

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (98) 7¹

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE ETHICAL AND ORGANISATIONAL ASPECTS OF HEALTH CARE IN PRISON

*(Adopted by the Committee of Ministers on 8 April 1998
at the 627th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that medical practice in the community and in the prison context should be guided by the same ethical principles;

Aware that the respect for the fundamental rights of prisoners entails the provision to prisoners of preventive treatment and health care equivalent to those provided to the community in general;

Recognising that the medical practitioner in prison often faces difficult problems which stem from conflicting expectations from the prison administration and prisoners, the consequences of which require that the practitioner should adhere to very strict ethical guidelines;

Considering that it is in the interests of the prison doctor, the other health care staff, the inmates and the prison administration to proceed on a clear vision of the right to health care in prison and the specific role of the prison doctor and the other health care staff;

Considering that specific problem situations in prisons such as overcrowding, infectious diseases, drug addiction, mental disturbance, violence, cellular confinement or body searches require sound ethical principles in the conduct of medical practice;

Bearing in mind the European Convention on Human Rights, the European Social Charter and the Convention on Human Rights and Biomedicine;

Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the recommendations on health care service in prisons summarised in the 3rd general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Referring to its Recommendation No. R (87) 3 on the European Prison Rules which help to guarantee minimum standards of humanity and dignity in prisons;

Recalling Recommendation No. R (90) 3 on medical research on human beings and Recommendation No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, as well as the 1993 WHO guidelines on HIV infection and Aids in prison;

1. In accordance with Rule 10.2.c. of the Rules of Procedure for the meetings of the Ministers' Deputies, the Danish Delegation wishes to make the following reservation: "Paragraph 72 of the appendix is not acceptable to Denmark to the extent that it allows for body searches being carried out by persons other than a medical doctor. And in the opinion of Danish Authorities, an intimate examination of body cavities should take place only with the consent of the person involved."

Mindful of Recommendations 1235 (1994) on psychiatry and human rights and 1257 (1995) on the conditions of detention in Council of Europe member states, prepared by the Parliamentary Assembly of the Council of Europe;

Referring to the Principles of Medical Ethics for the Protection of Detained Persons and Prisoners against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in 1982;

Referring to the specific declarations of the World Medical Association (WMA) concerning medical ethics, in particular the Declaration of Tokyo (1975), the Declaration of Malta on hunger strikers (1991) and the Statement on body searches of prisoners (1993);

Taking note of recent reforms in structure, organisation and regulation of prison health care services in several member states, in particular in connection with reforms of their health care systems;

Taking into account the different administrative structures of member states which require the implementation of recommendations both at federal and state levels,

Recommends that the governments of member states :

- take into account, when reviewing their legislation and in their practice in the area of health care provision in prison, the principles and recommendations set out in the appendix to this recommendation;
- ensure the widest possible dissemination of the recommendation and its explanatory memorandum, paying special attention to all individuals and bodies responsible for the organisation and provision of preventive treatment and health care in prison.

Appendix to Recommendation No. R (98) 7

I. Main characteristics of the right to health care in prison

A. Access to a doctor

1. When entering prison and later on while in custody, prisoners should be able at any time to have access to a doctor or a fully qualified nurse, irrespective of their detention regime and without undue delay, if required by their state of health. All detainees should benefit from appropriate medical examinations on admission. Special emphasis should be put on the screening of mental disorders, of psychological adaptation to prison, of withdrawal symptoms resulting from use of drugs, medication or alcohol, and of contagious and chronic conditions.
2. In order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penal institutions, depending on the number and the turnover of inmates and their average state of health.
3. A prison's health care service should at least be able to provide out-patient consultations and emergency treatment. When the state of health of the inmates requires treatment which cannot be guaranteed in prison, everything possible should be done to ensure that treatment is given, in all security, in health establishments outside the prison.
4. Prisoners should have access to a doctor, when necessary, at any time during the day and the night. Someone competent to provide first aid should always be present on the prison premises. In case of serious emergencies, the doctor, a member of the nursing staff and the prison management should be warned; active participation and commitment of the custodial staff is essential.
5. An access to psychiatric consultation and counselling should be secured. There should be a psychiatric team in larger penal institutions. If this is not available as in the smaller establishments, consultations should be assured by a psychiatrist, practising in hospital or in private.
6. The services of a qualified dental surgeon should be available to every prisoner.

7. The prison administration should make arrangements for ensuring contacts and co-operation with local public and private health institutions. Since it is not easy to provide appropriate treatment in prison for certain inmates addicted to drugs, alcohol or medication, external consultants belonging to the system providing specialist assistance to addicts in the general community should be called on for counselling and even care purposes.

8. Where appropriate, specific services should be provided to female prisoners. Pregnant inmates should be medically monitored and should be able to deliver in an external hospital service most appropriate to their condition.

9. In being escorted to hospital the patient should be accompanied by medical or nursing staff, as required.

B. Equivalence of care

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it.

11. The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment.

12. The role of the ministry responsible for health should be strengthened in the domain of quality assessment of hygiene, health care and organisation of health services in custody, in accordance with national legislation. A clear division of responsibilities and authority should be established between the ministry responsible for health or other competent ministries, which should co-operate in implementing an integrated health policy in prison.

C. Patient's consent and confidentiality

13. Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.

14. Unless inmates suffer from any illness which renders them incapable of understanding the nature of their condition, they should always be entitled to give the doctor their informed consent before any physical examination of their person or their body products can be undertaken, except in cases provided for by law. The reasons for each examination should be clearly explained to, and understood by, the inmates. The indication for any medication should be explained to the inmates, together with any possible side effects likely to be experienced by them.

15. Informed consent should be obtained in the case of mentally ill patients as well as in situations when medical duties and security requirements may not coincide, for example refusal of treatment or refusal of food.

16. Any derogation from the principle of freedom of consent should be based upon law and be guided by the same principles which are applicable to the population as a whole.

17. Remand prisoners should be entitled to ask for a consultation with their own doctor or another outside doctor at their own expense.

Sentenced prisoners may seek a second medical opinion and the prison doctor should give this proposition sympathetic consideration. However, any decision as to the merits of this request is ultimately his responsibility.

18. All transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality. Prisoners should be informed that their medical record will be transferred. They should be entitled to object to the transfer, in accordance with national legislation.

All released prisoners should be given relevant written information concerning their health for the benefit of their family doctor.

D. Professional independence

19. Doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. The health needs of the inmate should always be the primary concern of the doctor.

20. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.

21. Nurses and other members of the health care staff should perform their tasks under the direct responsibility of the senior doctor, who should not delegate to paramedical personnel tasks other than those authorised by law and by deontological codes. The quality of the medical and nursing services should be assessed by a qualified health authority.
22. The remuneration of medical staff should not be lower than that which would be used in other sectors of public health.

II. The specific role of the prison doctor and other health care staff in the context of the prison environment

A. General requirements

23. The role of the prison doctor is firstly to give appropriate medical care and advice to all the prisoners for whom he or she is clinically responsible.
24. It should also imply advising the prison management on matters concerned with nutrition or the environment within which the prisoners are required to live, as well as in respect of hygiene and sanitation.
25. Health care staff should be able to provide health information to the prison management and custodial staff as well as appropriate health training, as necessary.

B. Information, prevention and education for health

26. On admission to prison, each person should receive information on rights and obligations, the internal regulations of the establishment as well as guidelines as to how and where to get help and advice. This information should be understood by each inmate. Special instruction should be given to the illiterate.
27. A health education programme should be developed in all prison establishments. Both inmates and prison administrators should receive a basic health promotion information package, targeted towards health care for persons in custody.
28. Emphasis should be put on explaining the advantages of voluntary and anonymous screening for transmissible diseases and the possible negative consequences of hepatitis, sexually transmitted diseases, tuberculosis or infection with HIV. Those who undergo a test must benefit from follow-up medical consultation.
29. The health education programme should aim at encouraging the development of healthy lifestyles and enabling inmates to make appropriate decisions in respect of their own health and that of their families, preserving and protecting individual integrity, diminishing risks of dependency and recidivism. This approach should motivate inmates to participate in health programmes in which they are taught in a coherent manner the behaviour and strategies for minimising risks to their health.

C. Particular forms of pathology and preventive health care in prison

30. Any signs of violence observed when prisoners are medically screened on their admission to a prison establishment should be fully recorded by the doctor, together with any relevant statements by the prisoner and the doctor's conclusions. This information should also be made available to the prison administration with the consent of the prisoner.
31. Any information on cases of violence against inmates, occasioned in the course of detention, should be forwarded to the relevant authorities. As a rule, such action should only be undertaken with the consent of the inmates concerned.
32. In certain exceptional cases, and in any event in strict compliance with the rules of professional ethics, the informed consent of the prisoner need not be regarded as essential, in particular, if the doctor considers that he or she has an overriding responsibility both to the patient and to the rest of the prison community to report a serious incident that presents a real danger. The health care service should collect, if appropriate, periodic statistical data concerning injuries observed, with a view to communicating them to the prison management and the ministries concerned, in accordance with national legislation on data protection.
33. Appropriate health training for members of the custodial staff should be provided with a view to enabling them to report physical and mental health problems which they might detect in the prison population.

D. The professional training of prison health care staff

34. Prison doctors should be well versed in both general medical and psychiatric disorders. Their training should comprise the acquisition of initial theoretical knowledge, an understanding of the prison environment and its effects on

medical practice in prison, an assessment of their skills, and a traineeship under the supervision of a more senior colleague. They should also be provided with regular in-service training.

35. Appropriate training should also be provided to other health care staff and should include knowledge about the functioning of prisons and relevant prison regulations.

III. The organisation of health care in prison with specific reference to the management of certain common problems

A. Transmitted diseases, in particular : HIV infection and Aids, tuberculosis, hepatitis

36. In order to prevent sexually transmitted infections in prison adequate prophylactic measures should be taken.

37. HIV tests should be performed only with the consent of the inmates, on an anonymous basis and in accordance with existing legislation. Thorough counselling should be provided before and after the test.

38. The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons.

39. No form of segregation should be envisaged in respect of persons who are HIV antibody positive, subject to the provisions contained in paragraph 40.

40. Those who become seriously ill with Aids-related illnesses should be treated within the prison health care department, without necessarily resorting to total isolation. Patients, who need to be protected from the infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections, particularly in those cases where their immune system is seriously impaired.

41. If cases of tuberculosis are detected, all necessary measures should be applied to prevent the propagation of this infection, in accordance with relevant legislation in this area. Therapeutic intervention should be of a standard equal to that outside of prison.

42. Because it is the only effective method of preventing the spread of hepatitis B, vaccination against hepatitis B should be offered to inmates and staff. Information and appropriate prevention facilities should be made available in view of the fact that hepatitis B and C are transmitted mainly by the intravenous use of drugs together with seminal and blood contamination.

B. Addiction to drugs, alcohol and medication : management of pharmacy and distribution of medication

43. The care of prisoners with alcohol and drug-related problems needs to be developed further, taking into account in particular the services offered for drug addicts, as recommended by the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group). Therefore, it is necessary to offer sufficient training to medical and prison personnel, and to improve co-operation with external counselling services, in order to ensure continuing follow-up therapy on discharge to the community.

44. The prison doctor should encourage prisoners to take advantage of the system of social or psychotherapeutic assistance in order to prevent the risks of abuse of drugs, medication and alcohol.

45. The treatment of the withdrawal symptoms of abuse of drugs, alcohol or medication in prison should be conducted along the same lines as in the community.

46. If prisoners undergo a withdrawal cure, the doctor should encourage them, both while still in prison and after their release, to take all the necessary steps to avoid a relapse into addiction.

47. Detained persons should be able to consult a specialised internal or external counsellor who would give them the necessary support both while they are serving their sentence and during their care after release. Such counsellors should also be able to contribute to the in-service training of custodial staff.

48. Where appropriate, prisoners should be allowed to carry their prescribed medication. However, medication which is dangerous if taken as an overdose should be withheld and issued to them on an individual dose-by-dose basis.

49. In consultation with the competent pharmaceutical adviser, the prison doctor should prepare as necessary a comprehensive list of medicines and drugs usually prescribed in the medical service. A medical prescription should remain the exclusive responsibility of the medical profession, and medicines should be distributed by authorised personnel only.

C. Persons unsuited to continued detention : serious physical handicap, advanced age, short term fatal prognosis

50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment.

51. The decision as to when patients subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds. While awaiting such transfer, these patients should receive optimum nursing care during the terminal phase of their illness within the prison health care centre. In such cases provision should be made for periodic respite care in an outside hospice. The possibility of a pardon for medical reasons or early release should be examined.

D. Psychiatric symptoms, mental disturbance and major personality disorders, risk of suicide

52. The prison administration and the ministry responsible for mental health should co-operate in organising psychiatric services for prisoners.

53. Mental health services and social services attached to prisons should aim to provide help and advice for inmates and to strengthen their coping and adaptation skills. These services should co-ordinate their activities, bearing in mind their respective tasks. Their professional independence should be ensured, with due regard to the specific conditions of the prison context.

54. In cases of convicted sex offenders, a psychiatric and psychological examination should be offered as well as appropriate treatment during their stay and after.

55. Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.

56. In those cases where the use of close confinement of mental patients cannot be avoided, it should be reduced to an absolute minimum and be replaced with one-to-one continuous nursing care as soon as possible.

57. Under exceptional circumstances, physical restraint for a brief period in cases of severely mentally ill patients may be envisaged, while the calming action of appropriate medication begins to take effect.

58. The risk of suicide should be constantly assessed both by medical and custodial staff. Physical methods designed to avoid self-harm, close and constant observation, dialogue and reassurance, as appropriate, should be used in moments of crisis.

59. Follow-up treatment for released inmates should be provided for at outside specialised services.

E. Refusal of treatment, hunger strike

60. In the case of refusal of treatment, the doctor should request a written statement signed by the patient in the presence of a witness. The doctor should give the patient full information as to the likely benefits of medication, possible therapeutic alternatives, and warn him/her about risks associated with his/her refusal. It should be ensured that the patient has a full understanding of his/her situation. If there are difficulties of comprehension due to the language used by the patient, the services of an experienced interpreter must be sought.

61. The clinical assessment of a hunger striker should be carried out only with the express permission of the patient, unless he or she suffers from serious mental disorders which require the transfer to a psychiatric service.

62. Hunger strikers should be given an objective explanation of the harmful effects of their action upon their physical well-being, so that they understand the dangers of prolonged hunger striking.

63. If, in the opinion of the doctor, the hunger striker's condition is becoming significantly worse, it is essential that the doctor report this fact to the appropriate authority and take action in accordance with national legislation (including professional standards).

F. Violence in prison : disciplinary procedures and sanctions, disciplinary confinement, physical restraint, top security regime

64. Prisoners who fear acts of violence including possible sexual offences from other prisoners for any pertinent reason, or who have recently been assaulted or injured by other members of the prison community, should be able to have access to the full protection of custodial staff.

65. The doctor's role should not involve authorising and condoning the use of force by prison staff, who must themselves take that responsibility to achieve good order and discipline.

66. In the case of a sanction of disciplinary confinement, any other disciplinary punishment or security measure which might have an adverse effect on the physical or mental health of the prisoner, health care staff should provide medical assistance or treatment on request by the prisoner or by prison staff.

G. Health care special programmes : sociotherapeutic programmes, family ties and contacts with the outside world, mother and child

67. Sociotherapeutic programmes should be organised along community lines and carefully supervised. Doctors should be willing to co-operate in a constructive way with all the services concerned, with a view to enabling prisoners to benefit from such programmes and thus to acquire the social skills which might help reduce the risks of recidivism after release.

68. Consideration should be given to the possibility of allowing inmates to meet with their sexual partner without visual supervision during the visit.

69. It should be possible for very young children of detained mothers to stay with them, with a view to allowing their mothers to provide the attention and care they need for maintaining a good state of health and to keep an emotional and psychological link.

70. Special facilities should be provided for mothers accompanied by children (crèches, daynurseries).

71. Doctors should not become involved in administrative decisions concerning the separation of children from their mothers at a given age.

H. Body searches, medical reports, medical research

72. Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement.

73. Prison doctors should not prepare any medical or psychiatric reports for the defence or the prosecution, save on formal request by the prisoner or as directed by a court. They should avoid any mission as medical experts involved in the judicial procedure concerning remand prisoners. They should collect and analyse specimens only for diagnostic testing and solely for medical reasons.

74. Medical research on prisoners should be carried out in accordance with the principles set out in Recommendations No. R (87) 3 on the European Prison Rules, No. R (90) 3 on medical research in human beings and No. R (93) 6 on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison.