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MEDAS-L(26 Apr 62)

SUBJECT: Accidental Toxic Psychoses(U)

TO Dir, Plans, Supply & Operations

FROM General Counsel

DATE 25 Jun 62 COMMENT NO. 6

Col Levin/arl/62501

1. On the basis of the inclosed file, we are led to the conclusion that the "advance" consent, would give little or no legal protection, but would serve merely as an impetus for execution of a valid consent by a person legally and mentally capable of giving consent at the time hospitalization is necessary.

2. Therefore, let us recognize that, if a person should be hospitalized, a valid consent must be executed at that time, not only to cover hospitalization but to cover other problems relating to transfers to other hospitals in or out of the state involved.

3. Without such a current consent properly executed and in appropriate detail, all kinds of legal complications could ensue, depending on what is done at the time. These could include charges of false imprisonment, assault and battery, and libel and slander, among others.

4. Accordingly, I suggest we approve the proposed consent agreement as a document which would have little legal effect, but which should be used as a basis for obtaining proper consents at the appropriate time. Although this will not wholly satisfy the Chemical Corps people, it is the safest position from the standpoint of protecting the United States and our medical personnel. Of course, there may be occasions involving overriding national security matters where legal precautions would have to be overlooked, but these would have to be faced if they arise.

1 Incl
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MAURICE LEVIN
Colonel, JAGC
General Counsel

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RE: 112
Accession # 69A-137
Box # 8
File Name: 401-02 Medical Treatment Consent to Refusal of, 1944-65

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AS-L (26 Apr 62)
 SUBJECT: Accidental Toxic Psychoses (U)

TO Dir, Plans, Supply and Operations
 ATTN: Chief, Operations Div

FROM General Counsel DATE 1 May 62 COMMENT NO. 2
 Col Levin/adc/62501

1. It is recommended that the proposed consent be modified as indicated by pencil changes made on the draft.
2. Procedures for admission to an Army hospital would be those normally applicable in cases of BEC beneficiaries (par. 13, AR 40-3).
3. There is, of course, some question whether the "consent", given in advance, would stand up in court. To some extent, members of the Army Medical Service involved in a hospitalization might be subject to direct suit for false imprisonment, a type of action not protected against by the Federal Tort Claims Act. It is felt, however, that the risk would be small in those cases where, under ordinary circumstances, a patient would require commitment.
4. The procedure discussed in attached correspondence does not, however, seem to envision commitment proceedings in appropriate cases. It would appear that in cases where commitment proceedings would be indicated, the local civilian authorities should be consulted with a view to taking action that would result in commitment, and, if desirable, temporary continued hospitalization in the military medical facility.
5. Because of the unusual nature of the consent involved, it may be desirable, from the standpoint of obtaining additional protection for members of the Army Medical Service, to ask and obtain the blessing of The Judge Advocate General. In the event you consider this an appropriate approach, I will be happy to sit down with you to work out a presentation, after you have mulled the matter over.

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MAURICE LEVIN
 Colonel, JAGC
 General Counsel

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General Counsel

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TO DTR: 51
SUBJECT: Accidental Toxic Psychoses (U)
4-23-62

MEDDD-OP (26 Apr 62)
SUBJECT: Accidental Toxic Psychoses (U)

TO General Counsel FROM Directorate of Plans, Supply, & Operations DATE 22 Jun 62 COMMENT NO. 5
Maj Tofte-Nielsen/63658/nsw

1. Note comments by TJAG.

2. What further complications may ensue if the patient is admitted to a facility in Maryland and is removed from Maryland to the District of Columbia, without his consent or the consent of next of kin, or without permission of civil authority, but in reliance only on the proposed consent statement as modified? In other words, should we try to contain this whole problem within onestate's jurisdiction?

1 Incl
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LINDEN H. SCHWAB
Colonel, MC
Chief, Operations Division

[Handwritten notes and signatures]

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