



treatment of hunger strikers.

2. The World Medical Association (WMA) has published two authoritative documents describing the duties of physicians with regard to prisoners on hunger striking. They are the Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (Declaration of Tokyo) and the Declaration of Malta on Hunger Strikers. The Declaration of Malta states that “*Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment. Equally unacceptable is the forced feeding of some detainees in order to intimidate or coerce other hunger strikers to stop fasting.*”
3. The American Medical Association (AMA) has been a member of the WMA since its inception after World War II. On 25 April 2013 Dr. Jeremy Lazarus, President of the AMA wrote to Secretary of Defense Chuck Hagel detailing the AMA’s position on force feeding. “Every competent patient has the right to refuse medical intervention, including life-sustaining interventions.” This was a reiteration of principles that had previously been expressed in 2005 and 2009. The AMA position means that when a physician performs, orders, supervises or monitors enteral feeding on a person who has refused such treatment, and has the mental capacity to refuse, this constitutes a violation of medical professional ethics.
4. The question of mental capacity is fundamental to this motion, as indeed it is to medical ethics more generally. The ‘assumption of capacity’ is the overriding principle of capacity assessment. This states that a person is deemed to have capacity unless it is proved that they have an impairment or disturbance of mental functioning (such as an intellectual disability, dementia or other cognitive impairment, acquired brain injury or mental illness) and this impairment is sufficient to affect their capacity to make a particular decision, in this case food refusal.
5. Assessment involves two stages: an assessment of mental impairment and a mental capacity

assessment.

6. In particularly complex cases (and the current hunger strike in Guantanamo would certainly appear to fall into this category) a physician should call on a psychiatrist for their specialist opinion. Such an evaluation should exclude other bases for food refusal such as mental illness (e.g. schizophrenia, suicidal depression, or anorexia). Hunger strikes per se do not demonstrate suicidal intention. Rather they may be undertaken by a person who does not wish to die, but is prepared to risk death in the hope that their demands are met.
7. If the conclusion is that mental illness is causally linked to the food refusal, the physician may be obliged to override the patient's decision. On the other hand, it may be determined that an individual suffers from a particular mental impairment but nevertheless retains mental capacity to make decisions regarding their own treatment. The WMA guidelines (attached) address such complex situations. *"If a physician is unable for reasons of conscience to abide by a hunger striker's refusal of treatment or artificial feeding, the physician should make this clear at the outset and refer the hunger striker to another physician who is willing to abide by the hunger striker's refusal."*
8. A lack of capacity cannot be assumed on the basis of cultural or religious beliefs, age, appearance or conditions of confinement.
9. Should the conclusion of the assessment be that the patient has mental capacity to refuse food the physician is bound by medical ethics and international and US law to refrain from enteral feeding.
10. The procedure, information gathered during this capacity assessment and the basis for the decision should all be carefully documented.
11. I have undertaken multiple such assessments over the course of my career and I stand ready to travel to the US Naval Base at Guantanamo Bay to carry out psychiatric assessment of the mental capacity of the plaintiffs in this motion should the Court deem this necessary.

Executed in Arlington, Virginia, USA, this 25th day of June 2013.

A handwritten signature in cursive script, appearing to read "Stephen N. Xenakis". The signature is written in dark ink on a white background.

Stephen N. Xenakis, MD