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MENTAL HEALTH EVALUATIONS

The Department of Defense (DOD) instruction (DoDI 6490.4), AFI 44-172 and AFI 44-109 governs these evaluations. Members should be aware of their defined rights to prevent abuse of the mental health evaluation process. This fact sheet discusses those rights and options.

WHO CAN ORDER COMMAND DIRECTED EVALUATIONS (CDE)

1. Routine CDEs:

- a. Commander: A commissioned officer who exercises command authority over a Service member (G-series orders)
- b. Supervisor: A commissioned officer within or out of a Service member's official chain of command, or civilian employee in a grade level comparable to a commissioned officer who:
 - Exercises supervisory authority over the Service member
 - Is authorized due to impracticality of involving an actual commanding officer in the member's chain of command

2. Emergency CDEs:

- a. Commander
- b. Supervisor
- c. Senior enlisted Service member (must be designated by commander)

VOLUNTARY EVALUATIONS

Commanders or supervisors may make informal, non-mandatory recommendations for Service members under their authority to seek care from a Mental Health Provider when circumstances do not require a Command Directed Evaluation (CDE) based on safety or mission concerns. Under such circumstances, the Commander or supervisor will inform the Service member that he or she is providing a recommendation for voluntary self-referral and not ordering the care. This will not trigger a CDE.

REFERRAL OF SERVICE

- 1. Pre-Referral:** The responsibility for determining whether or not referral for MHE should be made rests with the Service member's commander or supervisor at the time of the referral.
- 2. Notice to Member:** When a commander or supervisor, in good faith, believes that a Service member may require a non-emergency MHE, he or she will:

- a. Advise the Service member that there is no stigma associated with obtaining mental health services.
 - b. Refer the Service member to an Mental Health Provider, providing name and contact information
 - c. Tell the service member the date, time, and place of scheduled MHE.
3. Anytime a member believes a mental health evaluation is ordered as reprisal for a protected communication, such as a prior communication to a member of Congress or the IG, may file a complaint with the DoD IG Hotline or the Air Force IG.
 4. No person shall restrict a member from lawfully communicating with an IG, attorney, member of congress, or others about the member's referral for a mental health evaluation; however, a dramatic change from prior rules governing mental health evaluations is that the member does not have the right to consult the IG or an attorney
 5. The mental health professionals shall ensure that members are advised of the purpose, nature, and likely consequences of the evaluation, and make clear to the member that the evaluation lacks confidentiality.

INPATIENT EVALUATIONS

1. Inpatient mental health evaluations should be used only if and when such evaluations cannot appropriately or reasonably be conducted on an outpatient basis, in accordance with the least restrictive alternative principle. Only a psychiatrist, or, in cases in which a psychiatrist is not available, another mental health professional or a physician with admitting privileges, may admit a member of the Armed Forces for a mental health evaluation to be conducted on an inpatient basis.
2. When a member is admitted to a treatment facility for an emergency or involuntary mental health evaluation, the following provisions apply:
 - a. Level of Care. Placement in a less restrictive level of care would result in inadequate medical care.
 - b. Admission Criteria. Admission is consistent with applicable clinical practice guidelines.
 - c. Re-evaluation Following Admission. The Service member will be re-evaluated, under the purview of the admitting facility, within 72 hours of admission by an independent privileged psychiatrist or other medical officer if a psychiatrist is not available.
 - The independent medical reviewer will notify the Service member of the purpose and nature of the review and of the member's right to have legal representation during the review by a judge advocate or by an attorney of the member's choosing at the member's own expense if reasonably available within the required time period for the review.
 - The independent medical reviewer will determine and document in the inpatient medical record whether, based on clear and convincing evidence,

continued involuntary hospitalization is clinically appropriate. If so, the reviewer will document the clinical conditions requiring continued involuntary hospitalization and the circumstances required for discharge from the hospital, and schedule another review within 5 business days.

- The independent medical reviewer will notify the Service member of the results of each review.

MEDICAL RECORD DOCUMENTATION

Documentation of the evaluation encounter, findings, and disposition must be consistent with applicable standards of care and will additionally:

- a. Document information pertaining to the inpatient admission in the Service member's MTF electronic health record including at a minimum communication of the assessment of risk for dangerousness, treatment plan, medications, progress of treatment, discharge assessment, and recommendations to commanders or supervisors regarding continued DoDI 6490.04, March 4, 2013 Change 1, 04/22/2020 12 ENCLOSURE 3 fitness for duty and actions the MHP recommends be taken to assist with the continued treatment plan.
- b. Upon discharge, MHPs will provide memorandums or copies of consultation reports to the commander or supervisor with sufficient clinical information and recommendations to allow the commander or supervisor to understand the Service member's condition and make reasoned decisions about the Service member's safety, duties, and medical care requirements.

LACK OF CONFIDENTIALITY

Generally, any statements made to mental health professionals in the course of an exam or a treatment program are inadmissible against the military member in future UCMJ proceedings under the Military Rule of Evidence 513. This psychotherapist-patient privilege has several important exceptions and does not apply to discharge actions or other administrative actions. The only individuals on base with purely privileged communications are the ADC, Special Victims Counsel (SVC), and the Chaplain. Remember your right to consult an attorney and your right against self-incrimination under the UCMJ.

USES OF MENTAL HEALTH EVALUATIONS

Members may be discharged under AFI 36-3208, paragraph 5.11.9, for "Conditions that Interfere with Military Service." These conditions include various types of mental disorders, for example: personality disorders, disruptive behavior disorders, adjustment disorders, impulse control disorders, transsexualism or gender identity disorder, and other disorders that interfere with duty performance or cause failure to adapt to the military environment. These mental conditions are defined in the current diagnostic tool used by mental health professionals, called the DSM. There must be connection between the disorder and duty performance. A simple disorder alone is not enough for discharge. Discharge under this section must result in an honorable separation. The regulation does, however, specify that if discharge under another section is appropriate, such as misconduct, that other section should be utilized. This may result in a separation with a less than fully honorable discharge.

Contact the Area Defense Counsel if you have any questions about any of your rights.