

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

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



28 MARCH 2023

Law

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

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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RELEASABILITY: There are no releasability restrictions on this publication.

OPR: 59 MDTs/SGSLP

Certified by: 59 MDW/SGA
(Colonel Wade B. Adair)

Supersedes: 59 MDWI 51-201, 5 February 2019

Pages: 7

This instruction implements Air Force Policy Directive 51-2, *Military Justice and Other Criminal Proceedings*. 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 collected incident to medical care as well as those collected for non-medical purposes. Non-medical purposes include those collected 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 AFI 33-332, *Air Force Privacy and Civil Liberties Program*, is included on 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 all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction 33-322, *Records Management and Information Governance Program*, and are

disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System.

SUMMARY OF CHANGES

This publication has been revised. This rewrite of 59 MDWI 51-201 includes: further clarified the search and seizure authorization and involuntary collection authorization for civilian personnel; changed Judge Advocate organization; changed Chain of Custody form; and clarified recording of observations.

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 of specimens collected 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 outside agencies 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 502 ISG/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. Continue treating the patient as normal, but carefully document observations. If the patient becomes disruptive and assistance is needed, 802d Security Forces Squadron Base Defense Operations Center (802 SFS/BDOC) may be reached at 671-2018.

2.3. Recording Observations. In all cases involving suspected drug or alcohol abuse, 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. The 59th MDW 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. 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. Civilian Personnel. Biological specimens may be collected from a civilian if consent is given or with a valid search warrant issued by a federal magistrate judge. If a civilian does not consent or there is no federal magistrate search warrant, then no further action can be taken.

3.2.4. Refer any questions to DHA/OGC.

3.3. Drug Abuse Testing Program. Biological specimens (individual or unit sweep) may be collected in connection with the drug testing program (See AFMAN 44-197, *Military Drug Demand Reduction Program*). Urinalysis testing for illegal drug use is coordinated and conducted by the Drug Demand Reduction Program.

3.4. Nonconsensual Collection of Biological Specimens:

3.4.1. Nonconsensual Collection of a BAT. If a service member disobeys his or her commander's or a Military Magistrate's order to allow medical personnel to draw blood for a BAT, contact the 502 ISG/JA or on-call 502 ISG Judge Advocate through the 802 SFS/BDOC immediately. Also, contact the 59 MDW/SGH.

3.4.1.1. If involuntary collection 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 collection 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.

3.4.1.2. Blood may not be taken involuntarily from a civilian unless pursuant to a valid search warrant issued by a federal magistrate judge.

3.4.2. Nonconsensual Collection 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 service member's commander. Any questions concerning such searches should be referred to DHA/OGC.

3.5. Declining to Collect Specimen When the Health of Subject or Medical Personnel is Endangered. 59 MDW personnel may decline to collect a biological specimen if the collection 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 DHA/OGC and notify 502 ISG/JA when 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 collect 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 collected or examined **solely** at the request of and for the use of civilian law enforcement authorities. Unless the providing physician determines collecting 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 collect 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 DHA/OGC before the non-WHASC personnel obtain the specimen. Under Texas law, the collection 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 AFMES Form 18, *Forensic Toxicology Analysis Request*, will be used for all BATs requested for judicial or administrative action (legal BAT requests). For Drug Abuse Testing Program samples, refer to AFMAN 44-197, 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 for suspected drug or alcohol intoxication, 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. 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**.

JEANNINE M. RYDER
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Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFPD 51-2, *Military Justice and Other Criminal Proceedings* 21 June 2021

AFI 33-332, *Air Force Privacy and Civil Liberties Program*, 10 March 2020

AFMAN 41-210, *TRICARE Operations and Patient Administration*, 10 September 2019

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

AFMAN 44-197, *Military Drug Demand Reduction Program*, 30 July 2019

AFI 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program*, 17 July 2018

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

DoDM 6025.18, *Implementation of the Health Insurance Portability and Accountability (HIPAA) Privacy Rule in DoD Health Care Programs*, 13 March 2019

Health Insurance Portability and Accountability Act of 1996

Texas Transportation Code, Section 724.011, 1 September 1997

Privacy Act of 1974

Title 18 United States Code, Section 1835, *Orders to Preserve Confidentiality*, as amended 11 May 2016

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*

AFMES Form 18, *Forensic Toxicology Analysis Request*

Acronyms and Abbreviations

BAT—Blood Alcohol Test

BDOC—Base Defense Operations Center

DHA/OGC—Defense Health Agency, Office of General Counsel

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)

Figure A2.1. 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 AFMAN 41-210, paragraph 2.2.4.
3. The minimum amount (of the record) that is necessary for me is state the amount.
4. "In accordance with HIPAA and DoDM 6025.18 paragraph 5.5.a.(2)(a), 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 AFMAN 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)

Figure A3.1. 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 paragraph 4.4.k.(1)(c)(1) of DoDM 6025.18, 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 AFMAN 41-210, paragraph 2.2.4.

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