

THE ASSISTANT SECRETARY OF DEFENSE

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MEMORANDUM FOR SECRETARIES OF THE MILITARY
DEPARTMENTS

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SUBJECT: Medical Program Principles and Procedures for the Protection and Treatment of
Detainees in the Custody of the Armed Forces of the United States

REFERENCES: (a) DoD Directive 5136.1, "Assistant Secretary of Defense for Health Affairs,"
May 27, 1994

(b) AR 190-8, OPNAVINST 3461.6, AFJI 3 1-304, MCO 3461.1,
"Enemy Prisoners of War, Retained Personnel, Civilian Internees
and Other Detainees"

(c) DoD Directive 5100.77, DoD Law of War Program, December 9, 1998

This memorandum is issued under the authority of reference (a) and reaffirms the historic responsibility of health care personnel of the Armed Forces (to include physicians, nurses, and all other medical personnel including contractor personnel) to protect and treat, in the context of a professional treatment relationship and established principles of medical practice, all detainees in the custody of the Armed Forces during armed conflict. This includes enemy prisoners of war, retained personnel, civilian internees, and other detainees.

It is the policy of the Department of Defense Military Health System that health care personnel of the Armed Forces and the Department of Defense (particularly physicians) will perform their duties consistent with the following principles.

HEALTH AFFAIRS

Principles

1. Health care personnel charged with the medical care of detainees have a duty to protect their physical and mental health and provide appropriate treatment for disease. To the extent practicable, treatment of detainees should be guided by professional judgments and standards similar to those that would be applied to personnel of the U.S. Armed Forces.
2. All health care personnel have a duty in all matters affecting the physical and mental health of detainees to perform, encourage and support, directly and indirectly, actions to uphold the humane treatment of detainees.
3. It is a contravention of DoD policy for health care personnel to be involved in any professional provider-patient treatment relationship with detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.
4. It is a contravention of DoD policy for health care personnel:
 - (a) To apply their knowledge and skills in order to assist in the interrogation of detainees in a manner that is not in accordance with applicable law;
 - (b) To certify, or to participate in the certification of, the fitness of detainees for any form of treatment or punishment that is not in accordance with applicable law, or to participate in any way in the infliction of any such treatment or punishment.
5. It is a contravention of DoD policy for health care personnel to participate in any procedure for applying physical restraints to the person of a detainee unless such a procedure is determined in accordance with medical criteria as being necessary for the protection of the physical or mental health or the safety of the detainee himself or herself, or is determined to be necessary for the protection of his or her guardians or fellow detainees, and is determined to present no serious hazard to his or her physical or mental health.

Procedures

Consistent with the foregoing principles, the following procedures are established.

1. Medical Records Accurate and complete medical records on all detainees shall be created and maintained in accordance with reference (b).
2. Treatment Purpose Health care personnel engaged in a professional provider patient treatment relationship with detainees shall not undertake detainee-related activities for purposes other than health care purposes. Such health care personnel shall

not actively solicit information from detainees for purposes other than health care purposes. Health care personnel engaged in non-treatment activities, such as forensic psychology or psychiatry, behavioral science consultation, forensic pathology, or similar disciplines, shall not also engage in any professional provider-patient treatment relationship with detainees.

3. Medical Information Under U.S. and international law and applicable medical practice standards, there is no absolute confidentiality of medical information for any person. Detainees shall not be given cause to have incorrect expectations of privacy or confidentiality regarding their medical records and communications. However, whenever patient-specific medical information concerning detainees is disclosed for purposes other than treatment, health care personnel shall record the details of such disclosure, including the specific information disclosed, the person to whom it was disclosed, the purpose of the disclosure, and the name of the medical unit commander (or other designated senior medical activity officer) approving the disclosure. Analogous to legal standards applicable to U.S. citizens, permissible purposes include to prevent harm to any person, to maintain public health and order in detention facilities, and any lawful law enforcement, intelligence, or national security related activity. In any case in which the medical unit commander (or other designated senior medical activity officer) suspects that the medical information to be disclosed may be misused, he or she should seek a senior command determination that the use of the information will be consistent with applicable standards.

4. Reporting Possible Violations Any health care personnel who in the course of a treatment relationship or in any other way observes circumstances indicating a possible violation of applicable standards, including those prescribed in references (b) and (c), for the protection of detainees, or otherwise observes what in the opinion of the health care personnel represents inhumane treatment of a detainee, shall report those circumstances to the chain of command. Health care personnel who believe that such a report has not been acted upon properly should also report the circumstances to the technical chain, including the Command Surgeon or Military Department specialty consultant. Technical chain officials may inform the Joint Staff Surgeon or Surgeon General concerned, who then may seek senior command review of the circumstances presented. As always, other reporting mechanisms, such as the Inspector General, criminal investigation organizations, or Judge Advocates, also may be used.

5. Training The Secretaries of the Military Departments and Combatant Commanders shall ensure that health care personnel involved in the treatment of detainees or other detainee matters receive appropriate training on applicable policies and procedures regarding the care and treatment of detainees.

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This memorandum, effective immediately, affirms as a matter of Department of Defense policy the professional medical standards and principles applicable within the Military Health System. This memorandum does not alter the legal obligations of health care personnel under applicable law. The principles and procedures contained in this memorandum and experience implementing them will be reviewed within six months, including input from interested parties outside DoD.

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