A LEGAL FRAMEWORK FOR MEDICAL READINESS: MILITARY-CIVILIAN PARTNERSHIPS CRUCIAL TO MISSION SUCCESS

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Every day – in the combat zone, on the home front and at every point en route between the two – members of the Military Health System are accomplishing the previously unthinkable and the seemingly impossible. From lowering the died-of-wounds rate to historic levels, to speeding up the battlefield-to-stateside transfer of care to a three-day average, military medical personnel are literally, as one wounded soldier put it, "moving the world" to save lives.[1]

In an era featuring a leaner military force structure, coupled with a higher operational tempo, mutually beneficial partnerships between military and civilian medical institutions are integral to maintaining the clinical currency and skills that enable armed forces healthcare professionals to perform these feats. Such partnerships, formalized through Training Affiliation Agreements between military medical treatment facilities (MTFs) and civilian healthcare entities, provide local institutions and patient populations with the benefit of military medical expertise, while allowing uniformed healthcare providers to treat a volume and variety of cases in order to maintain their skills before and between deployments.

A History of Cooperation

Cooperation between the military and civilian healthcare spheres has long been the norm in the field of medical education. The Civil Service Reform Act of 1978[2] created a statutory exception to the Anti-Deficiency Act[3] enabling federal agencies to accept voluntary services from students "for the purpose of providing educational experiences." This provision authorized MTFs, as well as other federal hospitals and clinics, such as those run by the Department of Veterans Affairs (VA), to partner with state and private medical educational institutions through no-cost agreements, and to accept their students and trainees into federal facilities for clinical rotations.

Under the terms of the Civil Service Reform Act, as well as its implementing regulation adopted by the Office of Personnel Management (OPM),[4] trainees rotating through federal agencies must be uncompensated by the government, cannot be used to displace regular employees or staff permanent positions, and are not considered federal employees for any purposes other than injury compensation and the Federal Tort Claims Act (FTCA).[5]

In addition to civilian trainees and their faculty participating in clinical rotations at MTFs, the armed services also send their trainees and faculty to non-federal institutions to facilitate the educational preparation of

military healthcare professionals. Increasingly, two-way exchanges of trainees between MTFs and non-federal entities are sustaining joint medical residencies that combine civilian and military residents and utilize several clinical locations.

Training Affiliation Agreements are a necessary component of such partnerships, in part because the Accreditation Council for Graduate Medical Education (ACGME) requires "master affiliation agreements" between sponsoring institutions and major participating sites.[6] The Department of Defense (DOD) components have developed affiliation templates to comply with ACGME requirements.

Moreover, pursuant to the Westfall Act,[7] all federal agencies rely upon the Department of Justice (DOJ) to certify their employees as acting within the scope of employment when FTCA claims arise, and thereby protect those employees from personal liability. Since the DOJ is statutorily responsible for defending FTCA suits that are not resolved by the individual agency's administrative claims process, DOD components must insure that their Training Affiliation Agreements with non-federal institutions do not impair the assertion of any defense. This includes the "borrowed servant" defense where the civilian entity controls the manner of the work being performed. Nor, under the Anti-Deficiency Act,[8] can MTFs agree to indemnification provisions that risk obligating the government in advance of congressional appropriations.

A Growing Trend

An increasing practice throughout the DOD has been to expand the applicability of Training Affiliation Agreements from the clinical education of students, residents and trainees to "proficiency training" for military medical staff. The impetus for this shift stems from the increased demand, since September 11, 2001, for surgical and trauma care experience to promote battlefield medical readiness.

A relatively small, healthy and young active military force, combined with the decreasing insularity of the Military Health System, meant that the number and gravity of acute cases were decreasing at some MTFs, just as the demand for currency in these skills was rising exponentially in deployed environments. As such, "additional opportunities to maintain operational currency in complex patient care platforms are critical" to the success of the wartime medical mission.[9]

In response, the Air Force implemented the Readiness Skills Verifications Program (RSVP) to set annual requirements for clinical procedures performed by deployable personnel.[10] One of the most innovative and successful platforms for accomplishing the RSVP requirements has been the Centers for Sustainment of Trauma and Readiness Skills (C-STARS), which allows for weeks-long immersion of Air Force healthcare providers into world-class trauma centers in Cincinnati, Baltimore and St. Louis.[11]

The Nevada Connection

The Armed Forces' efforts to seek proficiency training for medical personnel in high-volume civilian hospitals have been aided by the provision in federal law[12] authorizing military healthcare professionals licensed in one state to practice in another, so long as they are performing authorized DOD duties. This provision extends to care rendered not only in MTFs, but also in any "civilian facility affiliated with the DOD."

This federal exception to state licensure requirements is permissive rather than mandatory. Individual civilian facilities retain the discretion to require in-state licenses before granting military healthcare providers privileges to practice there. With that in mind, and in order to facilitate

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Training Affiliation Agreements between MTFs and hospitals in this state, the Nevada Legislature this year passed Senate Bill 302 by unanimous votes in both houses, and secured approval by the governor in May [13].

The law amends NRS 449 to explicitly authorize hospitals in Nevada to enter into Training Affiliation Agreements with the armed forces, whereby medical officers can provide care in civilian settings pursuant to federal statute. The involved military practitioners must hold a valid license in a state or territory of the United States, and work within the context of a training or educational program related to their military employment.[14] To further protect patient safety, DOD regulation[15] establishes even stricter qualifications that active duty healthcare professionals must meet in order to be eligible for assignment to off-base duties.

This new provision in Nevada law promises to strengthen the already robust partnerships between military and civilian medical facilities in the state, and to provide additional opportunities to leverage Nevada's unique medical capabilities for the benefit of national defense and the care of our wounded warriors. Moreover, Nevada hospitals and patients stand to benefit from the medical support provided by military healthcare professionals practicing in the local community as part of their official DOD duties. NL

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1 Testimony of Lt. Gen. James G. Roudebush, Air Force Surgeon General, before the United States Senate Committee on Appropriations, Subcommittee on Defense (Apr. 16, 2008).
2 5 U.S.C. § 3111.
3 31 U.S.C. § 1342.
4 5 C.F.R. Part 308
5 28 U.S.C. §§ 2671-2680.
6 ACGME Institutional Requirements, ¶ I(C) (Jul. 1, 2007).
7 28 U.S.C. § 2679.
8 31 U.S.C. § 1342.
9 Testimony of Maj. Gen. Melissa A. Rank, Assistant Air Force Surgeon General, before the United States Senate Committee on Appropriations, Subcommittee on Defense (Apr. 16, 2008).
10 Col. Michael Restey, C-STARS Prepares Medics for Expeditionary Duties, Air Force Surgeon General Newswire (Mar. 2004).
11 Tech. Sgt. Phyllis Hanson, C-STARS: Diverse Trauma Saves Lives, Air Force News Agency (Jul. 28, 2007).
12 10 U.S.C. § 1094(d).
13 See leg.state.nv.us/75th2009/Reports/history.cfm?ID=865.
14 S.B. 302, available at: leg.state.nv.us/75th2009/Bills/SB/SB302_EN.pdf.
15 Dep't of Defense Reg. 6025.13, Military Health System (MHS) Clinical Quality Assurance (CQA) Program Regulation (Jun. 11, 2004).