

XII. ETHICS

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**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)**

**SUMMARY**

Council is asked to approve a resolution to amend Council's 2009, 2013 and 2015 resolutions that address the roles of psychologists in national security settings to allow psychologists, in addition to treating military personnel, to treat detainees if they are working in a health care role for the express purpose of providing psychological treatment, independent of whether they are working directly for the detainee or an independent third-party.

The proposed resolution was introduced as a Council new business item in August 2017. The Ethics Committee was assigned as the lead referral group and the Board of Professional Affairs (BPA), Board for the Advancement of Psychology in the Public Interest (BAPPI), Policy and Planning Board (P&P) and Committee on Legal Issues were assigned as referral groups.

**STRATEGIC GOALS/OBJECTIVES**

Expand psychology's role in advancing health (2a, d, e, and f).

**FINANCIAL IMPLICATIONS**

There are no direct costs associated with adoption of the Main Motion.

**IMPLEMENTATION**

If approved by Council, the revised resolution will be included in APA Policy Manual and the 2009, 2013 and 2015 Council policies will be amended as stipulated. The resolution will also be posted on the APA website and disseminated to APA boards and committees, APA division and state, provincial and territorial psychological associations and reflected in relevant correspondence with the U.S. Government.

**RECOMMENDATION**

The Board of Directors and Council Leadership Team recommend approval of the substitute motion. A detailed rationale from the Board regarding the substitute motion can be found in Exhibit 3.

The Ethics Committee, as the assigned lead group, believes the main motion is consistent with the APA *Ethical Principles of Psychologists and Code of Conduct* ("Ethics Code"), 2002, as amended in 2010 and 2017.

BPA believes there is insufficient evidence to assess the consequences of approval of the main motion.

P&P believes the NBI addresses the policy implications of barring psychologists from settings rather than the behavior of psychologists in those settings that will engender further consideration by Council.

BAPPI opposes the main motion.

Detailed feedback from the referral boards and committees is provided as Exhibit 1.

## MAIN MOTION

1 That Council adopts the following Resolution to Amend Council’s 2009, 2013 and 2015  
2 Resolutions that Address the Roles of Psychologists in National Security Settings as APA  
3 policy:  
4

5 WHEREAS the American Psychological Association (APA) is an accredited non-  
6 governmental organization (NGO) at the United Nations (UN);  
7

8 WHEREAS the U.S. ratified the Third Geneva Convention, relative to the treatment of  
9 Prisoners of War, in 1955;  
10

11 WHEREAS the UN Security Council, of which the US is one of the five permanent  
12 members, adopted a report from the UN Secretary-General and Commission of Experts,  
13 concluding that the Geneva Conventions has passed into the body of customary  
14 international law in 1993;  
15

16 WHEREAS the U.S. Supreme Court ruled on June 29, 2006, in Hamdan v. Rumsfeld that  
17 America's armed conflict with al-Qaeda was non-international in character and, as such,  
18 was governed by Geneva Conventions;  
19

20 WHEREAS the Deputy Secretary of Defense issued a policy on July 7, 2006, mandating  
21 that military personnel adhere to Common Article 3 of the Third Geneva Convention in  
22 all dealings with detainees;  
23

24 WHEREAS Chapter II, Article 13, of the Third Geneva Convention states that “Prisoners  
25 of war must at all times be humanely treated. Any unlawful act or omission by the  
26 Detaining Power causing death or seriously endangering the health of a prisoner of war  
27 in its custody is prohibited, and will be regarded as a serious breach of the present  
28 Convention. In particular, no prisoner of war may be subjected to physical mutilation or  
29 to medical or scientific experiments of any kind which are not justified by the medical,  
30 dental or hospital treatment of the prisoner concerned and carried out in his interest”<sup>1</sup>;  
31

32 WHEREAS Chapter II, Article 15, of the Third Geneva Convention states “The Power  
33 detaining prisoners of war shall be bound to provide free of charge for their  
34 maintenance and for the medical attention required by their state of health<sup>2</sup>,”  
35

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<sup>1</sup> Retrieved from [http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf) p. 97

<sup>2</sup> Ibid, p. 97

36 WHEREAS Chapter III, Article 30, of the Third Geneva Convention mandates that  
37 “Prisoners of war shall have the attention, preferably, of medical personnel of the  
38 Power on which they depend and, if possible, of their nationality<sup>3</sup>,”  
39

40 WHEREAS the Detainee Treatment Act of 2005<sup>4</sup> incorporates standards of the Eighth  
41 Amendment to the U.S. Constitution, including an adequate response to the medical  
42 and psychological care needs of prisoners;  
43

44 WHEREAS military health care providers - physicians (including psychiatrists), specialists,  
45 nurses and physician assistants - are currently providing the full spectrum of health care  
46 to detainees, in accordance with their profession’s code of ethics, with only military  
47 psychologists excluded as a result of APA policy;  
48

49 WHEREAS It is the unqualified policy of the American Psychological Association...to  
50 conduct its operations in strict compliance with the antitrust laws of the United States,  
51 laws which specifically prohibit any agreement or understanding restricting the scope of  
52 services provided by specific providers or types of provider, the locations in which  
53 psychologists may practice, or the classes of employees, patients, or collaborators with  
54 whom a psychologist may practice;  
55

56 WHEREAS the 2009 Petition Resolution policy, which is incorporated and clarified in the  
57 2013 and 2015 Council Resolutions, prohibits psychologists from working at detention  
58 settings deemed by APA policy to be operating in a manner inconsistent with the U.S.  
59 Constitution or international law “unless they are working directly for the persons being  
60 detained or for an independent party working to protect human rights,” or providing  
61 treatment to military personnel, effectively restricts detainees’ access to health care  
62 provided by psychologists, in direct contradiction to the Third Geneva Convention, as  
63 well as the 2005 Detainee Treatment Act<sup>5</sup>;  
64

65 THEREFORE, BE IT RESOLVED that the 2009 Petition Resolution Policy, “Psychologists  
66 and Unlawful Detention Settings with a Focus on National Security,” and its  
67 incorporation into Statement 1, ¶ 1 of the Policy Related to Psychologists’ Work in  
68 National Security Settings and Reaffirmation of the APA Position Against Torture and  
69 Other Cruel, Inhuman, or Degrading Treatment of Punishment, (Adopted by COR August  
70 2013, as Amended by COR August 2015), be amended as follows  
71 (bracketed/strikethrough material to be deleted; underlined material to be added):  
72

73 “psychologists may not work in settings where persons are held outside of, or in  
74 violation of, either International Law (e.g., the UN Convention Against Torture and the  
75 Geneva Conventions) or the US Constitution (where appropriate), unless they are  
76 working directly for the persons being detained or for an independent third party  
77 working to protect human rights, or they are working in a health care role for the  
78 express purpose of providing psychological treatment to detainees or military  
79 personnel. [7][#]\*  
80

81 \*Footnote references (Fn. 7 from the original 2009 Petition Resolution Policy, and Fn. ii  
82 from the incorporation into the Policy Related to Psychologists’ Work in National Security

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<sup>3</sup> Ibid, p. 103

<sup>4</sup> Retrieved from <https://www.dni.gov/index.php/ic-legal-reference-book/detainee-treatment-act-of-2005>

<sup>5</sup> Retrieved from <http://www.apa.org/independent-review/psychologists-interrogation.pdf> p. 6

83 *Settings and Reaffirmation of the APA Position Against Torture and Other Cruel,*  
84 *Inhuman, or Degrading Treatment or Punishment), are to be deleted since they will be*  
85 *incorporated into the text.*  
86 [~~7. It is understood that military clinical psychologists would still be available to provide~~  
87 ~~treatment for military personnel]~~  
88 ii. [~~It is clarified by a footnote in the Member Petition Resolution "that military clinical~~  
89 ~~psychologists would still be available to provide treatment for military personnel."~~]  
90  
91 BE IT FURTHER RESOLVED that the following policies:  
92  
93 a) 2015 "Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles  
94 of Psychologists Related to Interrogation and Detainee Welfare in National Security  
95 Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against  
96 Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All  
97 Settings", and  
98  
99 b) Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of  
100 the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of  
101 Punishment, (Adopted by COR August 2013, as Amended by COR August 2015)  
102  
103 Be amended as follows. Insert in a) at the end of paragraph 2, and in b) at the end of  
104 "Actions to be Undertaken by APA", ¶ 1, the following text: (underlined material to be  
105 added):  
106  
107 Such communications to officers of the U.S. Government shall reflect current APA policy  
108 and clarify the appropriateness of qualified psychologists serving in a health care role for  
109 the express purpose of providing psychological treatment to detainees or military  
110 personnel in any national security setting.

**SUBSTITUTE MAIN MOTION**

(as originated by the Board of Directors)

1 That Council adopts the following Resolution to Amend Council's 2009, 2013 and 2015 Resolutions  
2 that Address the Roles of Military Psychologists in National Security Settings as APA policy:  
3  
4 WHEREAS the American Psychological Association (APA) is an accredited non-governmental  
5 organization (NGO) at the United Nations (UN);  
6  
7 WHEREAS the U.S. ratified the Third Geneva Convention, relative to the treatment of Prisoners  
8 of War, in 1955;  
9  
10 WHEREAS the UN Security Council, of which the US is one of the five permanent members,  
11 adopted a report from the UN Secretary-General and Commission of Experts, concluding that  
12 the Geneva Conventions has passed into the body of customary international law in 1993;  
13  
14 WHEREAS the U.S. Supreme Court ruled on June 29, 2006, in Hamdan v. Rumsfeld that  
15 America's armed conflict with al-Qaeda was non-international in character and, as such, was  
16 governed by Geneva Conventions;

17 WHEREAS the Deputy Secretary of Defense issued a policy on July 7, 2006, mandating that  
18 military personnel adhere to Common Article 3 of the Third Geneva Convention in all dealings  
19 with detainees;

20

21 WHEREAS Chapter II, Article 13, of the Third Geneva Convention states that “Prisoners of war  
22 must at all times be humanely treated. Any unlawful act or omission by the Detaining Power  
23 causing death or seriously endangering the health of a prisoner of war in its custody is  
24 prohibited, and will be regarded as a serious breach of the present Convention. In particular, no  
25 prisoner of war may be subjected to physical mutilation or to medical or scientific experiments  
26 of any kind which are not justified by the medical, dental or hospital treatment of the prisoner  
27 concerned and carried out in his interest”<sup>6</sup>;

28

29 WHEREAS Chapter II, Article 15, of the Third Geneva Convention states “The Power detaining  
30 prisoners of war shall be bound to provide free of charge for their maintenance and for the  
31 medical attention required by their state of health”<sup>7</sup>;

32

33 WHEREAS Chapter III, Article 30, of the Third Geneva Convention mandates that “Prisoners of  
34 war shall have the attention, preferably, of medical personnel of the Power on which they  
35 depend and, if possible, of their nationality”<sup>8</sup>;

36

37 WHEREAS the Detainee Treatment Act of 2005<sup>9</sup> incorporates standards of the Eighth  
38 Amendment to the U.S. Constitution, including an adequate response to the medical and  
39 psychological care needs of prisoners;

40

41 WHEREAS military health care providers - physicians (including psychiatrists), specialists, nurses  
42 and physician assistants - are currently providing the full spectrum of health care to detainees,  
43 in accordance with their profession’s code of ethics, with only military psychologists excluded as  
44 a result of APA policy;

45

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

51

52 WHEREAS the 2009 Petition Resolution policy, which is incorporated and clarified in the 2013  
53 and 2015 Council Resolutions, prohibits psychologists from working at detention settings  
54 deemed by APA policy to be operating in a manner inconsistent with the U.S. Constitution or  
55 international law “unless they are working directly for the persons being detained or for an  
56 independent party working to protect human rights,” or providing treatment to military  
57 personnel, effectively restricts detainees’ access to health care provided by psychologists, in

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<sup>6</sup> Retrieved from [http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf) p.  
97

<sup>7</sup> Ibid, p. 97

<sup>8</sup> Ibid, p. 103

<sup>9</sup> Retrieved from <https://www.dni.gov/index.php/ic-legal-reference-book/detainee-treatment-act-of-2005>

58 direct contradiction to the Third Geneva Convention, as well as the 2005 Detainee Treatment  
59 Act<sup>10</sup>;

60  
61 THEREFORE, BE IT RESOLVED that the 2009 Petition Resolution Policy, “Psychologists and  
62 Unlawful Detention Settings with a Focus on National Security,” and its incorporation into  
63 Statement 1, ¶ 1 of the Policy Related to Psychologists’ Work in National Security Settings and  
64 Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading  
65 Treatment of Punishment, (Adopted by COR August 2013, as Amended by COR August 2015), be  
66 amended as follows (bracketed/strikethrough material to be deleted; underlined material to be  
67 added):  
68

69 “psychologists may not work in settings where persons are held outside of, or in violation of,  
70 either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions)  
71 or the US Constitution (where appropriate), unless they are working directly for the persons  
72 being detained or for an independent third party working to protect human rights, or they are  
73 working in a health care role for the express purpose of providing psychological treatment to  
74 detainees or military personnel. [7][ii]\*  
75

76 *\*Footnote references (Fn. 7 from the original 2009 Petition Resolution Policy, and Fn. ii from the*  
77 *incorporation into the Policy Related to Psychologists’ Work in National Security Settings and*  
78 *Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading*  
79 *Treatment of Punishment), are to be deleted since they will be incorporated into the text.*

80 [7. It is understood that military clinical psychologists would still be available to provide  
81 treatment for military personnel]

82 ii. [It is clarified by a footnote in the Member Petition Resolution “that military clinical  
83 psychologists would still be available to provide treatment for military personnel.”]  
84

85 BE IT FURTHER RESOLVED that the following policies:  
86

- 87 c) 2015 “Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of  
88 Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to  
89 Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and  
90 Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings”, and  
91  
92 d) Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA  
93 Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment,  
94 (Adopted by COR August 2013, as Amended by COR August 2015)  
95

96 Be amended to include the following clauses (underlined material to be added):  
97

98 BE IT RESOLVED that military psychologists are recognized as providers of mental health  
99 treatment to detainees in all national security settings if they are able to do so in full  
100 adherence to the *Ethical Principles of Psychologists and Code of Conduct* (Amended  
101 effective June 1, 2010 and January 1, 2017) (the “Ethics Code”) and are able to obtain  
102 any information or ask any questions necessary to act competently and ethically.  
103

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<sup>10</sup> Retrieved from <http://www.apa.org/independent-review/psychologists-interrogation.pdf> p. 6

104 BE IT RESOLVED that APA strongly encourages the Department of Defense to make  
105 independent psychologists working for the detainees or for a human rights organization  
106 available as health care providers to detainees at sites identified in the 2015 resolution  
107 as operating outside of, or in violation of, the U.S. Constitution or international law.  
108

109 BE IT RESOLVED that APA recommits to its anti-torture policy dating back to 1985  
110 (incorporated into the Ethics Code as Standard 3.04 (b) as part of the implementation of  
111 the 2015 Council policy) and to continue to take strong action to oppose torture or  
112 cruel, inhuman, or degrading treatment or punishment of detainees held in U.S. custody  
113 and to safeguard their welfare.  
114

115 Be amended as follows. Insert in a) at the end of paragraph 2, and in b) at the end of “Actions to  
116 be Undertaken by APA”, ¶ 1, the following text: (underlined material to be added):  
117

118 Such communications to officers of the U.S. Government shall reflect current APA policy and  
119 clarify the appropriateness of qualified psychologists serving in a health care role for the express  
120 purpose of providing psychological treatment to detainees or military personnel in any national  
121 security setting.

## **BACKGROUND/HISTORY**

Council New Business Item 35B was introduced at Council’s August 2017 meeting. The item requests an amendment to Resolution 23B (Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings) which was passed by Council in August of 2015. That resolution included a prohibition against working in national security detention facilities in violation of human rights as deemed by the United Nations “unless working directly for the persons being detained or for an independent third party working to protect human rights.” It permitted providing mental health services to military personnel. The proposed amendment’s stated goal is to change that prohibition to specifically permit psychologists to work “in a health care role for the express purpose of providing psychological treatment for detainees.”

The Agenda Planning Group referred the item to the Ethics Committee as the lead group, with the Committee on Legal Issues (COLI), Policy and Planning Board (P&P), Board of Professional Affairs (BPA), and Board for the Advancement of Psychology in the Public Interest (BAPPI) as referral groups. The Ethics Committee reviewed this item during its October 2017 meeting and determined that comments from other APA Boards and Committees were needed prior to developing a final recommendation. P&P considered the NBI at its November 2017 meeting and offered initial reflections and questions for clarification. The Ethics Committee requested feedback from the referral groups at their 2018 Spring Consolidated Meetings. The Committee reviewed the comments received from referral groups at their April 27-29, 2018 meeting and determined that the main motion is consistent with the Ethics Code as amended in 2010 and 2017 and should be brought to the Council for consideration at its August 2018 meeting.

## **EXHIBITS**

1. NBI 35B/Aug 2017, *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*
2. Feedback from Assigned Referral Groups
3. Board Rationale for Substitute Motion

*Lindsay Childress-Beatty, JD, PhD*  
*Ethics Office*



**AUGUST 2017 LEGISLATIVE COUNCIL NEW BUSINESS FORM**

Date Submitted: 8/11/2017

Agenda Item #35B  
(completed by staff)

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Please follow the instructions on the right hand side. The back of this page provides the Guidelines for Council Resolutions, the APA priorities most recently identified by Council and a space for co-sponsors to sign. **If you have questions, consult a staff person or a member of the Council Leadership Team.**

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**TITLE:** 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

**MOVER:** Carrie Kennedy, PhD; Sally Harvey, PhD

**REPRESENTING:** Division 19/Military Psychology

**ISSUE:** This amendment addresses an unintended consequence of the 2009 Petition Resolution policy (which was incorporated and clarified in the related 2013 and 2015 Council resolutions) by recognizing the role of psychologists to serve in a health care capacity with the express purpose of providing psychological treatment to detainees in all settings. This change would make the role of psychologists consistent with the role of psychiatrists and other military health providers who are offering services across the medical care spectrum. APA policy currently recognizes the role of psychologists to provide mental health treatment to military personnel and to work directly for detainees or for an independent third party working to protect human rights in all detention settings.

**ESTIMATED COSTS/STAFF RESOURCES:** None.

**DATA NEEDS/SUPPORTING DATA:** None.

**MAIN MOTION:** That Council approves the following resolution to amend Council's 2009, 2013 and 2015 resolutions that address the roles of psychologists in national security settings:

WHEREAS the American Psychological Association (APA) is an accredited non-governmental organization (NGO) at the United Nations (UN);

WHEREAS the U.S. ratified the Third Geneva Convention, relative to the treatment of Prisoners of War, in 1955;

WHEREAS the UN Security Council, of which the US is one of the five permanent members, adopted a report from the UN Secretary-General and Commission of Experts, concluding that the Geneva Conventions has passed into the body of customary international law in 1993;

WHEREAS the U.S. Supreme Court ruled on June 29, 2006, in *Hamdan v. Rumsfeld* that America's armed conflict with al-Qaeda was non-international in character and, as such, was governed by Geneva Conventions;

WHEREAS the Deputy Secretary of Defense issued a policy on July 7, 2006, mandating that military personnel adhere to Common Article 3 of the Third Geneva Convention in all dealings with detainees;

WHEREAS Chapter II, Article 13, of the Third Geneva Convention states that "Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest";<sup>1</sup>

WHEREAS Chapter II, Article 15, of the Third Geneva Convention states "The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health;"<sup>2</sup>

WHEREAS Chapter III, Article 30, of the Third Geneva Convention mandates that "Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality;"<sup>3</sup>

WHEREAS the Detainee Treatment Act of 2005<sup>4</sup> incorporates standards of the Eighth Amendment to the U.S. Constitution, including an adequate response to the medical and psychological care needs of prisoners;

WHEREAS military health care providers - physicians (including psychiatrists), specialists, nurses and physician assistants - are currently providing the full spectrum of health care to detainees, in accordance with their profession's code of ethics, with only military psychologists excluded as a result of APA policy;

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;

WHEREAS the 2009 Petition Resolution policy, which is incorporated and clarified in the 2013 and 2015 Council Resolutions, prohibits psychologists from working at detention settings deemed by APA policy to be operating in a manner inconsistent with the U.S. Constitution or international law "unless they are working directly for the

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<sup>1</sup> Retrieved from [http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf) p. 97

<sup>2</sup> Ibid, p. 97

<sup>3</sup> Ibid, p. 103

<sup>4</sup> Retrieved from <https://www.dni.gov/index.php/ic-legal-reference-book/detainee-treatment-act-of-2005>

persons being detained or for an independent party working to protect human rights,” or providing treatment to military personnel, effectively restricts detainees’ access to health care provided by psychologists, in direct contradiction to the Third Geneva Convention, as well as the 2005 Detainee Treatment Act;<sup>5</sup>

**THEREFORE, BE IT RESOLVED** that the 2009 Petition Resolution Policy, “Psychologists and Unlawful Detention Settings with a Focus on National Security,” and its incorporation into Statement 1, ¶ 1 of the Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment, (Adopted by COR August 2013, as Amended by COR August 2015), be amended as follows (bracketed/strikethrough material to be deleted; underlined material to be added):

“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. [7][ii]\*

*\*Footnote references (Fn. 7 from the original 2009 Petition Resolution Policy, and Fn. ii from the incorporation into the Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment), are to be deleted since they will be incorporated into the text.*

*[7. It is understood that military clinical psychologists would still be available to provide treatment for military personnel.]*

*ii. [It is clarified by a footnote in the Member Petition Resolution “that military clinical psychologists would still be available to provide treatment for military personnel.”]*

**BE IT FURTHER RESOLVED** that the following policies:

- a) 2015 “Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings”, and
- b) Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment, (Adopted by COR August 2013, as Amended by COR August 2015)

Be amended as follows. Insert in a) at the end of paragraph 2, and in b) at the end of “Actions to be Undertaken by APA”, ¶ 1, the following text: (underlined material to be added):

Such communications to officers of the U.S. Government shall reflect current APA policy and clarify the appropriateness of qualified psychologists serving in a health care role for the express purpose of providing psychological treatment to detainees or military personnel in any national security setting.

**EXPECTED OUTCOMES/PRODUCTS:** Amendments to the 2009, 2013, and 2015 Council Resolutions to

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<sup>5</sup> Retrieved from <http://www.apa.org/independent-review/psychologists-interrogation.pdf> p. 6

recognize the role of military psychologists to serve in a health care role to provide psychological treatment for detainees in all national security settings.

**WHEN SUBMITTING A NEW BUSINESS ITEM --- IT IS IMPORTANT TO:**

- ▶ Provide adequate information so that someone unfamiliar with the issue can understand the need for item and what it will accomplish.
- ▶ Do your homework: make certain that what you are proposing does not replicate existing Association policy, that it is consonant with current Association priorities, and that it is fiscally realistic.

IDENTIFY THE GOALS/OBJECTIVES AND/OR CORE VALUES, IF ANY, TO WHICH THE ITEM IS AIMED BY PLACING A CHECK MARK TO THE LEFT OF EACH RELEVANT GOAL, OBJECTIVE OR CORE VALUE.

**APA'S GOALS AND OBJECTIVES (APPROVED BY COUNCIL – AUGUST 2009)**

**Goal 1: Maximize Organizational Effectiveness**

Objectives

*The APA's structures and systems support the organization's strategic direction, growth and success.*

- a. Enhance APA programs, services and communications to increase member engagement and value;
- b. Ensure the ongoing financial health of the organization;
- c. Optimize APA's governance structures and function;
- d. Ensure that APA collects, maintains and manages accessible member and professional data to allow for evidence-based decision-making. (Added by Council in 2015.)

**Goal 2: Expand Psychology's Role in Advancing Health**

Objectives

*Key stakeholders realize the unique benefits psychology provides to health and wellness and the discipline becomes more fully incorporated into health research and delivery systems.*

- a. Advocate for the inclusion of access to psychological services in health care reform policies
- b. Create innovative tools to allow psychologists to enhance their knowledge of health promotion, disease prevention, and management of chronic disease;
- c. Educate other health professionals and the public about psychology's role in health;
- d. Advocate for funding and policies that support psychology's role in health;
- e. Promote psychology's role in decreasing health disparities;
- f. Promote the application of psychological knowledge for improving overall health and wellness at the individual, organizational, and community levels.

**Goal 3: Increase recognition of psychology as a science**

Objectives

*The APA's central role in positioning psychology as the science of behavior leads to increased public awareness of the benefits psychology brings to daily living.*

- a. Enhance psychology's prominence as a core STEM (Science, Technology, Engineering, and Mathematics) discipline;
- b. Improve public understanding of the scientific basis for psychology;
- c. Expand the translation of psychological science to evidence-based practice;
- d. Promote the applications of psychological science to daily living;
- e. Expand educational resources and opportunities in psychological

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**APA CORE VALUES (APPROVED BY COUNCIL - FEBRUARY 2010)**

The American Psychological Association commits to its vision through a mission based upon the following values:

- Continual Pursuit of Excellence
- Knowledge and Its Application Based Upon Methods of Science
- Outstanding Service to Its Members and to Society
- Social Justice, Diversity, and Inclusion
- Ethical Action in All that We Do

**GUIDELINES FOR COUNCIL RESOLUTIONS**

These guidelines apply to all resolutions submitted to Council for consideration. The following information must be provided: (1) The purpose and rationale for the resolution stated clearly, and documenting its relevance to psychology or psychologists; (2) The issue's importance to psychology or to society as a whole; (3) Representative scientific or empirical findings related to the resolution; (4) The extent to which the resolution is consistent with APA's core values, and the extent to which it addresses human rights, health and welfare, and ethics; (5) The likelihood of the resolution having a constructive impact on public opinion or policy.

Resolutions approved by Council are understood to reflect what APA values or believes and, in most cases, does not commit APA to any action. If approval of the resolution requires that specific action be taken, the following information must also be provided: (6) Suggestions on how it should be implemented, if it is passed; (7) Breakdown of staff resources or association funds needed to implement the resolution.

**DESIGNATE COSIGNER(S):**

Robert Resnick, PhD; Jeffrey Younggren, PhD; Deirdre Knapp, PhD; Avi Kaplan, PhD; Keely Kolmes, PhD

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## EXHIBIT 2

### Summary of Board and Committee Feedback on Main Motion of New Business Item 35B introduced August 2017.

#### ETHICS COMMITTEE (April 2018)

The Ethics Committee made the following statement as the lead group:

The Main Motion of NBI 35B/Aug 2017, 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, is consistent with the *Ethical Principles of Psychologists and Code of Conduct* with specific reference to Principle A: Beneficence and Non-Maleficence, Standards 3.01 (Unfair Discrimination), and 3.04 (Avoiding Harm). Most significantly, they are consistent with Section 1.04 and 3.04(b) of the revised Ethics Code that has been effective since January 1, 2017 and which now read:

**Section 1.04 (Informal Resolution of Ethical Violations):** "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authorities, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the general principles and Ethical Standards of the Ethics Code. *Under no circumstances may this standard be used to justify or defend violation of human rights.* (italics added)"

**Section 3.04(b) (Avoiding Harm):** "Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(a)."

#### BOARD OF PROFESSIONAL AFFAIRS (March 2018)

The following represents an Unapproved Minute from the Board of Professional Affairs Spring 2018 Meeting which took place on March 23-25, 2018. As follows:

##### **BPA Item No. 38.5. Treatment to Detainees or Military Personnel in National Security Settings (Council New Business Item 35(B))**

The Board of Professional Affairs (BPA) appreciates the opportunity to provide input and feedback on this referral item. BPA held a thoughtful discussion with diverse perspectives about this request from the Ethics Committee to review the proposed *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 (NBI35(B)/August 2017)*. In BPA's read, this new resolution endeavors to address an "unintended consequence" of a previous resolution which has resulted psychologists not able to "serve in a health care capacity with the express purpose of providing psychological treatment to detainees in all settings."

The specific language change is as follows:

Furthermore, based on current reports of the UN Committee Against Torture and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,

it is also a violation of APA policy for psychologists to work at the Guantánamo Bay detention facility, “black sites,” vessels in international waters, or sites where detainees are interrogated under foreign jurisdiction “unless they are working [~~directly for the persons being detained or for an independent third party working to protect human rights~~] (a) working in a health care role for the express purpose of providing psychological treatment or detainees, (b) working directly for the persons being detained, or (c) for an independent party working to protect human rights” or providing treatment to military personnel.

BPA expressed several concerns in its discussion of this item, particularly that any change could be perceived as APA providing a back door for psychologists assisting in exposing detainees to potential further harm or endorsing torture. We don’t believe this is the intent of this item, but there is insufficient information to properly assess the consequences of this change and, as such, BPA encourages the APA Ethics Committee to request additional information to clarify some of the particulars. Questions BPA encourages the Committee to consider:

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?

#### **BOARD OF PSYCHOLOGY IN THE PUBLIC INTEREST (MARCH 2018)**

BAPPI opposes the main motion that Council approve the resolution to amend Council’s 2009, 2013, and 2015 Resolutions that address the roles of psychologists in national security settings as specified in **NBI 35B/Aug 2017, Resolution to Amend Council’s 2009, 2013, and 2015 To Clarify That Psychologists May Provide Treatment to Detainees or Military Personnel in National Security Settings.**

During the review of this item, BAPPI identified several issues as being problematic. Omission of any mention of or lack of intent to address the issues that follow is of significant concern to the Board:

- Successful treatment depends upon a strong working alliance and trust. It is impossible to provide a therapeutic relationship when the psychologist involved works for the organization (i.e., the Military) that is detaining the individual.
- Issues around confidentiality are of utmost concern.
- For providers, there is a potential conflict of interest as the goals of their employers (i.e., the Military) and clients’ needs would not be the same. Psychologists in military service at isolated detention centers are likely to be particularly vulnerable to conflicts because of both physical isolation and national security constraints. Clinical psychologists are allowed in GTMO under APA policy, but they must be working directly for the detainee or a human rights organization.
- The wording in the proposed main motion is quite like wording pre-Hoffman that allowed

psychologists to work with detainees in these settings. Given the major controversy surrounding the Hoffman Report, even the appearance of impropriety could be problematic.

- There is no evidence that the military clinicians have special training in treatment of torture victims or imprisoned individuals. They may lack the competence to treat this severely traumatized population.

The following excerpt from a November New York Times article may be informative:

"In recent interviews, more than two dozen military medical personnel who served or consulted at Guantánamo provided the most detailed account to date of mental health care there. Almost from the start, the shadow of interrogation and mutual suspicion tainted the mission of those treating prisoners. That limited their effectiveness for years to come.

Psychiatrists, psychologists, nurses and technicians received little training for the assignment and, they said, felt unprepared to tend to men they were told were "the worst of the worst." Doctors felt pushed to cross ethical boundaries, and were warned that their actions, at an institution roiled by detainees' organized resistance, could have political and national security implications.

Rotations lasted only three to nine months, making it difficult to establish rapport. In a field that requires intimacy, the psychiatrists and their teams long used pseudonyms like Major Psych, Dr. Crocodile, Superman and Big Momma, and referred to patients by serial numbers, not names. They frequently had to speak through fences or slits in cell doors, using interpreters who also worked with interrogators.

Wary patients often declined to talk to the mental health teams. ("Detainee refused to interact," medical records note repeatedly.) At a place so shrouded in secrecy that for years any information learned from a detainee was to be treated as classified, what went on in interrogations "was completely restricted territory," said Karen Thurman, a Navy commander, now retired, who served as a psychiatric nurse practitioner at Guantánamo. "'How did it go?'" Or "'Did they hit you?'" We were not allowed to ask that," she said.

Dr. Rosecrans said she held back on such questions when she was there in 2004, not suspecting abuse and feeling constrained by the prison environment. "From a surgical perspective, you never open up a wound you cannot close," she said. "Unless you have months, years, to help this person and help them get out of this hole, why would you ever do this?"

The United States military defends the quality of mental health care at Guantánamo as humane and appropriate. Detainees, human rights groups and doctors consulting for defense teams offer more critical assessments, describing it as negligent or ineffective in many cases."

<https://www.nytimes.com/2016/11/13/world/guantanamo-bay-doctors-abuse.html>

The amendments cite the Geneva Convention/Detainee Treatment Act/8th Amendment for the prospect that detainees are entitled to access to mental health care. This could be provided by independent psychologists who do not work for the Military. BAPPI's concern applies to cases in which care is provided by psychologists who work for the organizations that are detaining the prisoners.



There are no factual allegations that the current APA provisions that allow for independent psychologists (either those that serve the detainee directly or those working to protect human rights) is resulting in insufficient access to psychologists and adopting the new resolution could result in the Military taking the position that psychologists are being provided and therefore external psychologists should be excluded.

There is no claim that any human rights organization or detainee advocate groups would support this resolution.

An alternative to this proposal might be that if the psychological needs of detainees are not being met that perhaps APA could organize a volunteer program for those willing to take leave from their current positions and provide these services. These efforts could be coordinated with human rights groups.

### **POLICY AND PLANNING BOARD (April 2018)**

The Policy and Planning Board's role is to recognize and to comment on policy implications of proposed resolutions. As such it is designated as a referral group on this item.

P&P recognizes that abuses do and have occurred and always occur in settings. P&P further understands that international bodies can and have judged certain military sites as illegal. Hence, P&P understands why there is concern when military psychologists are stationed in sites ruled illegal.

At the same time P&P understands that the present Ethics Code is directed toward the behavior only of psychologists.

Consequently, P&P believes that this NBI addresses the policy implications of barring psychologists from settings rather than the behavior of psychologists in those settings that will engender further consideration by CoR.

### **POLICY AND PLANNING BOARD (November 2017)**

The Policy and Planning Board (P&P) has received a request from the Ethics Committee as the leader referral group to offer its thoughts as one of the referees on *NBI 35B/Aug 2017, 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*. P&P has been discussing the item and is pleased to offer the following points. P&P offers them with the understanding that these represent its initial reflections only.

- The NBI refers to "unintended consequences" but mentions none. P&P believes including examples from experience since the adoption of the existing policy would strengthen the NBI.
- P&P believes that the welfare and ethical treatment of detainees is of paramount importance. At the same time P&P is concerned for the moral stance and reputation of the profession and the APA.
- APA is experiencing significant organizational change. Relevant among these are the impending revision of the Ethics Code.

- Also, APA has received the report of the Ethics Commission. While the recommendations of the Commission are not APA policy, P&P recommends that the Ethics Committee's review of NBI35/Aug 2017 consider these recommendations.
- Another report that P&P anticipates will be relevant to NBI35/Aug 2017 is the expected report of the human rights task force.

P&P believes that there are varying and important beliefs about the existing policy that need critical clarification:

- Some members of COR and some members of the general membership believe that the policy adopted in August 2015 changed the Ethics Code. (P&P believes it did not.)
- Some members of COR believe that the 2015 policy intended to change the Ethics Code but did not.
- For the first time, an APA policy bars psychologists from specific sites making psychologists vulnerable to ethics complaints for being on a site rather than for behavior. Legal counsel has advised that APA may pass whatever policy it wishes; until its comportment with the Ethics Code is tested, the policy remains in effect.

P&P would be pleased to hear the Ethics Committee's responses to these points and to receive the current thinking of the Ethics Committee on NBI35/Aug 2017.



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

## **MEMORANDUM**

TO: APA Board of Directors

FROM: Committee on Legal Issues

DATE: May 25, 2018

RE: NBI 35B: Resolution to Amend Council’s 2009, 2013, and 2015 Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings

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During its Spring 2018 meeting, COLI discussed the Council New Business Item #35B, “Resolution to Amend Council’s 2009, 2013, and 2015 Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings.” We appreciated that Drs. Kennedy and Harvey moved this item forward and agree that the Resolution as originally approved should be revisited.

### **Level 1 Concerns:**

COLI agrees with the suggested language explicitly allowing psychologists to provide treatment services to detainees even when those individuals are “held outside of...either International Law...or the US Constitution.” We unanimously supported this provision.

Beyond approving the amendment, COLI encourages broadening the provision to also allow psychologists to be involved in the practice and policy of humane interrogations. We recognized that footnote 6 of the Resolution allows psychologists to “provide consultation...pertaining to information gathering methods which are humane,” but the text that the footnote refers too broadly prohibits psychologists from being present at “any national security interrogations.” The implication of these two pieces of text together is that psychologists are not to be present at all during interrogations but can provide guidance on information-gathering policies at an abstract level. The Committee on Legal Issues questions this distinction and recommends that the Resolution be revised to more explicitly allow for the inclusion of psychologists in the practice of humane information-gathering approaches.

We recognize that this Resolution was written during a time when the APA felt compelled to assert its strong opposition against torture in the wake of the IR. However, the practice of interrogations and information-gathering approaches has been informed by a wealth of

psychological science. Psychologists can provide guidance on best practices to promote the humane treatment of detainees during efforts to gather information from these individuals, and it is inconsistent with the APA mission to promote public welfare to remove psychologists from contributing their expertise in this way. In fact, the APA has multiple sources of guidance for psychologists working in this field, including but not limited to, our Ethics code, research concerning false confessions, and other guidelines concerning best practices.

**Level 2 Concerns:**

None

### Board Response to NBI #35B on Detainee Treatment

The Board recommends adoption of a substitute motion in response to Council New Business Item #35B, entitled “*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,*”

The substitute motion includes the following changes:

- 1) The following is clarified in the text recommended for revision:

Military psychologists providing mental health treatment to detainees in national security settings are able to do so ethically, in full adherence to our profession’s *Ethical Principles of Psychologists and Code of Conduct* (Amended effective June 1, 2010 and January 1, 2017) (the “Ethics Code”) and are able to obtain any information or ask any questions necessary to act competently and ethically.

**Rationale:** In accordance with the highest ethical ideals of the profession, including **Beneficence and Non-Maleficence, Justice, and Respect for People’s Rights and Dignity**, psychologists respect the dignity and worth of all people, practice within the boundaries of their competence, benefit those with whom they work, and take care to do no harm. Similarly, the AMA Principles of Medical Ethics require that “A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.”

Furthermore, the language about military psychologists not being restricted in their communication with the detainees is included in response to reports that military psychologists at the Guantanamo Bay detention facility did not ask about, or document, histories of torture, abuse, or resultant PTSD symptoms, in contrast to information obtained from independently-examined detainees. They also need to have access to the detainee’s full medical record available to the federal government.

- 2) The following clause is included:

BE IT RESOLVED that APA strongly encourages the Department of Defense to make independent psychologists working for the detainees or for a human rights organization available as health care providers to detainees at sites identified in the 2015 resolution as operating outside of, or in violation of, the U.S. Constitution or international law.

**Rationale:** This clause is derived from the 2009 Council petition resolution and was included in an earlier NBI that Council considered in a “mega-issue” discussion in August of 2016, which had been drafted with input from diverse groups. The intent of this provision is to take into account the concern that detainees who had been abused or tortured are unlikely to build a therapeutic alliance with health care professionals who work for the military at settings that do not offer human rights protections under the Constitution or international law. Military psychologists who provided mental health care to detainees (which has been on a voluntary basis) at such settings received specialized training to do so. While there are important security clearance issues to consider at military detention facilities, it can be argued that arranging for independent

forensic psychologists who are competent multiculturally and linguistically (when feasible) are trained and experienced in working with torture victims and others in a detention setting would be beneficial. Such an action would also enable more military psychologists to provide care to other military personnel in keeping with their principal training and mission.

3) The following clause is included:

APA recommits to its anti-torture policy dating back to 1985 (which has explicitly been incorporated into the Ethics Code as Standard 3.04 (b) as part of the implementation of the 2015 Council policy) and to continue to take strong action to oppose torture or cruel, inhuman, or degrading treatment or punishment of detainees held in U.S. custody and to safeguard their welfare.

***Rationale:*** On the hoped-for future, there will be no threat or risk of national security detainees being abused in U.S. custody (as there is no evidence that they are now). Were this to be the case, the Board recognizes that the above-stated caveats to NBI 35B would be rendered moot. This is because our current APA policy dating back to 2009 only prohibits military psychologists from treating detainees “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 [as deemed by U.N. authorities as clarified by the 2015 Council resolution] or the US Constitution (where appropriate).”