

# Patient Confidentiality and Sexual Health

## A Discussion for Health Care Providers

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In addition to the obvious challenge of helping a person reduce their health-risk behavior, military healthcare professionals who treat and counsel Sailors and Marines for sexual health conditions also face some unique additional challenges. These challenges include confidentiality and the conflict that can arise between a healthcare provider's need for personal information, and the healthcare provider's legal and ethical requirements to report behavior that may be illegal, harmful, or detrimental to the naval service.

Privacy is understandably important to every patient, particularly regarding sexual health. Military patients may also be concerned with perceived work-related implications of their condition. These concerns may be heightened for people who are married, those in leadership positions, those in highly sensitive job positions, those who are concerned their sexual behavior may violate the Uniform Code of Military Justice (UCMJ), those who personally know the shipboard "doc," or those who simply fear their privacy will not be protected.

Examples of conditions that may communicate a lack of privacy are the "STD clinic" sign or the STD clinic time-block, real or perceived "Command access" or mishandling of sensitive medical records, and real or perceived unauthorized release, or idle discussion of personal information.

Another example is the perception among some Sailors and Marines that they will be punished for seeking sexually transmitted infection (STI) treatment. This perception holds that some medical professionals advocate discipline as a "cure" for repeated STIs. Typical anecdotes may be the Sailor who was denied liberty call for multiple STIs during a cruise, the Marine who is told "You know—if this happens again we'll report it to your commanding officer," or the leader who announces to a crew that they "will not pick up any STIs on this float—or else." These perceptions persist even though the Armed Forces Epidemiological Board specifically discouraged the use of punishment to control STIs over three decades ago.<sup>(1,2)</sup>

When Sailors and Marines perceive a lack of privacy or fear disci-

pline for their infection, STI prevention and control is hindered. Some people may seek treatment from a civilian source. Others may self-treat with medications purchased over-the-counter in foreign ports or may try folk remedies. They may delay treatment, or avoid seeking treatment altogether. This could result in asymptomatic carrier states, which may spread the untreated STI to others, or result in more serious complications such as pelvic inflammatory disease (PID) (3) or latent syphilis. Some people might purge their medical records of documentation of previous STIs, thereby impeding follow up treatment. When Sailors and Marines do not seek care from our military healthcare system, we lose the opportunity to provide appropriate treatment, prevention counseling, and partner referral. These unique challenges can and must be overcome. Military medical professionals are most effective when their clientele perceive them as trusted healers and helpers.

When is the healthcare worker required to disclose information shared by a patient during treatment?

Article 1137 of U.S. Navy Regulations require persons in the naval service to report to superior authority all offenses under the UCMJ that come under their observation. Violation of this article is punishable under the UCMJ. The guidance that has been provided by the Deputy Assistant Judge Advocate General (criminal law) is that the term "observation" should be strictly interpreted, i.e., it is limited to actual observed (first hand knowledge) offenses and that hearsay reports (verbal accounts) are not actionable. That does not mean hearsay disclosures can't be reported, but that a failure to do so is not a violation of Navy regulations.(4)

Regarding homosexual conduct, a 1998 DOD report concludes "*It has been alleged that DOD doctors . . . are required to, and do, disclose confidential communications concerning homosexual conduct to commanders. We found that none of the Services require healthcare professionals to report information provided by their patients, unless, in the judgment of the healthcare professional, it is necessary to do so in order to protect the patients or to ensure the safety or security of military personnel or the accomplishment of the military mission.*"(5)

Specific requirements for a healthcare worker to report disclosures by clients include cases of suspected child physical or sexual abuse, when clients express threats to cause harm to themselves or someone else, or if it is clear to the healthcare worker that clients are unfit for service.

Concerning sexual partner referral, spouses will always be notified of the HIV-positive status of a service member.(6) Regarding other STIs, and non-spousal sexual partners of HIV positive patients, healthcare workers

will notify only named sexual partners of their exposure, but will not divulge the name of the patient to the partner.(6,7)

The Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA) govern access to and release of health/medical information. DOD implementing guidance for these acts can be found in DOD 5400.11-R, "DOD Privacy Act Program," and DOD 6025.19-R, "DOD Health Information Privacy Regulation." In general, personally identifiable health information of individuals shall not be used or disclosed except for specifically permitted purposes (e.g., law enforcement, military mission activities, and public health to name a few) and must be the minimum amount of information necessary to accomplish a valid use or disclosure purpose. Any questions on the release of health information should be referred to the military treatment facility's (MTF's) privacy officer.

The Manual of the Medical Department (MANMED) provides additional guidance for medico-legal issues including entries by healthcare professionals and access/release of medical information.(8) Article 16-37 of the MANMED states "*Access is restricted to persons with a legal need to know about the information contained in the medical record . . .*" Additionally, the manual states, "*The following information cannot be released without the patients' informed consent . . . (b) Never release, for a routine inquiry, prognosis or sensitive information about the admission of the patient such as . . . venereal or other sexually transmitted diseases.*" Article 16-9 restricts access to medical records to authorized medical service personnel and has specific exceptions to access specified within this article.

The authority to release medical information of an active duty service member to his or her commanding officer is provided in Navy Regulations Article 0820, Welfare of Personnel. This article directs that the commanding officer maintain a satisfactory state of health and physical fitness of the personnel under his or her command. The release of medical information is crucial in the ability of the commanding officer to fulfill this obligation. It is noted that the commanding officer is also bound by the laws referenced above in the use and any further disclosure of an individual's medical information.(4)

Access to medical records for non-healthcare-related purposes is not unique to the military. Civilian authorities can similarly access the records of civilians by subpoena and/or court order, in accordance with state and federal laws.

Documenting and Reporting "Misconduct" in a medical record is addressed in the MANMED Article 16-38, which states "*U.S. Navy Regulations, articles 1123 and 1124 require that Naval personnel be advised in writing when entries are made in their medical records relative to disease or injury attributed to misconduct, or indicating the use of intoxicants or habit forming drugs to a degree presumed to disqualify the member physically, mentally, or morally for performance of duties.*" Additionally, it states to "*seek legal advice regarding*" these matters.

Regarding the confidentiality of the epidemiological interview of HIV-positive active duty members, "*Information obtained from a service member during or as a result of an epidemiologic assessment interview may not be used against the service member in a court martial; nonju-*

ditional punishment; involuntary separation (other than for medical reasons); administrative or disciplinary reduction in grade; denial of promotion; an unfavorable entry in a personnel record; bar to reenlistment; and any other action considered by the Secretary of the Navy to be an adverse personnel action. The term epidemiological-assessment interview means: that part of the medical assessment of an HIV-1 positive individual where the questioning of the member is for the direct purpose of obtaining epidemiologic or statistical information regarding the occurrence, source, and potential spread of the infection.”(6)

An exception exists for HIV positive active duty members who are subject to disciplinary action under the UCMJ and/or administrative separation for failure to comply with a written “preventive medicine order” (PMO).(9) This order states:

*“Prior to engaging in sexual activity, or any activity in which your bodily fluids may be transmitted to another person, you must verbally advise any prospective sexual partner that you are HIV positive and the risk of possible infection . . . . If your partner consents to sexual relations, you shall not engage in sexual activities without the use of a condom . . . . You must advise your potential partner that the use of a condom does not guarantee that the virus will not be transmitted.”*

SHARP (Sexual Health and Responsibility Program), while not policy makers or medical-legal authorities, suggests these guidelines for healthcare workers:

- Provide for the healthcare needs of your patients, make appropriate notations in the medical record, and maintain confidentiality of the medical record in accordance with laws and regulations.

- Be cognizant of the fact that there is a process for law enforcement authorities to access medical records when they have due cause, and that providers can be called to testify regarding any entry they make in the medical record.

- There should never be a need for the healthcare worker to make any standard opening statements about liability or Miranda-like warnings regarding the information patients might share. Do not open sessions with “warnings” or “promises.” Instead, be prepared to answer specific questions the patient may ask regarding what is written, who has access to the record, and how the patient’s personal medical information is handled and protected in the process of partner notification and disease reporting.

- Regarding requests for information from medical records, refer the requestor to the MTF medical records privacy officer, where policies and procedures exist to ensure appropriate protection and release of personal medical information.

- Consider that the use of discipline as a “cure” or prevention for STIs can damage a service member’s trust in the healthcare system and may reduce health-seeking behavior.

- Know your state laws relative to reporting and partner notification.

- Seek clarification from your chain of command and its legal advisors when you need it.

Perception equals reality. Navy medicine cannot assist patients who

do not seek care. Military medical professionals are most effective when their clientele perceive them as trusted healers and helpers.

## References

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