

**MEMORANDUM IN SUPPORT OF LEGISLATION**  
**NEW YORK STATE ASSEMBLY**  
submitted in accordance with Assembly Rule III, Section 1 (e)

(..) Memo on original draft of bill  
( X ) Memo on amended bill

**BILL NUMBER:**      **Assembly** A.6665-B                      **Senate** S.4495-A

**SPONSORS:**            **Member(s) of Assembly:** Gottfried  
                                 **Senator(s):** Duane

**TITLE OF BILL:** An act to amend the public health law, the education law and the labor law, in relation to prohibiting participation in torture and improper treatment of prisoners by health care professionals

**PURPOSE OR GENERAL IDEA OF BILL:** To bar health care professionals from participating in torture or improper treatment of prisoners, and provide a means by which health care professionals responsible for the care of prisoners or detainees can refuse an order to directly or indirectly participate in torture and to insist on providing professionally responsible care and treatment.

**SUMMARY OF SPECIFIC PROVISIONS:** Bill section one is a statement of the legislature's intent to give effect to existing international treaties, and standards, federal, state and local laws, and professional standards.

Bill section 2 would create a new Public Health Law § 22. Subdivision 1 defines "health care professional" to include all health professions licensed by Title Eight of the Education Law. The definitions of "torture" and "improper treatment" of a prisoner are consistent with international treaties, federal and state law and professional standards. "Prisoner" is defined "as any person who is subject to punishment, detention, incarceration, interrogation, intimidation or coercion.

Subdivision 2 of the new §22 provides that it shall be an element of any violation of this section that the health care professional knew or reasonably should have known the nature of his or her actions.

Subdivision 3 establishes general obligations of health care professionals in relation to the treatment of prisoners and detained persons, consistent with generally applicable legal, health and professional standards, including protection of confidential patient information.

Subdivision 4 prohibits direct and indirect actions which constitute participation, complicity, incitement, assistance, planning, design, attempt, or conspiracy to commit torture or improper treatment of a prisoner. Health care professionals may not use their knowledge or skill to adversely affect a prisoner's health by punishment, detention, incarceration, interrogation, intimidation or coercion, or to evaluate or treat a prisoner so that such improper treatment may be used or continued.

Subdivision 5 permits the proper conduct of health care professionals

towards prisoners: to provide proper care and treatment as reasonably able under the circumstances. The purpose must be to evaluate, treat, protect, or improve the physical or mental health or condition of a prisoner. They may restrain or sedate a prisoner, where such actions comply with appropriate standards, are necessary to protect health or safety, and do not harm the prisoner. Health care professionals may appropriately participate in the investigation, prosecution or defense in criminal, administrative, civil matters. Health care professionals may provide training only in relation to recognizing and responding to physical and mental illness; the effects of interrogation techniques and the development of effective interrogation strategies, so long as such training is not in support of specific interrogations.

Subdivision 6 establishes a duty to report, consistent with protecting the safety of both the prisoner and the health care professional.

Subdivision 7 establishes mitigation for compliance with an investigation of, or reporting, alleged torture or mistreatment of prisoners.

Subdivision 8 applies this section to conduct taking place within and beyond New York's borders.

Bill sections 3 and 4 add the violation of the new §22 to the definition of professional misconduct in Education Law §§ 6509 (health care professionals other than physicians or physician assistants) and 6530 (physicians and physician assistants).

Bill section 5 and 6 adds whistle blower protections for employees and contractors to labor law §§740 and 741.

**JUSTIFICATION:** There is very strong evidence that U.S. health professionals have been directly engaged in or complicit in torture and other cruel, inhuman or degrading treatment of prisoners and detainees. {1,2} The situation does not appear to be that of a few errant individuals, but a more systemic problem, facilitated by official policy. Most frequently, involvement is indirect, such as enabling mistreatment to continue by treating the consequences of the mistreatment. However, complicity has also become more direct: evaluating a prisoner prior to interrogation and setting the limits for torture, resuscitating or treating a prisoner during an interrogation session so that the interrogation may continue, making a prisoner's medical records available to interrogators, advising on strategies for a torture session, and developing torture techniques.

Health care professionals have an ethical obligation to protect prisoners against torture and other cruel, inhuman, or degrading treatment. However, we now know that American governmental authorities have reinterpreted both the meaning of torture and health professionals' ethical obligations to encourage them to participate in these acts. It is reasonable to assume that state and local authorities, as well as foreign governments, are also engaging in such practices and involving American health care professionals.

Widely accepted principles of medical ethics clearly define the roles and responsibilities of health care professionals in regard to the ethical treatment of prisoners and detainees. In 1975, the World Medical Association adopted the Declaration of Tokyo, which contained the "Guidelines for Medical Doctors concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment." These guidelines were amended and strengthened in 2006 to forbid the participation of physicians in any interrogation of an individual detainee or prisoner. In 1982, the UN General Assembly adopted "Principles of medical ethics relevant to the role of health

personnel, particularly physicians, in the protection of prisoners against torture and other cruel, inhuman or degrading treatment or punishment,"{3} drafted by the World Health Organization. The American Medical Association, the American Psychiatric Association, and other professional organizations have adopted these and similar principles.

For professionals licensed by New York State, it is appropriate for New York to adopt legislation that provides accountability and implements these widely held rules of professional conduct. Both the Declaration of Tokyo and the UN principles call for all governments and professional organizations to adopt standards implementing these principles.

A professional licensed by the State of New York who comes to the aid of a prisoner, detainee, victim of torture etc., under the general obligations of health professionals should not be presumed to be in violation when she or he is fulfilling the ethical principle of beneficence. In contrast, a professional who, for example, attends to a prisoner, detainee, victim of torture etc. in order to allow torture or improper treatment to commence or continue is not acting beneficently. Such practices are inconsistent with ethics and standards in the health profession and are violations of this legislation.

**PRIOR LEGISLATIVE HISTORY:** 2008: Based upon A.9891 reported to Rules committee

**FISCAL IMPLICATIONS:** None to the state

**EFFECTIVE DATE:** January 1 after the date that it shall have become law.

{1} Lifton RJ, Doctors and Torture; New England Journal of Medicine; 2004:351, 415. Katherine Eban. Rorschach and A we. Vanity Fair (web edition) <http://www.vanityfair.com/politics/features/2007/07/torture200707>.

{2} Jane Mayer, The Black Sites. New Yorker August 13,2007. Bloche MG, Marks JH; When Doctors Go to War, New England Journal of Medicine; 2005:352, 3, [http://www.newyorker.com/reporting/2007/08/13/070813\\_fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2007/08/13/070813_fa_fact_mayer).

{3} Resolution 37/194 (Principles of Medical Ethics) adopted by the United Nations General Assembly on 19 December 1982. <http://www.cioms.ch/1983textsofguidelines.htm>.