

## Doctors and Torture

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**The Obama administration has stated that persons who participated in torture will not be prosecuted if they believed in good faith the advice from senior officials that those activities were legal.**

Reports suggest that up to 50% of victims report physicians serving in an oversight capacity. As members of a profession dedicated to upholding high ethical principles, however, physicians may not be excused from responsibility for unethical actions by a governmental statement that such activity is legal.

In the Nuremberg trials, many high-level defendants pleaded: “I was only following orders.” It was not an acceptable defense. Nor was legality a defense: the horrific experiments done by the German doctors were legal in Nazi Germany. One characteristic of a profession is that it establishes standards of behavior for its members. In the US, indeed throughout the world, it is clear that doctors act unethically if they participate in torture.

The **American Medical Association (AMA)** Code of ethics unequivocally prohibits doctors’ participation in torture. Notably, “participation” includes the monitoring of the victim so that the torture does not “go too far.” The Code offers no reason that justifies torture. Physicians may treat prisoners who have been tortured after the fact and only if such treatment is not used as part of the process of torture.

*Opinion E 2.067*

*Torture refers to the deliberate, systematic, or wanton administration of cruel, inhumane, and degrading treatments or punishments during imprisonment or detention.*

*Physicians must oppose and must not participate in torture for any reason.*

*Participation in torture includes, but is not limited to, providing or withholding any services, substances, or knowledge to facilitate the practice of torture. Physicians must not be present when torture is used or threatened.*

*Physicians may treat prisoners or detainees if doing so is in their best interest, but physicians should not treat individuals to verify their health so that torture can begin or continue. Physicians who treat torture victims should not be persecuted. Physicians should help provide support for victims of torture and, whenever possible, strive to change situations in which torture is practiced or the potential for torture is great.*

When there is a conflict between the law and a “bright line” moral standard, such as torture, the moral standard must trump the law. For example, the state may not compel a physician to execute a person. The state may not compel a doctor to

treat a person in a medically inappropriate manner. And the state should not compel a doctor to participate in torture. The AMA Code specifically recognizes the responsibility of the physician to uphold ethical behavior even if it violates existing law.

*Opinion E 1.02*

*Ethical values and legal principles are usually closely related, but ethical obligations typically exceed legal duties. In some cases, the law mandates unethical conduct. In general, when physicians believe a law is unjust, they should work to change the law. In exceptional circumstances of unjust laws, ethical responsibilities should supersede legal obligations.*

*The fact that a physician charged with allegedly illegal conduct is acquitted or exonerated in civil or criminal proceedings does not necessarily mean that the physician acted ethically.*

Whether doctors who participated in torture will be subject to criminal prosecution under federal law is not clear, but I suspect it is unlikely. Doctors are licensed to practice medicine by each state, not by the federal government. Ethical behavior is a criterion for licensure in each state. The AMA Code of Ethics sets the generally accepted standard for ethical behavior. The AMA, however, is a membership organization without either the means or resources to determine the actual facts in these very difficult cases. Even if a doctor clearly participated in torture, the AMA’s only power over that doctor would be termination of AMA membership if he/she were a member.

Support of a safe, supportive environment for victims, where they can report their experiences without fear, is critical. The **Physicians for Human Rights (PHR)** has advocated for victims and accountability for participants. Its Campaign Against Torture examines and treats victims as well as documents evidence of the torture. This evidence, gathered from a variety of sources in accordance with The Istanbul Protocol, can be used by victims who wish to pursue legal redress. The Campaign Against Torture, in an expansion of its role, would proactively present evidence of physician participation in torture to medical licensing boards (with the permission of the victim) if the identities of the participating doctors were known. The records, which so far have been available for review, however, have been redacted with names of the participants deleted. Information from observers of and other participants in the torture is critical. The government has this information. But it is highly unlikely that name-specific data will be released. Persons who offer such testimony would be at significant risk and must be protected from retribution and retaliation.

A broadly supported, independent commission sponsored by PHR, AMA and other medical organizations and dedicated

to the investigation and documentation of physician participation would reaffirm our Profession's dedication to the highest ethical standard. The commission would facilitate the use of this data so that such egregious lapses in physician behavior can be considered in the licensing process. Such a project is likely to encounter significant political opposition, though RI Senator Whitehouse is a leader in advocating for accountability in this matter. Funding for this effort could come from contributions from medical organizations, the public and grants.

Each licensing board then would weigh the evidence in each case relative to state law and in accordance with due process decide if the doctor should retain the right to practice. Since licensing boards have little or no experience in this arena, the national Federation of State Licensing Boards should promulgate guidelines to assist the state boards. One barrier to this process is the reluctance of licensing boards to tackle this issue. Public pressure, however, may play a role in forcing the process.

In a parallel situation federal policy requires government lawyers found guilty of professional misconduct by the Department of Justice (DOJ) Office of Professional Responsibility to be referred to their state bar disciplinary tribunal unless

the guilty finding is overturned on internal DOJ appeal.<sup>1</sup>

Medical organizations also should educate their members about their ethical responsibilities and the consequences of ignoring them.

The argument that doctors who participate in torture are absolved of their ethical responsibilities and therefore do not deserve to suffer consequences, because the government declared these actions legal, is not valid.

## REFERENCES

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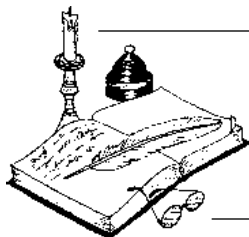
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The author has no financial interests to disclose.

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# Physician's Lexicon

## The Couched Words of Psychoanalysis

**Greek mythology has provided the art of psychoanalysis with a multitude of metaphoric tales and immortal characters; and certainly the myths of Oedipus, Eros and Psyche must be preeminent amongst these wondrous stories.**

The ruler of Thebes, Laius, and his wife, Iocaste, were childless. And so Laius sought guidance from the Delphic Oracle, who warned him that any son born to Iocaste would ultimately slay him. Iocaste then caused Laius to be intoxicated, Laius, in inebriated confusion, caused Iocaste to become pregnant. A son was born nine months hence and Laius had the infant abandoned on a mountain side but first Laius had the infant's feet pierced with nails. A shepherd found the helpless infant; and because of his injured and swollen feet, named him Oedipus [Greek for swollen, as in the word oedema; feet, as in pedal.]

The adult Oedipus killed Laius in a roadside encounter, not knowing that the victim was his father; nor did Laius know his biological relationship to his slayer. Oedipus then married the widow of Laius, Iocaste, thus fulfilling the morbid incest prophesy of the Oracle, and, in passing, provided a core theme of modern psychiatry with a fitting mythic icon.

The other crucial terms in narrative psychiatry pale in vitality to Oedipus. The word, anxiety, is from the Latin, *anxietas*, meaning variously anguish or solicitude. Etymologists trace it further to the Latin, *angere*, meaning to press together, to throttle, and ultimately, the source of the English words, anger and angina. Depression descends from the Latin, *depressare*, meaning to press down, to plant deeply; and earlier, from the Latin *premere*, to squeeze, to weigh heavily upon.

Psyche, a maiden in Greek mythology was loved by Eros and became the earthly personification of the human soul. A psychiatrist, hence, is a healer of the soul. The Greek root, *iatros*, means physician [as in pediatrician, geriatrician and iatrogenic.]

Eros—while undeniably the Greek god of love—was never considered powerful enough to be amongst the twelve Olympian Board of Directors; still he was not to be denied a legitimate role in the creation of new English words such as erotic, erogenous and erotomania, and in the male name, Erasmus, meaning a loved one. The word, erosion, however, is derived from the Latin, *erodere*, meaning to gnaw or consume.

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