THE ASSISTANT SECRETARY OF DEFENSE

1200 DEFENSE PENTAGON
WASHINGTON, DC 20301-1200

HEALTH AFFAIRS

AUG 24 2006

The Honorable John W. Warner
Chairman, Committee on Armed Services
United States Senate
Washington, DC 20510-6050

Dear Mr. Chairman:

This report responds to Section 750 of the National Defense Authorization Act for Fiscal Year 2006, which provides that the Secretary of Defense shall establish the policy of the Department of Defense (DoD) on the role of military medical and behavioral science personnel in interrogations, and report to the congressional defense committees on the policy.

Department of Defense Instruction (DoDI) 2310.08E, "Medical Program Support for Detainee Operations" (enclosed), was published on June 6. It addresses the role of the military medical and behavioral science personnel, and is applicable throughout DoD Basic principles include the requirement that no detainee "shall be subject to cruel, inhuman, or degrading treatment or punishment," and that medical treatment should be guided by standards similar to those applied to U.S. military personnel.

The Instruction makes clear that the medical personnel assigned to provide health care in a professional provider-patient treatment relationship will not be used to supervise, conduct, or direct interrogations. Further standards and procedures for use of Behavioral Science Consultants (BSCs) are prescribed in Enclosure 2 of DoDI 2310 08E (page 9 of the enclosed DoDI).

BSCs are authorized to make psychological assessments of the character, personality, social interactions, and other behavioral characteristics of detainees, including those interrogated, and to provide advice concerning lawful interrogations. Although they may observe, BSCs shall not conduct or direct interrogations, nor shall they use or facilitate, directly or indirectly, the use of physical or mental health information in a manner that would result in inhumane treatment.

BSCs may not provide health care nor medical screening services. They shall in no way allow themselves to be identified to detainees as health care providers, nor provide any medical care, except in emergency circumstances when no other health care providers can respond adequately to save life or prevent permanent injury. As a matter of

professional management, BSCs will be qualified psychologists. When psychologists are unavailable or unable to meet critical mission needs, a physician may be assigned BSC duties, with my approval.

I believe that this new Instruction provides appropriate guidance to our military medical personnel, wherever assigned, to enable them to carry out the duties in support of detainee operations, while upholding high ethical standards.

Thank you for your continued support of the Military Health System.

Sincerely,

William Winkenwerder, Jr., MD

Enclosure:
As stated

cc:
Senator Carl Levin

Department of Defense
INSTRUCTION

NUMBER 2310.08E
June 6, 2006

USD(P&R)

SUBJECT: Medical Program Support for Detainee Operations

References: (a) Assistant Secretary of Defense (Health Affairs) Memorandum, "Medical Program Principles and Procedures for the Protection and Treatment of Detainees in the Custody of the Armed Forces of the United States," June 3, 2005 (hereby canceled)
(b) DoD Directive 5100.77, "DoD Law of War Program," December 9, 1998
(c) DoD Directive 2310.01E, "The DoD Detainee Program," August 18, 1994, under revision
(d) DoD Directive 5136.1, "Assistant Secretary of Defense for Health Affairs (ASD(HA))," May 27, 1994
(e) through (k) see Enclosure 1

1. PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction.

1.2. Establishes policy and assigns responsibility, consistent with References (b) through (d), DoD Directive 3115.09, and Section 1403 of the Detainee Treatment Act of 2005 (References (e) and (f)) for medical program support for detainee operations.

1.3. Reaffirms the responsibility of health care personnel to protect and treat, in the context of a professional treatment relationship and established principles of medical practice, all detainees in the control of the Armed Forces during military operations. This includes enemy prisoners of war, retained personnel, civilian internees, and other detainees.

2. APPLICABILITY AND SCOPE

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all

other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS

3.1. Behavioral Science Consultants (BSCs). Health care personnel qualified in behavioral sciences who are assigned exclusively to provide consultative services to support authorized law enforcement or intelligence activities (similar to behavioral science unit personnel of a law enforcement organization or forensic psychology or clinical social work practitioners supporting the criminal justice, parole, or corrections systems).

3.2. Detainee. The definition in Reference (c) applies to this Instruction.

3.3. Health Care Personnel. An individual who has received special training or education in a health-related field and who performs services in or for the Department of Defense in that field. A health-related field may include administration, direct provision of patient care, or ancillary or other support services. Health care personnel include, but are not limited to, individuals licensed, certified, or registered by a government agency or professional organization to provide specific health services. Health care personnel covered by this Instruction include those assigned as BSCs and also include members of the Uniformed Services, civilian employees, and contractor personnel in a health-related field acting in support of any DoD Component.

4. POLICY

It is DoD policy that:

4.1. Basic Principles. Health care personnel (particularly physicians) perform their duties consistent with the following principles.

4.1.1. 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 and to ensure that no individual in the custody or under the physical control of the Department of Defense, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment, in accordance with and as defined in U.S. law.

4.1.2. Health care personnel charged with the medical care of detainees have a duty to protect detainees' 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 applied to personnel of the U.S. Armed Forces.

4.1.3. Health care personnel shall not 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.

4.1.4. Health care personnel, whether or not in a professional provider-patient treatment relationship, shall not apply their knowledge and skills in a manner that is not in accordance with applicable law or the standards set forth in Reference (c).

4.1.5. Health care personnel shall not certify, or 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 participate in any way in the administration of any such treatment or punishment.

4.1.6. Health care personnel shall not participate in any procedure for applying physical restraints to the person of a detainee unless such a procedure is determined to be necessary for the protection of the physical or mental health or the safety of the detainee, or necessary for the protection of other detainees or those treating, guarding, or otherwise interacting with them. Such restraints, if used, shall be applied in a safe and professional manner.

4.2. Medical Records. Accurate and complete medical records on all detainees shall be created and maintained. Medical records must be maintained for all medical encounters, whether in fixed facilities or through medical personnel in the field.

4.3. Treatment Purpose. Health care personnel engaged in a professional provider-patient treatment relationship with detainees shall not participate in detainee-related activities for purposes other than health care. Such health care personnel shall not actively solicit information from detainees for other than health care purposes. Health care personnel engaged in non-treatment activities, such as forensic psychology, behavioral science consultation, forensic pathology, or similar disciplines, shall not engage in any professional provider-patient treatment relationship with detainees (except in emergency circumstances in which no other health care providers can respond adequately to save life or prevent permanent impairment).

4.4. Medical Information. Health care personnel shall safeguard patient confidences and privacy within the constraints of the law. 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. Similar to legal standards applicable to U.S. citizens, permissible purposes include preventing harm to any person, maintaining public health and order in detention facilities, and any lawful law enforcement, intelligence, or national security-related activity.

4.4.1. When the medical unit commander (or other designated senior medical activity officer) suspects the medical information to be disclosed may be misused, or if there is a disagreement between such medical activity officer and a senior officer requesting disclosure, the medical activity officer shall seek a senior command determination on the propriety of the

disclosure or actions to ensure the use of the information will be consistent with applicable standards.

4.4.2. Consistent with applicable command procedures, International Committee of the Red Cross physicians shall be given access to review medical records of detainees during visits to detention facilities.

4.5. Reportable Incident Requirements. Any health care personnel who in the course of a treatment relationship or in any other way observes or suspects a possible violation of applicable standards, including those prescribed in References (b), (c), and (e), for the protection of detainees shall report those circumstances to the chain of command. Health care personnel who believe such a report has not been acted upon properly should also report the circumstances to the medical program leadership, including the Command Surgeon or Military Department specialty consultant. Officials in the medical program leadership may inform the Joint Staff Surgeon or Surgeon General concerned, who then may seek senior command review of the circumstances presented. Other reporting mechanisms, such as the Inspector General, criminal investigation organizations, or Judge Advocates, also may be used.

4.5.1. Health care personnel involved in clinical practice activities shall make a written record of all reports of suspected or alleged violations in a reportable incident log maintained by the medical unit commander or other designated senior medical activity officer.

4.5.2. Health care personnel carrying out BSC functions under Enclosure 2 shall also comply fully with the reportable incident requirements of paragraph 4.5. They shall make a written record of all reports of suspected or alleged violations in a reportable incident log maintained by the detention facility commander or other designated senior officer.

4.6. Training. The Secretaries of the Military Departments and, as appropriate, Combatant Commanders shall ensure 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. This training shall include at least the following elements:

4.6.1. A basic level of training for all military health care personnel who may be deployed in support of military operations and whose duties may involve support of detainee operations or contact with detainees. The overall purpose of this training is to ensure a working knowledge and understanding of the requirements and standards for dealing with health care of detainees.

4.6.2. Periodic provision of refresher training consistent with the basic level of training.

4.6.3. Additional training for health care personnel assigned to support detainee operations, commensurate with their duties.

4.7. Consent for Medical Treatment or Intervention. In general, health care will be provided with the consent of the detainee. To the extent practicable, standards and procedures for obtaining consent will be consistent with those applicable to consent from other patients.

Standard exceptions for lifesaving emergency medical care provided to a patient incapable of providing consent or for care necessary to protect public health, such as to prevent the spread of communicable diseases, shall apply.

4.7.1. In the case of a hunger strike, attempted suicide, or other attempted serious self-harm, medical treatment or intervention may be directed without the consent of the detainee to prevent death or serious harm. Such action must be based on a medical determination that immediate treatment or intervention is necessary to prevent death or serious harm, and, in addition, must be approved by the commanding officer of the detention facility or other designated senior officer responsible for detainee operations.

4.7.2. Involuntary treatment or intervention under subparagraph 4.7.1. in a detention facility must be preceded by a thorough medical and mental health evaluation of the detainee and counseling concerning the risks of refusing consent. Such treatment or intervention shall be carried out in a medically appropriate manner, under standards similar to those applied to personnel of the U.S. Armed Forces.

4.7.3. Detention facility procedures for dealing with cases in which involuntary treatment may be necessary to prevent death or serious harm shall be developed with consideration of procedures established by Title 28, Code of Federal Regulations, Part 549 (Reference (g)).

4.8. Role of the Armed Forces Medical Examiner (AFME) in Death Investigations. As required by the Secretary of Defense Memorandum dated June 9, 2004 (Reference (h)), if a detainee dies, the commander of the facility (or if the death did not occur in a facility, the commander of the unit that exercised control over the individual) shall immediately report the death to the cognizant Military Criminal Investigation Organization (MCIO). The MCIO shall contact the Office of the AFME, which shall, consistent with Reference (h), Section 1471 of title 10, United States Code, and DoD Instruction 5154.30 (References (i) and (j)), determine whether an autopsy will be performed. The body will be handled as directed by the Office of the AFME. The determination of the cause and manner of death will be the sole responsibility of the AFME or other physician designated by the AFME.

4.9. Health Care Personnel Management. As a matter of personnel management policy, except as provided in this paragraph, health care personnel's support of detainee operations is limited only to providing health care services in a professional provider-patient treatment relationship in approved clinical settings, conducting disease prevention and other approved public health activities, advising proper command authorities regarding the health status of detainees, and providing direct support for these activities. Medical personnel shall not be used to supervise, conduct, or direct interrogations. Health care personnel assigned as, or providing direct support to, BSCs, consistent with Enclosure 2, or AFME personnel, are the only authorized exceptions to this paragraph. The Assistant Secretary of Defense for Health Affairs (ASD(HA)), or designee, must approve any other exceptions to this paragraph.

4.10. BSCs. Standards and procedures for BSCs are established in Enclosure 2.

4.11. Effect on Legal Obligations. Nothing in this Instruction may be construed to alter any legal obligations of health care personnel under applicable law.

5. RESPONSIBILITIES

5.1. The ASD(HA), under the Under Secretary of Defense for Personnel and Readiness, shall:

5.1.1. Supervise implementation of this Instruction and provide supplementary direction, as necessary.

5.1.2. Coordinate with the Chairman of the Joint Chiefs of Staff, the Under Secretary of Defense for Policy, the Under Secretary of Defense for Intelligence, the General Counsel of the Department of Defense, the Secretary of the Army as Executive Agent for administration of detainee operations policy under Reference (c), and, as appropriate, with other Heads of DoD Components regarding activities under this Instruction.

5.2. The Secretaries of the Military Departments shall:

5.2.1. Implement training programs consistent with paragraph 4.6.

5.2.2. Ensure health care personnel assigned to duties as BSCs have been appropriately trained, consistent with the standards and procedures in Enclosure 2.

5.2.3. In assigning health care personnel to duties as BSCs under Enclosure 2, allow health care personnel to volunteer for the assignment, to the extent practicable and consistent with mission requirements.

5.2.4. Establish systems and procedures to ensure the ability of all health care personnel to comply with all requirements of this Instruction and any additional implementing guidance.

5.3. The Secretary of the Army, as Executive Agent, consistent with DoD Directive 5101.1 (Reference (k)), for administration of detainee operations policy under Reference (c), shall establish training and certification standards for the training required by paragraph 4.6.

5.4. The Commanders of the Combatant Commands through the Chairman of the Joint Chiefs of Staff, shall plan for, execute, and oversee medical program support for detainee operations within their respective commands in accordance with this Instruction.

6. EFFECTIVE DATE.

This Instruction is effective immediately.

William Winkenwerder, Jr., M.D.
Assistant Secretary of Defense (Health Affairs)

Enclosures – 2
E1. References, continued
E2. Standards and Procedures for BSCs

E1. ENCLOSURE 1

REFERENCES, continued

(e) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," November 3, 2005
(f) Section 1403 of the Detainee Treatment Act of 2005, Pub. L. No. 109-163, Title XIV
(g) Title 28, Code of Federal Regulations, Part 549, Subpart E, "Hunger Strikes, Inmate," current edition
(h) Secretary of Defense Memorandum, "Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States," June 9, 2004
(i) Section 1471 of title 10, United States Code
(j) DoD Instruction 5154.30, "Armed Forces Institute of Pathology Operations," March 18, 2003
(k) DoD Directive 5101.1, "DoD Executive Agent," September 3, 2002

E2. ENCLOSURE 2

STANDARDS AND PROCEDURES FOR BSCs

E2.1. BSCs are authorized to make psychological assessments of the character, personality, social interactions, and other behavioral characteristics of detainees, including interrogation subjects, and, based on such assessments, advise authorized personnel performing lawful interrogations and other lawful detainee operations, including intelligence activities and law enforcement. They employ their professional training not in a provider-patient relationship, but in relation to a person who is the subject of a lawful governmental inquiry, assessment, investigation, interrogation, adjudication, or other proper action. Requirements in this Instruction applicable to BSCs are also applicable to other health care personnel providing direct support to BSCs.

E2.1.1. BSCs may provide advice concerning interrogations of detainees when the interrogations are fully in accordance with applicable law and properly issued interrogation instructions.

E2.1.2. BSCs may observe, but shall not conduct or direct, interrogations.

E2.1.3. BSCs may provide training for interrogators in listening and communications techniques and skills and on results of studies and assessments concerning safe and effective interrogation methods and potential effects of cultural and ethnic characteristics of subjects of interrogation.

E2.1.4. BSCs may advise command authorities on detention facility environment, organization and functions, ways to improve detainee operations, and compliance with applicable standards concerning detainee operations.

E2.1.5. BSCs may advise command authorities responsible for determinations of release or continued detention of detainees of assessments concerning the likelihood that a detainee will, if released, engage in terrorist, illegal, combatant, or similar activities against the interests of the United States.

E2.1.6. BSCs shall not support interrogations that are not in accordance with applicable law.

E2.1.7. BSCs shall not use or facilitate directly or indirectly the use of physical or mental health information regarding any detainee in a manner that would result in inhumane treatment or not be in accordance with applicable law.

E2.1.8. To ensure that detainees do not obtain the mistaken impression that health care personnel engaged in clinical care of detainees are also assisting in interrogations, BSCs shall not allow themselves to be identified to detainees as health care providers. BSCs shall not provide medical care for staff or detainees (except in emergency circumstances in which no other health care providers can respond adequately to save live or prevent permanent impairment). BSCs

shall not provide training in first aid, sanitation, or other health matters. Absent compelling circumstances requiring an exception to the rule, health care personnel shall not within a three-year period serve in the same location both in a clinical function position and as a BSC.

E2.1.9. BSCs shall not provide medical screening (which is a health care function) to detainees, nor act as medical monitors during interrogation.

E2.1.10. BSCs may consult at any time with the psychology or other applicable specialty consultant designated by the Surgeon General concerned for this purpose regarding the roles and responsibilities of BSCs and procedures for reporting instances of suspected noncompliance with standards applicable to detainee operations.

E2.2. As a matter of professional personnel management, physicians are not ordinarily assigned duties as BSCs, but may be so assigned, with the approval of ASD(HA), in circumstances when qualified psychologists are unable or unavailable to meet critical mission needs.