



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY MEDICAL COMMAND
2050 WORTH ROAD
FORT SAM HOUSTON, TEXAS 78234-6000

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24 MAY 2005

MEMORANDUM FOR

Commanders, MEDCOM Major Subordinate Commands
Directors, OTSG/MEDCOM OneStaff

SUBJECT: Interim Guidance on Detainee Medical Care

1. References:

- a. AR 190-8 (OPNAVIST 3461.6, AFJI 31-304, MCO 3461.1), Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees.
- b. DoD Directive 2310.1, DoD Program for Enemy Prisoners of War (EPW) and Other Detainees.
- c. Geneva Conventions of 1949.
- d. Health Affairs Policy 02-005, "DoD Policy on Medical Care for Enemy Persons Under U.S. Control Detained in Conjunction with Operation ENDURING FREEDOM", dated April 10, 2002.
- e. The Declaration of Tokyo (1975).
- f. AR 190-47, The Army Corrections System.
- g. DoD Directive 5100.77, DoD Law of War Program.
- h. AR 40-66, Medical Record Administration and Health Care Documentation.
- i. AR 40-400, Patient Administration.
- j. DoD 6025.18-R, DoD Health Information Privacy Regulation, Jan 2003, c7.11.4.
- k. The Standards for Privacy of Individually Identifiable Health Information. (Parts 160 & 164 issued by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996, 45 CFR 164.500(c), 45 CFR 164.512(k)(2), 45 CFR 164.512(k)(5).
- l. The Privacy Act of 1974 (5 U.S.C.552a(a)(2)).
- m. US Southern Command Confidentiality Policy for Interactions Between Health Care Providers and Enemy Persons Under US Control, Detained in Conjunction with Operation ENDURING FREEDOM, Policy Memorandum 8-02.

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n. FM 27-10, The Law of Land Warfare.

o. FM 34-52, Intelligence Interrogation.

p. FM 8-10-5, Brigade and Division Surgeons' Handbook.

q. Military Medical Ethics. Textbooks of Military Medicine, The Borden Institute, Office of The Surgeon General, Department of the Army, 2003.

r. DoD Directive 3216.2, Protection of Human Subjects and Adherence to Ethical Standards in DoD-Supported Research.

s. AR 70-25, Use of Volunteers as Subjects of Research.

2. This guidance remains in effect for one year or until superseded by guidance or policy from higher authority.

3. Background:

a. The Army is the Executive Agent for the Department of Defense for Enemy Prisoner of War operations.

b. Military healthcare providers are expected to assist in the care and medical supervision of detainees, enemy prisoners of war, retained personnel, and civilian internees. For the purposes of this guidance, all such personnel will be referred to as detainees. The overarching theme of this guidance is that all patients are equal. Whenever possible, detainees should receive medical care equal to that of our own troops.

c. The military physician is the Commander's advisor for medical ethics. As a patient advocate (in this case, a detainee), the military physician and all military healthcare providers must maintain the patient's health. They must also refrain from participating in any action potentially adverse to the patient's health. They should be alert for potential and actual ethical conflicts, and exert all efforts to remedy any perceived conflicts.

d. Documents such as the Geneva Conventions of 1949 can be helpful in such situations. These documents require military healthcare providers to treat captured enemy Soldiers compassionately and humanely. They generally prohibit physicians from playing a direct role in interrogations, insist physicians treat prisoners with injuries who are undergoing interrogation, and further require that caregivers attempt to prevent mistreatment of prisoners. Specific regulatory guidance is given in AR 190-8/ OPNAVINST 3461.6/AFJI 31-304/MCO 3461.1.

4. What healthcare providers should do:

a. No matter the setting, healthcare providers have a responsibility to report information that constitutes a clear and imminent threat to the lives and welfare of others. Information gained from patients who are detainees should be treated no differently.

b. Healthcare providers and the healthcare personnel who support them must provide for the care of detainees, and protect them from harm. Medical requirements specific to detainee care are given in AR 190-8/OPNAVINST 3461.6/AFJI 31-40/MCO 3461.1, and must be followed. These requirements include an examination upon arrival at the detention facility, as well as a chest radiograph (tuberculin skin test for children up to age 14). Sick call must be available daily, and each internee must be weighed at least once per month. Sanitation and hygiene must be maintained at all times (AR 190-8, para 3-4i.).

c. Healthcare providers and the healthcare personnel who support them will create and maintain medical records on all detainees IAW AR 190-8 and AR 40-66.

(1) Entries should be made into detainee medical records as they would for any other patient. Detainee medical records, like the medical records of all service members, retirees, and their dependents are property of the United States government. Detainees are entitled to copies of their medical records upon release from detention. All healthcare provider information, including healthcare provider names, must be stricken from the copied medical records. The original records remain the property of the United States.

(2) The Health Insurance Portability and Accountability Act (HIPAA) does not apply to the medical records of detainees (DoD 6025 C5.1, C7.10, C7.11). However, the handling, disposition, and release of all types of medical records are governed by regulation. Commanders and other officials who have an official need to know can access information contained in internee medical records by following the procedures given in AR 40-66, Chapter 2, using DA Form 4254. Patient consent is not required. When requesting disclosure of a patient's protected health information (PHI), personnel will present their official credentials and document their official need to know the requested information. Receiving medical treatment facilities (MTFs) file and maintain all DA Form 4254's.

(3) The MTF Commander or Commander's designee (usually the patient administrator) determines what information is appropriate for release. Only that specific medical information or medical record required to satisfy the terms of a legitimate request will be authorized for disclosure. Healthcare providers should expect that released medical information will be used by the chain of command, to include interrogators, in accordance with applicable laws, regulations, and policies.

d. Just as one would write a profile or duty limitation for one of our own service members, healthcare providers have a responsibility to inform the detention facility chain of command of detainees' activity limitations. This includes "clearing the prisoner for interrogation", with the expectation that interrogation will conform to the standards of AR 190-8. Medical recommendations concerning detainee activities are exactly that - recommendations. Decisions concerning detainee activities are made by the chain of command.

(1) Because the chain of command is ultimately responsible for the care and treatment of detainees, the detention facility chain of command requires some medical information. For example, patients suspected of having infectious diseases such as tuberculosis should be separated from other internees. Guards and other personnel who come into contact with such patients should be informed about their health risks and how to mitigate those risks.

(2) Releasable medical information on detainees includes that which is necessary to supervise the general state of health, nutrition, and cleanliness of internees, and to detect

contagious diseases. Such information should be used to provide healthcare, to ensure health and safety of detainees, ensure the health and safety of the officers or employees or others at the facility, ensure law enforcement on the premises, and ensure the administration and maintenance of the safety, security, and good order of the facility. Under these provisions, healthcare providers can confirm that a detainee is healthy enough to work or perform camp duties.

e. Healthcare providers and the healthcare personnel who support them should be trained in the tenets of the Geneva Conventions of 1949 and other documents and principles of detainee care. They should also be trained to recognize the symptoms and signs of internee maltreatment or abuse. As one would do for our own troops, retirees, and family members, healthcare providers and the healthcare personnel who support them must report any suspected abuse or maltreatment of a detainee.

(1) The chain of command is the first and foremost channel for information and reporting. Healthcare providers will report routine medical information (information which is appropriate for Commanders to receive), clear and imminent threats, suspicions of abuse or maltreatment, or any other relevant information to their Commanders or their Commanders' designees. If the healthcare provider is not assigned to the detention facility, mechanisms must be in place to also inform the detention facility chain of command.

(2) Alternative means of reporting exist for healthcare providers who are unable to resolve issues through the chain of command. The technical chain is the first alternative, and begins with the Command Surgeon responsible for medical oversight of the providers' activities. Other alternatives include the provider's specialty consultant, the Inspector General, and Criminal Investigation Command.

5. What healthcare providers should not do:

a. Healthcare professionals charged with any form of assistance with the interrogation process, to include interpretation of relevant excerpts from medical records and other information, should not be involved in any aspect of detainee healthcare, except during emergencies. During emergencies, everyone helps.

b. Healthcare providers charged with the care of detainees should not engage in any activities that jeopardize the healthcare providers' protected status under the Geneva Conventions.

c. Healthcare providers charged with the care of detainees should not: (1) be involved in interrogation; (2) advise interrogators how to conduct interrogations; or (3) interpret individual medical records/medical data for the purposes of interrogation or intelligence gathering.

d. Healthcare providers may not conduct any form of medical research that involves detainees (DoD 3216.2, para 4.4.2). Research refers to any systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. The compassionate or one-time emergency use of investigational or unapproved agents may be approved on a case-by-case basis by the US Army Surgeon General.


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e. As in any setting, healthcare personnel should not perform any duties they feel are illegal, immoral, or unethical. If healthcare personnel feel they have been ordered to perform such duties, they should voice their concerns to and seek clarification from the chain of command. If the chain of command is unable to resolve the situation, healthcare personnel should engage the technical chain by contacting the Command Surgeon. If these avenues are not fruitful, healthcare personnel may contact their specialty consultants, the Inspector General, or Criminal Investigation Command. Healthcare personnel should recognize that situations could arise where their participation is required depending on the healthcare needs of the population served, and on the tactical and strategic situations.

6. The point of contact for this memorandum is the Deputy Assistant Surgeon General for Force Projection at (703) 693-5607.

FOR THE COMMANDER:



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