



UNITED STATES MARINE CORPS

COMMAND ELEMENT
II MARINE EXPEDITIONARY FORCE
PSC BOX 20080
CAMP LEJEUNE, NC 28542-0080

IN REPLY REFER TO:

6025.1

HSS/029

21 JUN 2011

II MEFO 6025.1

From: Commanding General

To: Distribution List

Subj: RELEASE OF PROTECTED HEALTH INFORMATION TO COMMANDING OFFICERS
AND THEIR DESIGNATED REPRESENTATIVES

Ref: (a) Public Law 104-191, Health Insurance Portability and
Accountability Act of 1996
(b) DoD 6025.18-R
(c) MANMED P-117, Chapter 23
(d) II MEFO 1850.1
(e) Directive-Type Memorandum 09-006, July 2, 2009
(f) DoDI 6400.06
(g) DoDI 5210.42
(h) DoDI 6490.4
(i) DoDI 1010.6
(j) DoD Directive 1332.18
(k) MARADMIN 308/11
(l) DoD Directive 6490.2

Encl: (1) Designation Letter

(2) Authorization to Request and Receive Protected Health
Information

1. Situation.

a. Reference (a) is the Health Insurance Portability and Accountability Act (HIPAA) of 1996. It provides protection for a person's personally-identifiable health information also known as Protected Health Information (PHI). In general, it defines requirements under which PHI may be used and disclosed.

b. Unauthorized use and disclosure of an individual's PHI, both living and deceased violates a patient's rights under the law. HIPAA rule adds protection to the nondisclosure requirements of the Privacy Act.

c. Under reference (b), all Commanders who exercise authority over an individual who is a member of the Armed Forces, or other persons designated by such commander are authorized to request and receive PHI

in order to carry out an activity under the authority of that Commander. A Commander is one who is properly appointed to command a military organization or unit under applicable provisions of law, regulations, or orders. Marine Corps commanders are titled as Commandant, Commander, Commanding General, Commanding Officer, Director, Inspector-Instructor. The titles, Officer in Charge or Noncommissioned Officer in Charge do not normally denote a commander. However in this specific instance the Commanding General may permit Officers in Charge or Noncommissioned Officers in charge access to PHI to the extent required for them to carry out their assigned tasks. Such permission must be specified in writing using enclosure (1). This military exemption rule is only valid for armed forces personnel. PHI of family members or other categories of beneficiaries is never shared with command authorities without the written authorization from the specific family-member.

d. Ensuring medical readiness is crucial to mission completion and should be a joint effort between the command and the individual Marine or Sailor. While this instruction is intended to improve communication between the chain of command and the medical community, it does not absolve the individual Marine or Sailor of the responsibility to inform his medical officer of any treatments or changes in duty status not originating from the Battalion Aid Station. As such, failure to inform the medical officer and/or chain of command to such developments in a timely fashion represents a dereliction of duty on the part of the Marine or Sailor and may be grounds for disciplinary action.

2. Mission. II MEF will use this order to empower and enable unit leadership at the lowest practical level to maintain unit and individual mission and medical readiness as well as safeguard the physical, emotional, and mental well-being of their Marines and Sailors.

3. Execution.

a. Commander's Intent.

(1) Too often we learn of a Marine or Sailor struggling with a medical issue or with the unanticipated effects of prescribed medications only after a tragic event. This order is intended to strike an appropriate balance between the individual's right to privacy and the obligation of leaders to train, equip and prepare forces for the execution of their assigned missions.

(2) This order provides authority for battalion/squadron level commanders to delegate to respective subordinate commanders and leaders access to appropriate medical information on their Marines and Sailors to ensure a more holistic approach to leadership than may currently be available. The type and amount of PHI will be the minimum amount necessary to accomplish the intended purpose of the use or disclosure. Leaders as low as platoon level, when allowed by law should have information to help them make decisions and recommendations regarding

duty status, deployability, and other key issues which ensure Marines and Sailors are afforded the opportunity to keep medical appointments (and be apprised if they miss them), and to allow them to provide the guidance, direction and counseling that the Marines and Sailors in their charge deserve.

(3) Commanders must remain within legal and ethical boundaries and ensure those granted this access do so as well. Additionally, the utmost discretion is required with the information gained; not only is unauthorized disclosure a violation of federal law, it is also counterproductive, as it can also increase the stigma associated with seeking help for mental or physical problems.

b. Tasks

(1) Commanders may request and receive specific PHI regarding members of their command in order to determine whether they are physically and mentally fit to effectively and efficiently carry out their assigned mission.

(2) Commanders will designate their representatives who may request and receive specific PHI. Designated representatives must be someone in the command's key leadership position such as the Executive Officer, Sergeant Major, Command Master Chief, Limited Duty Coordinator or an Investigating Officer. Designees must be appointed in writing using enclosure (1). Authorization to request and receive PHI, enclosure (2) must also be completed and presented when requesting PHI. Such authorization letters must be in plain language and must contain the following core elements required by references (a) and (b):

- (a) The name of the patient;
- (b) The name of the person authorized to request and receive the PHI;
- (c) Beginning date and expiration date of authorization for disclosure;
- (d) A description of information to be disclosed;
- (e) A description of each purpose of the requested use or disclosure;
- (f) The name and signature of the Commander requesting PHI;
- (g) A statement of the right to revoke the authorization; and
- (h) A statement that the information disclosed may be subject to redisclosure.

(3) Commanders will establish a periodic medical briefing

(weekly or more frequently as necessary) with the battalion/squadron medical provider to receive status updates on the medical readiness of the unit. This is in addition to the requirement under reference (c) that a listing (Binnacle List - NAVMED Form 6320/19) of all sick and injured personnel excused from duty at that point in time, be submitted to the Commanding Officer by 0930 everyday. Information disseminated during periodic briefs may include but not limited to the following:

(a) Completion of Pre-Deployment Health Assessment, Post-Deployment Health Assessment and Post-Deployment Health Reassessment including compliance to medical referrals arranged by the Deployment Health Center

(b) Scheduled and missed appointments, however information on medical appointment reminders does not include the right to know the specific clinic (for example mental health) in which the service member has an appointment scheduled.

(c) Treatment plans

(d) Recommended medical and physical restrictions

(4) Commanders will receive Medical Evaluation Board/Physical Evaluation Board (MEB/PEB) monthly report from the Limited Duty (LIMDU) coordinator regarding status updates and process compliance of Marines on light duty and those undergoing MEB/PEB process as directed by reference (d).

(5) Per reference (e) health care providers shall notify the Commander when a member of his/her command presents with a mental health condition and/or when any of the following circumstances exist:

(a) Harm to Self. The provider believes the member is a serious risk to self-harm.

(b) Harm to Others. The provider believes there is a serious risk of harm to others. Per reference (f) this includes any disclosures concerning child abuse and domestic violence.

(c) Harm to Mission. The provider believes there is a serious risk of harm to a specific military operation and mission. Serious risks may result from behavioral disorders that have significant impact on a person's impulse, insight, and judgment.

(d) Special Personnel. Per reference (g) members in the PRP or in a position that has been identified by service regulations or by the command as having mission responsibilities of such potential sensitivity or urgency that normal notification standard would significantly risk mission accomplishment.

(e) Inpatient Care. When the member is admitted or

discharged from any inpatient mental health or substance abuse treatment facility as these are considered critical points in treatment of active duty members in mental health systems and support nationally recognized patient safety standards.

(f) Acute Medical Conditions Interfering with Duty. The member is experiencing an acute mental health condition or acute medical event that impairs the member's ability to perform his/her duties.

(g) Psychotherapy Notes. Unless there is a valid and specific written authorization from the member, access and release of psychotherapy notes are not permitted except for the limited conditions listed under reference (a).

(h) Command-Directed Mental Health Evaluation. The mental health services are obtained as a result of a command-directed mental health evaluation consistent with reference (h).

(6) Providers may disclose PHI regarding the member who has entered into a formal outpatient treatment or inpatient treatment program consistent with reference (i) for treatment of substance abuse or dependence. Those who seek education on alcohol use, who have not had an alcohol-related incident (such as arrest for driving under the influence), do not require command notification unless they choose to be formally evaluated and eventually diagnosed with substance abuse or a dependence disorder.

(7) Separation or Discharge from Military Service. Per reference (j) when a member is discharged or separated from the service, PHI may be disclosed to the Department of Veterans Affairs (DVA) upon request for the purpose of determining the individual's eligibility and entitlement to benefits under laws administered by the Secretary of Veterans Affairs.

4. Administration and Logistics.

a. Commanders and their designated representatives who require PHI in the performance of their duties must first request that information from their medical providers at Battalion/Regimental/Group Aid Station (BAS/RAS/GAS). Medical providers generally have access to this information and should be able to provide or if necessary assist them in obtaining this information from outside sources such as a military or civilian treatment facility. If the commander or his designated representative requires access to PHI from outside military or civilian treatment facility, enclosure (2) will be completed and presented for access. Requests for information must be specific; general information in the medical records will not be disclosed. Examples of specific information include:

- (1) Diagnosis

(2) Description of planned or prescribed treatment (such as follow-up care, medical appointments, list of medications, etc.)

(3) Impact on duty or mission

(4) Recommended duty restrictions

(5) Prognosis

b. Commanders are allowed under reference (k) to request the PHI of their subordinates to:

(1) Determine the Marines' and Sailors' fitness for duty including participation in the Nuclear Weapons Personnel Reliability Program (PRP), the Physical Disability Evaluation Process, and the DoD Physical Fitness and Body Composition Program.

(2) Determine the Marines' and Sailors' fitness to perform any particular mission, assignment, order, or duty. This may include ability to handle weapons, operate a vehicle or heavy machinery, and handle classified information as well as suitability determination for flight duty, field operations and deployment.

(3) Carry out medical surveillance activities consistent with reference (l).

(4) Report casualties in any military operation.

(5) Carry out administrative discharge and criminal proceedings.

(6) Carry out any other activity necessary to the proper execution of the mission of the Armed Forces.

c. Operational Stress Control and Readiness (OSCAR) Extenders are selected organic personnel with collateral duty positions charged with helping their commanders build unit strength, resilience, and readiness as well as helping keep Marines and Sailors in the fight through prevention, early identification and intervention with stress-related problems. Due to the nature of their responsibilities, they may be authorized access to PHI under the "need to know" basis with the minimum information necessary to carry out their duties. Medical officers who are also OSCAR extenders already have access to PHI under the treatment plan provision authorized under reference (a).

d. The manner in which the information may be disclosed depends upon the preferred method used by the disclosing facility. For II MEF, the preferred method is through confidential written or face to face direct communication between parties involved. Unencrypted e-mails do not meet the privacy or security requirements for the transmission of PHI.

e. After serving its intended purpose, PHI must be disposed

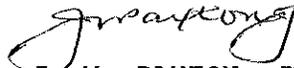
appropriately by cross-shredding all related hardcopies. No files containing PHI will be created and maintained.

f. In order to ensure HIPAA compliance, Commanders must provide training to all personnel who handle PHI on an annual basis. The initial and annual refresher courses regarding the use and disclosure of PHI maybe accessed online through Military Health System Learn at <https://sso.csd.disa.mil/>. Document all initial and refresher training completed in the member's training record.

5. Command and Signal.

a. Command. Commanders, their designees and the chain of command will use this order as a guide in obtaining, using and disclosing PHI. Per reference (b), criminal penalties for unlawful use and disclosure of protected information begin with a fine not to exceed \$50,000 and imprisonment not to exceed one year. If the violation is done with the intent to sell the information or to maliciously harm the patient, the fine is not to exceed \$250,000 and imprisonment not to exceed 10 years.

b. Signal. This order is applicable to all units throughout II MEF and is effective as of the date it is signed.


J. M. PAXTON, JR.

Distribution:
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