

SANCTIONS FOR TORTURE: DOMESTIC MEDICAL ASSOCIATIONS TAKE ACTION

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Over a year into the Obama administration, there has been no public government investigation of the psychologists implicated in the torture and mistreatment of U.S. detainees captured in counter-terrorism efforts since the September 11th attacks. Although these psychologists potentially are criminally and civilly liable, they have not been made to answer for their actions. This current lack of accountability raises the question of what role health professional associations and licensing boards should play in holding their members responsible for possible human rights violations.

In most countries, professional organizations assume the task of enforcing the ethical obligations of their members and preserving the integrity of their profession; in the United States state licensing boards and professional associations fulfill these roles. Practitioners of law, medicine, and psychology are thought to have responsibilities beyond those of the general population because of their specialized training and positions of trust. For this reason, licensing boards are prominent in regulating the conduct of professionals in these fields.

Participation in torture or detainee abuse violates the universal obligation to “do no harm” embodied in ethical codes promulgated by licensing boards and professional organizations. Although most medical associations endorse codes forbidding their members from complicity with torture, relatively few have taken steps to enforce these standards. However, beginning in the 1970s and 1980s, in the midst of (and after) authoritarian dictatorships in Latin America and the Apartheid regime in South Africa, medical associations in Brazil, Chile, Uruguay, and South Africa took steps to hold doctors accountable for their roles in torture and

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other human rights abuses. The associations did not always act swiftly or decisively, or as in the case of South Africa, even voluntarily. However, through their actions, the organizations sent a message that the profession would not tolerate complicity in human rights abuses by their members. In each instance individuals, either from inside or outside a professional organization's institutional framework, worked through professional associations to hold physicians accountable for human rights abuses, and in the words of the Chilean Medical Association, to "preserv[e] the dignity of the medical profession."²

EFFORTS BY BRAZIL'S FEDERAL AND REGIONAL MEDICAL COUNCILS TO SANCTION PHYSICIANS

In Brazil, evidence indicates numerous doctors aided and abetted the torture of political detainees under the repressive military dictatorship that governed from 1964 to 1985. Doctors examined detainees to determine their weak points, treated them to enable torture to continue, and falsified medical certificates to conceal evidence of torture and illegal executions. As in many other South American countries, Brazil's military government pushed through an amnesty law inhibiting criminal prosecutions against human rights abusers operating within the dictatorship. However, through professional sanctions, Brazil's medical associations were able to enforce a degree of accountability for medical professionals complicit in torture.

In Brazil, elected Regional Medical Councils regulate the ethical conduct of doctors in the state, while the Federal Medical Council determines ethical standards and decides appeals in disciplinary actions. Registration in the medical councils is compulsory for civilian practice. For the last few decades, Brazil's Regional Medical Councils, at the insistence of accountability activists, have repeatedly sanctioned doctors responsible for human rights abuses under the military regime.

In 1980, in one of the earliest actions against medical complicity under a South American military dictatorship, the São Paulo Regional Medical Council struck Dr. Harry Shibata, Director of the São Paulo State Forensic Medical Institute, from its medical register for signing false medical certificates covering up torture. This action occurred after Dr. Shibata achieved notoriety

² Chilean Medical Association, "The Participation of Physicians in Torture: A Report of the Chilean Medical Association, 1986," Appendix A in Stover, *The Open Secret*, 77.

for omitting marks of torture from several death certificates, including that of journalist Vladimir Herzog, whose 1975 death mobilized domestic and international opinion against the repressive regime in Brazil. Dr. Shibata stated that Herzog's death was a suicide by asphyxiation, but later admitted he had not viewed the body before signing the certificate.

In 1988, a regional council also voted to strike Dr. Amilcar Lobo, a military psychiatrist, from the council for his role in torture during the late 1960s and early 1970s while working in a military detention center in Rio de Janeiro. In radio and television interviews, Dr. Lobo admitted to preparing political detainees for torture, testing their physical capacity for interrogation and reviving them when they became unconscious. The Federal Council affirmed the decision and barred Lobo for eight years before reinstating him in 1996, after determining the statute of limitations in his case had expired.

In conjunction with the human rights organization *Tortura Nunca Mais* (Torture Never Again), Brazil's councils have continued to pursue accountability for doctors who participated in torture during the military regime. In 1990, Rio de Janeiro's Regional Medical Council accepted *Tortura Nunca Mais's* complaints against forty-four doctors for their complicity in torture during the military dictatorship. By mid-1996, the council had initiated disciplinary proceedings against fifteen of these doctors. Similarly, the São Paulo Regional Medical Council accepted complaints against sixty-six doctors in 1990, and, by mid-1996, initiated disciplinary proceedings against twenty-five of them. Again in 1999, after more than a decade of research, *Tortura Nunca Mais* renewed its efforts to bring claims against physicians. The group sought sanctions against over a hundred physicians who worked in military prisons between 1964 and 1985.

Despite their well-documented claims, activists from *Tortura Nunca Mais* have faced harassment charges—for example, in 1993, Helena Creco, president of a regional branch of *Tortura Nunca Mais*, was convicted of calumny and defamation and given a one year suspended prison sentence.³ Furthermore, according to the Edila Pires, president of *Tortura Nunca Mais's* São Paulo chapter, “there has been resistance every step of the way, with the accused and their allies trying to destroy proof and cover up their involvement.”⁴ Despite these difficulties, the group has persevered and has achieved several notable successes. For instance, in 2003, a

³ Amnesty International. “Human Rights Violations and the Health Professions,” 3.

⁴ Larry Rohter, “Brazil Rights Group Hopes to Bar Doctors Linked to Torture,” *New York Times*, March 11, 1999.

regional council determined Dr. Renato Sérgio Lima Cappellano had been negligent in omitting marks of torture from autopsy reports and suspended him. Unsatisfied with the severity of the sanction, *Tortura Nunca Mais* appealed, and the Federal Medical Council permanently expelled Dr. Capellano. In the last decade, the Councils have ordered suspension or expulsion for several other doctors complicit in torture including Walter Sayeg, Abeylard de Queiroz Orsini, João Guilherme Figueiredo, Cypriano Oswaldo Monaco, and Antonio Valentini.

EFFORTS BY THE CHILEAN MEDICAL ASSOCIATION TO SANCTION PHYSICIANS

After the Pinochet regime seized power in 1973, Chile's state security police and other branches of its security forces routinely used torture, such as prolonged beatings, electric shock, near-drowning, and mock executions to interrogate, punish, and intimidate political dissidents. Under Pinochet's rule dozens of military physicians were involved in these acts of mistreatment, humiliation, and torture. From 1973 to 1981, when the military junta appointed the Chilean Medical Association (CMA) leadership, the association failed to speak out against these doctors or in defense of those who had been imprisoned or disappeared. Furthermore, as in Brazil, Chilean courts were often unwilling or unable to pursue accountability due to political pressures and amnesty laws. However, after Pinochet allowed the CMA to democratically elect its leaders in the early 1980s, the medical association investigated and took action against physicians involved in torture under the dictatorship, often at great personal and professional risk to its leaders.

Because the military junta eliminated the CMA's licensing authority in 1981, the CMA was able to sanction doctors by suspending or expelling them from the organization but was not able to prevent them from practicing medicine. Despite this limitation, by 1987, the CMA ethics department had investigated twenty physicians for unethical behavior under the military regime. Of these cases, six resulted in discipline for complicity with torture. The CMA suspended and expelled members for acts such as participating in the performance of medical examinations before and during torture to certify prisoners fit for continued torture, attending torture sessions in order to intervene if the victim's life was at risk, and administering non-therapeutic drugs and hypnotic induction.

In 1983, in its first investigation, the CMA suspended an army physician, Dr. Carlos

Héran Pérez Castrol, for one year for falsely certifying that a prisoner was in good physical condition upon release from a detention center after being blindfolded, physically beaten, burned with cigarette butts, and subjected to electric shock. The CMA was not persuaded by Dr. Pérez's defense that he was present at the torture sessions to help, rather than harm, patients. In 1986, the CMA expelled Dr. Manfredo Jurgensen Ceasar for his complicity in the torture and death of Federico Alvarez Santibañez. The association also expelled Dr. Guido Díaz Pacci for examining a detainee during the series of torture sessions leading up to his death and Dr. Luis Losada Fuenzalida for falsely certifying the good health of another torture victim.

In 1985, the General Council of the CMA issued a statement recognizing that the organization had initially failed to adequately address reports that physicians were present during the torture or ill-treatment of detainees and stated: "it is painful to recognize that the CMA was a mere spectator to the institutionalized violence taking place around it."⁵ CMA leaders also testified before the U.S. Congress to provide evidence of state-sponsored torture in Chile, and took steps to educate physicians and the public about the organization's knowledge of and opposition to torture. In their 1986 report, *The Participation of Physicians in Torture*,⁶ the CMA unequivocally condemned any participation in torture by its members. The report stated, "the work of a physician and that of a torturer or an accomplice are incompatible. The Department of Ethics believes this so strongly that proof of the mere presence of a physician in a place of torture is sufficient grounds for his expulsion from the association."⁷ Furthermore, the CMA rejected the "superior orders" defense to involvement in torture because, "from a moral point of view responsibility is not transferable, but always personal."⁸

EFFORTS OF URUGUAY'S INTERUNION MEDICAL COORDINATING COMMITTEE TO SANCTION PHYSICIANS

In Uruguay, a military junta, which held power from 1973 to 1985, enforced control by holding thousands of political detainees in clandestine detention centers and national security prisons. At these centers many doctors were complicit in torture, which was frequently used for punishment and to secure confessions. Common interrogation methods at the centers included beatings,

⁵ General Council of the Chilean Medical Association, Santiago, Minutes, November 1, 1985, quoted in Stover, *The Open Secret*, 47.

⁶ Chilean Medical Association, "The Participation of Physicians in Torture," in Stover, *The Open Secret*, 65-78.

⁷ *Ibid.*, 67.

⁸ *Ibid.*, 69.

extended sleep deprivation, electric shocks, prolonged emersion of the head in water, forced standing with legs apart for hours to days, mock executions, and prolonged deprivation of food and water.

Although Uruguayan physicians had no nationwide professional organization, in the 1980s, about 80 percent of the country's 7,500 physicians belonged to one of two medical trade unions. During the period of military rule, the junta dominated and controlled the medical community, replacing union leaders with military officers or collaborators and arresting union activists or forcing them into exile. Despite this history of repression, in the early 1980s, after Uruguay began to transition to civilian rule, physicians banded together to create an Interunion Medical Coordinating Committee and rallied union members to address the charges that military doctors had participated in human rights abuses. At a conference attended by 1,500 of Uruguay's approximately 7,500 physicians, the Interunion Medical Coordinating Committee won approval for an ethics committee composed of nine doctors and five lawyers. This National Commission for Medical Ethics (Commission) received complaints against and investigated dozens of physicians for their role in torture and abuse.

Uruguayan doctors were accused of disclosing results of clinical examinations for use in torture, falsifying reports, failing to provide assistance to ill and injured prisoners, and engaging in political interrogations. Additionally, psychiatrists and a psychologist had been accused of actively aiding in the design of rules and routines intended to undermine detainees' mental health, and deliberately abusing detainees with tranquilizers designed to treat psychotic symptoms. The unions expelled several physicians including Eduardo Saiz Pedrini, Nelson Fornos Vera, Vladimir Bracco, Hugo Díaz Agrelo, and Nelson Marabotto for acts such as falsifying physical reports and autopsies to cover up abuse and torture. Although Uruguay did not have a national code of medical ethics, in reaching its decisions, the Commission cited a variety of international norms, such as the Declaration of Tokyo and the United Nations Principles of Medical Ethics, as binding on Uruguayan physicians.⁹ The Commission also relied on longstanding Uruguayan legal proscriptions against torture.

As a creation of the unions, the Commission lacked the legal authority to bar an Uruguayan physician from practicing. However, the unions' sanctions do have immediate

⁹ For further information on international ethical standards for health care practitioners see Summer Volkmer, "International Ethics Applicable to Health Care Professionals," June 2010, posted at Do No Harm? website.

consequences for a physician's financial well-being and professional prestige. Unions can bar their members from referring patients to a member who has been suspended or expelled, and they can deny the member admitting privileges and employment at union-controlled hospitals and health maintenance organizations. The unions can also exclude sanctioned physicians from medical conferences, educational programs, and fraternal activities.

However, partly due to political pressures and lack of physician cooperation, in the 1980s, the Medical Ethics Committee was able to reach a verdict on only a small fraction of the complaints brought. The work of the Medical Ethics Committee was particularly hampered by a 1985 Ministry of Defense resolution prohibiting military doctors from testifying before the Commission. Despite its struggles, through the late twentieth and early twenty-first century, activists in Uruguay's medical unions continued to pursue accountability for physicians implicated in torture. For example, in 1999, one of the unions voted to expel a doctor, Salomón Cizin, for attending to political prisoners who were tortured by state actors during the military regime. In its decision, the union made clear that it would continue to hold its members accountable for actions in violation of the Hippocratic Oath and the resolutions of the United Nations, World Medical Assembly, and other international organizations. In its finding, the union also stressed the significant moral force of the decision to condemn a colleague after a long and careful investigation.

SOUTH AFRICA'S JUDICIAL MANDATE REGARDING THE DEATH OF STEVE BIKO

Under South Africa's Apartheid regime from 1948 to 1994, the National Party enforced a system of legalized racial segregation and oppression, and attempted to quash resistance by imprisoning anti-apartheid leaders, many of whom were tortured or abused. In contrast to the South American medical associations, South Africa's primary medical association, the South African Medical and Dental Council (SAMDC), did not fully investigate doctors complicit in prisoner abuses until a court ordered it to do so.

After a ruling in 1985 by the Pretoria Supreme Court, SAMDC disciplined two doctors implicated in the 1977 death of Black Consciousness Movement leader Steve Biko. Prior to the court ruling, SAMDC had failed to sanction two district surgeons, Ivor Lang and Benjamin Tucker, who although entrusted with the care of prisoners and detainees did not report or treat

Biko's police-inflicted, fatal head injury. In 1977, while Biko was detained under South Africa's Terrorism Act, Dr. Lang certified that he "found no evidence of abnormality or pathology"¹⁰ on Biko despite his visible injuries, strange movements, and slurred speech. Even after blood was found in Biko's brain fluid, neither Dr. Lang nor his superior, Dr. Tucker, objected to his continued imprisonment. When Biko became semi-comatose after collapsing, glossy-eyed and hyperventilating, Dr. Tucker authorized police to transport Biko 750 miles to another facility without medical assistance. Biko was pronounced dead shortly after his arrival at the new location.

SAMDC licenses members of the medical and dental professions, is responsible for ensuring the maintenance of proper ethical standards, and is charged with investigating and imposing penalties against its members for improper conduct. A magistrate presiding over the 1979 inquest into Biko's death failed to find the police liable, but the magistrate reported Dr. Lang and Dr. Tucker to SAMDC and sent the council a portion of the inquiry containing relevant evidence. However, in 1980, a five-member "inquiry committee" of the thirty-four member SAMDC released a statement to the press dismissing the claim for lack of *prima facie* evidence before the full body had met to consider the resolution. Later SAMDC officially adopted this resolution, despite the protest of two members. The Medical Association of South Africa, a voluntary, non-statutory professional organization, also declined to take action against the doctors.

In conjunction with the Transvaal Medical Society, a voluntary professional organization, several doctors, petitioned the Pretoria Supreme Court to set aside the SAMDC resolution and to direct the organization to conduct a new inquiry into the conduct of Dr. Lang and Dr. Tucker. In 1985, the court ruled in the petitioners' favor and found that there was *prima facie* evidence of misconduct by the two doctors. The court also ruled that the applicants had standing to approach the court because the law governing the activities of SAMDC was intended to protect not only the public, but the medical profession itself. The court set aside SAMDC's resolution and ordered the council to investigate the conduct of the doctors.

After the court-mandated investigation, a SAMDC disciplinary committee held a four day hearing, and subsequently found Dr. Lang guilty of improper conduct on five counts and found

¹⁰ Complaint by the Transvaal Medical Society Against Doctors Ivor Lang and Benjamin Tucker in Terms of Section 41 of the Medical, Dental, and Supplementary Health Services Act, 1974, made to the South African Medical and Dental Council, March 18, 1982, quoted in Rayner, *Turning a Blind Eye*, 24.

Dr. Tucker guilty of improper and disgraceful conduct on three counts. Dr. Lang was given a caution and a reprimand, and Dr. Tucker was suspended from practicing medicine. In a subsequent letter published in the *South African Journal on Human Rights*, Professor Trevor Jenkins, one of the petitioners in the successful court challenge, argued that SAMDC had “allowed political and, perhaps, what they perceived to be state security considerations to cloud the issue” in a case that was “one of straightforward and relatively simple medical ethics.”¹¹

CONCLUSION

These examples of professional sanctions against physicians for complicity in torture and abuse occurred against a backdrop of inaction by the state to pursue criminal or civil accountability. In most of these instances, medical associations punished doctors where courts were unwilling or unable to do so. In some countries, such as Brazil and South Africa, the medical professional associations were also the licensing boards, and were able to revoke or suspend the licenses of physicians who were complicit in torture. In countries such as Chile and Uruguay, even boards without licensing authority used their economic, political, and social clout to take a stand against torture.

These efforts also unfolded over time. Some accountability efforts occur during the repressive regime or in the immediate aftermath of the return to democratic rule, while others continue decades after the regime is out of power. However, even professional sanction efforts that take place long after a government that sanctions torture is no longer in control send a powerful message that complicity with torture is a breach of medical ethics, and one that will not be tolerated.

¹¹ Trevor Jenkins, “The MASA Letter,” quoted in Rayner, *Turning a Blind Eye*, 46.

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