

June 12, 2015

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

Dear Secretary Carter:

We write to comment on the report of the Defense Health Board – released on March 3, 2015, and currently under review – examining “Ethical Guidelines and Practices for U.S. Military Medical Professionals,”<sup>1</sup> and to request a meeting with you or with appropriate personnel in your office to discuss this matter further. The report is an extremely significant development and provides the Department with an opportunity to take a strong ethical stance to bring military medical ethics into conjunction with universal medical ethics standards, and to thereby strengthen the commitment of military health care personnel to their patients, both military and civilian. We would like to help with this endeavor: together we have decades of experience with medicine and medical ethics, including military medical ethics.

The most important and core recommendation of the Defense Health Board report is Recommendation 2: “Throughout its policies, guidance, and instructions, DoD must ensure that the military health care professional’s first ethical obligation is to the patient.”

This is really all that has to be said about medical ethics, and arguably all that should be said. The report nonetheless adds a call for an explicit code of ethics for health care professionals in the military, but makes no attempt to justify in what manner medical ethics would differ in the military setting. One difference that is highlighted is the possibility of there being some tension with nonmedical commanders. In this context the suggestion in Recommendation 3 that commanders “should excuse health professionals from performing medical procedures that violate their professional codes of ethics, state medical board standards of conduct, or the core tenets of their religious or moral beliefs,” is useful. Likewise, the calls for the development of an ethical and educational infrastructure and support system are all to the good.

Of course, specifics need to be worked out. For example, Recommendation 7 rightly asserts that “military health professionals should have privileges similar to those of Chaplains and Judge Advocates...regarding privacy and confidentiality.” We believe this point is correct, but so is a larger one: consistent with Recommendations 2 and 3, military health professionals should no more be asked to violate medical ethics than chaplains are asked to violate the tenets of their religion or Judge Advocates are asked to violate the U.S. Constitution.

One area we think needs more explicit attention is that which has caused the most controversy and consternation since 9/11: medical and health care and treatment of prisoners. As with the 2006 Defense Department instruction on Medical Program Support for Detainee Operations,<sup>2</sup> the recently released Defense Health Board report was prepared primarily in response to wide discussion and debate about the role of military health care professionals at the Guantanamo Bay detention facility. Thus it is disturbing that while both the hunger strikes at Guantanamo and the Geneva Conventions are mentioned briefly in the report, no

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

<sup>2</sup> See <http://www1.umn.edu/humanrts/OathBetrayed/Winkenwerder%206-6-2006.pdf>.

attempt is made to do an ethical analysis of how military physicians should respond to hunger strikes and the role of the World Medical Association's ethical rules regarding hunger strikes.

The most critical area of failure of military medical ethics has been in responding to hunger strikes, and if we expect our military physicians and health care professionals to follow medical ethics, we must put a system in place that not only permits ethical behavior, but rewards it. Such a system is not suggested in the report, but it should be developed. Ethics, even explicit patient-centered ethics, without a well-developed and understood implementation strategy, will only be window-dressing.

We would like to meet with you or with appropriate personnel in your office to discuss this matter further, and would be happy to participate in developing an ethics implementation system for military medical professionals.

Please contact Scott Roehm (copied below), Senior Counsel at The Constitution Project, with any questions or to follow up. Thank you for your time and consideration.

Sincerely

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