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AFJAGS Podcast: Episode 55

Defense Health Agency Transition with Lt Col Robert Vorhees and Lt Col Justin Swick

Host: Major Erin Davis
Guests: Lieutenant Colonel Robert Vorhees and Lieutenant Colonel Justin Swick

In this Episode, Major Davis guides us through a conversation with Lt Col Robert Vorhees and Lt Col Justin Swick, two Air Force medical law attorneys, about the Defense Health Agency transition, which has changed the landscape of the Military Health System.

Background

Major Erin Davis:
Hello and welcome back to another episode of The Air Force JAG School Podcast. Today, we're taking a look at the Defense Health Agency transition and answering questions about the changes to our military medical system and what both commanders and patients can expect moving forward.

So you may be wondering, what is DHA? Why are we talking about this? DHA or the **Defense Health Agency** is a new DoD agency created by Congress to handle military medical for all branches. So now, instead of having medical command of the Army, Navy, or Air Force running the medical treatment facilities or MTFs, all of the medical care provided to the military beneficiaries is being run by DHA. Well, at least that's what they're working on.

You may be asking why DHA was created and why Congress thought the military needed it. What they said was that DHA can increase access to health care and make things easier, more efficient and more organized for patients. And it will also allow medical command to focus on the bigger picture—national security mission. And, of course, at the heart of any good congressional policy is the desire to save some money. Having so many different medical facilities on different bases with a huge range of different medical services, and therefore sometimes more referrals and in-house appointments

and sometimes more facilities and medical providers than patients was starting to cost an arm and a leg.

As you can imagine, creating a brand-new agency and taking control from three different military branches has not been easy. In fact, it's taken almost a decade. The transition has taken effect, and now we're finally starting to see it at the installation level after so many years at the policy level. So what do you need to know about the transition?

We asked Lieutenant Colonel Robert Vorhees and Lieutenant Colonel Justin Swick to answer some questions about the transition and what commanders and patients can expect now that the transition has happened.

Lieutenant Colonel Vorhees is the Surgeon General's attorney. He's the JAG advising top Air Force medical leadership.

Lieutenant Colonel Swick is the Chief of the Medical Law Field Support Center, and he's in charge of the Medical Law Consultants or MLCs, who are assigned to Air Force hospitals out in the field.

Both Lieutenant Colonel Vorhees and Lieutenant Colonel Swick have seen how the transition has come about and the changes that have begun to take place. We first asked Lieutenant Colonel Vorhees how the DHA came to be.

Defense Health Agency (DHA)

Lieutenant Colonel Robert Vorhees:
So there's a lot of facts that compressed into this answer, but we'll try to handle it kind of at a nutshell. DHA, as you said, is a Defense Health Agency. It's a successor organization to the TRICARE management activity. But to think about DHA and its existence and where we are today, I think we really need to kind of go back in time starting all the way in 1948. We have history that there have been 18 different military health system governance studies, right? So a lot of studying how this military health system should be structured. It resulted in 2011 in a DoD task force on its, the most recent study DoD Task Force on NHS Governance, which issued a report in September 2011 recommending a DHA model for NHS governance.

That recommendation then went to the Deputy Secretary of Defense who in March of 2012 directed additional planning for DHA's implementation. Basically they wanted to see a working group study this issue. The next step was Department of Defense Directive **5136.13**, which more or less is the founding document that established the DHA. It made the DHA takeover key duties of the TRICARE management activity and the DHA mission, as established in that DoDI, is to manage TRICARE, to manage the Defense Health Program appropriation, what's also referred to as DHP funds. And they had also management responsibility for shared services, functions, and activities. And they were authorized to exercise authority direction, control over MTFs within the NCR that were assigned to DHA. So that's the initial construction of DHA.

Until the National Defense Authorization Act of 2017. That's really the big moment in all of this. In 2017, the NDAA in section 702 and 703 directed DHA to assume authority, direction and control of all of the MTFs and essentially section 702 says beginning October 1st 2018, the Director of the Defense Health Agency shall be responsible for the administration of each military medical treatment facility.

And that was a big moment. You know, 703 of NDAA 2017 required the Secretary of Defense to develop an implementation plan. So they did that. They put together a plan. It was going to be a plan based that DHA would have these various markets, and so there would be large markets, there would be these kind of small and standalone MTFs that would be clumped together, and then there would be regions. There would be a region in Europe and a region in the Indo-Pacific.

So as we were working through all of that, then the next important piece of the puzzle was NDAA 2019. And NDAA 2019, section 711 there was a lot of technical difficulties and issues and pushback from the services about implementing this transition to DHA authority, direction and control of the MTFs. And the timeline got bumped the NDAA 2019 from 1 October of 2018 as the deadline to no later than September 30th of 2021 to have the implementation done. And NDAA 2019 also interestingly enough it bolstered DHA's position of having authority, direction and control over the administration and management of the MTF. It clarified the roles that DHS would have and made it perfectly clear that they were responsible for all of the management of the health care aspect that takes place in the MTFs.

It also added a section 712 which clarified the additional duties—added additional duties of the Surgeon Generals of the Armed Forces. And assigned to them—it gave them the authority to assign uniforms, medical and dental personnel to the MTFs for training purposes. But it also said that they were responsible to ensure the readiness for operational deployment of medical and dental personnel. So, this is a piece that makes it really clear that the Surgeon Generals are the ones who assign military providers to the MTF and the Surgeon Generals are the ones who are responsible for the readiness for operational deployment of these medical forces.

Role Changes

Maj Davis:
So with the passing of those laws, the Defense Health Agency became the authority for all medical aspects of the military medical system. Practically speaking, we were wondering how does this affect the command structure at the wing or installation level? Lieutenant Colonel Vorhees explained that the role of the installation commander has changed because the role of the Surgeons General has changed.

Before, the Surgeons General controlled all aspects of the military medical system, including making the policies that affected the medical care and services offered at the MTF. MTFs have always had two tentpoles of responsibility. On the one hand, they provide medical services, including things like pediatric care, immunizations, cancer treatment and even brain surgery, just as any civilian hospital would.

But uniquely, they also have military command structure, and they make sure not only that our uniformed medical providers are able to go out in the field and provide treatment for our wounded in the theater, but also that our entire force is medically ready and fit to fight. The Surgeon General used to be in charge of both aspects but now with the transition, DHA will handle the medical side of the house, while the surgeons and through the chain of command, the installation commanders are responsible for military readiness.

Lt Col Vorhees:
You're talking about the installation commander and what's he or her and what are they going to see with regards to this transition? The fact is that I liken it almost to a tenant host relationship. DHA is going to have responsibility for what goes on inside that MTF as it relates to everything associated with the health care really that goes on in there.

So if Airman Jones wants to go in there and needs to get an appointment, he's going to make an appointment with the primary care manager and go in there. And that, the rules that structure, what kind of care he gets, generally, if it's just a normal health care it's all going to be governed by DHA.

Lieutenant Colonel Justin Swick:
And I just want to chime in very quickly. I mean, DHA is not a civilian organization. DHA is a branch of DoD. They just happen to be a purple branch of DoD. So, the fundamental concept of an MTF is changing in the manner in which it's being overseen and run. But the fundamental concept is not changing at all. It's still run by DoD. The purpose of the NDAA change was to bring all of the services' MTFs under one roof.

When you look at the mission of a medical treatment facility, on base, it has really two fundamental purposes. One is to operate as a hospital or a clinic, to take sick people in and make them better. Whether that's an active duty Airman or a retiree who just happens to have access to that facility through their benefits.

Of course, the other purpose of an MTF is to maintain readiness for the military. Make sure people get their shots, and make sure people get their annual physicals. That they go from red to green off their IMR. So it's these two fundamental purposes that are going to remain after this. That readiness mission is still going to belong to the installation wing commander because that is the job of an installation wing commander is to train and equip forces ready to deploy at a moment's notice around the world.

So really, the purpose of an MTF is going to be bifurcated now. Half of it is going to be overseen by DHA, the health care delivery aspect, and then the other half is going to be seen by the wing commander as always. And there's going to be some bumps as we figure out what particular job duty within the MTF belongs in which bucket, whether that's the installation commander's authority to train and equip, versus DHA's authority to oversee health care delivery.

Lt Col Vorhees:
I would add that a year or so ago, maybe two years ago now, the Air Force Surgeon General directed that there would be a changed kind of in the structure internally to our MTFs such that there is now an operational medical readiness squadron piece, the most MTFs and a health care operations squadron. So the HCOS, health care operation squadron within MTF focuses on delivery of health care to beneficiaries and dependents. Whereas the OMRS or operational medical readiness squadron within the MTF focuses on the active duty and on the care that they need in order to be medically ready. And so most of our Airmen are now assigned to those OMRS being seen in clinics that are at least for primary care, exclusively for active duty members. So that is one small change that's been ongoing over the last year or two to really get after the readiness issues. And as Lieutenant Colonel Swick said, the installation commander is still going to be responsible for the overall readiness of the force to get out the door for deployments and this is how this is accomplished through the OMRS construct. And he'll still have the ability to have visibility into that aspect.

Organization

Maj Davis:
Policy changes aren't the only way that the installation command roles have been affected by the transition. The question now becomes who's calling the shots at the MTF? If the installation and group commanders are in charge of readiness, but DHA is in charge of the actual medical process, who is running the medical group?

I asked Lieutenant Colonel Vorhees to break down, explain the different leadership roles.

Lt Col Vorhees:
So let me start by kind of describing a little bit better maybe the construct. So for DHA, they have a market construct and essentially that means there are areas where we have major medical facilities—full scale, full service hospitals. You know, a prime example would be something like you have BAMC—Brooke Army Medical Center in San Antonio, Texas, and that's a full-size hospital.

And so for DHA, what they've done is in areas that have one of these full service hospitals, they make a market of the smaller MTFs and clinics around there and lump them together, and they'll call that the large health care markets—there are 21 of those that I'm tracking. And last I saw, 19 of those large markets have been established, a couple left to go.

In addition to the large markets where they're essentially trying to find efficiencies across that space for services, there's also a series of what they call Small Market and Stand Alone Military Treatment Facility Organizations

called the SSO. And this oversees I'm tracking about 17 different SSO kind of organizations under there. And then in addition to all of that, they're going to have a region and Europe is a region Indo-Pacific that will cover all of those MTFs.

So when we talk about you said the DHA directorate, there are multiple levels here. One is the DHA director, which is Lieutenant General Ronald Place. He's an Army three star. So he's the director of DHA. But then at the market level, you're going to end up having one of the MTF commanders inevitably tapped to be the DHA market director. And as the market director, they would try to execute DHA policy across that market.

And then, of course, within the individual MTFs you have the med group commander who's dual hatted now. They are dual hatted with a service commander hat and with a DHA MTF director hat. And with the MTF director hat, they execute the DHA mission, the administration and management of the MTF and the health care that takes place in there. With the service commander hat, they do the service commander assignments and all the various pieces and parts that our service directly serves connected to readiness issues that they had before.

Impact on Patients

Maj Davis:
You may be wondering; how will this whole transition actually affect me as a patient?

Practically speaking, for people who are coming to the MTF, whether it's an active duty person or a dependent—when we think about medical versus military readiness at the MTF, how will that break down? If I'm an active duty member and I go in to go to the doctor, do I still see my same doctor? You know, do I still have a uniformed doctor treating me and I could still get referred somewhere else? How does that start to look at the MTF level?

Lt Col Swick:
Yeah, I don't think the transition will be necessarily visible to patients at all. You know, there may be some small changes, but, you know, the MTF is going to continue to function probably the way it always has. The organization of the MTF will be different. But, you know, I don't think that will be visible to the patient coming in for duty. So hopefully the transition goes smoothly and that transition is not visible to the patients. But I don't anticipate a large change in the way the health care is delivered, at least on the ground level.

Reductions

Maj Davis:
When I was a medical law consultant, there was a lot of concern about whether our uniformed medical personnel were on their way out, and that with the DHA transition and a potential increase in the number of off-base referrals, and even shutting down some clinics, the need for military medical providers would fall off and cuts would be made.

Lt Col Vorhees:
No, no. I haven't heard anything about active duty military docs losing their jobs specific to, specifically related to the NHS transition or DHA taking over authority, direction and control of the MTFs. Of course, manning is its own kind, and planning and programing are all their own kind of issues and questions and are driven largely by budgets. At this point in time, I haven't heard of massive cuts or doctors losing their jobs associated with THIS effort. That doesn't mean that in future years there won't be budgetary cuts much as we go through from time to time.

Just a point of clarification. That, as part of our overall service manpower reduction, that is ongoing and the discussions are ongoing, there is some portion of Air Force medical service billets and positions that may be lost in the near future. But I don't tie that directly to this effort, this NHS transition effort, but more to the services in general, losing some manpower authorizations.

COVID-19

Maj Davis:
Of course, these major seismic changes to the military medical system have been overshadowed by bigger medical news—the COVID-19 pandemic. I know that we know, as Colonel Vorhees said earlier this really came into being, really you know 2011 we started really having this conversation. Obviously now it's 2021. So I know that there were some initial timelines and then some edited timelines as things went on and things started to roll out and we're sort of figuring it out as we go.

But what in this timeline, what really has been affected by COVID? Has it slowed down the transition at all? Because obviously everybody in the NHS had to pivot to focus on global pandemic. So some of the bureaucracy and the administration maybe not the focal point. But what effect did COVID have, and what is the plan after that moving forward? Where are we in the transition?

Lt Col Swick:
I think like the rest of society, COVID caused some difficulties and the transition was paused for a period of time. So, I would say it's fair to say that the transition is probably behind where someone would expect it to be two or three years ago. But I don't think it fundamentally changed anything about the transition itself. It just slowed it down.

And where we are in the transition right now, October 1st of this year was a big date. And that would be the date that the DHA takes full control over the MTFs. Now that is going to be a process. And just to give you an idea, a small part of the transition is the legal portion. That's the part that we do.

So DHA right now, they're busy standing up their market, hiring personnel, putting them in place, going through the MTFs. There's a certification process to make sure that the MTFs are within the standards the DHA has set for the MTFs. All of that is ongoing.

As I mentioned, they're behind where you would expect them to be, and COVID was a big part of that. But that process is moving forward. That October 1st date of this year has come and gone. The DHA has assumed control. However, the transition is still slowly moving along and nothing magical happened on October 1st. It's not like everybody came into their office and the walls were painted a DHA color instead of an Air Force color.

What JAGs Should Know

Maj Davis:
For our JAG listeners, we also asked Lieutenant Colonel Swick and Lieutenant Colonel Vorhees what our base legal officers need to know about the transition.

So, yeah, speaking of the base legal office, what do they need to know about the transition? What does their new role look like? And you know, MLCs used to be the reach back point for those kinds of questions? What will that new setup look like?

Lt Col Swick:
Well, there's going to be probably two things, that's kind of a two part question. One is what do they need to know right now? And then what are they going to need to know when the transition is complete?

The first address where we are right now. So I'm counting of the 76 MTFs that we have worldwide, as of this date, DHS has informed me that seven of those facilities, DHA is ready to start providing full spectrum legal advice to those facilities. So that's less than 10%. Just to give you some indication of where we are in the process.

Now, a month from now, maybe we're up to 20%, maybe we're up to 15%. It really is going to depend on DHA. That's not a decision we're going to make for them. We're going to continue to support our MTFs, our MTF commanders. Do what we've always done to meet the mission until that happens.

So if I'm a captain in the base legal office and I have a medical legal question, most bases, at this point, still have an MLC to call. Now, if you happen to be at one of those seven bases that have transitioned to DHA, it probably be a good idea to know that. And we've been in consistent contact with the SJAs for those facilities to make sure that they understand that their MTFs have transferred, that the dynamic is different that they may have a different chain of command, so to speak, for MTF legal support, and they need to be aware of that.

So that's a good segue into what is it going to look like at the end of this transition? What are base legal office attorneys going to have to know three years from now or two years from now or even a year from now, when the transition is complete? It's going to be critical, I think, for base SJAs and the civil law chief or whoever has oversight over some of the issues around the MTF. It can be critical for them to know who DHA the attorney is for their particular MTF.

DHA is going to be more or less a tenant unit on base. They're going to have their own equities at that MTF. And just like other tenant units on a base, you're going to have to develop a relationship. Just to give you an example, if there's a military medical provider who commits some sort of misconduct, perhaps, you know, there's a patient complaint that leads to an investigation. Now, that misconduct that may have clinical implications and DHA attorney, just like the MLC has always done, will usher through that clinical adverse action process to review the privileges and make sure that there's not a threat to patient safety.

Now, that may also be a UCMJ concern, and there's going to be some questions about medical records and who does the investigation and who's able to share the outcome of that investigation. There's going to be a lot of coordination that needs to be done. Traditionally, that's been done with the MLC. At the end of the transition, it's going to have to be done with DHA.

So a good, healthy working relationship with the DHA attorney, whether that's at the market where the attorney actually co-located in the MTF, depending on the location. That's going to be very important to base legal office attorneys know that.

I'll also say that there's going to be a portion of the MLCs traditional legal portfolio that's going to stay with the Air Force. So that's going to be a retained medical law mission. Mostly stuff related to the installation commanders, authorities who oversee military medical readiness. For example, of COVID vaccination process is ongoing. There are many questions that the installation commander has for that process to make sure his troops are in accordance with SecDef's vaccination mandate.

Those questions may not be appropriate for DHA. It's going to be appropriate for whoever in the Air Force JAG Corps is the medical law subject matter expert. And traditionally that question will go to the MLC. But if the MLC position has been eliminated at that base, they may have to call up here to the civil law domain and speak to a medical military, medical law expert to help get that specific guidance. So that they're able to advise that installation commander on his military health readiness mission.

So really, it might be a little more complicated at first. They're going to have to perhaps work with DHA, also know who to go for medical reach back support. But this is nothing that is going to be too complicated. It just can be a matter of communicating with me, communicating with your regional MLC to make sure that basically bosses are aware of when their base is transitioning and who they need to call, when they need the support that they need.

What Commanders Need to Know

Maj Davis:

And of course, we were wondering, is there anything else the commanders need to know?

Lt Col Swick:
So I think that's a good question. And I think the one thing the commanders are going to have to know is that there are some unknowns in this process. They probably have more questions than I think DHA or anyone in the Air Force medical community may have answers for. These are complicated questions. Right? These are you know—this is a new process for a lot of people. I think the question of, you know, it's easy to talk theoretically about you know, what is health care delivery versus what is military medical readiness? It's harder in practice, because there's a lot of things that happen under the roof of that MTF. And I think there's going to be a lot of things that happen that perhaps fall into both buckets.

And there's going to be a question of well does DHA have authority over this—this is health care delivery, but it's also military readiness. Something as simple as getting your COVID shot. Now, that's a medical procedure. You know, getting any kind of vaccinations is a medical procedure, and it's overseen by the DHA, but it's also something critical to maintaining readiness. So the installation commander has an equity there of that shot going in that Airman's arm. So, you know, who oversees that process? Who has the ability to make changes to that process? And for our perspective, who advises on that process? These are harder questions that I think anybody really is prepared to handle.

It doesn't mean we're not going to get there. I think it just means that there may be some patients and maybe an understanding that there's going to be some issues where we're going to have to huddle with our DHA attorney counterparts and come to an agreement that, you know, this is something that, you know, that falls into this bucket or maybe falls into both. Let's come to a meeting of the minds on it.

So my best advice to commanders and SJAs or anyone that may be trying to track this and work through this transition is that you know, be patient. You know, this is splitting a cruise ship into two different cruise ship. You know, this might not be the best analogy [laughter], but this is really trying to create a new process, meet Congress's intent and make sure that everyone knows what they need to do and where they need to go at the end of this process. And there's a reason why the transition and why everything just didn't magically transition overnight.

Lt Col Vorhees:
Yeah, I think those are valid comments. There are certainly some unknowns as we get closer to the final implementation and DHA taking authority, direction, and control over the MTF. I'll just mentioned that the Overseas Defense Health Regions are scheduled to be stood up in spring of 2022. So that's kind of the timeline for the last pieces to shift over to DHA.

And I'll just mention as well that communication is really important, as Lieutenant Colonel Swick said, and that we're really leveraging the dual hatted nature of the MTF commander to help accomplish that communication mission. You know, some of the issues that he brought up about it can be a Uniform Code of Military Justice issue and it can also be a DHA issue, and a service issue and DHA issue. Well, that's why they're dual-hatted, so that we can make sure that information can flow through the service side as well.

Summary

Maj Davis:
So as with many other things, the best advice we can give everyone at this point is to be patient and stand by. And to do your best to stay in the loop at your own base, so you're tracking when the transition will hit your MTF and how it will affect your installation.

We want to give a special thanks to Lieutenant Colonel Vorhees and Lieutenant Colonel Swick for sitting down and chatting with us and answering our questions. For more information about DHA and the military health system, you can go to **health.mil** and as always, reach out to your local base legal office or medical law consultant for more info on medical law issues.

Thanks for joining us today. Don't forget to subscribe to The AFJAGS podcast so you'll know every time we publish a new episode.

Capt Hedden:
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Glossary

- **AFJAGS:** Air Force Judge Advocate General's School
- **BAMC:** Brooke Army Medical Center
- **JAG:** judge advocate general
- **DHA:** Defense Health Agency
- **DHP:** Defense Health Program
- **HCOS:** health care operation squadron
- **IMR:** immunization record
- **JAG:** judge advocate general
- **MLC:** Medical Law Consultant
- **MTF:** medical treatment facility
- **NCR:** National Capital Region
- **NHS:** National Health Strategy
- **OMRS:** operational medical readiness squadron
- **SecDef:** Secretary of Defense
- **SJA:** Staff Judge Advocate
- **SSO:** Small Market and Stand Alone Military Treatment Facility Organization

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