U. S. Attorney. The Public Health Service Claims Officer should be informed immediately of such a request. Questions concerning the risk of medical professional liability should be directed to the Public Health Service Claims Officer or Chief, Litigation and Claims Branch, Office of the General Counsel, DHEW.