DEPARTMENT OF DEFENSE

ISSUE: CONFIDENTIALITY UNDER THE HOMOSEXUAL CONDUCT POLICY (HCP), COLLOQUIALLY KNOWN AS "DON'T ASK, DON'T TELL.

POLICY DESCRIPTION: Service members have limited confidentiality when talking with chaplains, chaplain assistants, doctors, psychologists and other allied health professionals. As a result, LGB service members risk losing their jobs when discussing issues related to their homosexuality or sexual orientation with these resources. In short, the disclosure is considered a statement under DADT and may be disclosed to the service member's command. While there is no regulation requiring disclosure of such statements, and the Department's original policy guidelines recognized that "speech within the context of the priest-penitent, husband-wife or attorney-client communications remains privileged," service members have been investigated and discharged based on revelations by health care providers or chaplains to service members' commands. For example:

- A Navy officer reported to SLDN that when his chaplain was questioned by a DADT investigator, the chaplain divulged the contents of conversations spanning more than two years in which the officer had sought spiritual counseling because he was struggling with a tension he felt between his sexual orientation and his faith.
- Senior Airman Brandi Grijalva saw her trust and confidentiality broken after seeking counseling from an Air Force chaplain assistant due to problems she was having at home. Concerned about the confidentiality of their conversation, Grijalva was hesitant to discuss the issues causing her unhappiness. Informed that their conversation was safe and confidential, Senior Airman Grijalva revealed that she and her partner were having difficulties in their relationship. Following that revelation, the chaplain assistant broke the promise of confidentiality and Senior Airman Grijalva was investigated for homosexual conduct.
- "Michael," a Marine with an exemplary service record, visited the base healthcare facility to request an HIV test. In the course of his examination, the physician's assistant treating him asked Michael how he might have contracted HIV. Michael asked the healthcare provider if the conversation was confidential and was assured that it was. Michael's response to the

question was "It wasn't with a female." The physician's assistant treating Michael reported this statement to the command. Michael was discharged from the Marine Corps after six years service, which included two tours in Iraq.

- Kevin Blaesing, a 22-year-old Marine infantryman, was outed by a Naval psychologist he had sought out for treatment. Blaesing asked generic questions concerning homosexuality and what it means to be gay, and the psychologist turned him in to his command. Kevin was discharged under DADT.

The current policy creates barriers to treatment. LGB members avoid seeking medical or psychological treatment and spiritual guidance for fear that information they have confided about their sexual orientation during the course of treatment will be disclosed to their command by the health care provider or chaplain. Our goal is to allow LGB service members to obtain spiritual support and both mental and physical medical care without fear of discharge.

RECOMMENDATION FOR CHANGE:

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Implementation of Policy Guidelines on Homosexual Conduct in the Armed Forces – Statements Made to Chaplains, Physicians, and Allied Health Professionals

There is no regulation that requires health care providers or chaplains to report a member's statement regarding homosexuality or sexual orientation. Nonetheless, some providers have disclosed information received in the course of treatment or counseling to the member's command, triggering an investigation and subsequent discharge. And despite the Department's long-standing recognition of the priest-penitent privilege, some chaplains have disclosed a member's confidential communications to commands. As a result, those with questions regarding their homosexuality or sexual orientation are reluctant to obtain spiritual, psychological, and medical help.

At a time when members of the armed forces are under extreme stress, facing multiple and extended deployments with the attendant difficulties that arise, all members, regardless of sexual orientation, should be free to seek the appropriate help without fear that the information they

reveal during the course of their treatment will be used as a basis of an investigation or as evidence in a discharge proceeding.

By inhibiting access to religious, medical, and psychological services, the current practice unnecessarily undermines the well being of lesbian, gay, and bi-sexual service members.

Based on this reasoning, the Policy Guidelines on Homosexual Conduct in the Armed Forces should now include the following:

Statements revealing homosexual conduct (as defined in subparagraph E2.1.7 of DoD Directive 1332.14 and subparagraph E1.1.12 of 1332.40) made by a member to a chaplain, chaplain assistant, physician, psychiatrist, psychologist, or other allied health professional shall not be disclosed and if disclosed shall not be used as a basis for an investigation nor used as evidence in a discharge proceeding.

PROCESS FOR MAKING CHANGE: DoD is responsible for the directives implementing the requirements of 10 U.S.C. § 654. The Secretary of Defense can either issue the necessary directives or delegate that authority to persons within the Department. The Secretary of each military department, Army, Navy, Marines, and Air Force, is required to ensure that the mandates are followed by his or her respective branch although commanding officers are primarily responsible for the implementation of the proscribed instructions.