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# Military Rules Said to Hinder Therapy

By [JAMES DAO](#) and DAN FROSCH

Pfc. Jeffery Meier, who struggled with [post-traumatic stress disorder](#) and [drug addiction](#) after two deployments to Iraq, got an appointment in August to see a psychiatrist at Fort Carson, Colo.

But when he arrived for his first session, he was asked to sign a waiver explaining that under certain circumstances, including if he admitted violating military laws, his conversations with his therapist might not be kept confidential. He refused to sign.

Private Meier, who is seeking a medical discharge from the Army, was given counseling anyway. But he says he never opened up to his therapist, fearing that actions taken in the heat of battle might be disclosed to prosecutors. "How can you go and talk about wartime problems when you feel that if you mention anything wrong, you're going to be prosecuted?" he said in an interview.

He is not alone in his wariness. Many soldiers, lawyers and [mental health](#) workers say that the rules governing confidentiality of psychotherapist-patient relations in the military are porous. The rules breed suspicion among troops toward therapists, those people say, reducing the effectiveness of treatment and complicating the Pentagon's efforts to encourage personnel to seek care.

The problem with the military rules, experts say, is that they do not safeguard the confidentiality of mental health communications and records as strongly as federal rules of evidence for civilians. Both systems say therapists should report patients when they seem a threat to themselves or to others. But the military rules include additional exceptions that could be applied to a wide range of suspected infractions, experts say.

"There really is no confidentiality," said Kaye Baron, a psychologist in Colorado Springs who has been treating soldiers from Fort Carson and their families for eight years. "You can find an exception to confidentiality in pretty much anything one would discuss."

The issue has gained new attention with the recent mass shootings at [Fort Hood](#) that killed 13 and wounded 43. In the weeks before the rampage, the accused gunman, Maj. Nidal M. Hassan, an Army psychiatrist, told colleagues and Army lawyers that he wanted to report soldiers who had admitted in counseling sessions that they witnessed or committed war crimes in Iraq or Afghanistan. War crimes can include acts like torture, murder, sexual assault and cruel treatment.

Though Major Hasan was discouraged from filing reports on his patients, military officials say, he would have been within his rights as an Army psychiatrist to have done so. Major Hasan's efforts to report war crimes were first reported by ABC News.

Pentagon officials acknowledge that the psychotherapy-patient privilege in the military is not absolute. But

they assert that the exemptions are relatively narrow. Those rules apply to both civilian and military mental health professionals who deal with military personnel.

Cynthia L. Vaughan, a spokeswoman for the Army medical command, said the rules were intended mainly to protect military personnel, installations and operations, or to prevent child or spousal abuse. In those situations, she said, therapists have a duty to report patients to commanders without their patients' consent. But they do not have a duty to report other kinds of crimes, she said.

The waiver that soldiers like Private Meier are asked to sign is simply to notify them that "there are circumstances when disclosure of behavioral health information can occur without prior consent," Ms. Vaughan said.

"We strongly encourage soldiers to seek behavioral health treatment," she added.

Psychotherapists are not required to report possible war crimes, Ms. Vaughan said. But it is considered a "general duty" under Defense Department directives to do so.

Ms. Vaughan said the Army could not comment on whether Major Hasan, whose job was to interview Fort Hood soldiers who were being medically discharged, actually filed reports on his patients. She added that "in normal day-to-day operations, the Army will investigate any report of a possible war crime by whatever means it is made known."

Some legal and mental health experts say the military's rules on psychotherapist-patient privilege are not clear-cut. Michelle Lindo McCluer, a former Air Force lawyer who is the executive director of the [National Institute of Military Justice](#), said that some exceptions to the privilege are so broadly worded that "you could drive a truck through them."

One exception in the military rules states that confidentiality can be breached without a patient's consent when "federal law, state law or service regulation imposes a duty to report information." Another says privilege can be broken to ensure the safety of military personnel and "the accomplishment of a military mission." The phrase "military mission," Ms. McCluer said, could entail almost anything a unit does.

Ms. McCluer said that when she was a defense lawyer for the Air Force from 2000 to 2003, she advised clients to seek mental health counseling from chaplains because the privilege rules on their communications are stronger than for therapists.

Until about 10 years ago, there was no psychotherapist-patient privilege in the military, meaning that any communication between a therapist and service member could be reviewed by prosecutors or commanding officers without the consent of the patient. The qualified privilege was created in 1999 to bring military rules more in line with the 1996 [Supreme Court](#) ruling in *Jaffee v. Redmond* that said federal courts must allow psychotherapists and other mental health professionals to refuse to disclose patient records in judicial proceedings.

In the years since the limited privilege was established, there has been little litigation testing its bounds, lawyers say. There has also been little written guidance for therapists, experts say.

Without bright-line rules, many troops say they are concerned that their therapists will reveal not just

admissions of major crimes but also minor infractions that might hurt their military careers or prevent them from being returned to combat duties.

“I personally have learned to be very vague about what I say,” said a 16-year Army veteran at Fort Carson who is in the process of receiving a medical discharge and did not want to be identified because he was concerned that speaking out about his experience would jeopardize his case.

Shannon P. Meehan, a former Army captain and tank platoon leader who was recently medically discharged from the Army, said his candid conversations with a psychiatrist at Fort Hood helped him cope with post-traumatic stress disorder. He had felt deep guilt about an order he gave in Iraq for a missile strike that killed women and children. That 2007 event became a central chapter in a book he has written with one of his former English professors, “Beyond Duty.”

Mr. Meehan said that the strike was clearly within the rules of engagement. But other soldiers might not be so certain about their actions during the chaos of combat, and he said he worried that troops who thought their therapists might report them would not discuss their deepest secrets — secrets that may be at the root of personal anguish or mental problems.

“To me,” Mr. Meehan said, “the healing power of being able to write through everything, talk through everything, really helped me make order of it.”

“That’s something I know is going to be one of the tragic long-lasting effects of the Fort Hood incident,” he said. “Soldiers will feel they can’t come forward to confess things. And that’s a bad road to be on.”

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