



Guantanamo Bay: A Medical Ethics–free Zone?

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American physicians have not widely criticized medical policies at the Guantanamo Bay detainment camp that violate medical ethics. We believe they should. Actions violating medical ethics,

taken on behalf of the government, devalue medical ethics for all physicians. The ongoing hunger strike at Guantanamo by as many as 100 of the 166 remaining prisoners presents a stark challenge to the U.S. Department of Defense (DOD) to resist the temptation to use military physicians to “break” the strike through force-feeding.

President Barack Obama has publicly commented on the hunger strike twice. On April 26, he said, “I don’t want these individuals [on hunger strike] to die.” In a May 23 speech on terrorism, the President said, “Look at our current situation, where we are force-feeding detainees who are . . . on a hunger strike. . . . Is

this who we are? . . . Is that the America we want to leave our children? Our sense of justice is stronger than that.” How should physicians respond? That force-feeding of mentally competent hunger strikers violates basic medical ethics principles is not in serious dispute. Similarly, the Constitution Project’s bipartisan Task Force on Detainee Treatment concluded in April that “forced feeding of detainees [at Guantanamo] is a form of abuse that must end” and urged the government to “adopt standards of care, policies, and procedures regarding detainees engaged in hunger strikes that are in keeping with established medical professional ethical and care stan-

dards.”¹ Nevertheless, the DOD has sent about 40 additional medical personnel to help force-feed the hunger strikers.

The ethics standard regarding physician involvement in hunger strikes was probably best articulated by the World Medical Association (WMA) in its Declaration of Malta on Hunger Strikers. Created after World War II, the WMA comprises medical societies from almost 100 countries. Despite its checkered history, its process, transparency, and composition give it credibility regarding international medical ethics, and its statement on hunger strikers is widely considered authoritative. The WMA’s most familiar document is the Declaration of Helsinki — ethical guidelines for human-subjects research. The Declaration of Malta states that “Forcible feeding [of mentally competent hunger strikers] is never ethically acceptable. Even if

intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment.” The Declaration of Malta aims to set the same type of ethical norm as the Helsinki document. Physicians can no more ethically force-feed mentally competent hunger strikers than they can ethically conduct research on competent humans without informed consent.²

It’s hardly revolutionary to state that physicians should act only in the best interests of their patients, with their patients’ consent. At Guantanamo, this principle is seriously threatened because constant physician turnover makes continuity of care impossible. Detainee trust has also been irrevocably damaged by physicians’ historical involvement in “enhanced interrogation,” as well as by the use of “restraint chairs” to break a 2006 mass hunger strike.³ Physicians may not ethically force-feed any competent person, but they must continue to provide beneficial medical care to consenting hunger strikers. That care could include not only treating specific medical conditions but also determining the mental competence of the strikers, determining whether there has been any coercion involved, and even determining whether the strikers want to accept voluntary feedings to continue their protest without becoming malnourished or risking death.⁴

Hunger striking is a peaceful political activity to protest terms of detention or prison conditions; it is not a medical condition, and the fact that hunger strikers have medical problems that need attention and can worsen does not make hunger striking itself a

medical problem. Nonetheless, Guantanamo officials have consistently sought to medicalize hunger strikes by asserting that protestors are “suicidal” and must be force-fed to prevent self-harm and “save lives.”² The DOD’s 2006 medical “Instruction” on this subject states: “In the case of a hunger strike, attempted suicide, or other attempted serious self-harm, medical treatment or intervention may be directed without the consent of the detainee to prevent death or serious harm.” This policy mistakenly conflates hunger striking with suicide.

Hunger strikers are not attempting to commit suicide. Rather, they are willing to risk death if their demands are not met. Their goal is not to die but to have perceived injustices addressed. The motivation resembles that of a person who finds kidney dialysis intolerable and discontinues it, knowing that he will die. Refusal of treatment with the awareness that death will soon follow is not suicide, according to both the U.S. Supreme Court and international medical ethics.² The March 2013 guard-force-centered Guantanamo policy on “Medical Management of Detainees on Hunger Strike” seems to concede this point, since it makes no references to suicide. (Available at www.globallawyersandphysicians.org/storage/AgendaHungerStrikeMeeting.pdf is the text and a summary of a meeting on physician participation in hunger strikes.)

A more troubling argument is that military physicians adhere to different medical ethical standards than civilian physicians — that as military officers, they must obey military orders, even if those orders violate medical ethics. Unlike individual medical and psychiatric assessments made

in the context of a doctor–patient relationship, the decision to force-feed prisoners is made by the base commander. It is a penological decision about how best to run the prison. Physicians who participate in this nonmedical process become weapons for maintaining prison order.

Physicians at Guantanamo cannot permit the military to use them and their medical skills for political purposes and still comply with their ethical obligations. Force-feeding a competent person is not the practice of medicine; it is aggravated assault. Using a physician to assault prisoners no more changes the nature of the act than using physicians to “monitor” torture makes torture a medical procedure. Military physicians are no more entitled to betray medical ethics than military lawyers are to betray the Constitution or military chaplains are to betray their religion.⁵

Guantanamo is not just going to fade away, and neither is the stain on medical ethics it represents. U.S. military physicians require help from their civilian counterparts to meet their ethical obligations and maintain professional ethics. In April the American Medical Association appropriately wrote the secretary of defense that “forced feeding of [competent] detainees violates core ethical values of the medical profession.” But more should be done. We believe that individual physicians and professional groups should use their political power to stop the force-feeding, primarily for the prisoners’ sake but also for that of their colleagues. They should approach congressional leaders, petition the DOD to rescind its 2006 instruction permitting force-feeding, and state clearly that no military phy-

sician should ever be required to violate medical ethics. We further believe that military physicians should refuse to participate in any act that unambiguously violates medical ethics.

Military physicians who refuse to follow orders that violate medical ethics should be actively and strongly supported. Professional organizations and medical licensing boards should make it clear that the military should not take disciplinary action against physicians for refusing to perform acts that violate medical ethics. If the military nonetheless disciplines physicians who refuse to violate ethical norms when ordered to do so, civilian physician organizations, future employers,

and licensing boards should make it clear that military discipline action in this context will in no way prejudice the civilian standing of the affected physician.

Guantanamo has been described as a “legal black hole.”³ As it increasingly also becomes a medical ethics-free zone, we believe it’s time for the medical profession to take constructive political action to try to heal the damage and ensure that civilian and military physicians follow the same medical ethics principles.

Disclosure forms provided by the authors are available with the full text of this article at NEJM.org.

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This article was published on June 12, 2013, and updated on June 26, 2013, at NEJM.org.

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DOI: 10.1056/NEJMp1306065

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Force-Feeding, Autonomy, and the Public Interest

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Hunger striking is a nonviolent act of political protest. It is not the expression of a wish to die, nor is it akin to the decision of a terminally ill patient to discontinue food and fluid intake. Rather, it is brinkmanship. Faced with hunger-striking detainees, prison authorities have three choices: force-feed the hunger strikers, let them die, or accede to their demands.

As the World Medical Association (WMA) suggests, most bioethicists unequivocally oppose force-feeding. Enteral feeding through a nasogastric tube while a detainee is strapped to a chair violates a mentally competent patient’s right to refuse treatment and is physically violent.¹ The WMA is less categorical about artificially feeding unconscious or delirious hunger strikers through their abdominal wall. Under these

circumstances, physicians may permissibly weigh their patient’s best interests and prior expressions of intent before deciding about continued treatment.

Physicians who care for hunger-striking detainees weigh autonomy and best interests; rarely must they consider security interests. Local authorities, however, do not have this prerogative. Whereas bioethicists are keen to uphold autonomy and avoid force-feeding, public officials are bound to maintain public order and prevent the deaths of detainees. Those responsibilities leave officials only two choices: forced or artificial feeding, or accommodation. Accommodation deserves first consideration because it may be a reasonable choice. Faced with hunger-striking Palestinian detainees in 2012–2013, for example, Israeli officials satisfied

some prisoners by improving prison conditions or modifying their prison terms. Similarly, the Turkish government met some hunger strikers’ demands last year. In each case, the hunger strike ended. Strikers played their hands deftly, carefully choosing realistic aims and employing nonviolent protests to gain symbolic but important concessions. Local medical organizations also played a role: the Israeli Medical Association instructed its members to comply with WMA guidelines, thereby pushing public officials to earnestly explore accommodation.²

The situation at Guantanamo deserves similar creativity. The detainees’ demands are not monolithic. Prisoners who are cleared for release require expedited repatriation, whereas others may be satisfied with customary legal proceedings, better prison con-