State must make it clear: Torture won't be tolerated

By Howard E. Moseley
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A little more than eight years ago, the Bush administration's Office of Legal Counsel secretly issued the infamous "torture memos."

Those memos stretched conventional legal doctrine to suggest that U.S. government personnel could lawfully use extreme tactics on detainees so long as they did not lead to organ failure or death.

As we now know, those memos led directly and indirectly to acts of torture by U.S. personnel that have permanently stained our nation's human rights reputation: mock electrocutions, inducing the sensation of drowning and the widely viewed images of human pyramids built of naked detainees at Abu Ghraib, to name a few.

Whether the lawyers who penned or approved those memos were guilty of professional misconduct, as an initial Department of Justice report found, or merely "poor judgment," as the superseding report concluded, has been the subject of much debate.

At the time, the nation was in a state of panic over the Sept. 11, 2001, terror attacks, and the Bush administration was not asking an abstract question but seeking legal guidance for a set of actions it believed were necessary to protect the nation. Of course, it seems clear now that the airplane attacks on New York and the Pentagon, and the heroic airplane crash in Shanksville, Pa., were not an existential threat - this nation, after all, saved an entire continent from the scourge of war not once, but twice - so the question must be asked: How can we ensure our nation never again engages in the use of torture?

I believe that kind of accountability begins with the legal and health professionals who work in government, as I do.

Most professionals, including lawyers, doctors and psychologists, are licensed by state professional boards. Even professionals working for the federal government - in civilian or military roles - are typically licensed through one or more state boards. Aside from setting professional qualifications, the most important function of a state board is to provide continuing oversight of its licensees by investigating complaints and imposing discipline if necessary, including disbarment.

In 2008, the California Legislature passed SR19, calling on each of the state's health boards to notify its licensees that participation in torture could result in discipline or even criminal action against them.
It was a good start, but further evidence has emerged since, revealing that professionals - some of whom may be licensed in California - stood by and closely monitored the physical distress of detainees as they were tortured.

Yet to this day, despite all that has been revealed in the public domain regarding the torture practices of the Bush administration, none of California's state boards has conducted a comprehensive investigation to determine if any of its licensees contributed to the torture of others, directly or indirectly.

No less than Sen. John McCain, R-Ariz. - a torture victim himself during the Vietnam War - expressed his deep concern with the Bush administration's torture policy: "If we inflict this cruel and inhumane treatment, the cruel actions of a few darken the reputation of our country in the eyes of millions. American values should win against all others in any war of ideas, and we can't let prisoner abuse tarnish our image."

It's time for California's professional boards to step up to this task.

If not, the Legislature needs to step in again to ensure they receive a clear mandate to perform their public duty.

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