



Representing Military Members in Medical Malpractice Cases

Can You Sue the Military for Medical Malpractice?

Medical malpractice occurs when a medical, nursing or other healthcare provider is either “negligent” or provides care that is below what is known as the “standard of care.” The “standard of care” is healthcare in a particular situation that is felt to be appropriate by similar healthcare providers.

Millions of Americans receive their healthcare through the military. For example, service men and women and their families typically receive medical care at a hospital, clinic or other medical facility operated and staffed by the military. The vast majority of the healthcare providers in such facilities are either on active duty themselves or employed by the government. Medical malpractice claims involving medical care provided by an active duty healthcare provider or someone employed by the United States government in a military facility are governed by special rules and regulations – [the Federal Tort Claims Act](#).

What is the Federal Tort Claims Act?

People injured by medical malpractice at military medical facilities may be entitled to obtain compensation, and military medical malpractice claims arise under the Federal Tort Claims Act (FTCA). Under the FTCA, the responsibility for military malpractice rests with the federal government, and as a result, the defendant in FTCA cases is the United States government instead of the individual medical provider. If you feel that you have been injured by medical malpractice at a military facility, you may be covered by the Federal Tort Claim Act. The Attorney General of the United States and an appropriate United States District Attorney must receive notice of the claim, and that claim must specify an exact amount of compensation being sought. After your administrative claim is filed, there is a six-month window within which the government may conduct its investigation. If the government does not complete its investigation and reach a decision within six months, the injured person can then file their FTCA claim in federal court.

Can Spouses or Family Members Sue the Military for Medical Malpractice?

People injured by medical malpractice at military medical facilities may be entitled to obtain compensation for their physical injuries, emotional harm and economic losses. Generally speaking, military dependents and/or family members who are not active duty can file a medical malpractice claim under the Federal Tort Claim Act if they are injured by medical malpractice of a military and/or government healthcare provider.

However, “active duty” military personnel cannot recover for medical malpractice under the of a physician, nurse or other healthcare provider if that provider was on active duty or an agent of the United States government. Active duty military personnel do not have a medical malpractice claim, even if they are injured by malpractice, under a body of law known as the *Feres Doctrine*. The *Feres Doctrine* bars claims against the federal government by members of the armed forces. For decades people have protested the unfairness of the *Feres Doctrine* because it is unfair and harsh, but it is still the law of the land. There are some exceptions to the general rule that active-duty military

personnel cannot recover for medical malpractice, and the laws concerning these exceptions are very complicated. For example, active-duty personnel who are injured while receiving medical care at a non-military facility may have a malpractice claim outside the FTCA government.

In addition, the U.S. Congress enacted a law that provides another recovery option for services member injured by military malpractice while active duty, the *"Military Medical Accountability Act."* (**See below.**)

Time Limits for Military Malpractice Claims

Military medical malpractice claims arising under the Federal Tort Claims Act are governed by the Statute of Limitations. You have a limited time to file. If a claim is not filed before the Statute of Limitations expires, it is **forever barred**. When filing an initial malpractice claim against the government, the patient does not file a traditional "lawsuit" in a state or federal court. In FTCA medical malpractice claims, a special claim form ("[Standard Form 95](#)") must be filed with the appropriate agency of the United States government to trigger an administrative process.

Types of Healthcare That Lead to Malpractice Claims

There are many types of healthcare that can lead to medical malpractice claims. Treatment provided by a military doctor can be malpractice. Similarly, care provided by a nurse or other healthcare provider in a military facility can be malpractice. Malpractice claims can arise from negligent treatment, misdiagnosis, medication errors, failure to properly refer a patient to a specialist, etc.

Common types of malpractice that leads to malpractice claims for military facilities include the following:

- Birth injuries, such as cerebral palsy or brachial plexus injuries.
- Surgical errors or complications.
- Failure to diagnose.
- Medication errors

Military Medical Accountability Act For Those Injured While Active-Duty

If the medical care you feel was malpractice occurred while you were active duty, is an additional option to seek compensation. The United States Supreme Court in the *Feres* decision held that active-duty military members are prohibited from filing medical malpractice claims arising from care provided by healthcare providers who were either active-duty military or certain types of contractors. In response, the US Congress passed the *Military Medical*

Accountability Act which allows active-duty military personnel injured by medical malpractice while on active duty to file an administrative claim with the Department of Defense. The DoD handles the claim evaluation, determines compensability, and makes payments using Federal Court Guidelines, if the claim is deemed to be compensable.

Our firm does not handle these claims, but if you were active duty when injured, we encourage you to reach out to a law firm that handles these claims. The links below are to the websites of law firms which indicate they do handle these types of cases.

- <https://www.jjsjustice.com/can-you-sue-a-military-doctor-for-malpractice/>
- <https://www.nationaltriallaw.com/military-medical-malpractice-attorneys/>
- <https://www.garybrucelaw.com/personal-injury/can-military-file-medical-malpractice-claims/>
- <https://www.triallaw1.com/injured-troops-can-now-file-medical-malpractice-claims-against-the-u-s-military/>

*Note: Though not a medical malpractice claim, our firm is monitoring the progress of the **Camp Lejeune Justice Act of 2022** and will help veterans and their families file a claim once the bill become a law. We encourage you to contact us to learn your options.*

Womack Army Medical Center at Fort Bragg

In an [October 1, 2014 Pentagon briefing](#), Defense Secretary Chuck Hagel ordered improvements in military hospitals based on the results of a 90-day review. Secretary Hagel said the first step is to create a culture of safety, quality and accountability.

This review listed Womack Army Medical Center, one of the largest military treatment facilities in the country and located at Fort Bragg near Fayetteville, North Carolina, as among eight military medical centers that show “higher than expected levels of morbidity” during a one-year period from July 2012 to June 2013. The other facilities listed were Mike O’Callaghan Federal Medical Center at Nellis Air Force Base in Nevada, Madigan Army Medical Center at Joint Base Lewis-McChord in Washington, San Antonio Military Medical Center at Fort Sam Houston in Texas, Naval Medical Center San Diego, Naval Medical Center Portsmouth in Virginia, Evans Army Community Hospital at Fort Carson in Colorado and Fort Belvoir Community Hospital in Virginia.

The review of 50 hospitals and 600 clinics nationwide included data from 2010 through 2013. The review cited 71 incidents of leaving a foreign object in a surgery patient, 57 unexpected adult deaths, 40 cases of wrong site surgery, 34 unexpected infant deaths and 28 cases of delayed treatment.

Military Hospitals in North Carolina

The [Womack Army Medical Center in Fayetteville](#) primarily serves Fort Bragg Army Base and Pope Air Force Base soldiers and their families. The [Naval Hospital Camp Lejeune](#) near Jacksonville serves the Camp Lejeune Marine Base and the Seymour Johnson Air Force Base in Goldsboro. Near Havelock, [the Naval Health Clinic](#) serves the Marine Corp Air Station at Cherry Point.

If you have questions about filing a military medical malpractice claim, call attorney [John Alan Jones](#) toll-free at [1-800-662-1234](#) or [reach us by email by completing the contact us form](#). Our firm does not charge a fee until a settlement is obtained for you. We understand that members of the military have very strict schedules. Our attorneys can come to you for a daytime, evening or weekend appointment.

If you, a loved one or a friend may have been injured by medical malpractice in a military medical facility, please give us a call. We have successfully tried and settled very significant medical malpractice claims arising under the Federal Tort Claims Act on behalf of family members of active duty military personnel.

Call us toll-free at [1-800-662-1234](#) or [reach us by email by completing the contact us form](#). It will cost you nothing to speak with us and there is no obligation. We have office locations in [Raleigh](#), [Durham](#), and Wilmington, North Carolina.