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II.

Special Considerations for PTSD and Related Mental Health Conditions

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Legal Assistance for Military Personnel
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SPECIAL CONSIDERATIONS FOR WORKING WITH **VETERANS** WITH **POSTTRAUMATIC STRESS DISORDER** AND RELATED MENTAL HEALTH CONDITIONS

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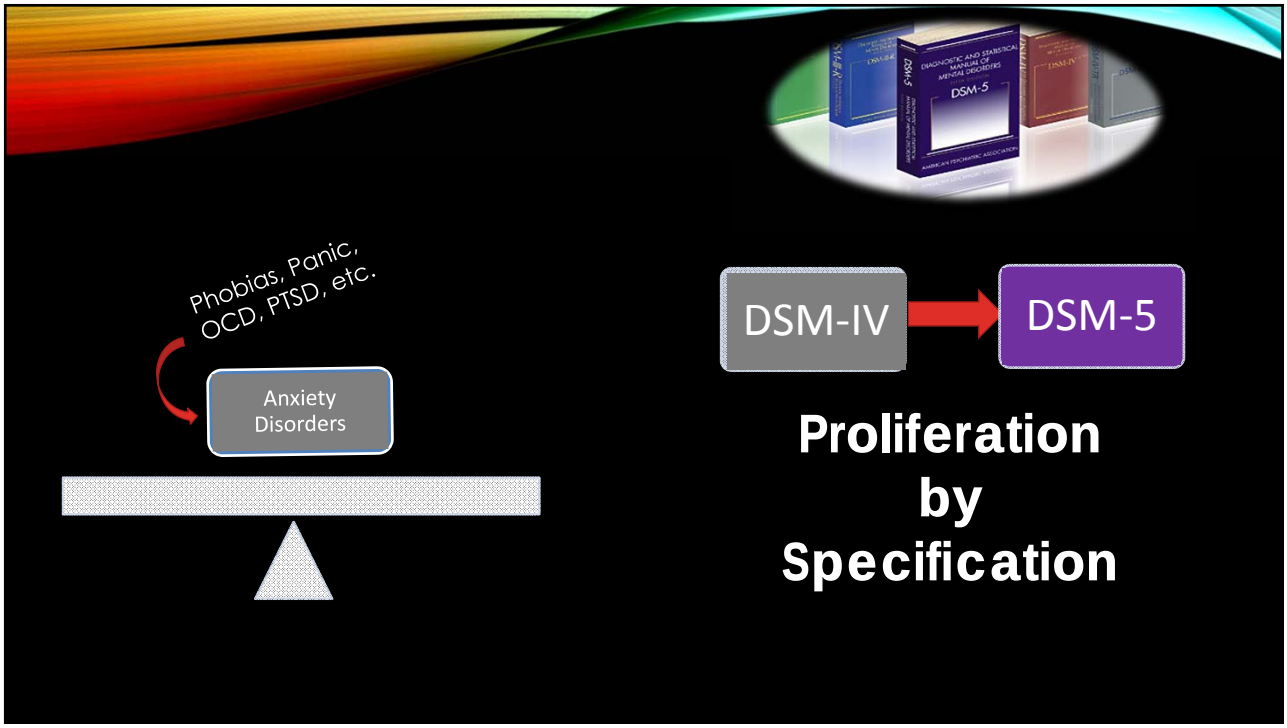
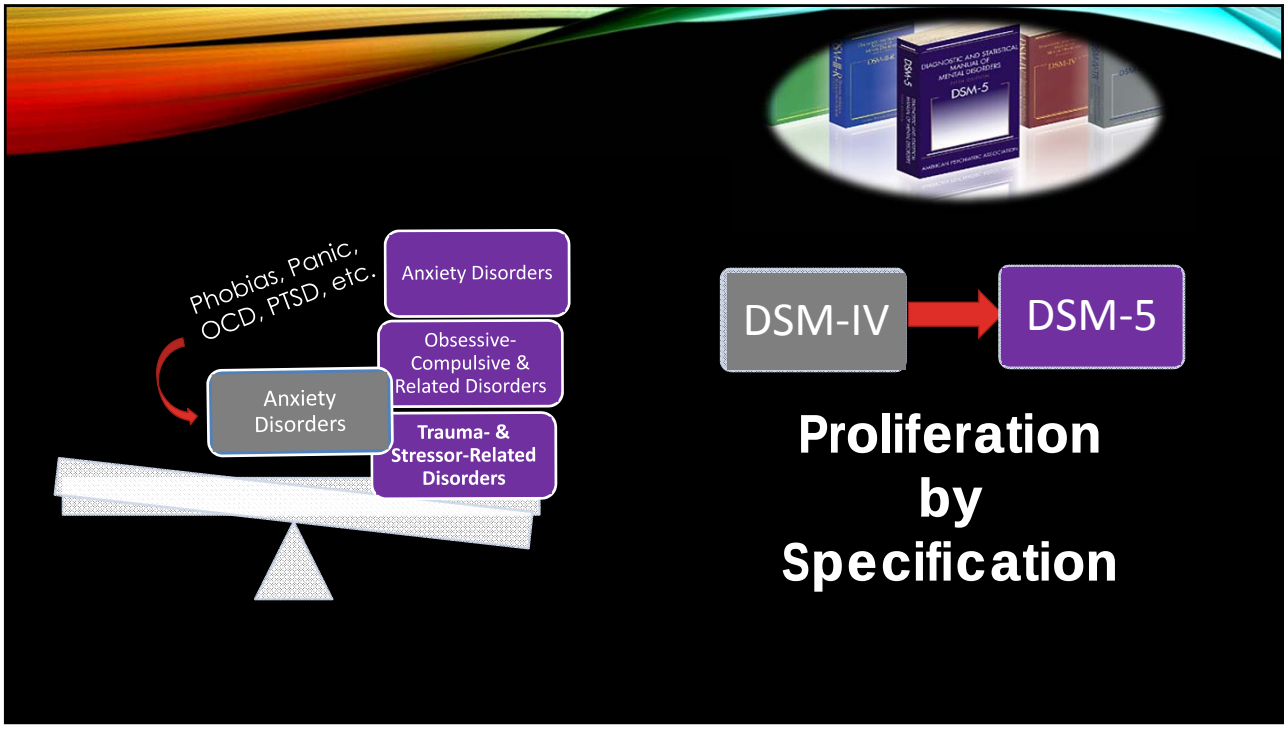
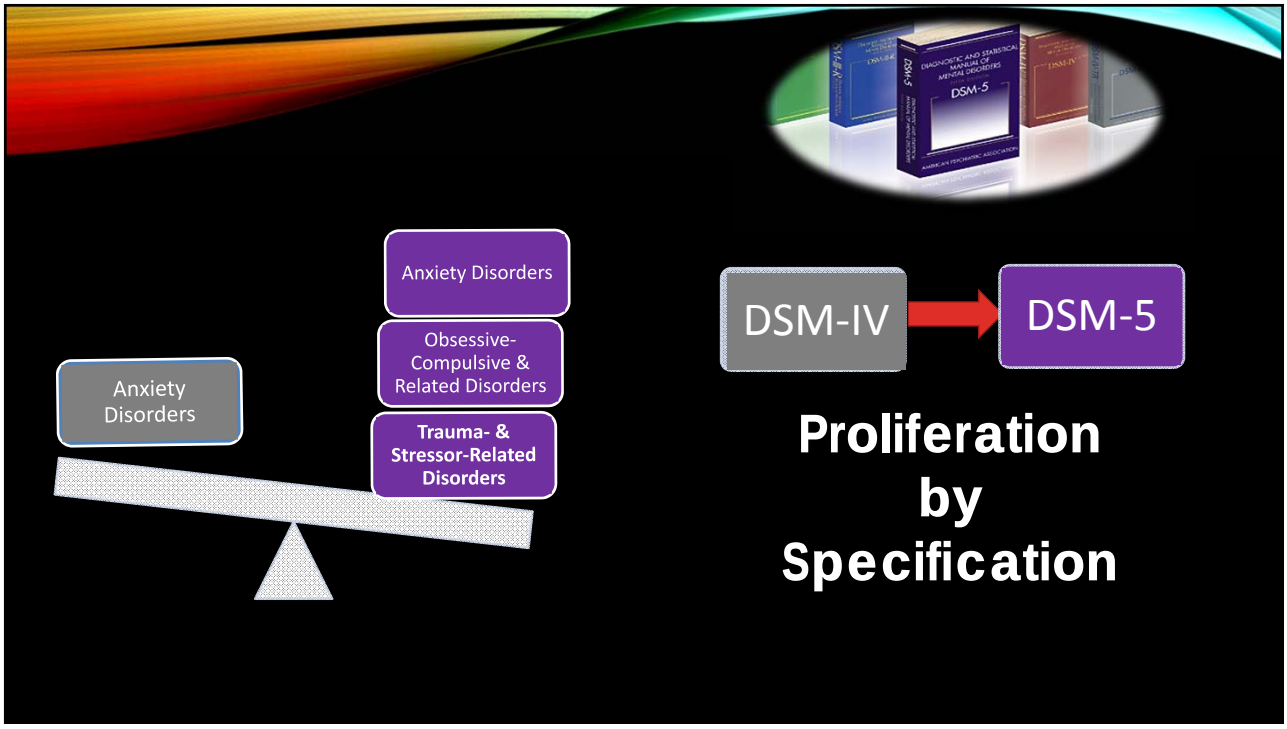



Phobias, Panic, OCD, PTSD, etc.
Anxiety Disorders
Obsessive-Compulsive & Related Disorders
Anxiety Disorders
Trauma- & Stressor-Related Disorders
DSM-IV
DSM-5
Proliferation by Specification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DSM-5 PTSD CRITERIA

DSM-IV Criterion A:
"*...experienced, witnessed, or was confronted with...actual or threatened death or serious injury or threat to the physical integrity of self or others...*

DSM-IV Criterion B:
"reexperiencing symptoms"

A. Exposure to actual or threatened death, serious injury, or sexual violence
   1. Directly experiencing the traumatic event(s)
   2. Witnessing the event(s) as it/they occurred to others
   3. Learning the event(s) occurred to a close family member or close friend. (must have been violent or accidental)
   4. Experiencing repeated or extreme exposure to the aversive aspects of traumatic events. (Police, other first responders) (Does not apply to exposure via media, unless work-related)

B. One or more "intrusion symptoms"
   1. Recurrent, Involuntary, intrusive distressing memories
   2. Recurrent distressing dreams related to the event(s)
   3. Dissociative reactions (flashbacks) in which the individual feels or acts as if the event(s) were recurring
   4. Intense or prolonged distress at exposure to internal or external cues that symbolize/resemble aspects of the event(s)
   5. Marked physiological reactions to internal or external cues that symbolize/resemble aspects of the event(s)

C. Persistent avoidance of associated stimuli [one or both]
   1. Avoidance/efforts to avoid distressing memories, thoughts, or feelings regarding the traumatic event(s)
   2. Avoidance/efforts to avoid external reminders that arouse distressing memories, thoughts, or feelings regarding the traumatic event(s)

PTSD (CONT.)

NEW SPECIFIERS:
- with "Dissociative Symptoms"
- with "Delayed Expression"

D. Negative alterations in cognition and mood, beginning or worsening after the event(s) (*two* or more of):
   1. Inability to remember an important aspect of the event(s) (not due to head injury, drugs, etc.)^
   2. Persistent/exaggerated negative beliefs/expectations about oneself, others, or the world^
   3. Distorted cognitions about the cause or consequences of the event(s) leading to blame of self or others*
   4. Persistent negative emotional state (fear, horror, anger, guilt or shame)
   5. Markedly diminished interest/participation in significant activities^
   6. Feelings of detachment or estrangement^
   7. Persistent inability to experience positive emotions.^

E. Marked alterations in arousal and reactivity (*two* or more of):
   1. Irritable behavior and angry outbursts – verbal or physical aggression
   2. Reckless or self-destructive behaviors*
   3. Hypervigilance
   4. Exaggerated startle response
   5. Problems with concentration
   6. Sleep disturbance

^ *denotes items moved from their location in DSM-IV criteria.*

* *denotes new items*

MORE VETERANS WITH PTSD
even with NO combat history
even those who seem fine for as much as 6 months after trauma
Increased risk with each deployment

MORE COMORBIDTY
especially major mood disorders and substance disorders

MORE HETEROGENEITY
more ways to meet minimum criteria = greater heterogeneity of population

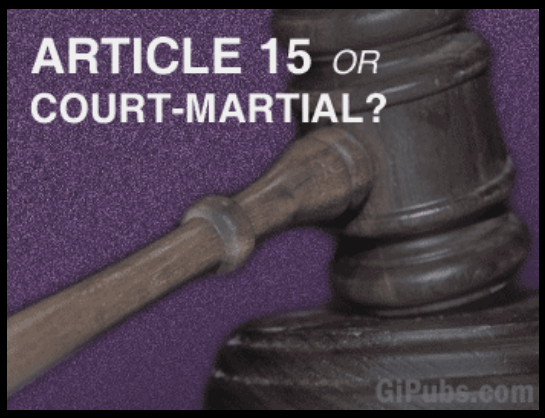
MORE "EXPECTED" PROBLEMS
memory deficits that are **unrelated** to TBI
violent / reckless/ or self-destructive behaviors
dissociation / unreality

Implications of DSM-5 Change

Points of Intervention

1. Misconduct Classification
2. Imposition of Non-Judicial Punishments
3. Administrative Separations
4. Defense of Lack of Mental Responsibility

1. MISCONDUCT CLASSIFICATION



Minor Violations of UCMJ

the classification of misconduct as "minor offense" is the sole discretion of the Commanding Officer

Ordinarily Considering:
- *Nature* of misconduct
- *Gravity* of misconduct (seriousness)
- *Circumstances* Surrounding its Commission

2. NON-JUDICIAL PUNISHMENT

ARTICLE 15, CAPTAINS MAST, OFFICE HOURS

- Notification of the Service Member
  - May allow consultation with defense counsel on how to proceed (consent, request CM)
    - Army – except if Summarized NJP
    - Marines – not a right to counsel per se, but consultation is encouraged
- UCMJ and Manual for Courts-Martial dictate max punishments, but discretion is afforded to CO on actual punishments
  - Intent is punitive *and* corrective (but may backfire for members with PTSD or TBI)
  - Suspension / Probation
  - Remit/Mitigate
- Appeal of Punishment to Higher Authority

3. SEPARATIONS AND DISCHARGES

- Administrative (ADSEP)
  - Medical
  - Honorable
  - Other Than Honorable
  - General Under Honorable
- Punitive (CM)
  - Bad Conduct Discharge
  - Dishonorable Discharge

10 U.S. Code § 1177 (a)(2) specifies that military personnel

- who were deployed overseas in contingency operation OR sexually assaulted during *previous 24 months*
- and diagnosed with PTSD (or TBI) as a result
- are entitled to a medical examination to assess whether PTSD is an extenuating circumstance to be considered in "other than honorable" characterization of the service member and/or his/her basis of administrative separation

** NOTE does not apply to Courts-Martial or other UCMJ proceedings

4. LACK OF MENTAL RESPONSIBILITY

the accused has the burden of establishing by clear and convincing evidence that s/he,

as a result of a severe mental disease or defect,

was unable to appreciate

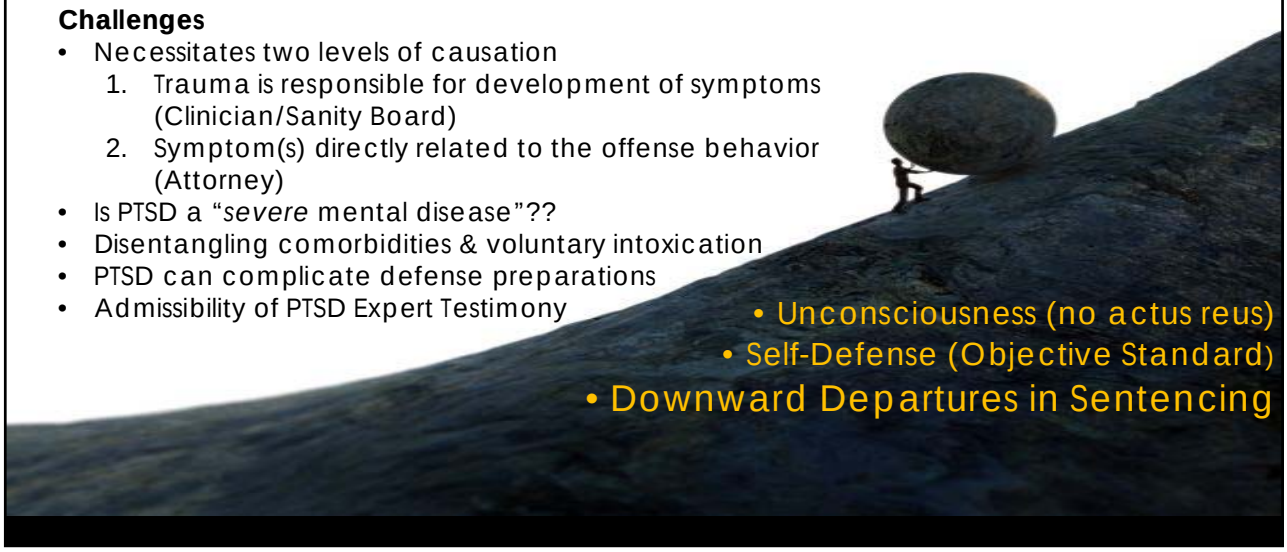
- **the nature (what) and quality (severity/consequences) of the acts**
  or
- **the wrongfulness of the alleged acts.**

850a. ART 50a

MENTAL DEFENSE (CONT.)

Challenges

- Necessitates two levels of causation
  1. Trauma is responsible for development of symptoms (Clinician/Sanity Board)
  2. Symptom(s) directly related to the offense behavior (Attorney)
- Is PTSD a "*severe* mental disease"??
- Disentangling comorbidities & voluntary intoxication
- PTSD can complicate defense preparations
- Admissibility of PTSD Expert Testimony



- Unconsciousness (no actus reus)
- Self-Defense (Objective Standard)
- Downward Departures in Sentencing

Summary

1. A diagnosis of PTSD may tell you very little about how to work effectively with the service member/veteran as an *individual*

2. A "one-size-fits-all" approach to discipline may serve to worsen, rather than correct, conduct violations – increasing the likelihood of adverse separation classifications or even punitive discharges.

3. Additional features of PTSD which may factor into administrative and legal contexts

** PTSD Education for CO ** Case-by-Case Analysis **
** Early Correction/Rehabilitation ** Mental Condition as Extenuating Circumstance

QUESTIONS/COMMENTS

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