



The Dual Roles of Military Psychiatrists: Ethical Considerations of the HIPAA Military Command Exception

Navy Lt. Meghan Quinn, M.D.
Psychiatry Resident

Department of Behavioral Health, Division of Education and Consultation
National Capital Consortium Psychiatry Residency
Walter Reed National Military Medical Center

27 October 2022
0800 – 0900 (ET)

Presenter

Navy Lt. Meghan Quinn, M.D.

Psychiatry Resident

Department of Behavioral Health, Division of Education and Consultation

National Capital Consortium Psychiatry Residency

Walter Reed National Military Medical Center



Medically Ready Force... Ready Medical Force



Navy Lt. Meghan Quinn, M.D.



Navy Lt. Meghan Quinn, M.D., is a psychiatry resident in the National Capital Consortium Psychiatry Residency program. She is a graduate of both the Uniformed Services University of the Health Sciences (USU) and the University of Maryland, College Park. She has authored four peer-reviewed journal articles and presented at multiple conference with national and international attendance. LT Quinn is the 2022 recipient of the AI Glass Award for Excellence in Military Medical Research. She has served as a volunteer firefighter and emergency medical technician (EMT) since 2007.



Medically Ready Force... Ready Medical Force



Disclosures

- LT Meghan Quinn has no relevant financial or non-financial relationships to disclose relating to the content of this activity.
- The views expressed in this presentation are those of the author and do not necessarily reflect the official policy or position of the Department of Defense, nor the U.S. Government.
- This continuing education activity is managed and accredited by the Defense Health Agency, J-7, Continuing Education Program Office (DHA, J-7, CEPO). DHA, J-7, CEPO and all accrediting organizations do not support or endorse any product or service mentioned in this activity.
- DHA, J-7, CEPO staff, as well as activity planners and reviewers have no relevant financial or non-financial interest to disclose.
- Commercial support was not received for this activity.



Medically Ready Force... Ready Medical Force



Learning Objectives

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

1. Explain the basis for disclosing personal health information to military command, even in the absence of a release of information.
2. Describe the situations in which behavioral health information may be disclosed to military command, and what information may be disclosed.
3. Discuss the ethics of dual agency when active duty physicians and clinicians must consider both the individual and the service in their clinical recommendations.



Medically Ready Force... Ready Medical Force



Health Insurance Portability and Accountability Act (HIPAA) of 1996

- Guarantees protection of personal health information (PHI)
- Prevents PHI from being disclosed by a covered entity without permission except in specific cases



Medically Ready Force... Ready Medical Force



HIPAA Exceptions

- Mandatory reporter
- Public health concerns
- Insurance payment
- Ongoing patient care
- Death identification



Medically Ready Force... Ready Medical Force



HIPAA §164.512 (k)(1)(i)

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.

(govinfo.gov, 2019)



Medically Ready Force... Ready Medical Force



Department of Defense (DoD) Guidelines

- DoDI 6025.18 (HIPAA and Military Health System)
- DoDI 6490.08 (Mental Health Disclosure)

(esd.whs.mil/DD, 2022)



Medically Ready Force... Ready Medical Force



DoDI 6490.08

- Harm to self
- Harm to others
- Harm to mission
- Special personnel
- Inpatient care
- Acute medical conditions interfering with duties
- Substance use treatment*
- Command directed evaluations
- Other special circumstances (authorized by O6+)

(esd.whs.mil/DD, 2022)



Medically Ready Force... Ready Medical Force



Limits of Confidentiality

LIMITS OF CONFIDENTIALITY

For use of this form, see AR 40-66; the proponent agency is the Office of The Surgeon General.

As part of your healthcare team, our goal is to provide you with quality care and to protect the privacy of your personal information. The care we provide you may include, but is not limited to: assessment, referral, individual therapy, couples therapy, family therapy, group therapy, substance abuse treatment, psychiatric evaluation and medications.

As your providers, we will document information about your visits in your military health record (written and electronic) to ensure continuity of care. Your health record is maintained as the property of the U.S. Government. In the majority of cases, we will not disclose any of your personal information nor confirm/deny that we have met with you unless you provide us with written authorization to disclose your personal information. There are a few exceptions, under which we may be required to release your personal information without obtaining your prior authorization. However, we will discuss these with you at the beginning of treatment and throughout treatment, whenever possible. For example:

1. Safety: If you threaten to harm yourself, we may seek hospitalization and/or contact others to ensure your safety. If you threaten serious bodily harm to another, we are required to take protective actions, such as contacting the potential victim, law enforcement, chain of command, or seeking hospitalization.
2. Abuse: If we believe that a child, spouse/domestic partner, or vulnerable adult is being abused or neglected, state law and military regulation require disclosure of such information. Suspected incidents of abuse or neglect must be reported to military agencies (CID, PM, FAP, ACS) and state Child and/or Adult Protective Services.
3. Legal: If you are involved in legal actions/proceedings, your records may be subject to subpoena or court order. Under the Uniform Code of Military Justice (UCMJ), there is a limited psychotherapist-patient privilege that may prevent your records from being disclosed in legal proceedings. This privilege is not absolute and there may be situations where we may be required to divulge your information to the chain of command, law enforcement, and/or other authorities. If you have any concerns related to this, please contact an attorney.
4. Self-Referrals: In accordance with DoDI 6490.08, healthcare providers will notify commanders if it is determined that your mental health condition, including substance abuse, or treatment represents a serious risk of harm to self, others or mission; impairs performing potentially sensitive or urgent mission requirements; is likely to impair your judgment, stability or reliability to protect classified, secret or higher information; requires inpatient care; or interferes with your ability to perform your duties and responsibilities.
5. Substance Abuse: If you are a Service member, records related to any treatment for substance abuse will be released to individuals within the

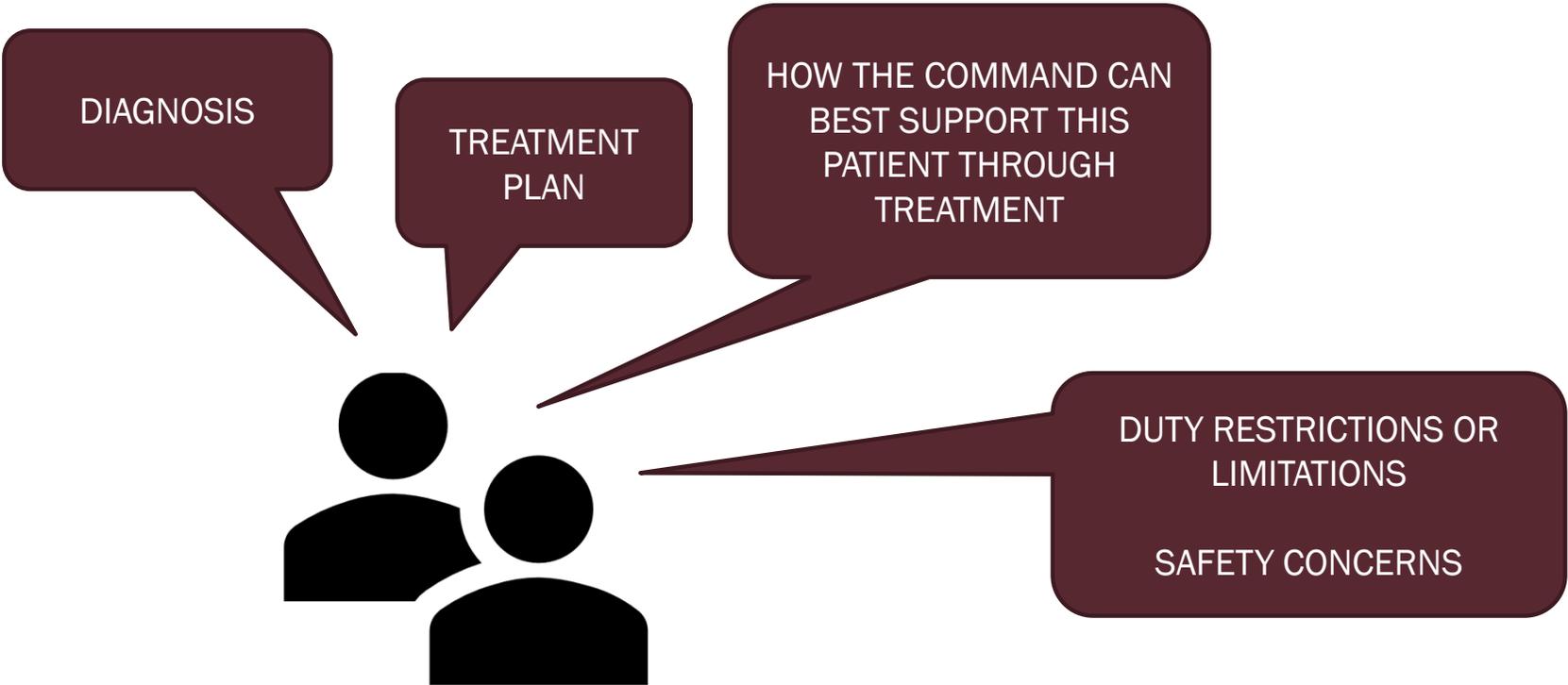
(esd.whs.mil/DD, 2022)



Medically Ready Force... Ready Medical Force



Minimum Necessary Information



Medically Ready Force... Ready Medical Force



Reference Guide

Criteria for Notification to Command

DoDI 6490.08 directs that providers shall notify the line commander when one of the following conditions or circumstances is met:

- 1 **Harm to Self:** Serious risk of self-harm by the Service Member either as a result of the condition itself or medical treatment of the condition
- 2 **Harm to Others:** Serious risk of harm to others either as a result of the condition itself or medical treatment of the condition
- 3 **Harm to Mission:** Serious risk of harm to a specific military operational mission. Such serious risk may include disorders that significantly impact impulsivity, insight, reliability, and judgment
- 4 **Special Personnel:** Service member is in the PRP, or a position that has been pre-identified as having mission responsibilities of such sensitivity or urgency that normal notification standards would significantly risk accomplishment
- 5 **In Patient Care:** Service Member is admitted or discharged from any inpatient health or substance abuse treatment facility
- 6 **Acute Medical Conditions Interfering with Duty:** Service Member is experiencing an acute mental health condition or is engaged in an acute medical treatment regimen that impairs ability to perform assigned duties
- 7 **Substance Abuse Treatment Program:** Service Member has entered into or is discharged from an outpatient or inpatient treatment program for substance abuse
- 8 **Command-Directed Mental Health Evaluation:** Mental health services are obtained as a result of a command-directed mental health evaluation
- 9 **Other Special Circumstances:** As determined on a case-by-case basis by a health care provider or CO at the O-6 or equivalent level or above

If the patient meets at least one of the criteria above, the provider should reach out to the embedded provider within the command. If there is no embedded provider within command, contact the commander directly.

Notification Criteria
The criteria listed in DoDI 6490.08 serve to indicate when providers should notify a Service member's command

Clarification of the Minimum Notification Standard

Providers should give detailed information that is related to the potential risks and the required actions to mitigate those risks, but should not provide personal information that is of no practical use to the commander.

The DoDI 6490.08 specifies the following information as "minimally necessary" to satisfy the purpose of the disclosure:

- Diagnosis**: A description of the prescribed or planned treatment
- Any recommended duty restrictions**: Any applicable duty limitations and implications for the safety of self and others
- Any ways the command can support the Service Member's treatment**: Any applicable duty limitations and implications for the safety of self and others

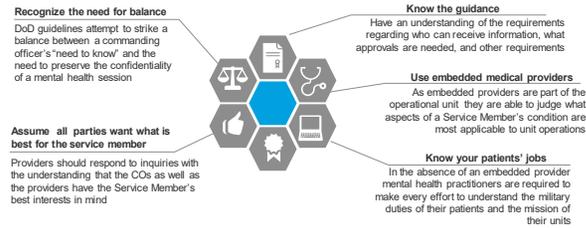
The DoDI identifies a great deal of information as "minimally necessary." Providers should generally be forthcoming with all relevant information. Additional guidance for information to be shared includes:

- Reasons the patient is considered "at risk"**: Avoid revealing information that is overly personal and has little to do with the patient's specific duty limitations
- What should be done to control the risk**: What was said by the patient to communicate this risk
- What provider and command can do to minimize risk in the future**: What was said by the patient to communicate this risk

Minimum Notification Standard
DoDI 6490.08 provides guidance on what information should be provided to satisfy the purpose of a disclosure

Best Practices for Sharing Mental Health Information

These best practices offer guidance for provider communications with line leaders to ensure a balance between the privacy of the patient and the safety of the Service member's unit and mission



Best Practices
The BUMED Psychological Health Advisory Board (PHAB) has identified some best practices for providers to consider when communicating with commanding officers.

Taking the time to have cooperative discussions with COs, within the boundaries of regulations, has the potential to markedly improve care and ensure that high-risk personnel are identified and appropriately monitored. These positive discussions also improve the relationship between the commander and mental health provider, both of whom are concerned about the health and well-being of their Service Members.

In Summary
One of the cardinal traits of mental health treatment is confidentiality. In order for patients to effectively participate in mental health care, they must feel reasonably certain that the information they share will remain private. Nevertheless, in both military and civilian settings there are limits to this confidentiality.

Resources for Additional Information

Several policies and instructions have been published to provide guidance for the communication of mental health information to commanding officers. The BUMED Psychological Health Advisory Board's information paper and supporting materials seek to clarify existing guidance for provider ease of reference



For additional guidance, please reference the BUMED Psychological Health Advisory Board's information paper and training materials

(mynavyhr.navy.mil, n.d.)



Medically Ready Force... Ready Medical Force



Dual Role

- Employed by the military (DoD/DHA/specific branch/local clinic)
- Work to ensure the fitness and readiness of the fighting force
- Duty to provide best appropriate care for patients
- Duty to support the military mission



Medically Ready Force... Ready Medical Force



Conflict

- What a patient wants
- What is in the patient's best interests
- The patient trusts you with their confidential health information
- What is best for the unit/mission/service
- What the unit wants
- At the end of the day, you answer to the government



Medically Ready Force... Ready Medical Force



Military-Unique Conflicts

- Does rank change the healthcare relationship?
- Can a medical recommendation be given as a direct order?
- Are there General Orders in place that govern or restrict medical care?



Medically Ready Force... Ready Medical Force



Conflict

At the end of the day, are you doing a disservice to one entity by prioritizing the needs of the other?



Medically Ready Force... Ready Medical Force



Conflict: Reconciled

Both can be true!



Medically Ready Force... Ready Medical Force



Making Difficult Decisions

The environment that you are in may dictate differing priorities when medical decisions are being made



Medically Ready Force... Ready Medical Force



Making Difficult Decisions

Don't treat Medical Evaluation Board (MEB) like
it's a bad word.



Medically Ready Force... Ready Medical Force



Medical Ethics

- Beneficence
- Nonmaleficence
- Justice
- Autonomy



Medically Ready Force... Ready Medical Force



Medical Ethics in the Military Health System (MHS)

- Advocate for the best possible health interests of patients while respecting the law and lawful military authority
- Respect rights and safeguard patient confidences and privacy within the constraints of the law
- Patient responsibility is primary, but there may be extraordinary circumstances associated with the mission or military necessity that may require additional considerations and ethical consultation.
- Consider context and sustainment in overseas humanitarian and disaster relief activities and use available resources to achieve the greatest good for the greatest number.
- Uphold legal responsibilities when caring for enemy combatants



Medically Ready Force... Ready Medical Force



Military Ethics

- Geneva Conventions
- Hague Conventions
- International laws
- Just War Theories
- Law of Armed Conflict
- United Nations Ethics Office
- Service-specific codes of conduct



Medically Ready Force... Ready Medical Force



Resources for Ethical Dilemmas

- DoD Medical Ethics Program → DoD Health Care Ethics Portal
- Local ethics committees



Medically Ready Force... Ready Medical Force



Key Takeaways

- There are scenarios when you should notify a patient's chain of command about their confidential health information—generally this is when their health threatens the unit's mission.
- DoDI 6490.08 provides guidance on command notification in cases of behavioral health patients.
- Ethical decision making in military settings may challenge ethics and rules of both military and medical professions



Medically Ready Force... Ready Medical Force



References

- Olsthoorn, P. (2018). Dual loyalty in Military Medical Ethics: A moral dilemma or a test of integrity? *Journal of the Royal Army Medical Corps*, 165(4), 282–283. <https://doi.org/10.1136/jramc-2018-001131>
- Quinn, M., & Wilkes, S. (2020). Military medical ethics: Privacy, military necessity, and the dual roles of military psychiatrists. *American Journal of Psychiatry Residents' Journal*, 15(4), 12–13. <https://doi.org/10.1176/appi.ajp-rj.2020.150408>
- Shank, C. G., & Alampay, M. M. (2019). Communicating with leadership: Behavioral Health and HIPAA in the field. *Military Medicine*, 184(11-12), 212–213. <https://doi.org/10.1093/milmed/usz270>
- Thomas, R., Lough, F., Girton, J., & Casciotti, J. A. (2020). A code of Ethics for Military Medicine. *Military Medicine*, 185(5-6). <https://doi.org/10.1093/milmed/usaa007>
- Varkey, B. (2020). Principles of clinical ethics and their application to practice. *Medical Principles and Practice*, 30(1), 17–28. <https://doi.org/10.1159/000509119>



Medically Ready Force... Ready Medical Force



Government Documents Cited

- Health Insurance Portability and Accountability Act of 1996
- Ethical Guidelines and Practices for U.S. Military Medical Professionals
- DHA-PI 6025.15
- DODI 1010.04
- DODI 6025.18
- DODI 6025.27
- DODI 6490.08
- OPNAVINST 5350.4E



Medically Ready Force... Ready Medical Force



Questions?



Medically Ready Force... Ready Medical Force



How to Obtain CE/CME Credits

To receive CE/CME credit, you must register by 0800 ET on 28 October 2022 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 27 November 2022 at 2359 ET. Please complete the following steps to obtain CE/CME credit:

1. Go to URL: <https://www.dhaj7-cepo.com/content/oct-2022-ccss>
2. Search for your course using the Catalog, Calendar, or Find a course search tool.
3. 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.
4. Follow the onscreen prompts to complete the post-activity assessments:
 - a. Read the Accreditation Statement
 - b. Complete the Evaluation
 - c. Take the Posttest
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/>
7. If you require further support, please contact us at: dha.ncr.j7.mbx.cepo-cms-support@health.mil



Medically Ready Force... Ready Medical Force

