

To: APA Council of Representatives

From: Linda M. Woolf, Ph.D.

Re: Action Item #2 (Resolution 35B)

As former chair of the Member-Initiated Task Force, which worked on the APA Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, (Adopted by COR August 2013, as Amended by COR August 2015) and one of the primary drafters of the 2006 APA Resolution Against Torture, I am writing to express my grave concerns about Action Item #2 Resolution To Amend Council's 2009, 2013, And 2015 Resolutions To Clarify That Psychologists May Provide Treatment To Detainees Or Military Personnel In National Security Settings (NBI #35B/AUG 2017).

My concerns, which I elucidate further below include:

- Wording of the 35B
- Lack of international conventions related to this action item
- Unique context of confinement
- Lack of ethical recourse for detainees
- Conditions of confinement
- Current international and political contexts
- Conflation of issues
- Member Petition Resolution

Please be aware that these concerns are not a reflection of any mistrust or apprehension about the skills, knowledge, or ethics of my colleagues, who work as military psychologists. My concerns relate to the serious problems associated with any U.S. or other national military site operating outside of, in violation of, or in contraindication to international law, as well as the ramifications of such settings on the work of psychologists.

I would also note that I do not believe that any of my colleagues are supportive of torture or cruel, inhuman, or degrading treatment or punishment as defined in the 2006 or 2013 APA resolutions, which define these actions and conditions in complementarity with international and domestic law.

### **Concern: Wording of the 35B**

The Resolution proposes the following changes to APA anti-torture policies (Underlined text is being added with footnotes removed):

“psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human

rights, or they are working in a health care role for the express purpose of providing psychological treatment to detainees or military personnel.

Although it argues that individuals would be working in a “health care role for the express purpose” of providing care, the Be It Resolved statement does not eliminate the possibility of individuals working in a secondary or consultative role—formally or informally, explicitly or implicitly, actively or passively—in such settings. For example, the statement does not explicitly state, “they are working independently and solely in a health care role” with a further explication at the end highlighting a bright line between care for the detainee and any other responsibilities on site. Such a bright line exists for other health care practitioners, who follow international guidelines on this issue. For example, it does not include any information as to whether a psychologist can be asked about fitness of the detainee for questioning/interrogation.

**Concern: Lack of international norms, standards, or conventions related to this action item**

Although the “whereas” statements of the proposed Resolution include reference to the Geneva Conventions, the Be It Resolved statements do not include any references to these Conventions. Whereas statements set the stage for the policy but the policy is contained exclusively in the Be It Resolved Statements. There is nothing in the policy that ties any work by psychologists operating at National Security sites, particularly those sites operating outside of international law, to the Geneva Conventions.

Additionally, the Resolution, inclusive of the Be It Resolved Statements, excludes other international documents. For example, the United Nations (UN) Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These UN Principles include:

Principle 3: It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4: It is a contravention of medical ethics for health personnel, particularly physicians:

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Aside: It should be noted that although it has been suggested that psychologists should be involved in humane questioning, Principle 4a states:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of

such prisoners or detainees and which is not in accordance with the relevant international instruments; 2

Moreover, the WMA Declaration of Tokyo – Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment In Relation To Detention and Imprisonment includes the following:

5. The physician shall not use nor allow to be used, as far as he or she can, medical knowledge or skills, or health information specific to individuals, to facilitate or otherwise aid any interrogation, legal or illegal, of those individuals.

7. A physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The physician's fundamental role is to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose.

The proposed Resolution includes none of these norms, standards, or Conventions.

### **Concern: Unique Context of Confinement**

Due to the nature of national security settings, particularly those settings operating outside of, or in violation of, international law, there are unique risks for detainees seeking psychological care.

First, the psychologist will be placed in a dual role in relation to “who is the client.” Without clear explication of roles and placing the psychologist solely within a medical command structure, there may be times that it becomes unclear whether the psychologist is working for the patient or for the protection of the United States. To whom does their first and sole duty lie? As noted by the Board of Professional Affairs:

1. How independently can any health care provider function within a “black site”?
2. If we are referring to military psychologists being reintroduced to “black sites”, how could such an individual ignore any type of mandate that could come from, say, their superior officer in a military context even in their role as a health care provider?
3. It is our understanding that specific military regulations around patient confidentiality are different and, if this is correct, how would these mental health services be treated in that regard?

These issues become increasingly important to issues of power perceptions, trust, and confidentiality. For example, the WMA Declaration includes:

3. When providing medical assistance to detainees or prisoners who are, or who could later be, under interrogation, physicians should be particularly careful to ensure the confidentiality of all personal medical information. A breach of the Geneva Conventions shall in any case be reported by the physician to relevant authorities.

Is that confidentiality guaranteed to detainees, who are treated by military psychologists, in terms of treatment and records?

None of these issues is clearly addressed in the policy Be It Resolved statements of the current proposed Resolution.

**Concern: Lack of ethical recourse for detainees**

It is important that the Resolution includes the following:

BE IT RESOLVED that military psychologists are recognized as providers of mental health treatment to detainees in all national security settings if they are able to do so in full adherence to the Ethical Principles of Psychologists and Code of Conduct (Amended effective June 1, 2010 and January 1, 2017) and are able to obtain any information or ask any questions necessary to act competently and ethically.

However, national security sites operate differently than domestic prisons and it is noteworthy that the sites in question for this Resolution are also operating outside of international law (an ethical issue in and of itself). As such, patients (detainees) have limited or no ability to pursue any ethical recourse if the Code is violated. Do they have any ability to file a complaint with APA or pursue another outside venue for adjudication?

The Resolution leaves the determination of the ethics with those working within the military setting, who may be subjected to immense situational pressures within the command structure.

**Concern: Conditions of confinement:**

The Petition Resolution, Statement 1 of the 2013 Resolution, and 2015 Resolutions only reference “settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate).”

Statement 1 of the 2013 Resolution, includes the following:

APA recognizes that torture and other cruel, inhuman or degrading treatment or punishment can result from conditions of confinement and the behavior of individuals.

Prisoners in such sites where detainees are held outside of, or in violation of, international law have limited access to legal recourse to address human rights violations or conditions of confinement constituting torture. Sadly, much has been written in other forums about the why these sites, in and of themselves constitute torture or cruel inhuman, or degrading treatment or punishment.

UN Principle 2 states:

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or

passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Individuals working for the military in illegal settings become complicit passively in torture or cruel, inhuman, or degrading treatment or punishment. Such complicit involvement places psychologists at risk ethically.

Aside: Individuals in domestic sites also may experience conditions of confinement that constitute torture and other cruel, inhuman, or degrading treatment or punishment. However, they have additional legal protections and access to legal recourse.

### **Concern: Current international and political contexts**

Although we might all like to think that torture of prisoners is well behind us in the United States, there are reasons for concern.

- According to a Pew Research Report, “Overall, 48% say there are some circumstances under which the use of torture is acceptable in U.S. anti-terrorism efforts.”  
<http://www.pewresearch.org/fact-tank/2017/01/26/americans-divided-in-views-of-use-of-torture-in-u-s-anti-terror-efforts/>
- The U.S. President supports the use of torture. He has argued that “enhanced interrogation ... works” and “Only a stupid person would say it doesn’t work.” Moreover, he has stated that he would “bring back a hell of a lot worse than waterboarding.” He also has argued for going after the families of individuals identified as terrorists.
- We live in a world that is marked by international conflict, which could escalate at any time.
- Sites operating outside of, or in violation, of international law, only escalate threats of conflict due to problems associated with detainee treatment.

Even if we could make an argument that existing sites are operating within international law, there are serious concerns related to any roll back of APA policy at this time in relation to torture or sites such as Guantanamo. The value of the Petition Resolution, particularly when embedded in broader anti-torture policy, is that it stands regardless of political administration or external events.

### **Concern: Conflation of issues**

The current proposed Resolution appears to conflate arguments that current U.S. sites with national security detainees are operating within international law and/or Geneva Conventions with changing existing policies concerning psychologist’s work within sites operating illegally under international law.

If the primary issue is that Guantanamo now meets international standards, then draft a resolution that directly argues that point, inclusive of international documentation. There would be no need to

weaken APA's anti-torture policy that took years of work to develop in relation to adopted policies and collaborative processes.

However, if the question is whether military psychologists can provide psychological treatment to prisoners at unlawful sites, then I would argue that the answer is “no” based on the above concerns.

Aside: United Nations statement December 2017, “US must stop policy of impunity for the crime of torture-UN rights expert” and he argued that conditions of torture continue:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22532&LangID=E> He further noted, “I very much regret that, despite repeated requests, my predecessors and I have consistently been refused access to Guantanamo and other high security facilities in accordance with the standard terms of reference of my UN mandate.”

Aside: The proposed Resolution includes the following Whereas statement:

WHEREAS It is the unqualified policy of the American Psychological Association...to conduct its operations in strict compliance with the antitrust laws of the United States, laws which specifically prohibit any agreement or understanding restricting the scope of services provided by specific providers or types of provider, the locations in which psychologists may practice, or the classes of employees, patients, or collaborators with whom a psychologist may practice

Obviously, a legal issues and I am not an attorney. Nonetheless, I would imagine that this U.S. antitrust applies to legal settings and not extralegal or illegal settings or contexts.

### **Concern: Member Petition Resolution**

The current proposed Resolution appears to modify, at best, or nullify, at worst, the Member Petition Resolution. APA membership voted by a margin of 59% to 41%, to prohibit psychologists from working at Guantanamo Bay, the CIA black sites and all other settings where people are held outside of or in violation of domestic and/or international law.

I am reticent to conclude that the membership was not aware of the serious nature of this vote and simply failed to consider any “unintended consequences” of this vote. Much discussion and heated debate occurred before the vote, with all sides clearly expressing their concerns, including concerns about unintended consequences.

As this Resolution involves a serious modification of the members vote, I urge great care in evaluating and voting on this issue.