



DoD INSTRUCTION 2310.08

MEDICAL PROGRAM SUPPORT FOR DETAINEE OPERATIONS

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| Originating Component: | Office of the Under Secretary of Defense for Personnel and Readiness |
| Effective: | September 5, 2019 |
| Releasability: | Cleared for public release. Available on the Directives Division Website at https://www.esd.whs.mil/DD/ . |
| Reissues and Cancels: | DoD Instruction 2310.08E, "Medical Program Support for Detainee Operations," June 6, 2006 |
| Approved by: | James N. Stewart, Assistant Secretary of Defense for Manpower and Reserve Affairs, Performing the Duties of the Under Secretary of Defense for Personnel and Readiness |

Purpose: In accordance with the authority in DoD Directive (DoDD) 5124.02 and DoDD 2310.01E, this issuance:

- Establishes policy, assigns responsibilities, and provides procedures for medical program activities required by the DoD Detainee Program, including ensuring compliance with the laws of the United States, the law of war, including the Geneva Conventions of 1949, and all applicable policies, directives, and other issuances.
- Establishes the Senior Medical Advisory Committee for the Detainee Program (SMACDP) to provide DoD oversight of medical support to the DoD Detainee Program.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to:

a. OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. The Commissioned Corps of the United States Public Health Service, as a condition of access to DoD detention facilities or to detainees under DoD control, under agreement with the Department of Health and Human Services.

1.2. POLICY. It is DoD policy that:

a. Health care personnel will:

(1) Provide appropriate medical care, in the context of a provider-patient treatment relationship and established principles of medical practice, to detainees in the control of the DoD.

(2) Exclusively engage in evaluation, care, or improvement of the detainees’ physical or mental health when working in an approved professional provider-patient treatment relationship. Health care personnel working in a professional provider-patient treatment relationship will not:

(a) Consult in relation to, supervise, conduct, or direct interrogations.

(b) Actively solicit information from detainees for other than health care purposes; or

(c) Participate in non-health care activities that, directly or indirectly, adversely affect the health of detainees.

(3) Safeguard patient confidences and privacy within the constraints of the law, using the procedures described in Section 3.

b. Health care will generally be provided with the informed consent of the detainee, except in specific circumstances described in Paragraph 3.6. To the extent practicable, standards and procedures (i.e., standard operating procedures or procedure manuals that are developed where the detainees are housed or where patients are cared for) for obtaining informed consent will be consistent with those applicable to consent from non-detainee patients established in DoD Instruction (DoDI) 6000.14.

c. Accurate and complete medical records on all detainees are created and maintained using the procedures described in Section 3, in accordance with DoDI 6040.42 and DoDI 6040.45.

d. Violations of detainee treatment standards described in this or other applicable issuances will be carefully documented and reported through the appropriate chain of command as established in Paragraph 3.4.

e. Medical ethics principles, standards, and guidelines set forth in DoDI 6025.27 apply to all aspects of medical program support for detainee operations.

f. Nothing in this issuance may be construed to alter any legal obligations of health care personnel in accordance with applicable law.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) is responsible for the Medical Support for Detainee Operations Program.

2.2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the USD(P&R), the ASD(HA):

- a. Develops policy, provides oversight, and monitors the implementation of this issuance.
- b. Grants exceptions to provisions of this issuance, if otherwise consistent with law and other applicable requirements, based on extraordinary circumstances.
- c. Oversees the Director, Defense Health Agency (DHA), in the execution of programmatic and operational responsibilities of medical support to the DoD Detainee Program.

2.3. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR HEALTH SERVICES POLICY AND OVERSIGHT (DASD(HSP&O)). Under the authority, direction, and control of the ASD(HA), the DASD(HSP&O):

- a. Develops policy and provides leadership, guidance, and oversight for matters related to this issuance.
- b. Coordinates on issues regarding activities covered in this issuance with the:
 - (1) CJCS.
 - (2) Under Secretary of Defense for Policy.
 - (3) Under Secretary of Defense for Intelligence.
 - (4) General Counsel of the Department of Defense.
 - (5) Secretary of the Army in his or her capacity as DoD Executive Agent for Administration of Detainee Operations Policy, as designated in DoDD 2310.01E.
 - (6) Director, DHA.
 - (7) The Military Departments.
 - (8) Other DoD Component heads as appropriate.
- c. Chairs the SMACDP and solicits representatives to, and receives recommendations from, the SMACDP in accordance with Section 4 of this issuance.

d. Ensures that records of the SMACDP are maintained and retained in accordance with all applicable legal requirements.

2.4. DIRECTOR, DHA. Under the authority, direction and control of the USD(P&R), through the ASD(HA), the Director, DHA:

a. Establishes and publishes DHA procedural guidance to implement this issuance in coordination with the Under Secretary of Defense for Policy, the Under Secretary of Defense for Intelligence, the General Counsel of the Department of Defense, the CJCS, the Secretaries of the Military Departments, and the Combatant Commanders (CCDRs).

b. Provides medical program support to operational forces, for the DoD Detainee Program as requested by the CCDRs through the CJCS, and under the oversight of the Office of the CJCS.

c. Selects a representative to the SMACDP.

2.5. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

a. Ensure health care personnel involved in the treatment of detainees or other detainee matters receive appropriate training on applicable policies and procedures, regarding the care and treatment of detainees using the procedures described in Paragraph 3.5.

b. Establish systems and procedures to ensure the ability of all health care personnel to comply with all requirements of this issuance and any additional implementing guidance.

c. Adhere to procedural instructions published by the Director, DHA.

d. Select a representative to the SMACDP.

2.6. SECRETARY OF THE ARMY. The Secretary of the Army is the DoD Executive Agent for the administration of the DoD Detainee Program, in accordance with DoDD 2310.01E. In addition to the responsibilities in Paragraph 2.5., the Secretary of the Army establishes training and certification standards for the training required in Paragraph 3.5.

2.7. CJCS. The CJCS:

a. Prioritizes CCDR detainee medical program requirements to the Joint Staff, the Secretaries of the Military Departments, the ASD(HA), and the Director, DHA.

b. Coordinates with the CCDRs to integrate the detainee medical program into CJCS sponsored exercises.

c. Ensures the CCDRs include detainee medical program requirements in joint mission-essential task lists.

d. Monitors lessons learned for each Combatant Command, in coordination with the Director, DHA, and the Joint Staff Joint Force Development Directorate.

e. Selects a representative to the SMACDP.

2.8. COMBATANT COMMANDERS. The CCDRs:

a. Plan for, execute, and oversee medical program support for detainee operations within their respective commands and consult with the Director, DHA, for support services as necessary.

b. Comply with Section 1471 of Title 10, United States Code, the June 9, 2004 Secretary of Defense Memorandum, and DoDI 5154.30, using procedures described in Paragraph 3.7., if a detainee dies.

c. Integrate the detainee medical program within CJCS-sponsored exercises.

d. Capture Combatant Command detainee medical program objectives and update the joint mission-essential task lists in order to develop detainee medical program requirements.

e. Select a representative to the SMACDP, as required.

SECTION 3: PROCEDURES

3.1. BASIC PRINCIPLES FOR HEALTH CARE PERSONNEL. Health care personnel:

a. Have a duty to support the DoD's responsibility to ensure no individual in DoD custody or physical control, regardless of nationality or physical location, will be subject to cruel, inhuman, or degrading treatment or punishment, in accordance with Section 2000dd of Title 42, United States Code.

b. Will provide health care services for detainees and have a duty to provide appropriate medical care and attention required by the detainee's condition. To the extent practicable, treatment of detainees should be guided by professional judgments and standards similar to those applied to personnel of the Military Services and consistent with DoDI 6025.27, including:

- (1) Consistent quality care.
- (2) Respectful treatment.
- (3) Security and safe environments.

c. In cases of long term detention, in addition to judgements regarding what is practicable, determinations regarding the scope of health care services provided will be made after consideration of the procedures and standards set forth in Bureau of Prisons Program Statement 6031.04.

d. Will exclusively maintain a professional provider-patient treatment relationship with detainees for the purpose of evaluating, protecting, or improving their physical and mental health.

e. Apply their knowledge and skills in a manner that is in accordance with applicable law or the standards in DoDD 2310.01E and DoDI 2310.09.

f. Will not certify, or participate in the certification of, the fitness of detainees for any form of treatment or punishment that is not in accordance with applicable law, or participate in any way in the administration of any such treatment or punishment. Certifications in accordance with applicable law include, but are not limited to, clearance for a work detail, transportation, questioning, or interrogation.

g. Must safeguard medical information in accordance with the procedures in Paragraph 3.3.

h. Will not participate in any procedure applying physical restraints to a detainee, unless such a procedure is determined to be necessary by a licensed provider, for the physical or mental protection or safety of the detainee, other detainees, or those treating, guarding, or otherwise interacting with them. Such restraints, if used, will be applied in a safe and professional manner.

i. Must be licensed in accordance with Section 1094 of Title 10, United States Code, or provide assistance to a licensed provider within their scope of duties and competencies. When

performing health care functions in support of detainee operations, these actions are limited to providing direct support for:

- (1) Health care services in a professional provider-patient treatment relationship in approved settings.
- (2) Conducting disease prevention and other approved public health activities.
- (3) Advising authorized command authorities regarding the health status of detainees.
- (4) The Armed Forces Medical Examiner (AFME) System.

3.2. MEDICAL RECORD RETENTION. Medical records must be retained in accordance with all applicable legal requirements and in a manner consistent with DoDI 6040.42, DoDD 2310.01E, and AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1. This includes implementing a medical records control and tracking process for all medical encounters, whether in fixed or temporary facilities.

3.3. SAFEGUARDING MEDICAL INFORMATION.

a. Health care personnel will safeguard patient confidences and privacy within the constraints of the law. For matters not addressed in this issuance, although DoD Manual 6025.18 is not directly applicable to detainees, health information confidentiality standards in that issuance are used as guidelines for handling medical information on detainees, subject to security and other military necessities applicable to the detention program circumstances involved.

b. Health care personnel will communicate to detainees U.S. policy regarding privacy and confidentiality of medical records and communications. However, similar to legal standards applicable to U.S. citizens, there are permissible purposes for disclosures that include preventing harm to any person, maintaining public health and order in detention facilities, and law enforcement, intelligence, or national security-related activities.

c. Disclosure of patient-specific medical information concerning detainees must include careful consideration of the purpose of the disclosure and the guidance in Paragraphs 3.3.d. through 3.3.f.

d. In connection with a request under the Freedom of Information Act, a detainee may consent to the disclosure of medical information to an attorney or other authorized representative of the detainee, or may obtain appropriate access to information in the detainee’s own medical records.

e. If a detainee, attorney, or other authorized representative of the detainee, presents information to any court, commission, official body, international organization, public media, or other forum alleging improper treatment by the U.S. Government, the presentation of that information will be considered consent by the detainee for DoD to disclose factual medical information necessary to respond to the allegation in the same forum. DoD’s disclosure of

medical information will be limited to the minimum amount necessary to respond accurately to the allegation.

f. Health care personnel will record the details of disclosure of personally identifiable medical information for purposes other than treatment or health care operations in a log separate from the medical record.

(1) Log entries will include the detainee internment serial number, date, time, the specific information disclosed, the person to whom it was disclosed, the purpose of the disclosure, and the name of the medical unit commander (or other designated senior medical activity officer) approving the disclosure.

(2) The log will be preserved and archived in the same manner as medical records described in Paragraph 3.2.

g. When the medical unit commander, or other designated senior medical activity officer, suspects the medical information to be disclosed may be misused, or if there is a disagreement between such medical activity officer and a senior officer requesting disclosure, the medical activity officer will consult with his or her senior line commander and legal advisors to:

(1) Determine the propriety of the disclosure or actions.

(2) Ensure the use of the information is consistent with applicable standards.

h. Consistent with applicable command procedures, International Committee of the Red Cross physicians will have access to review medical records of detainees during visits to detention facilities.

3.4. REPORTABLE INCIDENT REQUIREMENTS. Any health care personnel who, in the course of a treatment relationship or in any other way, observes or suspects a possible violation of applicable standards for the protection of detainees, as described in this issuance, will carefully document and report those circumstances to the chain of command using the procedures in Paragraphs 3.4.a. and 3.4.b. Additional reporting pathways include the command surgeon, Joint Staff Surgeon, military medical department specialty consultant, Service surgeon general, inspector general, military criminal investigation organizations (MCIOs), or judge advocates.

a. Health care personnel involved in clinical practice activities will make a written record of all reports of suspected or alleged violations related to use of medical information or provision of health care in a reportable incident log maintained by the medical unit commander or other designated senior medical activity officer.

b. The log will be preserved and archived in the same manner described in Paragraph 3.2.

3.5. TRAINING. Training will include at a minimum:

a. Basic level of training for all military health care personnel who may be deployed in support of military operations and whose duties may involve contact with detainees, as prescribed in DoDI 1322.24. Additional training is required for health care personnel assigned to support detainee operations, commensurate with their duties.

b. A refresher training is required on a periodic basis.

3.6. EXCEPTIONS TO CONSENT FOR MEDICAL TREATMENT OR INTERVENTION.

a. Imminent Danger. In cases where there is imminent danger of serious, permanent harm to health or death without immediate intervention (e.g., attempted suicide or unconsciousness in a critically ill patient), the treating physician may direct medical treatment or intervention without consent. These actions must be:

(1) Recorded in the medical record and reported verbally to the appropriate chain of command as soon as practical after the incident.

(2) Reported, in writing, to the detention facility commander or other designated senior officer, responsible for detainee operations within 24 hours of the incident.

b. Control and Management of Infectious Diseases. Upon the recommendation of the senior medical officer of a detention facility, a detention facility commander may:

(1) Order mandatory testing or screening for tuberculosis or other infectious disease deemed to present a public health threat to the detainee population or staff.

(2) To the extent necessary to prevent the spread of an infectious disease, order infection control measures (e.g., medical isolation or quarantine, ongoing medical surveillance, or involuntary treatment, such as immunization or chemoprophylaxis) for a detainee with, or exposed to, an infectious disease of public health concern.

c. Medical Management of Significant Weight Loss.

(1) Health care personnel will evaluate the physical and mental condition of detainees as quickly as possible if the detainee:

(a) Has significant weight loss due to hunger strike or other intentional manipulation of weight;

(b) Is chronically underweight; or

(c) Shows signs of malnutrition that the senior medical officer believes may require medical intervention to prevent risk of death or serious harm.

(2) Medical management will, to the extent feasible, follow procedures consistent with the Federal Bureau of Prisons Program Statement 5562.05. Any proposed medical management

requires the consent of the detainee, except when medical intervention is necessary to prevent risk of death or serious harm using the procedures described in Paragraph 3.6.e.

d. Incapacitation in Decision-Making. In cases where the detainee does not have capacity to make decisions because of mental disorder or grave illness, the attending physician may request authorization from the detention facility commander to provide treatment. Before any such request, the attending physician will produce a clinical summary documenting any evaluations that were conducted, diagnoses, and recommended treatment, all of which must be documented in the detainee's medical record.

(1) If the detention facility commander authorizes treatment, such treatment or intervention will be carried out in a medically appropriate manner, under standards similar to those applied to personnel of the Military Services.

(2) The request for authorization for treatment must include:

(a) A thorough medical and mental health evaluation, including any appropriate specialty consultations; a forensic psychiatric evaluation of the detainee; and evidence of counseling concerning the risks of refusing treatment.

(b) Documentation of a mental health disorder diagnosed by a board-certified or board-eligible psychiatrist, a licensed psychologist, or other documented incapacity diagnosed by a board eligible or board certified physician.

(c) A medical assessment of the risks of failing to provide the recommended treatment or intervention and likelihood of serious physical harm.

(d) Evidence of severe deterioration in routine functioning.

(e) Documentation of presentation of the case to the appropriate level healthcare ethics board or clinical review panel, including any comments or recommendations received.

e. Authority to Direct Involuntary Treatment. Upon recommendation, only the detention facility commander has authority to order treatment or intervention. This does not apply to imminent danger cases, which are covered in Paragraph 3.6.a. The procedures for directing involuntary treatment are:

(1) The senior medical officer will ensure the attending (or other qualified) physician:

(a) Conducted an appropriate assessment and plan for treatment.

(b) Determined that immediate treatment or intervention is necessary to prevent death or serious harm.

(c) Conducted a thorough medical and mental health evaluation of the detainee with appropriate medical specialty consultation, if appropriate.

(d) Documented counseling concerning the risks of refusing treatment or continuing a harmful behavior.

(e) Made reasonable efforts to convince the detainee to voluntarily accept treatment or take other measures to improve his or her condition.

(f) Planned appropriate procedures for medical staff involved to ensure both detainee and staff safety.

(2) The senior medical officer will provide their recommendation to the detention facility commander for approval or disapproval.

3.7. DEATH OF A DETAINEE. Should a detainee death occur in a detention facility:

a. The detention facility commander will report the death to the cognizant MCIO.

b. The MCIO will contact the Office of the AFME.

c. The AFME will determine whether an autopsy will be performed.

(1) The Office of the AFME will provide direction to ensure prevention or slowing of decomposition and to protect the integrity of the examination by protecting and preserving evidence.

(2) The determination of the cause and manner of death will be the sole responsibility of the AFME or other physician designated by the AFME.

(3) If necessary, due to operational requirements, the Secretary of Defense is the waiver authority for this requirement.

SECTION 4: ACTIVITIES OF THE SMACDP

4.1. PURPOSE OF THE SMACDP. The SMACDP will:

- a. Provide OSD program-level oversight of medical activities required by the DoD Detainee Program.
- b. Identify potential acute and chronic medical problems that may arise in detainee populations over time.
- c. Assess the adequacy of processes established for providing requested and anticipated medical capabilities at detention facilities.
- d. Provide a forum to address biomedical ethical issues as they arise.
- e. Address policy shortfalls and inconsistencies related to medical program support to the DoD Detainee Program and make recommendations for appropriate policy changes.

4.2. OVERALL GOALS OF THE SMACDP. The SMACDP will:

- a. Assess the status of medical activities required by the DoD Detainee Program with special attention to adequacy of preventive services, emergency response, primary care, surgical support, care for chronic diseases, inpatient care, and behavioral health services.
- b. Assess processes established to oversee quality of care and mechanisms for obtaining required medical specialty capabilities beyond those physically present at detention facilities.
- c. Identify medical service demands and biomedical ethical issues that might arise from circumstances particular to ongoing detainee medical operations (e.g., deterioration of known chronic conditions or from the development of acute conditions). Recommend solutions for addressing any policy issues and mobilizing appropriate resources to meet identified needs.
- d. Coordinate recommendations and policy determinations with represented organizations to assist health care practitioners at the tactical level to implement relevant policy.
- e. Periodically reassess the goals of the SMACDP.

4.3. CHAIR OF THE SMACDP. The DASD(HSP&O) or designee will chair the SMACDP, and as such, will.

- a. Draft the SMACDP charter for Principal Deputy ASD(HA) approval.
- b. Record and retain meeting minutes of all classified and unclassified meetings and other committee records.

c. Provide the ASD(HA) with periodic assessment and review of medical activities in support of detainee operations.

d. Schedule meetings as required.

4.4. MEMBERSHIP OF THE SMACDP. The SMACDP will include:

a. Representatives from the Under Secretary of Defense for Policy; the Under Secretary of Defense for Intelligence; the ASD(HA); the Director, DHA; the Secretaries of the Military Departments; and the CJCS as specified in the SMACDP charter.

b. Representatives from federal agencies (e.g., Department of Justice Bureau of Prisons) invited by the Chair.

c. A legal advisor from the Office of the General Counsel of the Department of Defense.

d. Others on an as-needed basis, e.g., representatives from Combatant Commands and joint task forces with issues under review by the committee, at the Chair's discretion.

GLOSSARY

G.1. ACRONYMS.

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|-------------|--|
| AFJI | Air Force Joint Instruction |
| AFME | Armed Forces Medical Examiner |
| AR | Army Regulation |
| ASD(HA) | Assistant Secretary of Defense for Health Affairs |
| CCDR | Combatant Commander |
| CJCS | Chairman of the Joint Chiefs of Staff |
| DASD(HSP&O) | Deputy Assistant Secretary of Defense for Health Services Policy and Oversight |
| DHA | Defense Health Agency |
| DoDD | DoD directive |
| DoDI | DoD instruction |
| MCIO | military criminal investigation organization |
| MCO | Marine Corps Order |
| OPNAVINST | Chief of Naval Operations Instruction |
| SMACDP | Senior Medical Advisory Committee for the Detainee Program |
| USD(P&R) | Under Secretary of Defense for Personnel and Readiness |

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

detainee. Defined in DoDD 2310.01E.

detainee medical program activities. The system of health care developed by the ASD(HA) that includes procedures and standards for health care-related activities and that are consistent with policies related to the DoD Detainee Program as set forth in DoDD 2310.01E.

DoD Military Health System. Defined in DoDD 5136.01

health care personnel.

Individuals who have received special training or education in a health-related field and who perform services in or for the DoD in that field. A health-related field may include administration, direct provision of patient care, or ancillary or other support services.

Health care personnel include, but are not limited to, individuals licensed, certified, or registered by a government agency or professional organization to provide specific health services.

Health care personnel covered by this issuance include Service members, United States Public Health Service Commissioned Corps, civilian employees, and contractor personnel, to the extent provided in the applicable contract, in a health-related field acting in support of any DoD Component. Also known as “medical personnel.”

informed consent. Defined in DoDI 6000.14.

reportable incident. Any suspected or alleged violation of DoD policy, procedures, or applicable law relating to DoD Detainee Program activities for which there is credible information, e.g., disclosure of patient-specific medical information concerning detainees for purposes other than treatment that is misused or in violation of any other standards described in this issuance.

retained personnel. Defined in DoDD 2310.01E

REFERENCES

- AR 190–8/OPNAVINST 3461.6/AFJI 31–304/MCO 3461.1, “Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees,” October 1, 1997
- DoD Directive 2310.01E, “DoD Detainee Program,” August 19, 2014, as amended
- DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD (P&R)),” June 23, 2008
- DoD Directive 5136.01, “Assistant Secretary of Defense for Health Affairs (ASD(HA)),” September 30, 2013, as amended
- DoD Instruction 1322.24, “Medical Readiness Training,” March 16, 2018
- DoD Instruction 2310.09, “Behavioral Science Support (BSS) for Detainee Operations and Intelligence Interrogations,” September 5, 2019
- DoD Instruction 5154.30, “Armed Forces Medical Examiner System Operations,” December 29, 2015, as amended
- DoD Instruction 6000.14, “DoD Patient Bill of Rights and Responsibilities in the Military Health System (MHS),” September 26, 2011, as amended
- DoD Instruction 6025.27, “Medical Ethics in the Military Health System,” November 8, 2017
- DoD Instruction 6040.42, “Medical Standards for Medical Coding of DoD Health Records,” June 8, 2016
- DoD Instruction 6040.45, “DoD Health Record Life Cycle Management,” November 16, 2015, as amended
- DoD Manual 6025.18, “Implementation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule in DoD Health Care Programs,” March 13, 2019
- Federal Bureau of Prisons Program Statement 5562.05, “Hunger Strikes,” July 29, 2005
- Federal Bureau of Prisons Program Statement 6031.04, “Patient Care,” June 3, 2014
- Secretary of Defense Memorandum, “Procedures for Investigation into Deaths of Detainees in the Custody of the Armed Forces of the United States,” June 9, 2004
- The Geneva Conventions of 12 August 1949
- United States Code, Title 5, Section 552 (also known as the “Freedom of Information Act”)
- United States Code, Title 10
- United States Code, Title 42