

October 7, 2015

The Honorable Ashton Carter
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Carter:

We, the undersigned medical and medical ethics professionals, write regarding the Defense Health Board's March 2015 report on "Ethical Guidelines and Practices for U.S. Military Medical Professionals" (DHB Report).¹ Together, we have decades of experience in medicine and medical ethics and some of us have served in senior leadership positions in the American Medical Association, the American College of Physicians, the American Psychiatric Association, and the World Medical Association. We are encouraged to learn that the Defense Department is carefully reviewing the DHB Report and intends to develop a plan of action for improving existing policies and procedures. As this important process continues, we would like to raise and explain some specific concerns.

The critical issue largely absent from the DHB Report is the one that has caused the most controversy and consternation since 9/11: the treatment of terrorism suspects and wartime detainees. This includes the involvement of health care professionals in brutal interrogations and the force-feeding of hunger strikers across theatres – from "black sites" to Abu Ghraib to the Guantanamo Bay detention facility. The DHB Report barely mentions these abuses and misses an opportunity to safeguard against their repetition. What is needed is specific ethics guidance for military health professionals working in national security detention settings.

Recommendation 2 is the core recommendation of the DHB Report: "Throughout its policies, guidance, and instructions, DoD must ensure that the military health care professional's first ethical obligation is to the patient." This recommendation is fundamental. It should be accepted and implemented, which will require significant changes in existing policies and procedures that were not addressed in the DHB Report. For example, force-feeding at Guantanamo continues to this day pursuant to policies that are rooted in a 2006 Defense Department Instruction on Medical Program Support for Detainee Operations. Indeed, Joint Task Force Guantanamo continues to force-feed a detainee who has been on hunger strike for more than 8 years, weighs 74 pounds, and is at significant risk of dying, rather than working to get him the medical care he needs. Recommendation 2 of the DHB Report would outlaw such conduct.

We are deeply troubled by the absence of specific, substantial information and detailed recommendations that speak to the national security detention context – recommendations that address an era of abuse that has now been studied, documented, and widely publicized, including by Congress. We agree with the DHB that "DoD should formulate an overarching code of military medical ethics based on accepted codes from various health care professions to serve as a guidepost to promote ethical leadership and set a standard for the cultural ethos of the [Military Health System]."² In particular, basic medical ethics principles established by The World Medical Association as well as U.S. medical societies should be explicitly articulated in Defense Department policy. These include:

¹ See <http://www.health.mil/About-MHS/Other-MHS-Organizations/Defense-Health-Board/Reports>.

² DHB Report Recommendation 4.

- Physicians should not be involved in abusive practices, including participating in, being present for, condoning or facilitating torture or cruel, inhuman or degrading treatment.
- Physicians should not be directly involved in interrogation, including conducting, participating in, or monitoring interrogation.
- Physicians must maintain the confidentiality of medical information and not provide medical information for use in torture; cruel, inhuman or degrading treatment; or any interrogation.
- Physicians must not treat prisoners for the purpose of returning them to interrogation; torture; or cruel, inhuman or degrading treatment.
- Physicians must report torture, abuse, or coercive treatments including those related to interrogation.
- Physicians must have clinical independence in treating detainees.

It is important that Defense Department policies and practices governing national security detention settings are in accord with established medical ethical principles and standards of care. The concept expressed in Recommendation 2 can only be honestly applied in that context. Our military health professionals and our service members deserve no less.

Please contact Scott Roehm, Vice President at The Constitution Project, with any questions or to follow up (Office: 202.580.6930; E-mail: sroehm@constitutionproject.org). Thank you for your time and consideration.

Sincerely,

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