

**[DOH ADMINISTRATIVE ORDER NO. 2013-0008,
February 28, 2013]**

**GUIDELINES FOR THE IMPLEMENTATION OF SECTION 19 OF THE
IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT
NO. 9745, OTHERWISE KNOWN AS THE ANTI-TORTURE ACT OF
2009**

I. BACKGROUND

On November 10, 2009, Republic Act 9745, "An Act Penalizing Torture and Other Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor," otherwise known As the **Anti-Torture Act of 2009**, was passed into law. The Act reaffirms a provision in the Philippine Constitution on the absolute condemnation and prohibition of torture. The Act reiterates the value conferred by the State on the dignity of every human person and guarantees full respect for human rights, specifically the rights of suspects, detainees and prisoners.

Certain provisions of the Anti-Torture Act of 2009 are related to the mandates of the Department of Health (DOH) and other major stakeholders in healthcare:

1. **Philippine Constitution, 1987** – "The State shall protect and promote the right to health... adapt an integrated and comprehensive approach to health development... There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women and children."
2. **Local Government Code of 1991** – The DOH shares responsibility with local government units for the health care provision of the Filipinos people.
3. **Magna Carta for Public Health Workers 1992** – The duties and obligations of the public health workers are: "(a) discharge his/her duty humanely with conscience and dignity; and, (b) perform his/her duty with utmost respect for life; and regardless of race, gender, religion, nationality, party politics, social standing or capacity to pay." Through this law, the public health workers are also protected from interference and coercion in the discharge of their functions, like when acts of undue influence are calculated to intimidate or to prevent the performance of their duties and responsibilities (Section 32).
4. **Magna Carta for Women 2009** – "Right to comprehensive health services.. the Magna Carta of Women also guarantees the civil, political and economic rights of women in the marginalized sectors (small farmers and rural workers, fisherfolk, urban poor, workers in the informal economy, migrant workers, indigenous peoples, Moro, children, senior citizens, PWD and solo parents)".
5. **Republic Act No. 7610** of 1992 which provides for "Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination."
6. **RA No. 7438** of 1992 which "Defines the Rights of Persons Arrested, Detained or Under the Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigation Officers."

7. **RA No. 9344** of 2006 which established the "Comprehensive Juvenile Justice and Welfare System."

II. Scope of Application

This Administrative Order shall be applicable to all government and private health institutions, health facilities and health practitioners.

III. Statement of Policies

1. Every human being is to be treated with dignity and respect.
2. Every human being has the right to health, including suspects, detainees and prisoners.
3. The DOH upholds the principles provided for in the 1987 Constitution on the absolute condemnation and prohibition of torture, which are reiterated by the Republic of Philippines' commitments to the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women , and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. The DOH, together with the Philippine Medical Association, supports the Declaration of Tokyo of 1975 for the 29th World Medical Assembly which issued the Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment. The Tokyo Declaration of 1975 consists of the following:

- a. "The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedure is suspected, accused or guilty, and whatever the victim's belief or motives, and in all situations, including armed conflict and civil strife.
- b. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.
- c. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment are used or threatened .
- d. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.
- e. Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgment concerning the consequences of such voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner."

5. The DOH likewise upholds The Istanbul Protocol and similar international and national covenants that are applicable to the practice of medical and other allied health professions.

6. All healthcare professionals and practitioners together with partner agencies and organizations are jointly responsible for the dissemination and implementation of the provisions of the Anti-Torture Act of 2009.

IV. Objectives

The objectives of this Administrative Order to implement Section 19 of the implementing Rules and Regulations of the Anti-Torture Act of 2009 in the Health Sector are to:

1. Establish the participation of healthcare workers in the implementation of the Anti-Torture Act of 2009;
2. Provide the mechanisms by which healthcare workers, especially the responding medical doctor, can protect the right of torture victims or potential torture victims to demand a medical examination by a physician of their own choice; and
3. Provide directives to ensure capability building toward the competent implementation of the Anti-Torture Act of 2009 in terms of assessment, diagnosis, and treatment of torture victims, their families and perpetrators of torture, and in terms of documenting and reporting probable incidences of torture.

V. Definition of Terms

1. *Torture* - RA 9745 defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions."
2. *Act* – for the purpose of this administrative order, shall mean Republic Act No. 9745 or the Anti-Torture Act of 2009.
3. *Person in authority* – refers to any person directly vested with jurisdiction, whether as an individual or as a member of a court or government corporation, board or commission.
4. *Agent of a person in authority* – refers to any person who, by direct provision of law or by election or by appointment of a competent authority, is charged with the maintenance of public order and the protection and security of life and property including any person who comes to the aid of persons in authority.
5. *Custodial investigation* – includes the practice of issuing an invitation to a person who is investigated in connection with an offense he/she is suspected to have committed, without prejudice to the liability of the inviting office for any violation of law, as defined in RA No. 7438 or "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof."
6. *Independent and competent doctor* – is defined by the Department of Justice (DOJ) and Commission on Human Rights (CHR) Implementing Rules and Regulations of RA 9745 as "any physician freely chosen by the victim or his/her authorized representative to conduct physical examination and treatment of tortured victims. Physicians who belong to agencies that are involved in the arrest and detention of the victim are not included, unless the victim specifically allowed such examination

and when circumstances so require.” For the purposes of the Anti-Torture Act of 2009, a physician who is licensed as a medical doctor by the Professional Regulatory Commission is considered a competent doctor.

7. *Healthcare worker* – is a person directly providing any form of legitimate health services or someone who works in a healthcare institution or healthcare facility.

8. *Medical Examiner* - is a physician who shall conduct the physical and/or psychological examination of the victim and shall evidence such examination with a medical report signed by him/her.

9. *Healthcare or health facility* – is a building or edifice that is used for the provision of healthcare services and includes all types of hospitals, outpatient clinics such as rural health units, health centers, health offices, barangay health stations, birthing facility, newborn screening centers, dental clinics and laboratories, drug testing laboratories, drug abuse treatment facilities, blood service facilities and other facilities for specialized health services

10. *Medical examination* – for the purpose of this document, shall mean physical examination and other adjunct method of assessment applied by a medical examiner in order to determine the presence of injuries and illness in a person.

11. *Forsenic medicine* – is the science that deals with the application of medical knowledge to legal questions.

VI. General Guidelines

1. **Acts Constituting Torture** – Healthcare workers, especially those mandated to directly attend to victims or probable victims of torture, shall raise their awareness or level of suspicion to be able to identify torture victims adequately. RA 9745 describes acts constituting torture and classifies them into 2 groups: physical torture and mental/psychological torture, as follows;

a. **Physical Torture** – Forms of treatment or punishment inflicted by a person in authority or his/her agent that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

- i. “Systematic beating, head banging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the abdomen;
- ii. Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
- iii. Electric shock;
- iv. Cigarette burning, burning by electrically heated rods, hot oil, by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on wounds;
- v. Submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
- vi. Being tied or forced to assume fixed and stressful bodily position;
- vii. Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum (or anus), or electrical torture of the genitals;
- viii. Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
- xi. Dental torture or forced extraction of the teeth;
- x. Pulling out of fingernails;
- xi. Harmful exposure to the elements such as sunlight and extreme cold;
- xii. The use of plastic bag and other materials placed over the head to the point of asphyxiation;