

Ask the Lawyer: Does What Happens in the Hospital Stay in the Hospital?

Q:

If I get treated at a hospital for a drug-related incident, can the military use my medical records against me?

A:

Just because a doctor, instead of your commander, ordered a urinalysis does not automatically mean the military cannot use the results to support a charge of wrongful use of a controlled substance in violation of Article 112a of the Uniform Code of Military Justice.

Under Rule 312 of the Military Rules of Evidence, the seizure of evidence obtained from an examination is permissible so long as it was conducted for a “valid medical purpose.” In *U.S. v. Rand* (1984), the Air Force Court of Military Review defined a “valid medical purpose” as anything that “ensure[s] the good health and well-being of the accused.”

When a service member ends up in the hospital because of a car accident or a drug overdose, a doctor may deem it necessary to conduct a urinalysis or blood test. In that case, government prosecutors may be able to use the test results as evidence in court-martial proceedings. The key question for the admissibility of medical examination evidence is whether the test infringed on the service member’s Fourth Amendment protection against unreasonable searches and seizures.

It may not even matter if the doctor who ordered the test ever took its results into consideration when prescribing a treatment, the Court of Military Appeals found in *U.S. v. Maxwell* (1993). This case involved an Air Force Senior Airman who was involved in a car accident and convicted of involuntary manslaughter. He sought to suppress the admission of blood-alcohol test results as evidence at his court-martial, claiming the test was medically unnecessary. The court, however, said these samples were admissible because they “were taken for valid diagnostic and treatment purposes,” regardless of whether they “impact[ed]...treatment.”

BUMEDINST 6120.20C prohibits Navy medicine personnel from assisting in the acquisition of evidence “solely for the purpose of enforcing local, state, or Federal civil laws.” They are, however, required to cooperate with law enforcement in “evaluating sobriety, determining competence for duty, making bodily views, and accomplishing bodily intrusions without regard to the legal competence of the evidence to be obtained.”

Service members facing an Article 112a charge due to a visit to the hospital or infirmary should immediately consult with a military law attorney. Depending on the circumstances, a lawyer could show that there was not a valid medical purpose for a test or that samples were improperly handled.

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. The information in this column is not intended as legal advice.