

# Women's Health Issues and the Law

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***"Medically Ready Force...Ready Medical Force"***

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# Disclaimers



- The materials and information provided during this training are for informational purposes only and not for the purpose of providing legal advice. Nothing in this presentation creates or is intended to create an attorney-client relationship, and is not a substitute for obtaining legal advice.
- Legal determinations are fact specific, but intended to assist with issue spotting. Consult with your agency counsel to obtain advice with respect to any particular issue or problem.
- Different agencies and services (including DHA, the U.S. Army/Navy/Air Force) have different regulatory guidance. Consult your agency-specific requirements.
- Licensed Individual Practitioners (LIPs) are subject to state specific guidance as well as guidance put forth by the U.S. Government and Department of Defense (DoD).

# Learning Objectives



At the conclusion of this activity, participants will be able to:

1. Identify legal issues and know when to ask for guidance.
2. Summarize the limitations and ethical concerns regarding abortion-related care in the federal government.
3. Explain the command-exception to HIPAA.
4. Discuss the ethical issues surrounding mandatory reporting and Women's Health.

# Scenario 1



- MAJ Octavia Lee presents requesting an abortion at 10 weeks, she states she was raped by her brother.
  - ☐ Is it permissible?
  - ☐ What if the provider does not want to perform the procedure because of religious concerns?
  
- What if:
  - ☐ She threatens to kill herself if she cannot have the procedure? She has a documented history of Bi-polar disorder and past suicidal ideations.
  - ☐ What if there were no rape, incest, or danger to life of mother/fetus concerns?
  
- The abortion is performed out in town. Complications arise, specifically excessive bleeding and cramping.
  - ☐ Can you treat her for any conditions arising from the procedure?

# Abortion



- **Hyde Amendment**

- Federal funds prohibited for abortions except “in cases of rape or incest, or where a physical condition endangers a woman's life unless an abortion is performed.”
- This is not permanent law, but has been attached every year as a temporary “rider” to the Congressional appropriations bill for the Department of Health and Human Services (HHS) since 1976.

- **Concerns**

- Tricare Coverage
- Approval Authorities
- Conscientious Objection?



# TRICARE Coverage



- TRICARE covers abortions only when:
  - ☐ The pregnancy is the result of an act of rape or incest.
    - A physician must note in the patient's medical record that it is their good faith belief, based on all available information, that the pregnancy was the result of an act of rape or incest.
  - ☐ The life of the mother is at risk.
    - The physician must certify that the abortion was performed because the life of the mother would be endangered if the fetus were carried to term.
  - ☐ TRICARE also covers medical and/or mental health services related to the covered abortion.
  - ☐ TRICARE doesn't cover:
    - Services and supplies related to a non-covered abortion
    - Counseling, referral, preparation and follow-up for a non-covered abortion
    - Abortions for fetal abnormality or for psychological reasons

<https://tricare.mil/CoveredServices/IsItCovered/Abortions>

# Conscientious Objections



■ Conscientious objection in health care is the refusal to perform a legal role or responsibility because of moral or other personal beliefs.

- ☐ At what point does refusal to consent to treatment constitute medical neglect?
- ☐ At what point does a clinician's moral objection to providing a treatment interfere with a patient's access to treatment, and violate professional ethical standards?

<https://www.thehastingscenter.org/briefingbook/conscience-clauses-health-care-providers-and-parents/>

# Conscientious Objections



■ **The Michigan Example:** In Wisconsin, a married mother of 4 sought the morning-after pill at a local pharmacy. The pharmacist refused to fill the prescription and he refused to transfer it to another pharmacist or to return the original prescription to the patient. Led to Michigan passing laws permitting conscientious objectors to certain health care services, other states soon followed suit.

■ **Issue:**

- ☐ Rights of the practitioner versus patient autonomy

# Conscientious Objections



## ■ Considerations:

- ☐ Is what you are being asked to do illegal?
- ☐ Conscientious objection in health care must balance the respect for the practitioner's individual beliefs with the rights and well-being of the public.
- ☐ Individual state licensure requirements
- ☐ Need for the service being requested
- ☐ Availability of other practitioners to provide services
- ☐ Need to maintain military readiness

# Sexual Harassment/Assault



Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#).

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

<https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>



SECRETARY OF DEFENSE  
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4/18/2018



MEMORANDUM FOR ALL MEMBERS OF THE DEPARTMENT OF DEFENSE

SUBJECT: Sexual Assault Awareness and Prevention

Those entrusted by our Nation with the lives of our troops and with carrying out violence must demonstrate self and unit discipline in all aspects of our performance. This requires us to do what is right at all times, regardless of the circumstances or whether anyone is watching. We are warfighters, defenders of our Nation, and exemplars of our Nation's values. Unit cohesion is what holds us together under stress and keeps us combat effective when the chips are down. Admired leadership builds the trust of all hands, trust being the coin of the realm and our bedrock in building a cohesive team, one free of denigrating behavior.

In this regard, I am highlighting our Department's commitment to assertively prevent and swiftly and appropriately respond to any sexual assault in our ranks. I expect every member of the Department to use their initiative and courage to model ethical and legal behavior in the workplace, at home, and online. My objective is that we communicate and behave in a way that reflects positively on America's military and builds trust daily in our chain of command, and I am directing a re-doubled effort from our most senior to most junior on insisting on an assault-free military.

Preventing sexual assault is our moral duty. By its nature, sexual assault is one of the most destructive factors in building a mission-focused military. Self-discipline, alert Non-Commissioned Officers (NCOs), and attuned chains of command are essential if we are to set standards that strengthen our military readiness to fight well and increase our ability to recruit and retain the finest all-volunteer force this world has ever known. Leaders in the Department also have a special obligation, an *in loco parentis* responsibility, for our young members that buttresses unit cohesion and combat effectiveness.

Due to the age at which nearly all recruits enter the military, NCOs and officers must carry this special responsibility for the care of our troops. While casualties on the battlefield are understood to be consistent with our military duties, I accept no casualties due to sexual assault within our ranks. Military leaders are to be zealous in carrying out *in loco parentis* responsibilities and ridding our ranks of such illegal, abhorrent behavior.

I know that the overwhelming majority of our military and civilian personnel represent the highest standards of decorum and maturity. However, I expect disciplined behavior from all hands without exception. I charge all officers, NCOs, and supervisors to use their authority and force of personality to prevent and eliminate sexual assault from our ranks.

*John Mattis*



**"Preventing sexual assault is our moral duty,"**

**"By its nature, sexual assault is one of the most destructive factors in building a mission-focused military."**

# Sexual Harassment/Assault



## ■ Statistics

- Sexual Assault reporting increased over 88% in the DoD between 2012-2016
- On May 2, 2019, the DoD released its Annual Report showing that service member reporting of sexual assault increased by about 13% in fiscal year 2018
  - NOTE: Reporting had increased about 10% in fiscal year 2017
- 30-50% of women medical school faculty report at least one episode of sexual harassment

\*\*\* ... and it's still generally acknowledged that incidents are underreported \*\*\*

## Scenario 2



LT Alicia Smith reports to her Obstetrician-Gynecologist (OB/GYN) for a well woman's health visit. She reports that she has been sexually assaulted.



## Scenario 2 - POLLING QUESTION #1



■ What do you do?

- ☐ Nothing.
- ☐ Call the police.
- ☐ Report it to her Chain of Command immediately.
- ☐ Ask the patient if she wants to report the assault.

## Scenario 2 – POLLING QUESTION #2



■ LT Smith is 17, do you need to call her parents or guardian to notify them of the assault?

☐ Yes

☐ No

## Scenario 2



LT Alicia Smith reports to her OB/GYN for a well woman's health visit. She reports that she has been sexually assaulted.

- Does it matter if the patient is not a service member?
  - ☐ It may change who the assault is reported to.

## Scenario 2



LT Alicia Smith reports to her OB/GYN for a well woman's health visit. She reports that she has been sexually assaulted.

### **... continued:**

- What happens if she reports that the person who assaulted her is in her Chain of Command?
- What happens if LT Smith is a resident that works in the same facility as you?

# Sexual Harassment/Assault



## ■ Barriers to Patients Wanting to Report

- ☐ Embarrassment, shame, fear of reprisal.
- ☐ Both the military and higher education environments are traditionally hypercompetitive and hierarchical institutions.
- ☐ To a certain extent, intimidation is part of the culture.

# Sexual Harassment/Assault



## ■ Considerations:

- ☐ Dual roles as leaders in the military and health care providers.
- ☐ We must commit ourselves to creating an environment which shows our patients and colleagues that they are supported, that their complaints will be taken seriously, that confidential options are available, and that they should not fear reprisal.
- ☐ We must be ready to intervene and help prevent or stop abuse when we observe others being targeted.

# Scenario 3



CPT Rebecca Jones reports to her Primary Care Provider that she has a rash in her genital area. She discloses to you that she is having an affair with a married man.

- Lab work is ordered, returns positive for Sexually Transmitted Diseases (STDs):
  - ☐ Syphilis
  - ☐ Herpes
  - ☐ HIV
- Duty to disclose?
- What happens if:
  - ☐ The man is her supervisor/ commanding officer?
  - ☐ Pregnancy test comes back positive?
  - ☐ She seeks an abortion.
  - ☐ Deployed environment with limited health care services.

# 45 CFR § 164.512



## (k) **Standard: Uses and disclosures for specialized government functions**

### (1) **Military and veterans activities.**

(i) **Armed Forces personnel.** A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

(A) Appropriate military command authorities; and

(B) The purposes for which the protected health information may be used or disclosed.

(ii) **Separation or discharge from military service.** A covered entity that is a component of the Departments of Defense or Homeland Security may disclose to the Department of Veterans Affairs (DVA) the protected health information of an individual who is a member of the Armed Forces upon the separation or discharge of the individual from military service for the purpose of a determination by DVA of the individual's eligibility for or entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

(iii) **Veterans.** A covered entity that is a component of the Department of Veterans Affairs may use and disclose protected health information to components of the Department that determine eligibility for or entitlement to, or that provide, benefits under the laws administered by the Secretary of Veterans Affairs.

(iv) **Foreign military personnel.** A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to paragraph (k)(1)(i) of this section.

(2) **National security and intelligence activities.** A covered entity may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).



# Release of Information



- What does the Command really NEED to know?
- Consider the patient and the recipient when filling out paperwork.
- For example, the Command needs to know that a Service Member is authorized Sick in Quarters (SIQ), but they do not necessarily need to know all the reasons therefore.

# Release of Information



- HIPAA – Command Exception: 45 CFR § 164.512(k)
- MINIMUM NEED TO KNOW
  - Contraception
  - Sexually Transmitted Infections (STIs)
  - Pregnancy
  - Sexual Assault/Domestic Violence
- Duty to Report
  - Communicable disease
  - Sexual Assault/ abuse of minors
- Dual Roles – Supervisor or Health care Professional?
- Private Sector versus Military Health System (MHS) Facilities

# Infectious Disease Reporting



- To track prevalence of communicable diseases, some states require reporting to the local health authority.

For example, in Maryland COMAR 10.06.01:

“An institution, as specified in Health-General Article, §18-202, Annotated Code of Maryland, and a health care provider who knows of a case of a reportable disease, condition, outbreak, or unusual manifestation shall report it to the health officer.”

<http://mdrules.elaws.us/comar/10.06.01.04>

## Scenario 4



Patient, retiree, presents to Emergency Department (ED) with laceration on face, bruising on arms and legs – some old, some new – upon interview with the patient, its determined that she has been abused by her civilian spouse. She reports that he beats her whenever his football team (LA Rams) loses a game. The Rams are not favored to win the upcoming game against the Packers.

## Scenario 4 - POLLING QUESTION #3



- The patient can be discharged directly from the ED and does not want to file a police report. Do you have a duty to report the incident?
  - Yes
  - No
  - Unsure

## Scenario 4 - POLLING QUESTION #4



- Do you have a duty to report the incident if the patient requires admission to the hospital for inpatient care? (The patient remains conscious the entire admission)
  - Yes
  - No
  - Unsure

## Scenario 4 – POLLING QUESTION #5



Patient, retiree, presents to ED with laceration on face, bruising on arms and legs – some old, some new – upon interview with the patient, its determined that she has been abused by her civilian spouse. She reports that he beats her whenever his football team (LA Rams) loses a game. The Rams are not favored to win the upcoming game against the Packers.

- Do you have a duty to report if she loses consciousness after she makes her statement re: the abuse? NOTE: No other health care surrogates can be found.
  - Yes
  - No
  - Argh, this is getting difficult!

# Scenario 4



Patient, retiree, presents to ED with laceration on face, bruising on arms and legs – some old, some new – upon interview with the patient, its determined that she has been abused by her civilian spouse. She reports that he beats her whenever his football team (LA Rams) loses a game. The Rams are not favored to win the upcoming game against the Packers.

- Do any of your answers change if the patient is an active duty Service Member?
- What if the spouse is an active duty Service Member?



# Domestic Violence Reporting



## Considerations:

- ☐ Generally can only report if the patient consents, but may rise to a duty to report depending on the severity of the injury.
- ☐ Most states have guidance on appointing health care surrogates (HCS). The only available HCS may be the alleged or suspected abuser.
- ☐ Readiness of Active Duty Service Members

## Scenario 5



A 14-year-old girl presents to the ED with symptoms of a cold; it does not seem significant, but her mother brought her in because the child insisted. While her mother had stepped out of the room – she mentions that she has a rash in her genital area and would like to be examined.

### ■ Any concerns?

- ☐ What do you do?
- ☐ Can she be treated?

## Scenario 5 – POLLING QUESTION #6



A 14-year-old girl presents to the ED with symptoms of a cold; it does not seem significant, but her mother brought her in because the child insisted. While her mother had stepped out of the room – she mentions that she has a rash in her genital area and would like to be examined.

- ☐ Do you have to get consent from her parents to examine her?
  - Yes
  - No

## Scenario 5 – POLLING QUESTION #7



A 14-year-old girl presents to the ED with symptoms of a cold; it does not seem significant, but her mother brought her in because the child insisted. While her mother had stepped out of the room – she mentions that she has a rash in her genital area and would like to be examined.

- ☐ Do you have to tell her mother about the rash?
  - Yes
  - No

## Scenario 5 – POLLING QUESTION #8



■ **CONTINUED...** Upon examination, it appears that she has significant bruising, and further discussion with the patient, she admits that she has been raped.

■ What do you do now?

☐ Do you have to tell her mother?

- Yes
- No
- Unsure

## Scenario 5 – POLLING QUESTION #9



- **CONTINUED...** She advises the person who raped her is a family member who lives in her home.
- What do you do now?
  - ☐ Do you have to tell her mother?
    - Yes
    - No
    - Unsure

# Mandatory Reporting Laws



**In cases of child and elder abuse, most states have mandatory reporting laws for health care workers. Generally some immunity from civil liability/ criminal penalty is provided.**

**For example in MARYLAND, you are a mandated reporter if you are one of the following:**

- Health Practitioner
- Educator
- Human Service Worker
- Police Officer

Reporting does NOT require PROOF that child abuse or neglect has occurred. Incidents are to be reported as soon as they are suspected. Waiting for proof may involve grave risk to the child and impede services to the family. Witnesses to child abuse and neglect are rare. Professional judgment and knowledge should be used to evaluate any suspicion.

Please note that effective October 1, 2016, if a local department has reason to believe that a mandated reporter knowingly failed to make a report of suspected abuse or neglect of a child, the local department must file a complaint with the appropriate licensing board or employer of the mandated reporter. Anyone making a “good faith” report is immune from civil liability and criminal penalty.

<http://dhr.maryland.gov/child-protective-services/reporting-suspected-child-abuse-or-neglect/mandated-reporters/>

# Scenario 6



- Private Josephine Martinez, 19, reports a sexual assault in the barracks. During the course of the discussion she mentions there are weekly parties where excessive drinking occurs, many of the participants are minors. There is another party that is planned for the coming weekend.
  - ☐ What do you do?
    - Duty to report the assault?
    - Duty to report the drinking?
  - ☐ What happens if she mentions that cocaine is freely available at these parties?
  - ☐ What happens if she mentions that MAJ Miller is the one providing the cocaine?
  - ☐ Can you ethically report any of this misconduct? If so, what is the minimum “need to know” information that can be reported?



# Emerging Issues



- Surrogacy
  - Can be considered “outside employment”
  - Potential Line of Duty Issues, Tricare Coverage Issues
  - Recently banned by Army Directive
- Fertility Issues
  - Tricare covers if medically necessary
  - When can the Command limit or postpone?
- Transgender Issues
  - Karnoski v. Trump Litigation, currently pending

# Key Takeaways



- Issue-spotting and appropriate triage.
- Status of the patient is important.
- Be aware there are service specific requirements as well as local jurisdiction concerns.
- Services are in a time of transition.

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To receive CE/CME credit, you must register by 0745 ET on 24 January 2020 to qualify for the receipt of CE/CME credit or certificate of attendance. You must complete the program posttest and evaluation before collecting your certificate. The posttest and evaluation will be available through 6 February 2020 at 2359 ET. Please complete the following steps to obtain CE/CME credit:

1. Go to URL <https://www.dhaj7-cepo.com/content/clinical-communities-speaker-series-23-jan-2020>
2. Click on the REGISTER/TAKE COURSE tab
  - a. If you have previously used the CEPO CMS, click login.
  - b. If you have not previously used the CEPO CMS, click register to create a new account.
3. Click "ENROLL."
4. Follow the onscreen prompts to complete the following for each session you wish to claim CE/CME Credit:
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  - b. Select the CE/CME credit type(s) you are seeking
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  - d. Take the Posttest
  - e. Download your Certificate(s)
  - f. Complete the Commitment to Change survey (optional)
5. After completing the posttest at 80% or above, your certificate will be available for print or download.
6. You can return to the site at any time in the future to print your certificate and transcripts at <https://www.dhaj7-cepo.com/>
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