

# Will Medical Ethics Be a Casualty of the War on Terror?

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Allegations of involvement in detainee maltreatment by military medical personnel serving in Iraq, Afghanistan, and Guantanamo Bay have been made in media reports, professional journals, and leaked reports of the International Committee of the Red Cross.<sup>1–10</sup> These allegations include physician participation in interrogations involving coercive techniques.

In June 2005, *The New York Times*<sup>3</sup> published an account of interviews with former Guantanamo Bay interrogators who said that military doctors had advised them on methods of increasing psychological stress on detainees, including exploiting an individual's particular fears and phobias. One detainee's medical record indicated that he had a severe phobia for darkness. Doctors told interrogators this information and suggested ways in which it could be used to induce the detainee to cooperate with questioning. Another doctor, serving as a member of a Behavioral Science Consultation Team, or BSCT ("biscuit") team, after reading a detainee's medical record suggested that the man's "longing" for his mother could be exploited to induce him to cooperate. Referring to BSCT team doctors, an interrogator told the *Times*, "Their purpose was to help us break them." Bryan Whitman, a senior Pentagon spokesman contacted by the *Times*, would not address the specific accounts of the interrogators. The *Times* reported that Mr. Whitman "suggested that the doctors advising interrogators were not covered by ethics strictures because

they were not treating patients but rather were acting as behavioral scientists."<sup>3</sup>

Physician participation in intelligence gathering has not occurred in a leadership vacuum. To the contrary, after 9/11, the Bush Administration, through the Justice Department and the Pentagon, crafted policies regarding the treatment of detainees that serve to support this activity.<sup>6</sup> Some of these policies have been modified over time, in response to increasing national and international concern about the treatment of detainees. However, endorsement of physician involvement in interrogations remains a feature of the Administration's policies on the treatment of detainees.

In June 2005, the Department of Defense (DoD) published a memorandum entitled, "Medical Program Principles and Procedures for the Protection and Treatment of Detainees in the Custody of the Armed Forces of the United States."<sup>11</sup> In form, this document follows the structure of the United Nations' 1982 publication, "Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."<sup>12</sup> However, unlike the United Nations' document, the DoD memorandum contains language that implicitly allows health care professionals to participate in activities inconsistent with traditional medical ethics when operating in a consultative rather than a treatment capacity.

The DoD memorandum differentiates consultants from treaters in several ways. It states that health care personnel "charged with the medical care of de-

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tainees have a duty to protect their physical and mental health and provide appropriate treatment for disease,” and that all health care personnel have a duty to uphold the humane treatment of detainees. However, later provisions support conduct that subverts these principles by allowing participation in interrogations and the sharing of medical records for purposes other than treatment (see below). Health care personnel may not be involved in a “professional provider-patient treatment relationship” with detainees, the purpose of which is not solely to evaluate, protect, or improve physical and mental health. Health care personnel may not use their expertise to assist in interrogation or to certify the fitness of detainees for any form of treatment or punishment “in a manner that is not in accordance with applicable law.” A bright line is established between health care professionals who provide treatment to detainees and those engaged in “non-treatment activities, such as forensic psychology or psychiatry, behavioral science consultation, forensic pathology, or similar disciplines,” with “treaters” and “non-treaters” prohibited from engaging in the professional activities of the other. The disclosure of patient-specific medical information for purposes other than treatment is allowed, with the proviso that details of the disclosure be recorded.<sup>11</sup>

The new DoD principles arguably enable physician participation in coercive interrogation practices.<sup>13</sup> By drawing a distinction between treatment and nontreatment activities, linking ethical conduct to interpretations of “applicable law,” and permitting disclosure of medical information for nonmedical purposes, the DoD document undermines the requirement of health professionals to uphold humane treatment, despite language that makes this a duty.

As awareness of physician participation in interrogation has increased in the general medical and psychiatric community, numerous journal articles and editorials have been published questioning whether such participation constitutes a violation of medical ethics.<sup>6–8,14</sup> The Department of Defense responded to this and other concerns by inviting a delegation of civilian psychiatrists, psychologists, ethicists, military doctors, and DoD health affairs officials to a six-hour visit of the naval and detention center hospitals at Guantanamo Bay last October. To date, at least two members of this delegation have published their impressions of the visit.

Writing in the *New England Journal of Medicine*,<sup>15</sup> contributing editor Susan Okie, MD, described a briefing by Major General Jay W. Hood, commander of the Joint Task Force at Guantanamo. General Hood acknowledged that harsh interrogation techniques had been employed in the past, but stated that these were no longer in use. He further indicated that interrogators under his command were not given access to information from detainees’ medical or psychiatric records. The visitors spoke with two psychologists who currently serve on Guantanamo’s BSCT and therefore do not provide treatment to detainees. These psychologists stated that their role is to observe interrogations and provide feedback to interrogators, as well as to advise guards on managing detainee behavior. The psychologists denied involvement in stress-producing interrogation techniques, emphasizing that rapport-building techniques facilitated productive interrogation.

Dr. Okie traveled to Guantanamo with the understanding that the visitors would probably be permitted to speak with hospitalized detainees. However, once she arrived, she found that officials had decided against this. Without the ability to speak to detainees, Dr. Okie found that although she left Guantanamo reassured by General Hood and others that detainees were treated humanely, she remained concerned by statements made by detainees through their attorneys that they are not.

Nancy Sherman, Professor of Philosophy at Georgetown University and a military ethicist, also participated in the visit to Guantanamo. In an editorial in *The Los Angeles Times*,<sup>16</sup> Sherman noted her impression that the unspoken reason for the invitation for “this unusual day trip” was the “bruising criticism the Bush administration has received for its use of psychiatrists and psychologists in the interrogation of suspected terrorist detainees.” The key subject of discussion during the day at Guantanamo was whether the same ethics standards apply to clinicians providing treatment to detainees and to those serving on interrogation teams. The argument that day was framed by the suggestion that some in the Pentagon leadership believed that psychiatrists, bound by the Hippocratic oath to do no harm, should provide treatment to detainees, while psychologists, free of such constraints, should participate in interrogations. Professor Sherman rightly rejected this argu-

ment. "It is hair-splitting that detracts from the real issue of whether health professionals of any stripe can ethically be involved in interrogations that may involve coercive techniques or torture. The answer is clearly no."<sup>16</sup>

Professional ethics prohibit all health professionals from participating in activity that may involve coercive techniques or torture. The American Psychiatric Association (APA) recently issued a position statement that psychiatrists should not participate in interrogation of persons held in military or civilian investigative or law enforcement custody. The statement reiterates the APA's position that psychiatrists should not participate in or facilitate torture. The DoD is, of course, free to articulate its own definition of acceptable "principles and procedures," for military medical personnel. But DoD policy statements are not an acceptable substitute for the traditional ethics standards that guide psychiatrists and other health care professionals. The DoD's assertion that "nontreatment" activities, such as participation in coercive interrogation, are ethically permissible since no "professional provider-patient treatment relationship" exists is not supported by any professional code of medical or psychiatric ethics.

According to William Winkenweder, Jr, MD, Assistant Secretary of Defense for Health Affairs and the author of the DoD's "Medical Program Principles and Procedures" memorandum, defense officials are working to finalize new and more detailed detainee-treatment policy guidelines.<sup>17</sup> This provides the DoD with the opportunity to rejoin the medical community in its stance on professional ethics. Most military health care professionals have undoubtedly served with courage and distinction in Iraq, Afghanistan, and Guantanamo Bay. They deserve the respect and gratitude of their civilian colleagues and the general public. They also deserve a DoD that encourages them to turn to traditional sources for guidance on ethics.

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