

## Use of Volunteers as Subjects of Research

Judge Advocate

23 March 1964  
A. Naimon/aln/65988

1. Reference is made to your Memo Routing Slip of 10 March 1964 inclosing Doctor Rayna-Jones's 3 March 1964 letter and minutes of the 19 December 1963 Ad Hoc Advisory Committee Meeting together with proposed OTSG Memorandum on above subject and requesting comments by this office thereon.

2. After careful consideration of the above referenced materials, it is the view of this office that rather than attempt to implement AR 70-25 at this time, the minutes reveal a need to amend AR 70-25 in the following respects:

a. The meaning of "volunteers" appearing in paragraph 1 and the phrase "risk beyond the normal call of duty" in paragraph 2 should be further clarified.

b. Although the committee is apparently unanimous in its opinion that all volunteer projects should be reviewed by The Surgeon General, paragraph 3, AR 70-25 provides for substantial exemptions from such a requirement.

c. The Committee apparently concluded that TSG should have authority to make final decisions on professional matters concerning research on humans and on certain non-professional matters which may place subjects at a risk in conducting research, but AR 70-25 requires TSG to transmit recommendations to the Chief of Research and Development for his approval, and in certain cases, provides for the Chief of Research and Development to in turn submit the matter to the Secretary of the Army for his approval (paragraph 6). This paragraph too should be clarified.

d. The Committee apparently takes the view that AR 70-25 applies to Army contracts and grants as well as to in-house research projects, and it is understood that this is consistent with the desires of SA TSG/R&D. Since AR 70-25 could also be interpreted oppositely, consideration should be given to clarifying AR 70-25 in this respect.

e. The phrase "nuclear biological or chemical warfare agents" should be substituted for the phrase "nuclear biological or chemical agents" in paragraph 6 so that, for example, the use of radioisotopes would not require approval of the Secretary of the Army.

f. The word "medical" should be substituted for "ethical medical" in paragraph 3c since it serves no useful function, and could be interpreted as implying that some Army supported investigations are not ethical.

g. AR 70-25 should clarify who is authorized to make the determination called for in paragraph 4c, that an experiment must be such as to .... have reasonable prospects of yielding militarily important results essential to an Army research program which are not obtainable by other methods or means of study. "

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h. It is suggested that the phrase "which arise" be substituted for the word "anticipated" in paragraph 5d.

3. Accordingly, this office withholds comment on proposed OISG Memorandum until a decision is reached on whether TSG will seek to amend AR 70-25 as here recommended, or will try to implement AR 70-25.

MAURICE LEVIN  
Colonel, JAGC  
Judge Advocate

*Alexander Naimon*

ALEXANDER NAIMON  
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2330 MASSACHUSETTS AVENUE, N.W.

WASHINGTON 8, D.C. 20008 3 March 1964

Ref: MEDDH-P

Colonel Donald L. Howie, MC  
 Chief, Program Planning Office  
 HQ, U.S. Army Medical Research and Development Command  
 Office of The Surgeon General  
 Department of the Army  
 Washington, D.C. 20315

Dear Colonel Howie:

I am much obliged to you for your letter of 28 February 1964 and its inclosures, namely:

Revised p. 5 of the Minutes of the meeting of the Ad Hoc Advisory Committee to The Surgeon on use of volunteers as subjects of research, 19 December 1963.

Memorandum -- Headquarters, Department of the Army, Office of The Surgeon General, Washington, D.C. 20315. (not yet dated).  
 Subject: Implementation of Army Regulation 70-25, 26 March 1962.  
 "Use of Volunteers as Subjects of Research".

I have read these inclosures carefully in comparison with the notes I made on the copies of the drafts you sent to me on 19 February 1964, and with notes of our talk by telephone on 24 February. As I said then, the drafts seemed to me to be excellent, accurate, and useful statements, which did not require any major revisions. You have agreeably accepted all the minor changes that I suggested. I have not found anything more that seems to me to need further revision, in either the minutes of the Committee meeting or in the memorandum of implementation of AR 70-25.

I have signed the minutes, inserted revised p.5 bearing our signatures, and return the original to you herewith.

I appreciated the privilege of serving as Chairman of the Ad Hoc Advisory Committee, and thank General Blount and you for having entrusted me with some part of the responsibility in the formulation of policies in regard to these matters. Working with you has been a pleasure.

Sincerely yours,

*Stanhope Bayne-Jones*  
 Stanhope Bayne-Jones, M.D.  
 Brigadier General, USAR, Retired

Incl.  
 Minutes of meeting.

20 December 1963

MINUTES OF MEETING OF THE AD HOC ADVISORY COMMITTEE TO THE SURGEON GENERAL  
ON USE OF VOLUNTEERS AS SUBJECTS OF RESEARCH, 19 December 1963

1. On 19 December 1963, the Ad Hoc Advisory Committee to the Surgeon General on Use of Volunteers as Subjects of Research convened to discuss implementing instructions for AR 70-25, entitled "Use of Volunteers as Subjects of Research" and AR 40-37, entitled "Radioisotope License Program (Human Use)." The committee convened under authority of Letter, MEDDH, 9 December. The committee membership included:

Stanhope Bayne-Jones, M.D., Chairman

Colin MacLeod, M.D.

Joseph H. Blair, Col, MC

Theodore E. Woodward, M.D.

William D. Tigertt, Col, MC

Gustave J. Dammin, M.D.

Dan Crozier, Col, MC

Henry K. Beecher, M.D.

Jacques L. Sherman, Lt Col, MC

Frederick J. Hughes, Col, MC

Donald L. Howie, Col, MC - Mil Liaison Off

Maurice Levin, Col, JAGC

Marion B. Sulzberger, M.C. - Tech Advisor

2. All members were present with the exception of Dr. Gustave J. Dammin.

Other participants and observers present included:

Robert E. Blount, Brig Gen, MC - Commanding, Med R&D Command and  
Special Asst to TSG for R&D

Carl Lamanna, MD, ARO/CRD

Claude M. Eberhart, Col, MC, D/PS, OTSG

Richard R. Taylor, Lt Col, MC - Deputy Commander, Medical R&D Command

Glen K. Arney, Lt Col, MC, D/PS, OTSG

Henry J. Donnelly, Lt Col, MC, Medical R&D Command

William Sawyer, Major, MC, MUFD

3. Findings of the committee:

a. That an Army Regulation covering the use of humans as volunteer

## MEETING OF AD HOC ADVISORY COMMITTEE ON USE OF HUMAN VOLUNTEERS - 20 Dec 63

subjects of research is useful and necessary.

b. That the regulation should give complete authority to the Surgeon General to decide on professional matters concerning use of volunteers.

c. That AR 70-25, as written, applies to Army supported contracts and grants as well as to in-house research programs.

d. That AR 70-25, as written, is not clear, and proper implementation, while possible in some instances, may be impossible in others.

4. Finding Number One: The Committee was called to order at 0900 hours, 19 December 1963, by Dr. Bayne-Jones who opened discussion on the background of AR 70-25 and the requirement for the Medical R&D Command to develop implementing instructions. The exact staffing of the regulation within the Army, and particularly within AMEDS, was not clear to those present. The origin of AR 40-37 and its relationship to AR 70-25 was simultaneously reviewed. Colonel Tigertt noted that anyone coming under AR 40-37 automatically comes under AR 70-25; thus leaving no exemption when isotope tracers are used. Dr. Sulzberger expressed the belief that "nuclear agents" as defined in paragraph 6 of AR 70-25, in reality means "nuclear warfare agents," and that the use of radioisotope tracers should not require approval at the level of the Secretary of the Army; though approval for use, as with other unusual agents, may be required. This opinion was upheld by Dr. Bayne-Jones, who referred back to paragraph one where research in "nuclear, biological and chemical warfare ---" is specifically mentioned. Colonel Eberhart noted that AR 40-37 was directed mainly at therapeutic use of radioisotopes, and was so written by the Preventive Medicine Division, OTSG. It was generally conceded that

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the two regulations should be made more compatible, but that a specific regulation covering the use of volunteers in research is needed.

5. Finding Number Two: Colonel Levin (JAGC, OTSG) opened further discussions on the need for certain changes in AR 70-25 clarifying paragraphs 1 and 3 on the definition of "volunteers" and of "unreasonable risk," but retaining a degree of broadness throughout which allows The Surgeon General to make decisions as the final authority on professional medical matters. The relationship of other Army agencies to the regulation and to The Surgeon General was discussed by the committee. It was agreed that a review of research proposed by other agencies, when volunteer subjects are involved, should be undertaken by The Surgeon General and that the regulation should give The Surgeon General authority to make final decisions on all professional matters concerning research on humans and on certain non-professional matters which may place subjects at a risk in the conduct of research.

6. Finding Number Three: There was considerable disagreement among members of the committee and other participants about interpretation of various parts of AR 70-25, but it was generally conceded that the regulation applies to Army supported contracts and grants through the controls already available to and applied by The Surgeon General and various Army echelons up to the Secretary of the Army.

7. Finding Number Four: A discussion of specific portions of AR 70-25 which seemed unclear followed. Colonel Levin (JAG) pointed out that the "man in the field" determines whether or not an experiment falls within the "exceptions" and if it does, he does not send in a protocol. Col Tigertt stated that he felt that the regulation as written "could be lived with"

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as far as in-house research is concerned. Col Crozier was of the opinion that paragraph 6, if literally interpreted, could not be lived with; that submission of each small proposal would drastically slow research progress. He felt that proposed studies should go to The Surgeon General or an expert consultant group for approval, and not to Department of Army where expertise is questionable. There followed a point-by-point discussion of the regulation. Dr. Bayne-Jones was of the opinion that paragraph 1 mentions nuclear, biological and chemical warfare agents, and that these are the specific agents referred to in later paragraphs--not such things as tracer radioisotopes, for example. He also suggested that the words "ethical medical" be deleted, since this implies that a number of things may be "unethical." This was agreed on by the committee. Dr. Beecher was of the opinion that "exemptions" in paragraph 3 were inconsistent with "definitions" in paragraph 2. It was pointed out that "beyond the normal call of duty" differs tremendously depending upon the position held by an individual. Dr. Woodward suggested that paragraph 3c omit "ethical" and include "where the use of volunteers is required and available techniques do not provide data necessary for diagnostic or control measures --," Dr. Beecher pointed out the pitfalls in paragraph 4a, including the difficulties involved in obtaining a true "voluntary consent." Dr. MacLeod mentioned the various aspects of "guardian consent," and Dr. Bayne-Jones suggested that "where consent is obtainable" might be added. He was also concerned about the definition of "militarily important results" in paragraph 4c. Colonel Tigertt stated that paragraph 4i is not clear, i.e., a volunteer cannot "withdraw" if he has been exposed to viruses which "can't be turned off." The same applies to 4k, but

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Dr. Bayne-Jones felt that the latter, even if unworkable, should be left in. Dr. Lamanna remarked that there comes a time in the midst of an experiment when the unexpected may occur. The word "anticipated" in 5d was felt by Col Crozier and Dr. Bayne-Jones to be inadequate. They felt it should be replaced by "which arise." In regard to paragraph 6, which had been previously discussed, it was again agreed upon that The Surgeon General should have the final say in such research. Dr. Bayne-Jones conceded that "it is a delicate situation." Dr. Lamanna stressed the importance of submitting proposals covering broad areas of research within which a number of studies could be undertaken whenever possible to take the administrative burden out of having to submit many small related proposals. Col Tigertt stated that the Secretary of the Army has the right to know whenever a hazardous experiment has been planned. It was agreed that AR 70-25 is not clear and may be impossible to implement in some instances.

8. The meeting adjourned at 1200 hours.

APPROVED:

3 March 1964  
(date)

Stanhope Bayne-Jones  
Dr. Stanhope Bayne-Jones, M.D., Chairman

Donald L. Howie  
Donald L. Howie, Col, MC, Military Liaison Officer

5.

Incl 1

*Draft*

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
Office of The Surgeon General  
Washington, D.C. 20315

## MEMORANDUM

IMPLEMENTATION OF ARMY REGULATION 70-25, 26 MARCH 1962,  
"USE OF VOLUNTEERS AS SUBJECTS OF RESEARCH"

1. Purpose: To implement the provisions of Army Regulation 70-25 for compliance by all organizations, installations and individuals under the jurisdiction of The Surgeon General, participating in or sponsoring DA research involving the use of volunteer subjects, and by all contractors and grantees conducting investigations involving human experimentation supported in whole or in part by the Department of the Army and monitored by The Surgeon General.

2. Responsibilities:

a. The Surgeon General is responsible for review and supervision of Department of the Army medical research conducted on volunteer subjects by, or sponsored by, organizations, installations, or individuals under his jurisdiction. He is also responsible for review of all proposals which involve research on humans by, or sponsored by, Department of the Army agencies not under his jurisdiction; and will, where appropriate, recommend action, as required by AR 70-25, to the Chief of Research and Development.

b. The Special Assistant to The Surgeon General for Research and Development (SATSG/R&D) is responsible for receipt and evaluation of all proposals, including those received from other agencies which involve the use of volunteers as subjects of research, and for forwarding comments and recommendations to The Surgeon General, as appropriate. Coordination will be effected as needed with the Office of The Surgeon General and with duly appointed advisory bodies.

c. Commanders are responsible for implementing the provisions of AR 70-25 and this directive, as well as for initiating further guidance on this subject to elements within their commands. Copy of such guidance will be furnished the Office of The Surgeon General, ATTN: SATSG/R&D.

d. In-service investigators planning the use of volunteers as subjects of research will submit proposals (through Command channels to appropriate commanding officers for evaluation and forwarding) to OTSG, ATTN: SATSG/R&D. Investigators conducting research using volunteer subjects on contract or grant will submit proposals which comply with AR 70-25 to the Commanding General, U.S. Army Medical Research and Development Command, OTSG, for review.

### 3. Implementation:

a. **Research on Volunteers:** Paragraphs 1 and 2 of AR 70-25 define research on volunteers. All provisions of AR 70-25 apply unless exempted by paragraph 3.

b. **Exemptions:** Paragraphs 3a and 3b of AR 70-25 are considered self-explanatory. Paragraph 3c applies to research conducted on patients where medical and clinical investigations may be expected to be of direct benefit and also to research utilizing normal subjects where benefit to actual or potential patients may be reasonably expected, providing no "unusual or potentially hazardous conditions", as defined in paragraphs 1 and 2, AR 70-25, exist or are anticipated. Examples of such investigations include:

- (1) Health surveys requiring routine collection of urine, feces, blood samples or sputum.
- (2) Diagnostic procedures accepted as carrying essentially no risk.
- (3) Use of vaccines, skin test antigens, biologicals and drugs, when such studies conform to the standards established by the US Public Health Service Division of Biologics Standards (DBS) or the Food and Drug Administration (FDA), in surveys of prophylactic or diagnostic efficacy or to determine incidence of diseases.
- (4) Testing of rations which are formulated to meet sound nutritional standards for specific conditions of work and environmental stress.
- (5) Use of instruments applied to the volunteer's body to monitor vital signs.
- (6) Other accepted medical procedures which do not, when added to an activity or investigation, create a situation of risk or unusual discomfort to the subject.
- (7) The use of radioisotope tracers in accordance with AEC regulations is not considered unusual or hazardous, as such. All investigations involving radioisotope tracers must be in conformity with existing AEC and Army Regulations (Code of Federal Regulations, Title 10, paragraphs 20 and 30, and AR 40-37).

c. **Non-Exempt:** Investigations, listed under the preceding subparagraph (3b) when repeated on any individual with such frequency, or under other circumstances, as to constitute an unusual or hazardous condition, require approval by The Surgeon General.

## MEMORANDUM

d. **Basic Principles:** With respect to volunteer status, subjects under the age of 21 years but over the age of 18 years are considered to have the "legal capacity to consent." Authorized hazard pay, such as thermal stress pay, is not considered a form of "force or duress." Paragraph 4c of AR 70-25, specifies that the experiment should be such as to contribute significantly to approved research. This determination is one which is based on the best judgment of the investigator and of the reviewing authorities. There will be conditions which arise where neither the volunteer nor the scientist in charge will be able to terminate an experiment at will, as required by paragraphs 4i and 4k. When this is the case, it will be clearly specified in the request for approval and the scientist in charge will take maximum precautions to prevent or treat serious adverse reactions.

e. **Additional Safeguards:** When a proposal for use of volunteer subjects is submitted, the responsible physician must be identified by name. Approval of a proposal by The Surgeon General constitutes the designation of the named physician. If it is necessary that another responsible physician be named at some time during the course of the experiment, authorization must be obtained from The Surgeon General.

f. **Approval to Conduct Experiment:** Commanders are encouraged to submit, when possible, protocols which are broad in scope and which will allow a number of individual studies to be conducted within an area of well-defined conditions. Approval of in-service proposals or of contracts and grants by The Surgeon General constitutes authority to conduct experiments, since such proposals will have been processed in accordance with the requirements of AR 70-25.

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