



This Resolution was properly presented to the Department Resolutions Committee prior to the 2021 Department of California Convention held virtually in Sanger, CA on 26-27. This is the result of the Resolution:

Resolution Number: 2021-003

Title of Resolution: Medical Malpractice

Subject Matter: This resolution is to give service members the option to file medical malpractice suits against DOD medical facilities/physicians for injuries/death occurring as a result of gross medical malpractice.

Convention Standing Committee Assignment: American Legion Riders (ALR)

Committee Recommendations: VA&R Committee

Action on the Floor: The Resolution was presented on the floor by a member of the VA&R Committee. It was adopted and is being forwarded to National for consideration

THE AMERICAN LEGION
DEPARTMENT OF CALIFORNIA
1601 7TH STREET, SANGER, CA 93657-2801

102 Annual Department Convention, Sanger, California
June 25-27, 2021

THIS FORM MUST BE FILLED OUT IN TRIPLICATE

Resolution No. 2021-003

Subject: Title of the subject being resolved

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DEPARTMENT OF DEFENSE MEDICAL MALPRACTICE RESOLUTION

WHEREAS from 2010 to 2015, 2,111 administrative claims for malpractice were filed against Army, Navy and Air Force medical centers and hospitals: and

WHEREAS members of the United States armed forces are barred, by a court-imposed rule, from making a claim against the United States for personal injury or death arising "incident to service:" and

WHEREAS military medical treatment received by a service member, while on active duty, has been held by the courts to be "incident to service," and, thus not actionable, even if that treatment was non-combat related of for a purely elective procedure, and even if the procedure was performed negligently: and

WHEREAS the General Accounting Office has reported that "medical incidents that lead to death or severe injury in the military's global system of hospitals and clinics ... increased to 319 in 2016 from 121 in 2013": and

WHEREAS the 2019 National Defense Authorization Act (NDAA) authorizes the Secretary of Defense to allow, settle and pay an administrative claim against the United States for personal injury or death of a member of the uniformed armed services that was the result of medical malpractice caused by a Department of Defense health care provider: and

WHEREAS the 2019 NDAA provides for a settlement process run through the Department of Defense: and

WHEREAS the settlement process limits most claims to under \$100,000, although the Secretary could authorize larger payouts in some circumstances: and

WHEREAS THE 2019 NDAA still keeps military members and their families from their day in court and provide no recourse for rejected claims, unlike the procedure provided to federal prisoners and non-military government employees: and

WHEREAS currently families of the USAAFMM who are victims of medical malpractice receive very little information related to the cause of the members injuries from the less than standard treatment received by Department of Defense (DoD) health providers: and

WHEREAS as the lack of information further inflicts suffering upon the USAAFMM and their families, as they attempt to comprehend the how and why they suffered their injuries: now therefore be it

RESOLVED by Post No. 161, of The American Legion Department of California, in regular meeting assembled in Antioch, CA on May 13, 2021, requests that The American Legion support legislation that would enable the Secretary of Defense to allow, settle and pay a United States of America Armed Forces member's (USAAFMM) claim against the United States of America (USA) for their personal injury occurring during the USAAFMM's military service and that was caused by the medical malpractice of a Department of Defense health care provider; and, be it further

RESOLVED, That this legislation should provide that if this USAAFMM's Department of Defense health care provider medical malpractice claim is denied, then this denial shall be in writing and sent to the USAAFMM; and be it further

RESOLVED, That if this USAAFMM is dissatisfied with the Secretary of Defense's settlement or denial of their claim, then there would be legislation that allows the USAAFMM to take legal action in an appropriate United States legal system; and, be it further

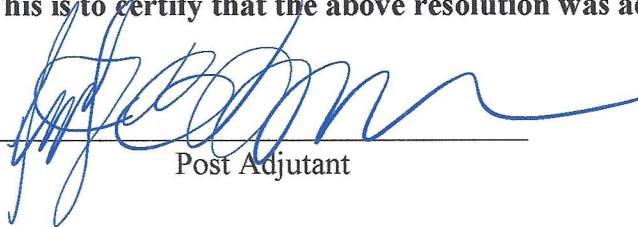
RESOLVED, That if the USAAFMM with the medical malpractice claim by a Department of Defense health care provider is deceased and legal action if taken up by the USAAFMM's estate, then all of the standards described herein would apply; and, be it finally

RESOLVED, That this Resolution shall be transmitted forthwith to The American Legion, Department of California for consideration and adoption at the Annual Convention of the American Legion Department of California, to be held June 25 - 27, 2021 in Sanger CA, and thereafter upon passage submitted to the National Headquarters of The American Legion for consideration by the appropriate Commission.

Author of Resolution

Manual Vega, Post 731 Department of California

This is to certify that the above resolution was adopted by Post 161



Post Adjutant

12 MARCH 21

Date

This is to certify that the above resolution was adopted by Department Convention.

Department Adjutant

Department Commander

Date