

PROFESSION



Allen Keller, MD (left), speaks to medical students during a trip to lobby New York legislators in favor of a bill which gives the state medical board the authority to punish doctors who take part in, or conceal evidence of, torture. Assembly member Richard Gottfried, lead sponsor of the bill, also was present. [Photo courtesy of New York State Assembly]

Medical board could discipline physicians for torture under N.Y. bill

The unique proposal would give the state board the authority to punish doctors and others who take part in, or conceal evidence of, torture.

By **KEVIN B. O'REILLY**, amednews staff. *Posted June 10, 2011.*

A New York bill that is the first of its kind in the nation would make participation in torture or interrogation of prisoners grounds for board discipline of physicians and other health professionals.

Dozens of medical students and other health professionals in training lobbied in favor of the legislation in late May, meeting with nearly 40 New York state legislators, said Allen Keller, MD. He helped organize the lobbying trip and directs the Bellevue Hospital Center/New York University Program for Survivors of Torture in New York City.

The bill, which was introduced in March by Democratic Assemblyman Richard N. Gottfried and has 39 co-sponsors, would give the state medical board and other health professional licensing boards the explicit authority to suspend or revoke practice rights based on evidence presented in accordance with the state's usual due-process procedures (assembly.state.ny.us/leg/?default_fld=%0D%0A&bn=A05891&term=&Summary=Y).

Under the bill, physicians and other health professionals would be barred from directly participating in torture, treating patients with the intent of determining when torture could continue, concealing medical evidence of torture or taking part in individual interrogations. Health professionals could generally advise interrogators on rapport building or other nonabusive techniques.

The bill is needed to give medical licensing boards clear authority to discipline doctors and others for participating in torture, supporters say. In 2007, a complaint was brought against one psychologist alleged to have participated in abusive interrogations at Guantanamo Bay, but the New York state body that licenses psychologists said it did not have jurisdiction to investigate the matter.

"We want to clarify that this is, indeed, grounds for discipline and also to achieve a preventive effect," said Dr. Keller, associate professor of medicine at NYU School of Medicine. "It's easier for individuals to torture than we'd like to think, because of hierarchies and environments that allow it. We believe this legislation would help physicians who are put in an untenable position to say, 'I can't do this; I'd lose my license.'"

A state matter?

The American Medical Association and the Medical Society of the State of New York have policy opposing physician participation in torture or direct participation in interrogations. But the MSSNY said the matter is best handled at the federal level, noting that torture is already criminal under federal law. In a June 2 letter to the New York State Assembly, MSSNY Senior Vice President and Chief Legislative Counsel Gerard Conway noted other concerns.

"The bill provides no practical recourse for physicians who are intimidated by military superiors into withholding reports of torture," Conway wrote. "There are inherent challenges and barriers to evidentiary discovery for accusations of torture in the military and prisons. Physicians may be poorly positioned to defend themselves since, ostensibly, many of these incidents would occur overseas. Physicians would have to overcome claims of national security and national defense and would have to operate in domains in which civil authority will be limited."

In response, Dr. Keller said that, with regard to accessing classified documentary evidence, physicians would be on a level playing field with anyone bringing a complaint. If the evidence were classified, then neither the medical board nor the physician would have it to use in a proceeding. On the other hand, if national-security documents were brought into evidence, then both the physician and the board would have equal access to them.

And, he said, it is appropriate for state medical boards to act because they are the bodies charged with regulating physician practice.

"Health professionals -- whether they practice in their state or in the Army or wherever -- they do so because they have a license that is issued not by the federal government or the Army but by a state," Dr. Keller said.

The New York legislative session is scheduled to end June 20. Advocates are pushing to have similar legislation proposed in other states.

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