

Irreconcilable choices in military medicine

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A recent controversy over the inappropriate release of a Canadian veteran's medical records by Veterans Affairs has resurrected debate over the degree to which people can expect privacy when they join the military.

In the civilian world, the rules regarding confidentiality of health information are fairly clear. In general, medical records aren't disclosed to people not involved in a patient's care unless that patient is considered an imminent threat to himself or others.

In the military, however, there are two common mindsets regarding privacy of medical information.

Some people believe that soldiers, fearing stigma or harm to their careers, will be reluctant to seek care, particularly for mental health problems, if their medical records can be viewed by commanding officers. Others, however, argue that people surrender certain personal rights when they join a military, and that the mission of the collective trumps the rights of the individual.

In the Canadian Forces, health care providers are not supposed to disclose medical records to personnel who aren't directly involved in patient care. Lieutenant-Colonel Dr. Rakesh Jetly, a psychiatrist and senior mental health adviser for the military, said in an interview with *CMAJ* earlier this year that doctors can inform military officials about their patients' limitations and suggest how their work be modified to accommodate health problems. But the exact nature of those health problems should remain private. "Confidentiality is of absolute paramount importance," said Jetly.

"Protecting the confidentiality, privacy and security of personal information is everyone's responsibility at Canadian Forces (CF) Health Services and is an important part of providing quality health care," Deputy Surgeon General, Colonel Dr. Jean-Robert Bernier writes in an email.



Reuters/Chris Wattie

Retired Canadian Forces Captain Sean Bruyey at a press conference on Parliament Hill in October.

That did not prevent officials in Veterans Affairs from including psychiatric reports about Sean Bruyey, a retired Canadian Forces captain and an outspoken critic of the department, in a briefing note to a politician in what appears to have been an attempt at character assassination. The government has subsequently apologized to Bruyey but opposition critics and privacy advocates have mused that inappropriate access to military medical records occurs much more often than the government would like to admit.

In the United States, access to soldiers' medical records is controlled by the Department of Defense, Health and Human Services (a government body with a mandate to protect health of all US residents) and Veterans Affairs. The rules regarding confidentiality fall under the Health Insurance Portability and Accountability Act, which states that all US health care providers must protect medical information about patients. The act, however, has exceptions for the US military.

According to the weekly publication *Army Times*, military commanders are permitted to access soldiers' health information when "such access is necessary to accomplish the military mission" (www.armytimes.com/benefits/health/online_hbml06_healthcare_othermedical12/). Disclosure of soldiers' medical records to nonmedical personnel is tracked — logged directly into the medical files or recorded with an electronic medical disclosure tracking tool — which allows patients to learn who has seen their medical information.

Most of the time, private health information can only be released with patient permission, though commanders in the US military have unrestricted access to information about drug testing, fitness for deployability, changes in duty status due to medical conditions, medical conditions or treatments that are duty limiting, and perceived threats to life or health.

"Our main emphasis is on the United States Army's desire to improve the health and well-being of our All

Volunteer Force; our Soldiers and Service Members who have now been at war longer than any other time in our history,” a US army spokesperson, who requested their name not be used, writes in an email. “Our Healthcare providers are committed to providing quality health care and to ensuring appropriate release of Soldiers’ Protected Health Information (PHI) to commanders when necessary.”

In May, General Peter W. Chiarelli, vice chief of staff of the US Army, released a message to the entire military stating that health care providers are required to inform soldiers when their commanders will receive their medical information (www.army.mil/-news/2010/10/18/46691-release-of-protected-health-information/).

“Commanders play a critical role in the health and well-being of their Soldiers, and therefore require sufficient information to make informed decisions about fitness and duty limitations,” stated Chiarelli. “We must balance the Soldier’s right to the privacy of her/her protected health information (PHI) with mission requirements and the commander’s right to know. It would be counterproductive for Soldiers to perceive increased stigma, or not seek medical care, because of the inappropriate release of PHI.”

In Australia, the military’s medical privacy policy appears to be similar to Canada’s. Medical records are accessed only by health practitioners, who inform command authorities about the health and well-being of their subordinates.

“Defence policy requires a health practitioner to provide advice to a member’s chain of command, regarding any

workplace conditions or restrictions that might arise as a consequence of the member’s diagnosed health condition,” an Australian Defence Force (ADF) spokesperson, who requested their name not be used, writes in an email.

“Where an ADF member is deemed to be unfit for deployment on health grounds, Command is duly informed of that change in the member’s employment status. In order to meet these requirements, a Commander does not need to view a member’s medical record.”

Some external observers say there is an inherent conflict in the notion of a physician–soldier. It is an “inherent moral impossibility,” wrote Dr. Victor Sidel, distinguished professor of social medicine at the Montefiore Medical Center and Albert Einstein College of Medicine in Bronx, New York, and Dr. Barry Levy, adjunct professor of community health at the Tufts University School of Medicine in Sherborn, Massachusetts, in a chapter titled “Physician–Soldier: A Moral Dilemma?” of the publication *Military Medical Ethics* (www.bordeninstitute.army.mil/published_volumes/ethicsVol1/Ethics-ch-11.pdf). They argued that, in some instances, it will be unclear whether a physician’s obligations are to a patient or to the military, which creates a circumstance they call “mixed agency.” Because of this conflict, a military health care provider may find it difficult to refuse a request for confidential information from a commanding officer even if a policy officially forbids such disclosure.

“Whether or not the medical officer agrees with the commander may in large part be driven by the degree to which the

medical officer identifies with the military unit, rather than with his patients as individuals,” the authors state. “It may also be influenced by the medical officer’s perception of what difficulties may follow if he refuses to comply with the commander’s request.”

Military health practitioners may often be intimidated into releasing confidential medical information, wrote the Royal Australian Naval Reserve Professional Studies Program, Office of Director General Reserves — Navy, in one of its *Goorangai* occasional papers (www.navy.gov.au/w/images/GoorangaiVol1Issue5.pdf).

“US military research has found that over 80% of military psychologists did not obtain written permission before releasing personal information about service members when requested to do so by unit commanders,” the paper states. “This suggests that perceived or actual obligations to military command take precedence over principles of confidentiality for many uniformed practitioners.”

Such limitations to confidentiality may be unavoidable in military settings, the paper suggests, so medical practitioners should explicitly inform patients that their medical information might be accessed by commanding officers. “Although this may prompt some service members to take their medical, psychological or legal concerns elsewhere, the integrity of the practitioner, the service and ultimately the member will be maintained.” — Roger Collier, *CMAJ*

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