

**BY ORDER OF THE COMMANDER
59TH MEDICAL WING**

**59TH MEDICAL WING INSTRUCTION
51-201**



20 OCTOBER 2016

Law

**COLLECTING BIOLOGICAL
SPECIMENS FOR USE IN JUDICIAL
AND NONJUDICIAL PROCEEDINGS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Air Force Policy Directive 51-2, *Administration of Military Justice*. This instruction prescribes the professional policies, procedures, and practices for all 59th Medical Wing (MDW) personnel involved in performing blood alcohol tests (BATs), urinalysis, or collecting other biological specimens that may be used for judicial or non-judicial proceedings. This instruction discusses samples taken incident to medical care as well as those taken for non-medical purposes. Non-medical purposes include those taken for judicial or administrative actions involving military and non-military personnel. Failure to comply with the provisions of this instruction may render a biological specimen inadmissible as evidence in judicial or administrative proceedings; however, this instruction is for internal guidance only and does not create any substantive rights. This instruction applies to all personnel assigned, attached, or under contract to the 59 MDW. This instruction does not apply to the Air National Guard or Air Force Reserve. This publication requires the collection and/or maintenance of information protected by the Privacy Act of 1974. The Privacy Act Statement required by Air Force Instruction (AFI) 33-332, *AirictectForce Privacy Act Program*, is in the Receipt for Military Identification Card Form. The Health Insurance Portability and Accountability Act of 1996 and Department of Defense (DoD) Instruction 6025.18, *Privacy of Individually Identifiable Health Information in DoD Health Care Programs*, applies. Refer recommended changes and questions about this publication to the Office of Primary Responsibility using the AF Form 847, *Recommendation for Change of Publication*. Ensure that all records created as a result of processes prescribed in this publication are maintained IAW Air Force Manual 33-363,

Management of Records, and disposed of IAW Air Force Records Information Management System Records Disposition Schedule.

SUMMARY OF CHANGES

This publication has been revised. This rewrite of 59 MDWI 51-201 includes further clarified the search and seizure authorization for civilian and active duty military personnel; added information regarding international students.

1. Overview. The results of testing of biological specimens, as well as the specimens themselves, may be evidence in military and civilian judicial or administrative proceedings. 59 MDW personnel must cooperate in collecting, preserving, and presenting such evidence. The term "biological specimen" as used in this instruction means specimens collected from human donors.

2. Collecting Specimens Incident to Medical Care That May Also Be Used in Judicial or Non-Judicial Proceedings.

2.1. Nothing in this instruction precludes the timely collecting and analyzing specimens taken incident to medical care of a patient. Whether such specimens may later be used as evidence is not a question for health care providers. Properly treating patients is the health care provider's primary concern. If collecting and analyzing a specimen for the purpose of medical care, no prior coordination with the 802nd Mission Support Group Legal Office (802 MSG/JA) or a military member's commander is required.

2.2. During treatment or evaluation of a patient for medical purposes, a physician or other health care provider may suspect the illegal use of alcohol or drugs by a patient. If this occurs, the physician or other health care provider must:

2.2.1. U.S. and Foreign/International Military Patients. Contact the patient's commander immediately. The military patient's commander will seek guidance from 802 MSG/JA to determine if a biological sample is needed. If the commander notifies the physician that collection of a biological specimen is necessary, 59 MDW personnel will comply with the procedures set out in paragraphs four (4) and five (5) below, including chain-of-custody procedures. Foreign/International military students will be tested using the same standard as U.S. military members.

2.2.2. Non-Military Patients. Contact 802d Security Forces Squadron Base Defense Operations Center (802 SFS/BDOC) immediately at extension 671-2018. This step must be taken prior to asking the patient for consent.

2.3. Recording Observations. In all cases involving suspected drug or alcohol abuse, record and document the facts as outlined in paragraph five (5) of this instruction.

3. Collecting Specimens Solely for Administrative or Judicial Proceedings.

3.1. The results of examinations of biological specimens as well as the specimens themselves may be used as evidence in military and civilian judicial or administrative proceedings, Wilford Hall Ambulatory Surgical Center (WHASC) cooperates in collecting and presenting such evidence under the circumstances described below. Refer to AFI 44-102, *Medical Care Management*, Chapter 11 for a more complete description.

3.2. Blood Alcohol Tests (BATs): Authority for Search and Seizure.

3.2.1. A Military Magistrate has the authority to order a probable cause search and seizure of the blood and urine of any person located on the installation.

3.2.2. A commander has the authority to direct a search of the blood and urine of any member of his or her command. **Note:** Foreign/International military students will be tested using the same standard as U.S. military members

3.2.3. Refer any questions to 802 MSG/JA during duty hours or to the on-call 802 MSG judge advocate through the 802 SFS/BDOC.

3.3. Drug Abuse Testing Program. Biological specimens (individual or unit sweep) may be taken in connection with the drug testing program (See AFI 90-507, *Military Drug Demand Reduction Program*). Urinalysis testing for illegal drug use is coordinated and conducted by the Drug Demand Reduction Program.

3.4. Nonconsensual Taking of Biological Specimens:

3.4.1. Nonconsensual Taking of a BAT. If an individual disobeys a commander's or Military Magistrate's order to allow medical personnel to draw blood for a BAT, contact the 802 MSG/JA or on-call 802 MSG Judge Advocate through the 802 SFS/BDOC immediately. Also, contact the 59 MDW/SGH.

3.4.1.1. If the individual withdraws consent at any time, medical personnel shall stop the collection and contact the 802 MSG/JA and 59 MDW/SGH immediately.

3.4.1.2. If involuntary extraction of biological specimens is authorized, it must be performed in a reasonable fashion by personnel with appropriate medical qualifications, such as a physician, nurse, or medical technician. Normally, involuntary extraction of blood or other biological specimens should not be conducted on alleged victims of crime. Security Forces personnel shall assist medically trained personnel when appropriate.

3.4.2. Nonconsensual Taking of Other Biological Specimens. Biological specimens that do not involve an intrusion into the body, such as hair samples, scrapings from under fingernails, scraping of dried fluid such as blood or semen from the skin surface, etc., may be taken without the member's consent when a Military Magistrate gives search authorization (verbal or in writing) or when directed by the member's commander. Any questions concerning such searches should be referred to 802 MSG/JA. (See AFI 44-102, [chapter 11](#))

3.5. Declining to Take Specimen When the Health of Subject or Medical Personnel is Endangered. 59 MDW personnel may decline to take a biological specimen if the taking would endanger the health of the subject or present a significant risk to the patient or health care provider. If this is believed to be the case, the matter should be referred to the senior medical officer present for determination. The senior medical officer present must seek legal guidance from 802 MSG/JA before declining to comply with a search order, warrant, or authorization. Subject to this limitation, medical personnel must comply with a Military Magistrate's search authorization or a commander's directive to take biological specimens.

3.6. Biological Specimens Requested by Civilian Law Enforcement Authorities. Military personnel are prohibited by statute from assisting local authorities in civil law enforcement.

Title 18 United States Code, Section 1385, Orders to Preserve Confidentiality. Biological specimens must not be taken or examined **solely** at the request of and for the use of civilian law enforcement authorities. Unless the providing physician determines taking a biological specimen would endanger the subject's health as described in paragraph 3.5 above, 59 MDW personnel will permit, but will not assist, non-WHASC personnel to take a biological specimen when acting at the request of a civilian peace officer (law enforcement) or at the direction of a civilian judge in accordance with Texas law. Consult 802 MSG/JA before the non-WHASC personnel obtain the specimen. Under Texas law, the taking of a blood specimen at the request of a peace officer may only be accomplished by a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse.

4. Chain-of-Custody. All biological specimens that are to be used for nonmedical purposes require a chain-of custody form in order to identify all persons who have had access and control of the specimen. Each person receiving the specimen will print and sign their name and will ensure that the next person receiving the specimen also signs. The DD Form 2624, *Specimen Custody Document – Drug Testing*, will be used for all BATs requested for judicial or administrative action (legal BAT requests). For Drug Abuse Testing Program samples, refer to AFI 44-120, Section C, for specific procedures for completing chain-of-custody documents.

5. Recording Observations.

5.1. Medical personnel called upon to examine or treat persons, regardless of whether it is in connection with gathering evidence for legal purposes or for medical purposes, should record their observations as to the following conditions within the medical record:

- 5.1.1. Odor of breath.
- 5.1.2. Steadiness of gait and muscular coordination.
- 5.1.3. Coherence of speech.
- 5.1.4. Clarity of speech.
- 5.1.5. Appearance of pupils and eyes.
- 5.1.6. Appearance of the face.
- 5.1.7. Orientation.
- 5.1.8. Evidence and description of trauma, if present.
- 5.1.9. Any other significant physical or mental presentation.

6. Releasing Results of Biological Tests.

6.1. All requests for laboratory results or patient medical records will be processed through the Release of Healthcare Information Office (59 MDSS/SGSBTH). Sample request letters are Attachments 2 and 3.

JOSEPH RICHARDS, Colonel, USAF, MC
Chief of the Medical Staff

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFPD 51-2, *Administration of Military Justice*, 4 November 2011

AFI 33-332, *Air Force Privacy and Civil Liberties Program*, 12 January 2015

AFMAN 33-363, *Management of Records*, 1 March 2008

AFI 41-210, *TRICARE Operations and Patient Administration Functions*, 6 June 2012

AFI 44-102, *Medical Care Management*, 17 March 2015

AFI 90-507, *Military Drug Demand Reduction Program*, 22 September 2014

AFI 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program*, 8 July 2014

DoDI 1010.1, *Military Personnel Drug Abuse Testing Program*, 13 September 2012

DoDD 1010.4, *Problematic Substance Use by DoD Personnel*, 20 February 2014

DoDI 1010.16, *Technical Procedures for the Military Personnel Drug Abuse Testing Program*, 10 October 2012

DoDI 6025.18, *Privacy of Individually Identifiable Health Information in DoD Health Care Programs*, 2 December 2009

Health Insurance Portability and Accountability Act of 1996

Texas Transportation Code, Section 724.011, 11 August 2007

Privacy Act of 1974

Title 18 United States Code, Section 1835, *Orders to Preserve Confidentiality*, 3 January 2007

Uniform Code of Military Justice (UCMJ); 1 February 2010

Military Rules of Evidence (MRE), 2006

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

DD Form 2624, *Specimen Custody Document – Drug Testing*

Acronyms and Abbreviations

AFI—Air Force Instruction

BAT—Blood Alcohol Test

BDOC—Base Defense Operations Center

DoD—Department of Defense

HIPAA—Health Insurance Portability and Accountability Act

MDW—Medical Wing

WHASC—Wilford Hall Ambulatory Surgical Center

Attachment 2

SAMPLE LAW ENFORCEMENT REQUEST FOR MEDICAL RECORDS (HIPAA)

MEMORANDUM FOR RELEASE OF HEALTHCARE INFORMATION

FROM: Name of Law Enforcement Office (Military Justice, Security Forces, OSI)

SUBJECT: Request for Medical Records on Name of Individual

1. In accordance with the Health Insurance Portability and Accountability Act (HIPAA) and other governing Air Force instructions, I am the state your position assigned to investigate/prosecute name of individual for whom you're requesting information. The file number of the investigation is list the file number. I respectfully ask for the following documents:

[Put in whichever is applicable]

- a. Medical records on name of individual.
- b. Mental health records on name of individual.
- c. Alcohol and substance abuse records on name of individual.

2. I need these records because explain why you need them—you are prosecuting the case, etc. [For mental health records, you will also have to comply with MRE 513/AFI 44-109 and explain how you are authorized the release—for instance, the Defense has put his mental health in issue] [For alcohol and substance abuse records, you will have an even higher threshold and will need to comply with 42 USC 290dd-2, as outlined in AFI 41-210, paragraph 2.2.4. The staff judge advocate, 802 MSG/JA, is the release authority for such records.

3. The minimum amount (of the record) that is necessary for me is state the amount.

4. "In accordance with HIPAA and DoDI 6025.18-R sections C7.6 and C13.1.2, I request that you temporarily suspend the above named individual's right to receive an accounting of any disclosures of protected health information to law enforcement. Informing the above named individual that his/her medical records were disclosed to Law Enforcement Office would impede Law Enforcement Office's investigative and law enforcement activities. This temporary suspension is effective until list a certain date. If the time is approaching and you are still investigating, ask for an extension of the accounting suspension.

5. I certify that the examination of the records is required as part of an official investigation.

6. Should you have questions, please contact me at _____.

SIGNATURE BLOCK

1st Ind, Release of Healthcare Information

We acknowledge receipt of your request. We are furnishing you identify and list the copies of the materials that are being furnished to or copied for the agent.

SIGNATURE OF RHI

I acknowledge receiving the following documents: list the documents.

SIGNATURE BLOCK OF AGENT

Note: According to AFI 41-210, paragraph. 2.5.2, the agent must sign a receipt for the copies the agent receives.

Attachment 3

SAMPLE OFFICIAL REQUEST FOR MEDICAL RECORDS (HIPAA)

MEMORANDUM FOR RELEASE OF HEALTHCARE INFORMATION

FROM: Legal Office

SUBJECT: Request for Medical Records on Name of Individual for Specialized Government Functions

1. On behalf of the United States, I am the state your position (for instance, Chief of Admin Discharges). Name of commander has granted me the authority to serve as an authorized representative, in accordance with the Health Insurance Portability and Accountability Act (HIPAA). I respectfully ask for the following documents on name of individual for whom you are seeking information:

[Put in whichever is applicable]

- a. Medical records on name of individual (or specify the exact records you need).
- b. Mental health records on name of individual.
- c. Alcohol and substance abuse records on name of individual.

2. I need these records because explain why you need them—you are working the administrative discharge for the case, etc. This is needed in accordance with C7.11.1 of DoDI 6025.18-R, in order to carry out activities necessary for the proper execution of the mission of the Armed Forces.

[For military justice matters, to get mental health records, you will also have to comply with MRE 513/AFI 44-109 and explain how you are authorized the release—for instance, the Defense has put his mental health in issue]

[For alcohol and substance abuse records, you will have an even higher threshold and will need to comply with 42 USC 290dd-2, as outlined in AFI 41-210, paragraph 2.2.4. The staff judge advocate, 802 MSG/JA, is the release authority for such records.]

3. The minimum amount (of the record) that is necessary for me is state the amount.
4. Should you have questions, please contact me at _____.

SIGNATURE BLOCK