호하기 위하여 빠른 시일 내에 형집행정지절차를 밟아 박00을 가족들에게 인계하여야 할 의무가 있다고 인정되므로, 피고는 박00에 대한 형집행정지 등 적절한 조치를 취하지 아니함으로 인하여 원고들이 입은 손해를 배상할 책임이 있다.

그러나, 박00이 성동구치소내의 병동에서 생활하였고 성동구치소에 입소하던 당시에 이미 그의 지병이 악화된 상태에 있었으며 구치소내의 생활로 인하여 특별히 병세가 급격히 악화되었다고 보기는 어려운 점등을 고려하면 피고 소속 공무원의 위와 같은 과실이 박00의 사망 원인이 되었다고 볼 수는 없고, 다만 피고 소속공무원들의 위와 같은 과실로 박00은 가족들의 간호를 받다가 사망할 수 있는 기회마저 상실한 채 사망에 이르게 되었다는 점에서, 원고들은 위 망인을 보살필 기회마저 상실한 채 뒤늦게 위망인의 사망 사실을 알게되었다는 점에서 각자 그로 인한 정신적 고통을 받았다고 보아야 할 것이고, 이러한 점에서 피고는 소속 공무원에 대한 지휘·감독의 책임이 있는 자로서 위 망 박00과 원고인들에게 그들이 받은 정신적 고통에 따른 손해를 배상할 책임이 있다 할 것이다.

다. 손해배상의 범위

나아가 피고가 위 박00 및 원고들에게 배상할 위자료의 수액에 관하여 보건대, 이 사건 변론에 나타난 여러 가지 정황을 고려해 보면, 피고가 배상할 위자료의 수액은 위 박00에 대하여는 500만원, 원고 노○○에 대하여는 300만원, 나머지 원고들에 대하여는 각 150만원으로 정함이 상당이다.

결 론

그렇다면, 피고는 원고 노○○에게 4,363,636 (=3,000,000원 + 1,363,636 (박□□의 위자료 5,000,000원 × 처의 상속분3/11. 이하 원 미만은 버림)), 원고 박○○, 박△△, 박▽▽, 박◇◇에 각 2,409,090원 (=1,500,000원 + 909,090원 (박□□의 위자료 5,000,000 × 자녀의 상속분 2/11)) 과 이에 대한 지연손해금을 지급할 의무가 있다할 것인바, 제1심 판결은 이와 결론을 같이 하여 정당하므로 피고의 항소는 이유없어 이를 기각하기로 하여 주문과 같이 판결한다.

2001년 10월 11일

재판장 판사 채영수 / 판사 정진영 / 판사 권기훈

3. 교도소에서 병세를 호소하던 재소자가 사망했을 경우 국가의 책임 여부

서울지방법원 의정부 지원 제 1 민사부 판결

사건 2001 가합 1703 손해배상(기)

원고 허0 외 3인(고 황00 씨의 유족)

피고 대한민국

주 문

1. 피고는 원고에게 금 59,748,295원 및 이에 대하여 2001. 3. 13부터 2001. 11. 9까지는 연 5%의, 그 다음날로부터 완제일까지는 연 25%의 각 비율에 의한 금원을 지급하라.

2. 원고들의 각 나머지 청구를 기각한다.

3. 소송비용은 이를 3분하여 그 2는 원고들이, 나머지는 피고의 각 부담으로 한다.

4. 제 1항은 가집행 할 수 있다.

청구취지

피고는 원고에게 및 위 각 금원에 대하여 이 사건 소장부본 송달 다음날부터 완제일까지 연 25%의 비율에 의한 금원을 각 지급하라는 판결

이 유

1. 기초사실

가. 황00은 1999. 7. 30. 서울지방법원 의정부지원에서 폭력행위등 처벌에 관한 법률위반죄로 벌금 100만원의 형을 선고받고 그 형이 확정되었으나, 위 벌금을 납부하지 아니하여 위 벌금미납에 따른 노역장 유치집행(2000. 1. 2 15부터 33일간)을 위해 2000. 12. 12 의정부교도소 4동 상층 2실에 수용되었고 한편 김00은 1999. 9. 3 서울지방법원 동부지원에서 같은 죄로 벌금 500만원의 형을 선고받고 그 형이 확정되었으나, 위 벌금 중 350만원을 납부하지 못하여 위 벌금미납에 따른 노역장 유치집행을 위해 위 같은 수용거실에 수용되어 있다.

나. 위 황00은 위 노역장 유치 전 수년동안 알코올성 간염 등 간질환으로 수십 차례 병원치료를 받은 경력이 있고, 2000. 4 경 파주시 월릉면 소재 금강산랜드에서 경비원으로 근무하던 중에는 간질로 인한 것으로 추정되는 발

작을 한 사실도 있는데, 의정부교도소에 수용된 2000. 12. 15 저녁식사 후 위 수용거실에서 귤을 먹던 중 갑자기 소리를 지르며 머리를 손으로 움켜쥐며 입에 거품을 물면서 앉은자리에서 뒤로 넘어지는 일이 발생하여 교도관 유00이 위 교도소 의무관의 전화통화로 처방받은 불상의 약을 가지고 와 이를 복용시켰고, 그 다음날에는 혼잣말로 하거나 동료수용자들에게 '집에 가겠다. 담배가진 것 있으면 달라. 술을 달라'는 등 비정상적인 말과 행동을 하여 동료수용자들이 수면 등 생활의 불편을 피하기 위해 황00을 다른 방으로 가게 해 달라는 취지의 퇴출보고문을 작성하여 성명불상의 교도관에게 전달하기도 하였으나 별다른 조치가 취해진 바는 없었다. 다음날인 2000. 12. 17에는 위 황00의 비정상적인 말과 행동의 정도가 더욱 심해져 잠 잘 시간에도 동료수용자들을 밟고 다니면서 '문을 열어 달라, 나간다'는 등 이상한 행태를 보였고 이에 동료수용자 모두 잠을 잘 수가 없어 교도관 황00에게 황00의 이방을 요청하여 같은 날 23:00경 교도관 탁00 황00을 관구실로 옮겼다가 빈방인 위 교도소 5동 상층 10실에 입실을 시킨 후 다시 관구실로 옮기고 담당교도관이 황00의 집에 전화를 하여 되도록 빨리 벌금을 납부하고 황00을 데리고 갈 것을 독촉하기도 하다가 그 다음날인 2000. 12. 18 새벽경 위 4동 상층 2실에 다시 돌려보냈다. (원고들은 황00의 입소 시 동료수용자들의 폭행이 있었다고 주장하나 이를 인정할 아무런 증거가 없고, 또한 원고들은 2000. 1.2 17 교도관 또는 경비교도들이 황00을 데리고 나가 교도봉으로 폭행하였다고 주장하나, 이에 부합하는 듯한 갑 제10호증의 기재 및 증인 박00의 증언은 모두 박00가 황00의 비정상적인 정신상태에서 한 말 또는 동료수용자이던 한00이 한말로부터 추측한 것에 불과하고 이를 믿을 수 없고 달리 원고들의 주장을 인정할 만한 증거가 없다.

다. 2000. 12. 18 19:40분경 황00이 다시 위 수용거실에서 '집에 가겠다'고 말하면서 텔레비전 앞에서 서성거리다가 동료수용자인 윤00과 말다툼을 하게 되어 거실이 어수선해 지자, 거실에 앉아서 텔레비전을 보고 있던 김00가 일어나서 비키라는 말과 함께 황00의 배를 걷어찼고 그 충격으로 황00은 창문 벽에 머리를 부딪힌 후 바닥으로 떨어져 누워버렸는데 그 후 심한 구토를 하다가 화장실로 미처 기어가기 전에 변을 본 후 의식을 잃었다.

라. 그 후 황00은 교도관에 의하여 의무과로 옮겨져 당시 의무과 당직 중이던 의무과 서무 교사 이00로부터 맥박, 체온 등의 간단한 검사만 받은 후 병동 10실에 옮겨져 곧 잠이 들었는데, 그 다음날인 2000. 12. 19 06:35경 확인한 결과 의식상태가 좋지 않아 의정부 소재 순천향병원에 후송되었으나, 후송 중 외상성 두부손상으로 인하여 사망하였다.

2. 손해배상책임의 발생

가. 이 사건사고 장소는 교도소 내로서 그와 같은 곳에서는 수용자들의 억눌린 감정으로 인하여 상호간의 폭력행사가 다발할 가능성이 일반적으로 예상되고, 가해행위에 대하여 달리 피신할 장소도 없으며, 교도관이 아니면 이를 제지하기도 어려울 뿐 아니라 더욱이 이 사건 사고는 이틀 전부터 위 수용거실의 수용자들로부터 황00의 수용실을 옮겨달라는 강한 요구를 받은 교도소로서는 위와 같은 황00의 비정상적인 행위를 빌미로 폭행이 있을 수 있음을 충분히 예상할 수 있으므로 담당 교도관으로서는 황00을 일반 수용자들과 격리시키거나 일반 수용자들과 함께 있게

할 경우에는 황00의 행동이나 그에 대한 일반 수용자들의 행동을 주의 깊게 관찰하여 이 사건 김00의 폭행행위와 같은 사고의 발생을 사전에 방지하여야함에도 이를 게을리 함으로써 위와 같은 폭행사고가 발생하였을 뿐 아니라, **한편 피고 산하 의정부교도소 의무과 담당자로서는 간질증세를 보이는 환자인 황00이 그 입소한 날부터 발작증세가 있었고, 이 사건 사고 당일 구토, 갑작스런 배변 및 의식불명 등의 증세를 보였으며 그 증세가 점점 악화되었다면 황00의 상태를 면밀히 살펴 치료하거나 교도소 안에서 황00에 대한 적정한 진단과 치료가 어렵게 되었다면 행형법 제29조에 의하여 즉시 소장의 허가를 얻어 치료가 가능한 외부병원으로 이송함으로써 황00으로 하여금 시기에 늦지 않게 적절한 치료를 받도록 하여야할 주의의무가 있음에도 이를 게을리하여 위와 같은 조치를 취하지 아니한 잘못이 있다 할 것이고, 이로 인하여 위 황00의 외력에 의한 외상성 출혈에 대하여 적기에 적절한 진단 및 치료를 받지 못함으로써 위와 같이 사망에 이르게되었다 할 것이므로, 피고는 그 소속공무원인 교도관들의 위와 같은 직무집행상의 과실로 원고들의 입은 손해를 배상할 책임이 있다고 할 것이다.**

나. 황00으로서도 정상적인 정신상태로 수용될 당시 자신의 정신적인 상태나 건강상태를 충분히 교도소에 알리고, 또한 동료수용자들에게도 양해를 구하거나 사사로운 분쟁을 스스로 방지할 조치를 강구하여야함에도 이를 제대로 하지 않은 과실이 있고, 그 과실상계비율은 40%로 봄이 상당하다.

(중략)

결 론

그렇다면 피고는 원고에게 59,748,295원 및 이에 대하여 원고들이 구하는 바에 따라 이 사건 소장부본 송달일 다음날인 2001. 3. 13부터 이 판결선고일인 2001. 11. 9까지는 민법 소정의 연 5%의 , 그 다음날부터 완제일까지는 소송촉진등에 관한 특례법 소정의 연 25%의 각비율에 의한 지연손해금을 지급할 의무가 있다 할 것이므로 원고들의 이 사건 청구는 위 인정범위 내에서 이유 있어 각 인용하고 나머지 청구는 이유 없어 각 기각하기로 하여 주문과 같이 판결한다.

2001. 11. 19

재판장 판사 박동영 / 판사 이정훈 / 판사 성충용

4. 교도소내 사망사건에 대한 정보공개청구거부 처분 취소 소송

전 주 지 방 법 원 판결

원고	문만식(전북평화와인권연대 사무국장)
피고	전주교도소장
변론종결	1999. 11. 30

주 문

1. 피고가 1999. 4. 27원고에 대하여 한 정보 비공개 결정 중 별지 세1목록 기재 각 정보에 대한 부분은 이를 취소한다.

2. 원고의 나머지 청구를 기각한다.

3. 소송비용은 이를 2분하여 그 1은 원고의, 나머지는 피고의 각 부담으로 한다.

청구 취지

피고가 1999. 4. 27. 원고에 대하여 한 별지 제1, 2목록 기재 정보 비공개 결정을 취소한다.

이 유

1. 처분의 경위

다음과 같은 사실은 당사자 사이에 다툼이 없거나 갑 제1, 2호 증 을 제4, 5, 7, 8, 10호 증 을 제 6호증의 1 내지 4, 을 제9호 증의 1내지 3의 각 기제에 변론의 전 취지를 종합하여 이를 인정할 수 있고 반증 없다.

가. 소외 배재문은 1997. 6. 17부터 전주 교도소에서 수감생활을 하다가 1998. 11. 20. 23:20 경 위 교도소 기결1사 하층 9실에서 화장실 철격자에 목을 매었다가 교도관에게 발견되어 응급실로 후송되었으나 당일 사망하였고 검찰은 국립과학 수사 연구소의 부검결과 등을 바탕으로 위 망인의 사망은 자살로 결론지었다.

나. 이에 원고는 전북지역 인권운동 단체인 전북 평화와 인권연대회의 사무국장으로서 전주 교도소에서 발생한 망 배재문의 사망사건의 진상 규명을 위하여 1999. 4. 14. 피고에게 공공기관의 정보 공개에 관한 법률(이하 '정보

공개법'이라고 한다) 제 8조 제 1항에 의하여 "고 배재문씨 변사 사건과 관련하여 전주 교도소가 보관하고 있는 일체의 사료"라는 제목으로 별지 제 1, 2목록 기재 각 정보에 대한 사본 출력물을 제공하여 달라는 정보 공개 청구를 하였고 이에 피고는 같은 달 27. 원고가 공개 청구한 정보의 내용은 정보 공개법 제7조 제1항 제4호의 규정에 의하여 공개 될 경우 그 직무수행을 현저히 곤란하게 하는 정보에 해당하므로 공개 할 수 없다는 내용의 정보 비공개 결정(이하 이 사건 처분이라고 한다)을 하였다.

2. 이 사건 처분의 적법 여부

가. 당사자들의 주장

원고는, 먼저 이 사건 처분은 처분 사유를 특정할 수 없어 위법한 처분이라고 할 것이고, 다 음으로, 공개 청구한 정보들은 망 배재문의 사망원인을 투명하게 밝혀 줄 자료들일 뿐이고 그것이 공개되더라도 피고의 직무수행을 현저하게 곤란하게 하는 것이 아닌데도 피고가 위 정보의 공개를 거부한 것은 위법하다고 주장함에 대하여, 피고는 원고가 청구한 정보 중 별지 제 2목록 기재의 각 정보들은 피고가 작성하여 보관하고 있는 정보가 아니거나 피고에게 이유 등을 질의하는 것이어서 공개의 대상인 정보가 아니며, 나머지 정보들도 항의, 집행, 교정, 보안처분에 관한 사항으로서 공개될 경우 그 직무 수행을 현저히 곤란하게 하는 것이거나 그 내용 중에 담당 공무원의 이름, 주민등록 번호 등이 포함되어 있어 공개될 경우 특정인을 식별할 수 있는 개인에 관한 정보 이어서 정보 공개법 제7조 제1항 제4호 또는 제6호 소정의 비공개 대상 정보이므로 이 사건 처분은 적법하다고 다툰다.

나. 관계법령

정보 공개법 제 2조 1호는 "정보"라 함은 공공 기관이 직무상 작성 또는 취득하여 관리하고 있는 문서, 도면, 사진, 필름, 테이프, 슬라이드 및 컴퓨터에 의하여 처리되는 매체 등에 기록된 사항을 말한다고 하고, 제2호는 "공개"라 함은 공공 기관이 이 법의 규정에 의하여 정보를 열람하게 하거나 그 사본 또는 복제물을 교부하는 것 등을 말한다고 하며, 제3조는 공공기관이 보유 관리하는 정보는 이 법이 정하는 바에 따라 공개하여야 한다고 하여 정보공개의 원칙을 천명하면서, 제7조는 공공 기관은 다음 각 호의 1에 해당하는 정보에 대하여서는 이를 공개하지 아니할 수 있다고 하여 비공개 대상 정보를 열거하고 있고, 그 제4호는 진행중인 재판에 관련된 정보와 범죄의 예방, 수사, 공소의 제기 및 유지, 형의 집행, 교정, 보안처분에 관한 사항으로서 공개될 경우 그 직무 수행을 현저히 곤란하게 하거나 형사 피고인의 공정한 재판을 받을 권리를 침해한다고 인정할 만한 상당한 이익이 있는 정보를, 제6호로 당해 정보에 포함되어 있는 이름, 주민등록 번호 등에 의하여 특정인을 식별할 수 있는 개인에 관한 정보를 각 규정하고 있다.

다. 판단

(1) 먼저 별지 2목록 기재 각 정보들에 관한 공개 청구 부분에 대하여 본다.

정보공개법 제 2조 제 1호는 정보에 대하여 "공공 기관이 직무상 작성 또는 취득하여 관리하고 있는 문서, 도면, 사진, 필름, 테이프, 슬라이드, 및 컴퓨터에 의하여 처리되는 매체 등 에 기록된 사항"이라고 정의하고 있어 공개 청구의 대상이 되는 정보는 공공 기관이 직무상 작성 또는 취득하여 현대 관리하고 있는 문서 등 실체가 존재하는 것에 한정되므로 정보공개 청구를 하는 청구인으로서는 공공기관이 관리하고 있는 구체적인 정보에 대하여만 공개청구를 할 수 있는 것이어서 당해 정보를 특정할 수 있는 정도의 문서 제목, 작성 일자, 문서 번호나 관련 내용들을 제시하여 당해 정보의 실체가 존재하며 공공기관이 이를 관리하고 있을 상당한 개연성이 있다는 점에 대하여 입증하여야 할 것인데, 원고가 공개를 청구한 정보 중 위 목록 기재 1 내지 10의 각 정보들에 대하여 위 정보가 존재하고, 피고가 이를 관리하고 잇다는 점을 인정할 아무런 증거가 없으며, 위 목록 기재 11항 기재 정보는 그 대상 정보가 특정되어 있지도 않을 뿐만 아니라 오히려 위 목록에 기재된 청구대상 정보들의 대부분은 피고에 대하여 사건의 경위와 이유를 묻는 것이고 원고도 위 정보들에 대하여 막연히 피고가 이 사건을 처분하면서 그 존재를 부인한 바 없으므로 위 정보를 보관하고 있을 것이라고 하고 있을 뿐이지 피고가 위 정보들을 보유 관리하고 있다거나 이를 보유, 관리하고 있을 개연성이 있다고 단정할 수는 없으므로 피고의 위 정보들에 대한 처분은 위법하다고 할 수 없고 원고의 위 정보들에 대한 정보 공개 청구는 이유 없다.

(2) 다음으로 별지 제 1목록 기재 정보들에 관한 공개 청구 부분에 관하여 본다.

(가) 처분 사유가 특정되지 아니하였다는 주장에 대한 판단

행정처분의 처분 사유는 처분서의 기재 내용과 처분 청의 업무, 처분이 이르게 된 경위 및 기타 사정을 종합하여 처분의 상대방이 그 처분 사유를 알 수 있는 정도이면 족하다고 할 것인데 , 앞서 본 바와 같이 형의 집행 및 교정 업무를 담당하고 있는 피고가 조사가 완료된 망 배재문의 사망사건과 관련한 자료의 공개를 거부하는 처분을 하면서 공개 청구한 정보가 정보 공개법 제7조 제1항 제4호의 규정에 의하여 공개될 경우 그 직무 수행을 현저히 곤란하게 하는 정보에 해당하는 사유를 명시한 이상, 피고의 처분사유는 대상 정보가 정보공개법 제7조 제1항 제4호에서 정한 형의 집행, 교정에 관한 사항으로서 공개될 경우 그 직무수행을 현저히 곤란하게 하는 비공개 대상 정보에 해당함을 이유로 한 것이 명백하므로 처분사유가 특정되지 아니하였다는 원고의 위 주장은 이유 없다.

(나) 법 제 7조 제 1항 제 4호 해당 여부에 대한 판단

현대 사회에서 알 권리의 한 내용으로서 일반 국민이 공공 기관에 대하여 그 관리, 보유 중인 정보를 공개해 달라고 요청할 수 있는 적극적 정보 공개 청구권은 국민 주권주의를 취하는 우리 헌법 하에서 국임의 선거에 의해 구성된 정부가 취득, 보유하는 정보는 국민의 것이고 그 모두가 국민에게 원칙적으로 공개되어야 한다는 국민 주권주의를 이념으로 하는 헌법의 기본적 요청으로서 헌법에 직접 근거를 갖는 청구권적 기본권이라 할 것이고 이와 같은 취지에서 제정된 법 제3조가 정보 공개의 원칙을 천명하고 있고 법 제7조가 예외적인 공개 제의 사유들을 열거하고

있는 점에 비추어 보면, 법 제7조 제1항 제4호에서 비공개 대상으로 규정한 "형의 집행, 교정에 관한 사항으로서 공개될 경우 그 직무 수행을 현저히 곤란하게 하는 정보"란 당해 정보가 공개 될 경우 재소자들이 이를 이용하여 도주하거나 사고를 야기하는 등 형을 집행하거나 교정 업무를 수행하는 때 직접적이고 구체적으로 장애를 줄 위험성이 있고 그 정도가 현저한 경우에 한한다고 할 수 있을 것인데, 앞서 채택한 각 증거에 의하면, 원고가 요구하는 위 정보들은 위 망인의 개인에 관한 신상 자료이거나 위 망인의 사망에 관련하여 그 원인을 조사한 자료일 뿐이고 교도소의 정비 등에 관한 자료가 아니어서 그것이 공개된다고 하여 피고의 형의 집행, 교정업무 수행을 현저히 곤란하게 한다고 볼 수 없을 뿐만 아니라 만약 위 정보들 중에서 법 제7조 제1항 제1조 소정의 비공개 대상 정보가 부분적으로 포함되어 있다고 하더라도 그 중 위 비공개 대상 부분을 가리고 복사를 하여 사본을 만드는 들의 방법으로 공개 대상 부분과 비공개 대상 부분을 분리하여, 공개 대상 부분만을 공개할 수도 있다고 할 것이므로 피고가 위 정보들 전체에 대하여 공개를 거부할 처분은 위법하다고 할 것이다.

(다) 법 제 7조 제 1항 제 6호 해당 여부에 대한 판단

처분청은 당초 처분의 근거로 삼은 사유와 기본적 사실 관계가 동일한 경우에 한하여 다른 사유를 추가하거나 변경할 수 있다고 할 것인바, 피고가 주장하는 별지 제1목록 기재 정보들이 정보 공개법 제7조 제1항 제6호 소정의 비공개 대상정보라는 사유는 이 사건 처분 당시 피고가 처분의 근거로 내세우지 아니한 사유이고, 당초 처분의 근거로 삼은 이유와 기본적 사실관계가 동일하다고도 할 수 없으므로, 정보 공개법 제7조 제1항 제6호의 사유를 이 사건 처분 사유라고 하는 피고의 위 주장은 더 나아가 판단할 필요 없이 이유 없다.

3. 결론

그렇다면 이 사건 청구는 별지 제 1목록 기재 정보들에 대한 부분은 이유 있어 이를 인용하고 나머지 청구는 이유 없어 이를 기각하기로 하여 주문과 같이 판결한다.

1999. 12. 28.

재판장 판사 김 경 일 / 판사 박 대 준 / 판사 차 묵 호

참고자료 3

피구금자 처우에 관한 최저기준규칙 (의료 부문만 발췌)

Standard Minimum Rules for the Treatment of Prisoners

1955년 8월 30일, 제1회 국제연합 범죄방지 및 범죄자처우회의에서 채택됨 ; 1975년 7월 31일 국제연합 경제사회이사회 결의 663 c(24)로서 승인됨 ; 1975년 5월 13일, 경제사회이사회 결의 2076(62)로 수정되어 제95조가 새로 추가됨

(Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977)

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be torn in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (I) The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;

(b) The hygiene and cleanliness of the institution and the prisoners;

(c) The sanitation, heating, lighting and ventilation of the institution;

(d) The suitability and cleanliness of the prisoners' clothing and bedding;

(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

참고자료 4

유럽형사시설규칙 (의료 부문만 발췌)

- 가맹국에 대한 각료위원회 권고 R(87)3호 -

Recommendation No. R(87)3
of the Committe of Ministers to Member States
on the European Prison Rules

1987년 2월 12일, 각료위원회 제404회 회의에서 채택

(Adapted by the Committee of Ministers on 12 February 1987 at the 404th meeting of the Ministers' Deputies)

Medical Services

26. ① At every institution there shall be available the services of at least one qualified general practitioner. The medical services should be organized in close relation with the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

② Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be suitable for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

③ The services of a qualified dental officer shall be available to every prisoner.

27. Prisoners may not be submitted to any experiments which may result in physical or moral injury.

28. ① Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. However, unless special arrangements are made, there shall in penal institutions be the necessary staff and accommodation for the confinement and post-natal care of pregnant women. If a child is born in prison, this fact shall not be mentioned in the birth cer-

tificate.

② Where infants are allowed to remain in the institution with their mothers, special provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

29. The medical officer shall see and examine every prisoner as soon as possible after admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all measures necessary for medical treatment; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might impede resettlement after release; and the determination of the fitness of every prisoner to work.

30. ① The medical officer shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with hospital standards, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

② The medical officer shall report to the director whenever it is considered that a prisoner's physical or mental health has been or will be adversely affected by continued imprisonment or by any condition of imprisonment.

31. ① The medical officer or a competent authority shall regularly inspect and advise the director upon:

a. the quantity, quality, preparation and serving of food and water;

b. the hygiene and cleanliness of the institution and prisoners;

c. the sanitation, heating, lighting and ventilation of the institution;

d. the suitability and cleanliness of the prisoners' clothing and

bedding.

② The director shall consider the reports and advice that the medical officer submits according to Rules 30, paragraph ②, and 31, paragraph ①, and, when in concurrence with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within the director's competence or if the director does not concur with them, the director shall immediately submit a personal report and the advice of the medical officer to higher authority.

32. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may impede a prisoner's resettlement after release. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner to that end.

참고자료 5

모든 형태의 억류 · 구금하에 있는 사람들을 보호하기 위한 원칙 (의료 부문만 발췌)

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

약칭 국제연합 피구금자 보호원칙, 1988년 12월 9일 투표없이 채택

(Date : 9 December 1988, Meetings : 76, Adopted without a vote, Report ; A / 43 / 889)

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

참고자료 6

Making standards work (의료부문만 발췌)

an international handbook on good prison practice

PRISONER'S PHYSICAL AND MENTAL HEALTH

Penal Reform International, The Hague, March 1995.

Produced with the assistance of the Ministry of Justice of The Netherlands.

PRISONERS' PHYSICAL AND MENTAL HEALTH

Opening statement

1. Physical and mental health of prisoners is the most vital as well as the most vulnerable aspect of life in prison.

   The Universal declaration of Human Rights states that

   Article 3

   Everyone has the right to life, liberty and security of person and that

   Article 5

   No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment.

   The **Body of Principles** (Principle 6), the **International Covenant on Civil and Political Rights** (**Articles 6.1 and 7**) claim the same rights, as well as the **U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** in its preamble. The **Body of Principles** moreover explains in a note added to **Article 6** 'The term cruel, inhuman or degrading treatment or punishment should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight of hearing, or of his awareness of place and the passing of time'.

2. Health care consequently is of most prominent importance and prisoners' health has to be a priority of treatment in prison. The level of health care in prison and medication should be at least equivalent to that in the outside community. It is a consequence of the government's responsibility for people, deprived of their liberty and thus fully dependent on the state authority.
   According to Rule **57** of the SMR referred to in **Section I, para 22**, imprisonment is afflictive by its very nature and shall not be aggravated. The Rule states that deprivation of liberty implies deprivation of the right of self-determination. When that right has been lost not only in principle, but also is impeded in daily practice by the rules governing prison regime, it will be difficult for a prisoner to take measures which he or she would consider necessary or desirable for his or her health. It is then an obvious responsibility of the government to ensure prisoners' right to life, good health standards in prison and to guarantee healthy living and working conditions, activities and treatment which do not harm

health of prisoners, and efficient and sufficient medical and nursing provisions and procedures.

Health care for prisoners and detainees a matter of priority

3. Too much emphasize can never be put on the fact, that a fair trial, including a well-founded indictment, information about legal procedures and legal aid, about prison rules and facilities are essential preconditions to prisoners' mental as well as physical health. Moreover long prison sentences as such are damaging to a person's well-being. They should be imposed as sparingly as possible. Sentencing being beyond the competence of prison administrations, they nevertheless could contribute to shortening long imprisonment where appropriate and possible by making use or recommending to make use of release, parole, remission or grace. In general seriously ill prisoners without a prospect of recovery should be released and outside care and housing with family, friends or appropriate bodies should be ensured.

4. SMR summarily mention health care for pre-trial prisoners (see Rule 91, para. 22 of this Section). As has been pointed out in the opening chapter **'Where the Handbook starts from', para. 13**, the SMR should also be applied to people detained in remand centres, in police stations and other establishments. Therefore the rules about health and health care in prison and what they imply in practice, are to be followed at all places where people are detained.

5. Being imprisoned means being made powerless and dependent and often without knowledge of what will happen and how to get some hold of one's situation. It creates bitterness, aggressiveness, nervousness, stress. The frequency of visits to a doctor, excessive use of sleeping pills, tranquillizers, drugs, even efforts of suïcide particularly during pre-trial detention prove it.
   Mental health affects physical health and vice versa.
   Therefore humane living conditions, psychologically and socially stimulating treatment of prisoners are also matters of health. Likewise confidence of prisoners in the health care of the prison is a remedial factor as such. This can only be obtained if it is known to everyone in prison that for a prison physician, nurse or health worker the patient always has to have and indeed has priority over order, discipline or any other interest of the prison.

Health care and health care functions

6. In order to ensure the physical and mental health of prisoners, the SMR contain rules which point at necessary provisions. Prisoners should be informed properly about them and about procedures to make them obtainable, about the exact purpose of prescribed medicines and about the contents of their medical reports and files. There should be more openness towards prisoners about their personal state of health and about medical treatment.

Right to health

7. The SMR do not look at the well-being of prisoners from the viewpoint of the prisoners. Nor are they formulated as rights of prisoners. In contrast, the **Universal Declaration of Human Rights** refer to the physical and mental well-being of prisoners as a right where they declare that **'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family ...' (Article 25).**

8. About restriction of these rights the **Declaration** provides, that

> **In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (Article 29. 2).**

These restrictions in no way injure the right of health.

9. Both Rules mentioned in **paras.** 7 and 8 speak about rights and thus imply a certain responsibility of prisoners for their own well-being. While deprived of some opportunities to take care of their own health, they are not deprived of their own responsibility to do so. Staff should remind prisoners of this and encourage them to exercise that responsibility, for example concerning taking exercise, washing and shaving, cleaning their teeth, smoking, keeping their living space clean. If prisoners do not accept responsibility for their state of well-being however, they should not be punished. They should be informed about health and hygiene risks, prevention of risks, first aid measures etc. Furthermore if prisoners behave irresponsibly so as to create a general health hazard to others, it may be necessary to impose measures of hygiene.
However if there are no proper provisions and opportunities to actively care for their health and hygiene, nor for timely consultation of a physician or other health officer, prisoners cannot be held responsible.

10. SMR claim that the medical service in prison **'should be organized in close relationship to the general health administration of the community or nation'** (Rule 22).
Therefore access of medical provisions in the local community to the prison and prisoners requesting medical advice from or being treated by outside services should be permitted as much as reasonable. Prison doctors themselves in particular should not scruple to refer to outside medical services, nor consider this an insult of their professional skills.

Quality of medical services

11. It is often asked what the standard of health care should be.
In many countries or parts of countries the medical services in the community leave much to be desired. Their actual availability may be insufficient; their accessibility, e.g. for financial reasons, may be bad. Should medical care in prisons then be beter than in the outside community?

12. Neither the SMR nor any other international regulations give the impression that poor health care in prison is acceptable, if it is poor in the community. The government has full responsibility for imprisoned people, who are placed under its total authority. It is not tolerable for imprisonment to add sickness, physical or mental suffering to the punishment. Health is therefore a prime responsibility. That responsibility is even bigger, since the situation of imprisonment in itself to a greater or less extent is damaging to people's physical and mental health. Moreover and perhaps in contrast to the situation outside, but consistent with Rule 57 (see **para. 2**), medical care has to be provided free of charge, as is required by **Principle 24** of the **Body of Principles** (see **para. 31**).

Prisoners' health a responsibilities of all staff members

13. It can be concluded from the preceding rules, that the physical and mental health of prisoners is a responsibility not only of the government and the prison administration, nor of health officers only, but also of prison staff, managerial as well as executive staff and others engaged in treatment of prisoners. Every staff member in prison should ensure that these prisoners' rights and entitlements are enforced and he or she has to contribute to it.
Mention has to be made of psychologists and social workers, who also have come to play an important role in matters of health, mental health in particular. Their profession and position in prison should be respected and supported similarly as those of health officials.

14. Attention may be drawn to the **U.N. Code of Conduct for Law Enforcement Officials.** It states in **Article 6** that

> **'law enforcement officials shall ensure the full protection of health of persons in their custody and, in particular shall take immediate action to secure medical attention whenever required'.**

This code includes prison staff, and therefore the quoted **Article 6** should be applied conscientiously by prison staff as well. Every request of a prisoner to see a doctor should be taken very seriously, answered and agreed to promptly, unless if misuse is patent. In case of doubt a request should be granted. If afterwards willful misuse is established, appropriate disciplinary sanctions may be taken, but a new request to see a doctor should never be refused by referring to a former misuse.

15. Mention may be made of Amnesty International's publication of **'Ethical Codes and Declarations relevant to the Health Professions'.**
It is a compilation of selected ethical texts and comprises e.g. statements of international professional associations of physicians, psychiatrists, nurses and psychologists.

Physician's functions - the patient is the priority

16. The SMR, analyzed closely, distinguish three functions and related duties of prison doctors;

    1. the doctor as a **private doctor** of a prisoner;

2. the doctor as an **adviser to the prison director** for specific matters with respect to prisoners' treatment (e.g. prison labour, regime);
3. the doctor as a **social health and hygiene officer**, supervising and reporting about the general situation of health and hygiene in the prison.

Notwithstanding these distinctions, it should be abundantly clear, that doctors work in prison because they are doctors. They are to act like doctors, i.e. only in the interests of their prisoners- patients and without interference by others or other interests.

17. As a private doctor the prison doctor acts on request of a prisoner and in behalf of the prisoner's health. Rules 22, 23, 25 (1) and 91 (see below) for example presuppose such function, where provisions are mentioned to ensure qualified medical care for prisoners. In Rule 26 (see below) a general responsibility of a prison doctor is mentioned, namely that of a social health and hygiene officer. It is a preventive function, according to which a prison doctor has to see that prison conditions and provisions do not endanger prisoners' health. Other rules (see below) define a further function of a prison doctor. It is derived from the prison director's responsibility for the health of prisoners. This includes not only the arrangements for a well functioning medical service, but also the need to ensure that regime's provisions do not damage prisoners' health. To undertake that responsibility properly, a director may often ask a doctor's advice.

18. The SMR do not claim, that the three medical functions should be fulfilled by different physicians, nor do they say the opposite. However desirable separate functions for separate doctors may be, it will not always be possible, so it is essential to be on the alert for conflicting situations which may arise. It should always be taken in mind however, that the first and most essential function of a doctor in prison is that of a private doctor, acting at the request and in behalf of the prisoner. Whatever further function the doctor may perform, it should never be to the detriment of the prisoner's health. For a prison doctor and any doctor the health interest of the patient comes first. The prisoner-patient has absolute priority.

19. A prison doctor's responsibility for his or her patients has a particular dimension, because a sound state of mind and physical health may improve prisoners' capacities to work at their rehabilitation. Rule 62, a guiding principle, is of particular relevance in this respect. It reads:

> **Rule 62**
>
> The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

Undesirable and bad prison conditions not only affect insane and mentally abnormal prisoners. They exert influence on all prisoners. Therefore Rule 62 mentions an overall responsibility of the medical services of a prison. This prin-

ciple, though explicitly addressed to prisoners under sentence, is as compelling with regard to all prisoners and detained persons.

Oath of Athens

20. The great resposibility of a prison doctor is clearly underscored by the **International Council of Prison Medical Services** in the so-called **Oath of Athens**, which is quoted here:

> **'We, the health professionals who are working in prison settings, meeting in Athens on September 10, 1979 hereby pledge, in keeping with the spirit of the Oath of Hippocrates, that we shall endeavour to provide the best possible health care for those who are incarcerated in prison for whatever reasons, without prejudice and within our respective professional ethics.**
> **We recognize the right of the incarcerated individuals to receive the best possible health care.**
>
> **We undertake**
> 1. **To abstain from authorising or approving any physical punishment.**
> 2. **To abstain from participating in any form of torture.**
> 3. **Not to engage any form of human experimentation amongst incarcerated individuals without their informed consent.**
> 4. **To respect the confidentiality of any information obtained in the course of our professional relationships with incarcerated patients.**
> 5. **That our medical judgements be based in the needs of our patients and take priority over any non-medical matters'.**

21. In order to improve the effectiveness of the Oath of Athens, prison directors and prison physicians should ensure that the Oath of Athens is known to all health staff, regularly or incidentally engaged in health care of prisoners. Resources and procedures are needed to ensure prompt and adequate medical help and to publicize ethical codes for physicians and nurses.
It should be a government's duty to provide health staff in prisons with information (names, addresses etc.) about bodies responsible for medical **ethics.**

Necessary provision of services

22. The following rules refer to necessary medical provisions as preconditions for effective medical service and health care.

> **Rule 22 (1)**
>
> **At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.**

(2)

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

(3)

The services of a qualified dental officer shall be available to every prisoner.

23. It is obviously the first requirement of health care that a physician is available and accessible. It will not always be possible nor necessary -depending on the size of the prison- to have a physician available full time. But then it is the more necessary to ensure permanent links with outside health services of the community, as it is stated in Rule no 22 (1). The **U.N. Basic Principles for the Treatment of Prisoners** go as far as stating that

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

As far as untried prisoners are concerned Rule 91 of the SMR requires:

Rule 91

An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

24. **Principle 9** as well as Rule 91 of the SMR, certainly is often not implemented because of its practical complications. Still the rules cannot be looked upon lightheartedly. Particularly because medical service in prison have always their limitations, structural and working relations with outside provisions are of major importance. Only then medical help in serious and emergency cases can be guaranteed. It happens, that prison directors and doctors do not pay sufficient attention to it. It certainly is a director's formal and initial responsibility. It is however as much a prison physician's duty to organize and maintain such links and to establish procedures and conditions to be observed. At the same time it is important to make sure, that 'red tape' should not obstruct a speedy transfer of patients to hospitals, nor a speedy visit to (out-patient) clinics.

Health officers

25. It is mentioned in Rule 22 (2), that 'suitable' and 'trained' officers shall be present in a prison hospital unit. This obviously not only refers to qualified physicians, but also to qualified nurses. Qualified nurses should be present as much in prisons without a hospital unit, particularly if services of a physician

are limited. They can fulfil an important role by compensating for a physician's restricted availability. In some countries in prisons even prison officers are trained to act as medical first aid officers, often referred to as health workers, to ensure that immediate help is available when necessary and that minor illnesses or wounds can be treated. (For some observations about nurses and health workers see below).

26. To ensure that responsible action can be taken, a disciplined functioning of nurses and health workers as well as systematic oral and written reporting to the prison physician is necessary . This also applies to distribution of medicines, prescribed by the prison doctor to prisoners. It even more does apply to the preparation of medicines (i.e. mixing or diluting powders and liquid medicines; preparing portions for individual prisoners). These are tasks to be carried out by qualified nurses. Prepared medicines may be distributed by health workers and only if it is unavoidable by regular but instructed prison officers. In such cases strict instructions and procedures drawn up by the doctor are to be followed and reporting to the doctor about any irregularities in distributing them should be prescribed. Preparation of medicines however can never be left to unsufficiently qualified staff.

Equipment

27. Next to sufficient and competent medical staff, medical services include good and well cared for medical equipment and treatment rooms. Rooms, medicine-cupboards and the like must be solidly locked and be accessible only by competent medical staff. Hygiene and safety also are their responsibility. Because of high temperatures in day-time in certain parts of the world, medicines are easy perishable, which requires adequate provisions to prevent it.

The physician as a private doctor of prisoners

28. The most general guideline for the prison doctor is Rule 25 (1), which reads:

Rule 25 (1)

The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

This rule undoubtedly implies three things: Firstly that the medical officer is a qualified physician; secondly that the prison doctor has at his or her disposal a well equiped physician's surgery and treatment room with all normal facilities and an adequate range of medicines; thirdly that the doctor is in a position and prepared to treat prisoners on the same basis as other patients.
In other words prison doctors should not just prescribe sleeping pills and pain killers, but act and be able to act at a fully professional level.
Prison doctors are often under pressure to prescribe various kinds of tranquillisers for prisoners without there being strict medical reasons for doing so. The

prison doctor has a duty to prescribe such medicines only when they are medically indicated for individual patients. They should never be prescribed for other reasons or under other circumstances.
Rule **25 (1)**, seen in its context, also applies to the prison doctor's role as an adviser of the director. This combination is a difficult one, as is explained below. In particular see **para. 43.**

Prompt and proper medical examinations

29. It is for very good reasons that Rule 25 (1) emphasizes the prison doctor's personal responsibility to see daily all prisoners who complain of illness. Health of prisoners is generally more vulnerable than that of free citizens, due to the conditions of imprisonment, due to the behaviour of prisoners themselves, who may mutilate themselves, make suicidal efforts or who may be violated by one another. The emotional stress of imprisonment furthermore may result in physical illness. Illness however also may be pretended and health care misused. But it is only the doctor who can judge about it. It should also be taken in mind, that faking illness may be a signal of a prisoner that something about his or her health and situation is wrong.

30. If a doctor is not available or immediately accessible at all times, the availability and accessibility of a qualified nurse is to be ensured for a first screening and first aid. It is also necessary to ensure that an outside doctor can and will be called in immediately in cases of emergency.

31. **Principle 24** of the **Body of Principles** requires that

> **A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.**

This principle is not about the physician's duty to examine a prisoner after admission, but about the prisoner's right to be examined. He shall be offered an examination and treatment. This shall be free of charge.

32. To underline the importance of the subject and the central position of the prisoner him- or herself in it, **Principle 25** and **26** of the **Body of Principles** state respectively:

> **Principle 25:**
> **A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.**
>
> **Principle 26:**
> **The fact that a detained or imprisoned person underwent a medical**

> **examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant Rules of domestic law.**

33. These rules are addressed to the prison authorities as much as to the prison physicians. Both of them however may have different views about what is '**necessary**' (**Principle 24**), what are '**reasonable conditions to ensure security and good order**' (**Principle 25**) and about '**access to reports**' (**Principle 26**). And their views may differ from the prisoner's opinion, who after all is the main subject. To comply with these Principles and to solve possible differences of opinion and interpretation, consequences have to be drawn as far as access to medical help is concerned (**paras 35 and 36**), information about injuries (**para. 34**) and the competence of decision making bodies in case of disagreements (**paras 86 and 87**).

Health officers should be informed about incidents

34. It is necessary that the doctor and the nurses are informed and take active steps to be informed about violence between prisoners as well as about use of violence, beatings, physical punishments etc. by members of staff. The prisoners concerned should be visited; immediate medical help should be provided; the director should be advised about the way of treatment of these prisoners. The same applies to suicidal efforts, self mutilation, hunger strike, sexual abuse etc. Wounds and marks of beatings, torture etc. must be investigated by a doctor, preferably an independent one. The doctor should be enabled to do this quietly, without official pressure. A 'second opinion', if required always should be allowed. It is the doctor's responsibility to report to an independent (judicial) body about torture practices and marks of physical violence by staff.
The **Body of Principles**, which explicitly forbids any form of cruel and degrading treatment (see **para. 1**), emphasizes that it is a duty of officials and others to report any violation to superior or other authorities or organs '**vested with reviewing or remedial powers**' (**Principle 7**).

Unhindered access to medical care

35. To ensure a fair, caring and prompt access to prison health services, it is of high importance, that prison officers are instructed to take prisoners' complaints seriously, to allow them to see the medical service promptly, to develop a caring and attentive attitude, and not to judge for themselves whether a prisoners needs a doctor.

36. Requests for and access to medical help should not be thwarted by complicated forms to be filled in by prisoners. It is not acceptable that the doctor or at least the nurse would see the patient only one or more days after the complaint has been raised. Although access to medical services should not be administratively complicated, it does not mean, that no records of requests have to be taken. In matters of health misunderstandings must be prevented. Requests to see a doctor should be written down on a simple form or a special book, either by the staff or by the prisoner and signed by both. The doctor is responsible for keeping these forms or the book carefully.

The prison doctor should explain his or her position to the prisoner

37. Because the prison doctor mostly is acting in two functions, i.e. as a private doctor and as an adviser to the prison director, he has a strict obligation to make clear his position in advance and to explain where his obligation to confidentiality ends, about what he has to report and which matters only can be reported with the prisoner's consent.

The physician, adviser to the prison director

38. The second function of the prison doctor is being an adviser to the director in individual and corporate health matters. Given that health encompasses most aspects of prison life, this function should not be seen as assistance to the director for the sake of good order and safety. Although consideration of health issues may help to do so, the prison doctor should not be ordered to put his or her skills at the service of prison order and discipline. Certainly a prison doctor's function should not be combined with that of a forensic physician, acting for the sake of police investigation. This last task is not envisaged by the SMR, is not compatible with that of prisoners' private doctor and therefore combination of these functions is unacceptable.

39. A prison doctor's views are often asked with regard to punishment of prisoners, as mentioned in Rule 32 (1) and (2) (see **Section II, paras 50-53**). This Rule is no longer consistent with viewpoints which have developed since SMR have been established. It is contrary to a doctor's profession and ethics to collaborate in the maltreatment of a person with the possibility of his or her mental or psychical health being affected, by certifying fitness to sustain certain punishments or other hardship. (On this matter see further **paras. 43-45**).

The doctor to report and retain confidentiality

40. Also other Rules about a doctor's function are applicable to his or her being a private doctor as well as an adviser to the governor. They therefore have to be interpreted very conscientiously. These Rules are:

> Rule 24
>
> **The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.**
>
> Rule 25 (2)
>
> **The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any conditions of imprisonment.**
> Rule 32 (3)
>
> **The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.**

41. A doctor examining a prisoner (Rule 24) and being obliged to report about it, may interfere with the prisoner's right of personal integrity and privacy. Such medical reports may also have disadvantageous consequences for the prisoner's situation in prison and thereby for his or her well-being or health.

42. Examining and reporting about it for instance may lead to allocating a prisoner to a hard work section or to excluding him or her from manual work at all. It may lead to segregation e.g. of HIV or AIDS patients, thus stigmatizing them. It may lead to punishment, isolation or solitary confinement, which may even cause physical or mental damage.

The medical officer and punishment

43. It is stated in the **UN Principles of Medical Ethics relevant to the role of Health Personnel, particularly Physicians, in the protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment, or Punishment, Principle 4(b)**, that:

> **It is a contravention of medical ethics for health personnel, particularly physicians:**
> (a) .....
> (b) **To certify, or to participate in the certification of the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.**

44. What must be avoided at the very least is involvement of a prison doctor in security or disciplinary matters of whatever kind. A prison doctor, being appointed as a clinical doctor, is not and may not be seen as part of prison management. In a dualist function as mentioned, a prison doctor should be painfully aware of not creating the impression on prisoners by attitude, words or conduct, that he or she is at the side of prison management. The advisory function therefore should be restricted as much as possible if the prison doctor has to combine it with being the prisoner's private physician. The physician in the first place, as well as the prison director, should realize, that such dualist function is difficult to handle and it may present serious conflicts of conscience to an ethically operating doctor.

45. It has to be emphasized that nurses often are put in the same delicate position as physicians. Because of their mostly being subordinate prison staff members, their professional independence should be ensured with even more carefulness.
It should be mentioned that in special institutions, such as (psychiatric) hospitals, doctors may be managers. The potential conflicts between the management function and the clinical function in relation to the individual patient however should be recognized.

Medical experimentation and research

46. **Article 7** of the **International Covenant on Civil and Political Rights** declares, that

> **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.**

Agreement of prisoners to undergo medical experiments in exchange of e.g. shortening of imprisonment or financial reward, is interfering with his or her free consent. Suchlike forms of manipulation are definitely in disagreement with **article 7. Principle 22** of the (more recent: 1988) **Body of Principles** in a way is even more restrictive:

> **No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation, which may be detrimental to his health.**

This principle does exclude categorically the prisoner's consent as an excuse for possibly damaging experimentation.

47. The 1964 **Helsinki Declaration** of the **World Medical Association**, reviewed in 1975, 1983 and 1989, has paid ample attention to this matter, clearly holding that the matter nowadays is of great significance. The Declaration therefore is very recommendable to prison doctors. It does not refer to experimentation in its strict sense, but to medical research. It states that 'Clinical research cannot legitimately be carried out unless the importance of the objective is in proportion to the inherent risk to the subject'. It states further that 'In the treatment of the sick person, the doctor must be free to use a new therapeutic measure, if in his judgement it offers hope of saving life, re-establishing health, or alleviating suffering'. The Declaration goes on saying, that 'If at all possible, consistent with patient's psychology, the doctor should obtain the patient's freely given consent after the patient has been given a full explanation'. The Declaration makes a 'fundamental distinction' between 'Clinical research in which the aim is essentially therapeutic for the patient and the clinical research, the essential object of which is purely scientific and without therapeutic value to the person subjected to the research'. About the latter the Declaration is very detailed. It states that 'it is the duty of the doctor to remain the protector of the life and health of that person on whom clinical research is being carried out'. Further 'The nature, the purpose and the risk of clinical research must be explained to the subject by the doctor'. And: 'Clinical research on a human being cannot be undertaken without his free consent after he has been informed'. This 'Consent should as a rule, be obtained in writing'. Furthermore the person involved 'should be in such a mental, physical and legal state as to be able te excercise

fully his power of choice'. And: 'The investigator must respect the right of each individual to safeguard his personal integrity, especially if the subject is in a dependent relationship to the investigator'. The last two statements obviously are of importance with respect to prisoners, in particular when rewards are offered to them in return to their consent.

Transmissible diseases, including HIV infection

48. Prisoners, who are HIV infected, suffer from AIDS, tuberculosis, hepatitis or other transmissible diseases, are often considered a risk to fellow prisoners and staff. Particularly HIV infection is felt as a threat, because of it being often connected with drug use. Therefore, forced medical examination and blood testing sometimes is considered a solution. Also segregation in separate units and social isolation is practiced, although it may be discriminative (see **Section I, para. 11**). Measures taken are very different in different countries. Decisions about these matters cannot be based on irrational opinions of prisoners, staff or the general public. The basic starting points should be respect of a person's integrity and dignity and trust in a physician's medical judgement and obligation of confidentiality. The first recommendable solution therefore is to inform prisoners as well as staff about these diseases, the real risks of infection and how to avoid them. Furthermore measures to reduce risks should be considered, like making condoms available and even syringes for drug users. However regrettable, sexual contacts among (male) prisoners and use of drugs to a smaller or larger degree are part of prison life. They are even to a certain extent effects of imprisonment. Such practices may be undesirable; certainly forced sexual contacts should be prevented and punished, either disciplinarily or by criminal law; against drug use should be fought sensibly and reasonably, - but it is useless to close one's eyes to reality.

49. It is part of a prison doctor's role to take initiatives both with regard to these prison problems of growing urgency and with respect to people's privacy. The latter even more points in the direction of involvement of independent outside health services.
The complex problem as such requires special attention to the training of health staff and to a careful study of their codes of ethics, mentioned in **para. 15** of this Section. In particular clear principles should be adopted on questions of confidentiality in relation to HIV infection.

50. However there may be extreme situations, which may allow for segregation of these prisoners and even to medical tests under well formulated and very restrictive conditions. Decisions like these never can be left to one or other prison doctor or governor. They should be taken on the basis of specific legal regulations by politically responsible authorities and after broad expert consultations.

Suïcide

51. In prison self-mutilation and suïcidal efforts occur. They happen generally because of mental, psychic, social or cultural problems. Therefore they should be dealt with carefully, sensitively and individually, certainly not routinely or disciplinarily. Despair about the future, the social situation in prison (e.g. sexual harassment), racial problems, different cultural backgrounds, isolation from fami-

ly and friends (e.g. with foreigners or imprisonment in very distant and unfamiliar places), - many personal reasons can explain such behaviour. Often the measure taken to prevent a prisoner harming him- or herself is isolation. However, isolation is the opposite of what is needed. Care and contact by trusted staff or fellow-prisoners should be the first response.
Besides, prevention of suicide and self-harm is of utmost importance. Death or serious injury of someone in custody can be damaging to staff and prisoner morale. Training staff (including specialists) about reasons for suicide attempts, identifying symptoms, establishing strategies to support those who appear vulnerable and prescribing record-keeping procedures are essential. There should be clear operational instructions about what to do to prevent suicide and self-harm attempts.

52. All staff are responsible for these issues. Although medical staff should be informed in every case, appropriate help may be found from, for example, a chaplain, a social worker, or another prisoner. Many of the problems that lead to suicide attempts are not resolvable at all, e.g. someone's husband abandoning them. What needs to happen is that unconditional support should be offered to such prisoners immediately. It may become necessary to supervise them closely and to take items away from them that they could hurt themselves with. It is true that in nearly every case prisoners who are offered support and who recognise that staff and fellow prisoners are concerned about them become more able to cope with their situation. Outside organizations who care for the suicidal in the community may be keen to extend their work into the prison.

Refusal to eat

53. A distinction has to be made between a refusal to eat as a protest, as a sympton of mental disturbance or a free choice to end life. A refusal to eat is frequently a protest, not a suïcide-attempt. Where this is the case, it is not a medical problem in the first place, but a political or social problem. It is of prime importance to realize this. Examining a prisoner who is on hunger strike and reporting about his or her condition may lead to forced feeding. It may even lead to ordering the doctor himself to administer liquid food against the will of the prisoner, thus annulling a prisoner's protest and allowing to ignore it. This definitely is unjust. As it is stated in the **World Medical Association's Declaration on Hunger-Strikes. '.... It is the duty of the doctor to respect the autonomy which the patient has over his person'**. The W.M.A.'s Declaration recognizes the doctor's conflict to both respect the patient's autonomy, and act in what is perceived to be the patient's best interest. The Declaration, however, states, that, if a doctor **'agrees to attend to a hunger-striker, that person becomes the doctor's patient'**, with all inherent implications, **'including consent and responsibility'**. Further the Declaration states: **'The ultimate decision on intervention or non-intervention should be left with the individual doctor without the intervention of third parties whose primary interest is not the patient's welfare'.**

54. Prisoners who refuse food may be disturbed, or may be trying to draw attention to their plight, or pursuade someone to take or take not certain actions. Sometimes there is no logical connection between not eating and the desired effect.

For example, a prisoner who refuses to eat because he wishes the court to make a different decision is unlikely to be succesful. Staff and friends of the prisoner should point this out. If sensible approaches fail, his condition should be monitored by a doctor who should advice him of the health risks involved. If necessary the prisoner should be moved to a hospital. Clear guidelines on treatment and resuscitation should be established.

55. Prison policy should be in accordance with the following principles, formulated in the **Tokyo (1975) and Malta (1992) Declaration of the World Medical Association** concerning a refusal to eat:

> **There is a moral obligation on every human being to respect the sanctity of life. This is especially evident in the case of a doctor who exercises his skills to save life and also acts in the best interests of his patients (beneficence).**
> **It is the duty of the doctor to respect the autonomy which the patient has over his person. A doctor requires informed consent from his patients before applying any of his skills to assist them, unless emergency circumstances have risen in which case the doctor has to act in what is perceived to be the patient's best interests.**

Furthermore they declare:

> **The ultimate decision on intervention on non-intervention should be left with the individual doctor without the intervention of third parties whose primary interest is not the patient's welfare.**

From the guidelines the following may be mentioned:

> **Doctors or other health care personnel may not apply undue pressure of any sort on the hunger-striker to suspend the strike...**
> **The hunger-striker must be professionally informed by the doctor of the clinical consequences of a hunger strike...**
> **Any treatment administered to the patient must be with his approval. The doctor should ascertain on a daily basis whether or not the patient wishes to continue with his hunger strike.**

Extreme illness and death

56. Another problem is connected with a prisoner's state of terminal or severely incapacitating illness, or with a prisoner being in an extremely bad physical or mental condition without any perspective to improvement. Such prisoners of course cannot be neglected nor given up, although much care is needed. The obvious solution is to end or suspend imprisonment and hand the medical care over to the appropriate community health services. According to Rule 25.2, quoted earlier, and as far as confidentiality permits, the doctor anyway should recommend the most preferable medical solution to the director.

57. Because of the complicated position of a prison doctor careful action also is needed in case of death of prisoners. It goes without saying, that death in prison, regardless its cause, has to be verified and investigated immediately by a doctor. It is desirable to have it done by an independent physician, not connect-

ed with the prison system or the ministry in charge. This should be done at any rate, if relatives of the deceased so request. Exttreme carefulness in these matters is required, regardless whether there is or could be a link between the imprisonment and the death, or that any suspicion of such a link might arise.

58. In all these cases a prison doctor, acting as the prisoner's private physician and as the director's adviser as well, must act with great subtlety and be extremely candid towards his or her patients about this dualist position and the consequences of it. It applies also to the prison director and other staff.

The physician a health and hygiene officer

59. The prison physician's general health and hygiene function should not be attributed exclusively to the prison doctor, although in a way it is connected with his or her function as a private doctor of prisoners and as an adviser to the director. Since prisoners live in a closed area and under restricted conditions their health situation is defined largely by this situation. Knowing the physical and mental complaints of the patients, the prison doctor is able to point at matters, which are critical to the health and hygiene situation in prison. Moreover imprisonment itself affects the health of prisoners. Therefore the prison doctor should advise about improvements of the prison regime, prison rules and methods of work, as far as they are related to health and hygiene, as is stated in the following Rule 26.

A medical officer's duty to inspect and report about health in prison

60. **Rule 26 (1)**

The medical officer shall regularly inspect and advise the director upon:

(a) The quantity, quality, preparation and service of food;
(b) The hygiene and cleanliness of the institution and the prisoners;
(c) The sanitation, heating, lighting and ventilation of the institution;
(d) The suitability and cleanliness of the prisoners' clothing and bedding;
(e) The observance of the Rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2)

The director shall take into consideration the reports and advice that the medical officer submits according to Rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

61. Daily exercise in the open air, as is stated in Rule 21 (see **Section VI, para. 122**) and safety at prison work, as required in Rule 74 (see **Section VI, paras 101-103**) should also be paid attention to by the prison doctor, although certainly not exclusively or even in the first place by him or her.

62. A doctor is not an expert in all matters mentioned in **para. 60.** Specialist services, as far as they are available in the community, or volunteers, specialized in some of these matters, should be involved, if possible, in monitoring the health and hygiene situations in prison, including those which are mentioned in the next few paragraphs.

Food and hygiene

63. An area of high importance and which requires expert monitoring and supervision is food, water and sanitation. Extensive attention is being paid to this subject matter in Section II. As has been emphasized in that section, a matter of priority is good quality of drinking water and sufficient access to it. The same applies to hygienic sanitary facilities. In many countries they are below reasonable and humane standards. Especially provisions in prison cells often are horrible. Air sometimes may be polluted by use of oil, paint, other chemicals, or by smut. Clean and sufficient fresh air and ventilation are among the basic necessities of good health and hygiene.

64. Inspection of food and meals in prison is extremely important, though often not done regularly, frequently and in a qualified way. Inspection is not only needed of the prepared food, its preparation and the hygiene situation in the kitchen. Inspection is needed as much with regard to the distribution of the meals: Is hot food still hot when the prisoners get it? Are portions sufficiently big? Are ways of distribution and eating facilities hygienic? Special attention is to be given to the quantity and quality of meals for young prisoners, sick prisoners and those who have to work hard.

65. The quality of food requires sound and expert supervision. The main components of food should be present in adequate qualities and adapted to climate; variation of menus is needed; account has to be taken of special diets for prisoners on religious or medical grounds; particular care should be paid to the diets of pregnant women, young mothers and their babies. These requirements are high. Even if local situations in the community with respect to food leave much to be desired, it is governmental responsibility, that people in its care, who in fact are unable to care for themselves, are fed well and that health is ensured.

Outside monitoring

66. In stead of the prison doctor a medical inspector of community health services could act in this function. In many countries moreover outside bodies of volunteers, so-called supervisory bodies or boards of visitors, inspect aspects of the general health and hygiene situation and the well-being of prisoners in general. It should be given attention that the medical or related professions are represented in these bodies for matters of health and hygiene. (Inspection is extensively discussed in Section IX).

Position of nurses

67. The Statement of the **International Council of Nurses** (Singapore 1975) about the role of the nurse in the care of detainees and prisoners refers to the ICN **Code for Nurses**, which reads:

> **The fundamental responsibility of the nurse is fourfold: to promote health, to prevent illness, to restore health and to alleviate suffering ...**

The statement concludes among other matters:

> **Therefore be it resolved that ICN condemns the use of all such procedures harmful to the mental and physical health of prisoners and detainees; and further it be resolved that nurses having knowledge of physical or mental ill-treatment of detainees and prisoners take appropriate action including reporting the matter to appropriate national and/or international bodies; ...**

68. Nurses have a crucial function to perform in prison. At the same time generally their degree of professional independence is less than that of prison physicians. Certainly they are seen as less independent by prisoners. Nurses may also contribute to this situation by creating an impression of being more concerned with discipline and the smooth running of the prison than with the prisoners' health.

69. Although nurses are not explicitly mentioned in the SMR, it is obvious that they are implicit in what the SMR call 'medical services' these services cannot function adequately without doctors' assistants. Their function however is often even more delicate than that of doctors. They share with the doctors confidential information, they assist and in minor matters even may replace the doctor and therefore they have to develop a relation of trust with prisoners.

Supervision of nurses

70. Practice in some countries does not always provide protection in accordance with the **ICN Code for Nurses**. The 'medical profession's secret' is not always considered to be applicable to nurse's profession. One reason is the different levels of qualifications of nurses. Another reason is, that in prisons nurses, being mostly part of the executive prison staff, are subordinate to the prison director.
Moreover in some countries there are no nurses in prisons. Some nursing or assisting tasks are fulfilled by ordinary prison officers.
To act responsibly it is necessary for prison directors, leading staff and physicians, to respect fully international and national codes of ethics of nurses and other health workers and to inform them about their position in this respect. Furthermore they should ensure that nurses and health workers are not charged with tasks for which they are not qualified and about which appeals to ethical codes will not be recognized.

71. In order to avoid conflicts of conscience with nurses, they should be managed and supervised by the prison doctor, who is responsible for their work.

Nurses' status

72. It is consistent with nurses being part of medical services, that they have access to the same complaints procedures as doctors and for similar reasons. Furthermore they are bound by the right as well as the duty of medical confidentiality in the same way as doctors are. The **ICN Code for Nurses** should be respected by the nurses themselves as well as by leading prison staff. It presents guidelines as to their role in the care of detainees and prisoners and in safeguarding human rights. The ICN (Brasilia 1983) stated in this respect:

> **Nurses have individual responsibility but often they can be more effective if they approach human rights issues as a group. The national nurses associations need to ensure that this structure provides a realistic mechanism through which nurses can seek confidential advice, counsel, support and assistance in dealing with these difficult situations.**

Nurses' professional skills

73. It should be a responsibility of the prison doctor to see to it, that the nurses are trained well, that they keep up with their medical expertise and that they are informed about frequent occurrence of diseases, symptoms of new or seasonal diseases and about how to prevent or in minor cases how to treat them. Special attention should be paid to identifying symptoms of AIDS, drug addiction and other transmissible diseases and how to handle them.

74. Nurses not only should be well trained as far as their medical profession is concerned, but also with respect to the way of dealing with patients. An authoritarian or patronizing way of handling prisoners, or a behaviour which suggests that it is a favour to the prisoner and a privilege to be given attention,- these are not ways to gain a prisoner's confidence. This applies to doctors and generally to prison staff as well.

Role of health workers

75. Health workers can play a valuable role in prisons, provided that they are trained well and function under full and sufficiently intensive supervision of the prison doctor, possibly assisted by a fully qualified nurse. Their main tasks can be:
- providing first and simple aid;
- recognizing situations which have to be referred to a professional medical officer -doctor or nurse- and actually acting accordingly;
- identifying stress caused by or connected with imprisonment and reporting about it to the responsible medical officer;
- identifying symptoms of drug addiction, abstinence of drug use, AIDS, other transmissible diseases and reporting about it as well.

76. Health workers could ensure full time availability of initial medical care. Health workers then, as a strict condition, must be well-trained and well-supervised. In prisons where regular prison officers have been trained up to a level indicated

in **para. 78**, health workers may not be necessary. If however health workers are appointed, ordinary prison officers should not be charged with health workers' tasks.

The health officer subject to conflicts of interests

77. Since prison doctors' - and nurses' - first responsibility lies with the patients and their personal autonomy, it is of utmost importance for them to make that clear to their patients and thus create a basis of trust with prisoners. On the part of the director it is of prime importance to respect that relation of confidentiality between doctor or nurse and prisoner, asking a doctor's advice only when urgently needed and discussing beforehand about the desirability of medical advice and its possible consequences.

78. If for special reasons, e.g. at the intake of prisoners, it is necessary to have them examined, doctors always are to inform a prisoner what a specific examination is about and what it is for. It contributes to a trustworthy relationship. If possible however, doctors should leave prisoners a choice and a responsibility, so that they can decide for themselves to allow the examination or not. If prisoners refuse to be examined, it may be necessary to take measures in proportion to health risks, which are suspected by the doctor. However, prisoners should not be punished for it. It would be an interference with their right to personal integrity.

79. Carefulness of health and medical care of prisoners should be ensured by national guidelines, including check lists of diseases, physical and mental complaints which the prison physician has to observe. Files of patients should be composed in conformity with these guidelines.
Principle 26 of the **Body of Principles**, quoted in **para. 32**, clearly underlines these requirements, where it states that **'the results of such an examination shall be duly recorded'**, and that, **'access to such records shall be ensured'**. Patients and representatives designated by them, do have the right to know the contents of their files and reports and to read them. If a prisoner is transferred to another prison, it is the physician's responsibility, that prisoners' medical files are handed to the physician of the other prison, while respecting the prisoner's privacy. If desirable from a medical point of view, the prison doctor should advice a prisoner at his or her release from prison, whether certain medical information should be passed on to the prisoner's outside personal physician.
Measures should be taken, to ensure, that the confidentiality of medical records and the patients' rights of access to them are respected after release.

80. Doctors too should not report to the governor without informing the prisoners concerned about the reports' content. As has been said earlier, international rules have defined, that prisoners are entitled to know what is in the reports. It would be preferable for a doctor to leave it to the prisoner to inform the governor about the outcome of an examination or not.

81. In fact there are only few situations, where the doctor has to inform the governor, i.e. when the interest of the prison community or the community outside is at serious risk. These situations are hardly different from those, where a doctor in the community has to report to public authorities about patients causing health risks. In most other situations it can be left to the prisoner to report about his or her health situation, when he or she thinks it necessary. A prisoner should allow the prison director or the responsible staff member to have that information checked with the doctor. In case prisoners do not wish to reply to reasonable and purposeful questions of a competent staff member about their health conditions, the taking of regime measures mostly will suffice. These measures however should never be of a disciplinary nature, in order not to devalue the prisoners' rights in this highly private and vital area of personal life.

Right of prisoners to complain about health care

82. Rule **36 (1)** of the SMR reads:

> **Every prisoner shall have the opportunity each week day making requests or complaints to the director of the institution or the officer authorized to represent him.**

The same is established in **Principle 33** of the **Body of Principles**. It is therefore important that complaints procedures are developed. Obviously this general Principle also refers to complaints about health care. Complaints procedures should include provisions about involvement of independent health (complaints) bodies, who are competent in matters of medical care. These bodies should be competent to review decisions, to order second opinion or treatment by another physician, to advice authorities about necessary improvements of health services and access procedures and about measures to be taken to ensure professional quality and conduct of health personnel. (About complaints see also **Section II**).

83. Complaints procedures must be known to prisoners to be effective. It inspires confidence if written as well as oral information is given at admission of the prison by a nurse, or by an intake officer together with further information about prison rules and facilities.

84. Independent health authorities furthermore should be involved in monitoring the health care situations in prisons and the application of the standards of medical ethics issues in general.

85. Besides, where such vital interest as health is at stake, access of prisoners to the civil judge and to a disciplinary body of the official professional organization of physicians or nurses should be made possible.

Health officers appeal procedures

86. The responsibility of a prison doctor and prison health officers in general for prisoners' health and his or her way of performing it, may give rise to problems

between the doctor and the prison director. Conflicts also could arise about a doctor, charged with the dual or triple function mentioned before, not acting properly according to a director's opinion. The first way to solve their problem of course is by sensibly and frankly discussing them between each other. That however may not always work. In that case, precisely because of the doctor's delicate and mostly multi-functional position, as well as because of his or her medical expertise, such conflicts need involvement of an independent body, acceptable to both parties and competent in both areas.

87. Formal procedures about how to deal with such matters are needed. It is not only in the interest of doctors and directors, but also of prisoners. It stengthens confidence that health care is considered of great value and problems are dealt with impartially. It is strongly recommendable to create also complaints procedures for doctors and health officers in general. Their prescriptions about treatment of patients, or their advices with respect to their advisory and social hygienic functions, may not always be followed at the detriment of individual or general health situations. If such provisions do not exist, the functions of health officers become enfeebled.

88. Since health matters are so crucial in prison, general supervision of the medical practice and the health situation is needed. The attention paid to health care in prisons in international legal instruments are compelling reasons to introduce independent and qualified bodies to ensure regular oversight of medical practice, of effectiveness of links with outside health services and of sufficient resources.

Specific health care for some groups of prisoners

89. **Principle 5.2** of the **Body of Principles** in particular stresses that:

> **Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.**

Health provisions for female prisoners (and their babies)

90. The SMR have emphasized the urgent need of special provisions for pregnant women and mothers with babies.

> **Rule 23 (1)**
>
> **In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.**

> (2)
>
> **Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.**

91. Although in different countries different viewpoints are held about the best solutions with respect to imprisoned mothers, some very basic provisions should be guaranteed. The recommendations of the Human Rights Watch Global Report on Prisons (New York, 1993) deserve to be quoted:

- Female inmates should be given sanitary napkins or substitutes and have daily access to showers or their equivalent during menstruation;
- work and educational opportunities should be available on an equal basis to both men and women;
- where visits to female inmates are severely limited because of the long distances relatives must travel, the authorities must make efforts to compensate (by subsidizing relatives' travel or through some other system);
- pregnant prisoners should be given regular pre-natal checkups and an adequate diet;
- nursing mothers should get an adequate diet;
- efforts should be made to facilitate mothers' contacts with their children and their right to direct their upbringing.

92. Prisons for women are not or poorly differentiated nearly everywhere. As a result the amount of security is mostly high, certainly far higher than what is generally necessary for women. Prison work for women is little and uninteresting. Prisons are built for men and often hardly adapted to special needs of women. In some countries not even their vital needs with respect to menstruation, pregnancy and motherhood, are not met as is indicated in the afore- mentioned Human Rights Watch Global Report on Prisons. These conditions affect adversely women's health situation and their state of mind. Moreover women in prison may be vulnerable to abuse, including rape, by some prison staff.
Prison doctors and nurses, therefore, should pay explicit attention to women, their conditions and their complaints. Gynaecological care for female prisoners should be guaranteed.

Treatment of drug addicts

93. A matter of growing concern in prisons is treatment of drug addiction. The SMR do not make mention very explicitly about the need for drug treatment, because it is a rather recent phenomenon. Moreover in free society consensus of treatment methods does not exist. It should be considered a prudent line of conduct not to have one physician decide all by him- or herself about treatment of a particular prisoner or of prisoners in general. Consultation of colleagues or experts in this area and/or decisions on the basis of recent and well documentated reports, should be obligatory. Agreement of the respective prisoner, who has to be well informed, of course is absolutely necessary. National guidelines therefore should be strived at. They should include rules about use of drugs on

order of a doctor. This is still forbidden in some countries, but at least for reasons of medical treatment it should be permitted.
Guidelines are necessary concerning procedures for medically supervised detoxification, so that the risk is avoided that some prisoners are forced to withdraw from drugs without medication or support. For persistent drug addiction and HIV infection, see **para. 48.**

Care for mentally ill and unbalanced prisoners

94. Assuring a sufficient degree of well-being of prisoners is particularly difficult as well as important as far as insane and mentally abnormal prisoners are concerned and prisoners under serious psychological stress. Rules 82 and 83 of the SMR deal with it. They read as follows:

> **Rule 82 (1)**
>
> **Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.**
>
> **(2)**
>
> **Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.**
>
> **(3)**
>
> **During their stay in a prison, such prisons shall be placed under the special supervision of a medical officer.**
>
> **(4)**
>
> **The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.**
>
> **Rule 83**
>
> **It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.**

95. The amount of prisoners in need of psychiatric care is rising in many countries. One reason often is, that psychiatric institutions and services in the community are overburdened with patiens. Therefore, psychiatric patients, who have committed offenses, are often not admitted. Mentally disturbed and insane persons, however, not seldom are neglected and abandoned in prison. Long term prisoners may develop mental and psychic disturbances by imprisonment itself

and by being cut off from their families. Mental problems also arise and may become chronic in big prisons, where there is much overcrowding; where there are few activities; where prisoners have to stay long time in their cells in daytime; where the prison population is undifferentiated; where criminal subcultures have developed and brute domination by prisoners occurs. These situations often coincide with and are aggravated by unsufficient staff to control the prison, let alone that staff have sufficient personal contacts with prisoners; that they know who are in need of specialist help and that they can exert a relaxing influence on the prison climate. Moreover cultural differences may pose special hardship and emotional confusion to foreigners and members of minority groups.
These reasons underline the necessity for prison staff to pay special attention to prisoners in psychic or mental trouble and to try and ease their situation individually. It is obviously an even bigger responsibility for medical and psychological staff.

96. To comply with Rules 82 and 83 (**para. 94**), a relaxed atmosphere is the basic requirement. It is characterized by caring attitudes of staff, by an organization which enables staff to know prisoners and report about their needs, and by procedures ensuring that prisoners' requests and prison officers' reports (oral and written ones) are taken seriously and dealt with promptly. Only in such situation, it is possible to detect prisoners in need of psychiatric care in the first place. Only then it may be possible to try and have them allocated, according to degree of urgency, to psychiatric institutions or to provide them with all adequate help which is available in prison and possibly after release.

97. In order to guarantee proper and adequate attention and treatment it is of special importance to keep records of mentally disturbed prisoners, or those who show abnormal conduct. Prison doctors or psychologists should be charged with instructing prison staff members to report regularly about these prisoners' behaviour.
In (sections of) prisons for these categories of prisoners reporting systems and regular evaluation of reports have to be developed. Special emphasis should be put on qualified staff. It should be emphasized that even in psychiatric hospitals for prisoners practices not always are in conformity with these Rules. It happens not seldom that patients are forgotten for a long time.

Prisoners under sentence of death

98. It is mentioned in the initial chapter about 'Where the Handbook starts from', that the SMR and other international rules about treatment of prisoners do not exclude from application people sentenced to death. The United Nations and other international and national organizations strive after abolition of death penalty. In spite of all reasonable objections however death penalty still exists in many countries.

99. The UN General Assembly resolution 2857, dated 20 December 1971, affirmed that 'in order fully to guarantee the right to life, provided for in **Article 3** of the **Universal Declaration of Human Rights**, the main objective to be pursued is that of progressively restricting the number of offenses for which capital pun-

ishment may be imposed, with a view to the desirability of abolishing this punishment in all countries'.
The UN Economic and Social Council adopted resolution 1989/64, in which it declared to be 'Alarmed at the continued occurence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty'. It recommended, that 'member states take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of councel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;
(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;
(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;
(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution'.

Resolution on physician participation in capital punishment

100. As a consequence of death penalty and of states' provisional decisions not to execute death penalty the situation of prisoners on death row requires urgent and intense attention. Conditions are usually far worse than those of other prisoners, because of increased isolation, even for long and indeterminate periods of time - and still lack of privacy -, inactivity and bad basic physical provisions. These conditions damage gravely death sentenced prisoners' mental and spiritual as well as physical health. Everything has to be done to ensure that at least humane living conditions, activities and communication facilities are provided, as well as professional psychiatric help. Conditions of prisoners on death row at the very least should not be worse than those of other prisoners.

101. In the context of health care in particular the role of health officials with respect to the execution of death penalties is to be considered. SMR do not deal with this matter. Reference may be made however to para. 43 of this Section and to other international instruments. The **World Medical Association** on this matter has adopted in 1981 the following **Resolution on Physician Participation in Capital Punishment:**

> **"it is unethical for physicians to participate in capital punishment, although this does not preclude physicians certifying death".**

The Secretary-general of the **World Medical Association** issued the following 's press release in September 1981 with the endorsement of the Assembly:

> **The first capital punishment by intravenous injection of lethal dose of drugs was decided to be carried out next week by the court of the State of Oklahoma, USA.**

Regardless of the method of capital punishment a State imposes, no physician should be required to be an active participant. Physicians are dedicated to preserving life.
Acting as an executioner is not the practice of medicine and physician services are not required to carry out capital punishment even if the methodology utilizes pharmacological agents for equipment that might otherwise be used in the practice of medicine.

A physician's only role would be to certify death once the State had carried out the capital punishment.

참고자료 7

교도소 내 보건의료의 윤리적 및 조직적 면에 관한 각료위원회의 유럽연합 소속 국가에 대한 권고안 R (98) 7

유럽평의회 (Council of Europe) 각료위원회(Committee of Ministers)

(1998년 4월8일, 각료 대리인들의 627차 모임에서 각료위원회에 의해 채택)

원문을 볼 수 있는 곳 - http://www.uncjin.org/Laws/prisrul.htm

유럽평의회 규정 15. b 조 조항에 의거 각료위원회는,

일반사회와 교도소에서의 의료행위가 동일한 윤리적 원칙에 의해 이루어져야 한다는 점을 고려하고,

수감인들의 기본권에 대한 존중에는 일반국민에게 제공하는 것과 동등한 예방진료 및 건강보호가 수반됨을 인지하고,

교도소에서 의료진이 교도행정측과 수감인들의 상충되는 기대로 인해 자주 어려움을 겪고 있고 이에 따라 의료진이 매우 엄격한 윤리적 가이드라인을 따르게 됨을 인식하고,

교도소에서의 건강권과 교도소 내 의사 및 보건 스탭들의 구체적 역할에 대한 뚜렷한 비젼을 가지고 나아가는 것이 교도소 내 의사, 그외 보건 스탭, 수감인 및 교도 행정관 모두에게 이익이라는 점을 고려하고,

과다수용, 전염병, 약물중독, 정신장애, 폭력, 독방감금, 몸수색등의 감옥내 문제상황은 의료행위에 있어서 건전한 윤리적 원칙을 요구한다는 점을 고려하고,

유럽인권협약(the European Convention on Human Rights), 유럽사회헌장(the European Social Charter), 인권과 생의학에 관한 협약(the Convention on Human Rights and Biomedicine)을 염두에 두고,

고문 및 비인도적 처우 또는 처벌 금지에 관한 유럽협약(the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)과 고문 및 비인도적 처우 또는 처벌 금지를 위한 유럽위원회(the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)의 제3차 사업보고서에 요약되어 있는 교도소 내에서의 보건 서비스에 관한 권고안을 염두에 두고,

교도소 내에서 인도적 처우 및 인간 존엄이 지켜지기 위한 최저 기준을 보장토록 한, 상기 위원회의 유럽 교도소 규정(the European Prison Rules)에 대한 권고안 R (87) 3 을 참조하고,

인간을 대상으로 한 의학 연구에 대한 권고안 R (90) 3, 교도소 내에서의 에이즈등의 전염성 질병에 대한 관리 및 관련 건강 문제의 범죄학적 면들에 관한 권고안 R (93) 6, 그리고 교도소 내에서의 HIV 감염및 에이즈에 대한 1993년 세계보건기구(WHO) 가이드라인을 상기하고,

유럽평의회 의원회의(the Parliamentary Assembly of the Council of Europe)에 의해 마련된 정신의학과 인권에 관한 권고안 1235 (1994) 및 유럽평의회 회원국들에서의 구금 조건에 대한 권고안 1257 (1995) 을 염두에 두고,

1982년 유엔총회(United Nations General Assembly)에서 채택된 고문 및 기타 비인간적 잔혹 행위 및 처벌로부터 구금된 사람과 수감인 보호를 위한 의료 윤리 원칙(the Principles of Medical Ethics for the Protection of Detained Persons and Prisoners against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment)을 참조하고,

의료윤리에 관한 세계의사협회(World Medical Association, WMA)의 선언들, 특히 1975년 도쿄선언(Declaration of Tokyo), 단식투쟁자에 대한 1991년 말타 선언(Declaration of Malta), 수감인들에 대한 몸검색에 관한 1993년 성명을 참조하고,

최근 몇몇 회원국에서의 교도소 보건의료서비스에 대한 구조, 조직 및 규정에 대한 개혁, 특히 국가보건체계의 개혁과 관련되어 이루어진 상기 개혁을 주목하고,

권고안 이행이 정부및 지자체 모두에서 이루어져야 하는 행정구조를 가진 회원국들이 있음을 고려하여,

회원국 정부에 다음 사항을 권고한다

- 교도소 내 보건 서비스 및 그에 관련된 법안을 재검토할 때 이 권고안 부록에 실린 원칙들과 권고사항을 고려하도록 한다

- 교도소 내에서의 예방진료 및 보건의료를 책임지고 있는 개인 및 단체들에 각별한 주의를 기울여 가능한 한 널리 이 권고안을 알리도록 한다.

권고안 R (98) 7 의 부록

I. 교도소 내 건강권 보장의 주요 특징

A. 의사에 대한 접근성

1. 교도소에 수감될 때와 그 후 수감 중에 수감인은 건강상태에 따라 필요하다면 구금방식에 상관없이 또 부당

한 지체없이 어느 때라도 의사나 자격을 갖춘 간호사를 만날 수 있어야 한다. 모든 수감인은 입소시 적절한 의학적 진찰을 받아야 한다. 정신질환, 교도소에 대한 심리적 적응, 마약이나 약물 그리고 알코올 금단증상, 접촉 전염성 혹은 만성 질환 등은 특별한 주의를 기울여야 한다.

2. 수감자의 의료요구를 충족시키기 위해, 규모가 큰 교정시설에서는 수감인들의 건강을 위해 수감인의 수와 교체정도 그리고 평균 건강상태에 따라 전담 의사와 자격을 갖춘 간호사가 상주하고 있어야 한다.

3. 교도소의 보건 서비스는 적어도 외래진료 및 응급치료를 제공할 수 있어야 한다. 수감인의 건강상태가 교도소 내에서 치료할 수 없는 정도라면 교도소 밖의 병원에서 보안 하에서 치료받을 수 있도록 모든 가능한 방안을 강구해야 한다.

4. 수감인은 주야 어느 때든 필요하다면 의사를 만날 수 있어야 한다. 교도소 내에는 응급처방을 할 수 있는 사람이 상주해야 한다. 심각한 응급 상황에서는 의사, 간호사, 그리고 교도소 행정처에 알려야 한다. 교도관들의 적극적인 참여는 매우 중요하다.

5. 정신과적 자문과 상담에 대한 접근성이 보장되어야 한다. 큰 규모의 교도소에는 정신과 담당 팀이 있어야 한다. 작은 규모의 교도소 등에서 이런 의료지원이 불가능하다면 외부 정신과 의사와의 상담이 보장되어야 한다.

6. 모든 수감인은 자격을 갖춘 치과의사의 치료를 받을 수 있어야 한다.

7. 교도소측은 지역의 공공및 사립 건강기관과의 협조를 위한 협정을 맺어야 한다. 마약, 알코올 혹은 약물에 중독된 일부 수감인은 교도소 내에서 적절한 진료를 받기 어려우므로, 일반사회에서 위와 같은 중독자들을 전문적으로 도와주는 외부 상담가를 불러 상담과 간호를 받을 수 있어야 한다.

8. 적절한 경우에 여성 수감자를 위한 별도의 지원이 제공되어야 한다. 임신한 수감자는 의료 모니터링을 받아야 하며 수감자 상태에 가장 적절한 외부 병원에서 출산할 수 있어야 한다.

9. 외부병원으로 환자를 호송할때 의료진이 동행해야 한다.

B. 의료의 동등성

10. 수감자들에 대한 의료 정책은 국가의 보건의료정책에 통합되어야 하며 또한 부합되어야 한다. 교도소 보건 당국은 의료, 정신과, 그리고 치과 치료를 제공할 수 있어야 하며 또한 일반인들과 마찬가지로 위생 및 예방의학 프로그램을 시행하여야 한다. 교도소 내 의사는 전문의들을 부를 수 있어야 하며 다른 대책이 필요하다면 교도소 당국은 이를 위한 조처를 취해야 한다.

11. 교도소 보건 당국은 외부와 동일하지는 않더라도 그에 상응하는 수준의 건물, 시설, 장비뿐만 아니라 충분한 수의 의료진과 기술진을 확보해야 한다.

12. 교도소 내 위생, 보건 및 보건 서비스 조직 평가가 법령에 부합하도록 정부 보건 담당 부서의 역할이 강화되어야 한다. 보건 담당 정부 부서와 그외 다른 부서간의 역할 분담을 분명히 하여 교도소 내에서의 통합된 보건 정책을 이행하는 데 있어서 협조하여야 한다.

C. 환자의 동의 및 비밀보장

13. 개인의료정보 보호는 일반사회와 마찬가지로 엄격히 지켜져야 한다.

14. 병의 상태가 환자자신이 자신의 상태를 이해할 수 없는 정도가 아니라면 검사나 검사에 필요한 각종 채취에 앞서 환자의 '고지된 동의'(informed consent)가 있어야 한다. 법률적으로 허용된 경우는 제외한다. 각각의 검사가 필요한 이유를 설명하고 수감인의 이해를 도와야 한다. 약물치료 시 수감인에게 설명을 하여야 하며 약물치료에 의해 생길 수 있는 부작용을 설명해야 한다.

15. 정신장애가 있는 환자의 경우나 치료거부, 식사거부 등의 경우와 같이 의료직무와 보안문제가 상충할 경우에는 '고지된 동의'를 받아야 한다.

16. 동의권(freedom of consent)의 원칙을 어기는 경우는 법이 허용하는 경우여야 하며 일반사회에서 이루어지는 것과 같은 원칙을 따라야 한다.

17. 미결수에게는 자기 부담으로 자신의 주치의나 교도소 외부 의사를 상담할 권리가 주어져야 한다. 기결수는 제2의 의료의견을 구할 수 있으며 이에 대해 교도소 의사는 호의적으로 고려해야 한다. 하지만 이런 요구의 효과에 대한 결정은 궁극적으로 교도소 의사에게 있다.

18. 다른 교도소로 이송할 때에는 모든 의료기록을 함께 보내야 한다. 이 기록들은 개인의료정보 보호가 유지될 수 있는 환경에서 이루어져야 한다. 수감인에게 그들의 의료정보가 보내질 것임을 통보해야 한다. 국가법률에 따라 수감인은 이 의료정보 송부를 반대할 자격이 있다.

출소한 모든 수감인에게는 그들 주치의가 볼 수 있도록 교도소내에서의 건강에 관한 기록부를 줘야 한다.

D. 직업적 독립

19. 교도소에서 일하는 의사는 수감인 개개인에게 일반사회에서와 같은 수준의 의료 서비스를 제공해야 한다. 수감인의 건강에 필요한 사항이 항상 의사의 주된 고려여야 한다.

20. 임상결정 및 그외 수감인의 건강에 관련된 평가는 의학적 기준에 의해 이루어져야 한다. 보건 의료진은 그들의 자격과 역량의 범위 하에서 전적으로 독립적이어야 한다.

21. 간호사와 그 외 의료진은 상급 의사의 직접 책임 하에 업무를 봐야 하며 책임 의사는 법과 업무수칙(deontological code)이 정한 범위 밖의 일을 준의료요원에게 위임할 수 없다. 자격을 갖춘 보건 기관으로부터 의료 및 간호 서비스의 질에 대한 평가를 받아야 한다.

22. 의료진의 급여는 다른 공공 의료기관에서의 급여보다 낮아서는 안된다.

II 교도소 환경 하에서의 의사와 의료진 역할

A. 일반적 요구사항

23. 교도소 의사의 우선적 역할은 그(그녀)가 의료에 있어 책임지고 있는 수감인들에 대한 진료와 의료상담을 하는 것이다.

24. 이에는 수감환경 및 위생, 영양에 관련된 문제에 대하여 교도소 당국에 조언하는 것 또한 포함된다.

25. 보건 의료진은 교도소 당국 및 교도관들에게 건강에 관련된 정보 및 교육을 제공할 수 있어야 한다.

B. 건강 관련 정보, 예방, 교육

26. 수감 시에 수감인 각자에게 자신의 권리와 의무, 내부 규정 및 도움과 조언을 어디서 어떻게 받을 수 있는지에 대한 가이드라인을 알려줘야 한다.

27. 모든 교도소에서 건강교육 프로그램이 개발되어야 한다. 수감인과 교도소 행정 당국 모두에게 기본적인 건강 증진 정보가 주어져야 하며 이는 수감인들의 건강 보호에 촛점이 맞춰져야 한다.

28. 간염, 성병, 결핵, HIV감염이 초래하는 부정적 결과, 그리고 익명성이 보장되는 전염성 질환의 검진에 자발적인 참여시의 잇점을 충분히 설명하여야 한다. 검사를 받는 사람들은 이후 추가 의학적 상담이 이루어져야 한다.

29. 건강교육프로그램은 건강한 생활습관을 가지도록 하는데 목표를 두어야 한다. 그리고 수감인들이 그들 자신의 건강과 그들 가족의 건강에 관하여 올바른 결정을 할 수 있도록 하여 의존성과 재범을 줄이고 개인의 완전성을 보존토록 해야 한다. 이러한 접근으로 수감인들이 건강프로그램에 참여토록 하여 건강의 위해요소를 줄이기 위한 행동과 전략을 배우도록 해야 한다.

C. 교도소 내에서의 특수한 병리학의 형태와 예방적 보건 관리

30. 교정시설에 피구금자들이 입소시 의학적 검진을 할 때 관찰된 모든 형태의 폭력성은 의사의 소견을 수감자들에 의한 관련된 진술과 함께 의사에 의해서 기록되어져야 한다. 이러한 정보는 또한 수감자의 동의와 함께 교도소 운영에 영향을 미칠 수 있어야 한다

31. 구금 과정에서 벌어진 수용자에 대한 어떠한 폭력 사건들에 대한 정보는 관련 당국에 보고되어야 한다. 규칙에 따라 그러한 행동은 관련된 수용자들의 동의에 따라 취해져야 한다.

32. 만일 의사가 어떤 피구금자가 수용시설 내에 심각하게 존재하는 위험이 있는 사건을 보고해야 하는 교도소 집단이나 환자들에 대한 우선적인 책임이 있다고 생각될 경우 전문적인 윤리적 원칙에 엄격하게 따르는 사건이나 어떤 특별한 사건들에 있어서는 피구금자들에게 알려져야하는 동의는 특별히 기본적인 것으로 간주될 필요가 없다. 의료 관리 서비스는 만일 필요하다면 관련 장관이나 교도소 관리자들과 논의할 수 있도록 정보 보호 관련 국내법에

따라 관찰된 심각한 상해에 대한 주기적인 통계 자료를 수집하여야 한다.

33. 구금시설의 직원들을 위한 적절한 건강 교육은 그들이 교도소내의 모든 수용자들에 대한 신체적, 정신적 건강 문제를 감지하고 보고하는 것을 용이하게 한다는 점에서 이뤄져야한다.

D. 교도소 의료진의 전문적인 교육

34. 교도소 의사들은 일반적인 의료와 정신병적 질환 모든 면에서 숙달되어 있어야한다. 그들의 교육은 상급 동료의 지도하에 신참교육과 그들의 기술의 평가, 교도소 환경의 이해와 그것이 의료행위에 미치는 영향, 그리고 근본적인 이론적 지식의 획득으로 이루어져야 한다. 그들은 또한 주기적인 내부 서비스 교육을 받아야한다.

35. 적절한 교육은 또한 다른 의료관리 직원들에게도 이루어져야 하며 그 교육은 교도소 관련 규칙들과 운용에 대한 지식이 포함되어야 한다.

III. 흔히 발견되는 문제들의 관리과 그와 연관된 보건의료 조직

A. 특히 전염성 질환 : 에이즈 바이러스, 폐결핵, 간염

36. 교도소내 성관계로 전염될 수 있는 질병을 막기 위해 적절한 예방 조치들이 취해져야 한다.

37. HIV 검사는 현재 법령에 따라 익명 원칙을 지키며 수용자들의 동의 하에서만 이뤄질 수 있다. 철저한 상담은 검사 전후로 이뤄져야 한다.

38. 전염병 환자의 격리는 일반사회에서도 동일한 방법이 취해질 경우에 한하여 정당화될 수 있다.

39. 완전한 격리는 40항에 포함된 조항들에 따라 HIV 항체 양성반응의 수용자들에 대해서는 이뤄지지 않는다.

40. 에이즈 관련 질병에 심각하게 앓는 수용자들은 완전한 격리에 꼭 의지하지 않고도 교도소 내의 부서 안에서 치료받아야 한다. 다른 환자들로부터 감염될 수가 있어 보호되어하는 환자들은 발병되는 전염병을 막기 위해 자신을 보호하기 위한 조치로서만 특히나 그들의 면역 기능이 심각하게 저하되었을 경우에만 격리되어야 한다.

41. 폐결핵이 감지되었을 경우에도 필요한 모든 조치들이 그 지역 관련 법령에 따라 감염의 전파를 막기위해 취해져야하며 치료를 위한 개입은 교도소 외부와 동등한 기준으로 이루어져야 한다.

42. B형 간염 예방접종은 B형 간염의 확산을 막기 위한 유일한 방법이기 때문에 수용자들과 직원들에게 제공되어야 한다. 적절한 예방 시설과 정보들은 B, C 형 간염이 주로 혈액과 정액의 오염과 함께 마약을 정맥에 놓았을 경우 전염된다는 사실에 유의해야 한다.

B. 마약, 알콜, 약물 중독 : 약품 관리와 의약품 공급

43. 마약관련 문제나 알콜과 관련된 피구금자의 관리는 '불법마약거래와 마약 중독과의 전쟁을 위한 협력 그룹'

들에 의해 제안되어진 마약 중독을 위한 특별한 서비스를 고려하는 것과 같이 좀 더 개발되어야 한다. 따라서 교도소 직원과 의료진을 위한 충분한 교육의 제공이 필요하고 출감이후 사회에서의 적응을 위한 계속적인 치료를 위해 외부적인 상담 서비스와의 협력을 향상시켜야 한다.

44. 교도소 의사는 피구금자들이 알콜, 약물, 마약 남용의 위험을 막기 위해 정신치료학적인 도움과 사회 제도에 적응할 수 있도록 고무시켜야한다.

45. 교도소 내의 약물, 알콜, 마약 남용의 증상을 중지시키기 위한 치료는 사회에서 행해지는 동일한 원칙에 따라 이루어져야 한다.

46. 만일 피구금자들이 완치 치료를 견뎌낸다면 의사는 그들을 교도소에 있는 동안이나 출감 이후에도 그들이 중독에 다시 빠지지 않도록 필요한 단계를 모두 취할 수 있도록 도와주어야 한다.

47. 구금된 수용자들은 그들이 풀려난 이후의 관리기간 동안과 처벌을 받는 기간동안에 필요한 도움을 줄 수 있는 전문적인 내외부 상담인들과 상의할 수 있어야만 한다. 그러한 상담인들은 구금(보호) 기관의 직원의 내부교육에 기여할 수 있어야 한다.

48. 적절한 것이라면 피구금자들이 규정된 약물을 지닐 수 있도록 허락해야 한다. 하지만 만일 과다 투약했을 때 위험한 약물은 금지되거나 개인적인 기준치에 근거하여 지급해야한다.

49. 법적으로 인정된 조제 고문들과의 협의를 통해 교도소 의사는 의료 서비스에서 주로 처방해주는 필요한 약품, 약물들의 포괄적인 목록을 준비해야한다. 의약품 처방은 전문적인 의료진의 전적인 책임하에 이루어져야 하고 약품들은 오직 자격을 갖춘 사람들에 의해 공급되어야 한다.

C. 지속적인 구금에 맞지 않는 수용자들 : 심각한 정신적 장애, 고령, 단기간 치명적 증후

50. 심각한 정신적 장애와 고령의 피구금자들은 일반적인 교도소 집단으로부터 분리되지 않아야 하며 가능한 평범한 삶을 허락할 수 있는 편의를 도모해준다. 구조적인 변경은 외부 환경에서와 비슷한 기준에 따라 휠체어 장애나 장애인들을 돕는데 효율적이여야 한다.

51. 단기간 치명적 증후에 따른 환자들에 대한 결정은 외부 병원으로 이송시켜서 의료 행위를 받도록 한다.

그러한 이송을 기다리는 동안 이러한 환자들은 교도소 의료관리 기관 내에서 그들의 질병의 말기 증상의 상태를 위해 최적의 간호를 받아야만 한다. 이러한 경우 외부의 말기환자들을 위한 병원에서 주기적인 보호를 받아야한다. 의학상의 이유로 용서나 이른 출감의 가능성도 검토될 수 있다.

D. 심리학적 증상들, 정신적 장애 그리고 자살 위험과 주된 성격 장애

52. 정신 건강에 책임있는 교도소 당국과 부서는 피구금자들을 위한 정신의학적인 서비스를 구축하는데 협력해야 한다.

53. 피구금자들에게 두는 정신적인 건강 서비스와 사회적 서비스는 그들의 적응 기술과 답습을 강화하고 수용자

들을 위한 조언이나 도움을 제공할 것을 목적으로 두어야 한다.

54. 성범죄자의 경우 정신치료학적이고 심리학적인 진찰은 그들이 교도소내에서나 출감 후 적절한 치료를 받을 수 있도록 제공되어야 한다.

55. 심각한 정신적 장애로 고통받는 피구금자들은 적절하게 훈련받은 직원들이 있고 적당한 시설이 되어있는 병원에서 머무르며 치료를 받아야만 한다. 수용자들이 공공병원에 입원시키는 결정은 심리학자와 인정된 기관의 권한에 의해서 결정되어진다.

56. 정신병 환자들의 폐쇄 감금은 피할 수 없을 경우에는 절대적으로 최소한의 경우로 낮추고 가능한 빨리 1대 1 지속적인 간호로 대치시켜야 한다.

57. 적절한 약물 치료를 요구하는 행동을 실행을 시작하는 동안 예외적인 조건들 아래에서 정신적으로 심하게 고통받는 환자들의 경우 짧은 기간에도 신체적인 제약이 관찰되어질 수 있다.

58. 자살 위험은 지속적으로 의료, 보호 직원에 의에 보고되어져야 한다. 자해 방지를 위해 고안된 신체적인 방법, 지속적이고 밀접한 관찰, 대화와 안식은 적절하게 위기의 순간에 사용되어야 한다.

59. 석방되는 수용자들을 위해 수반되는 치료는 외부의 전문적인 서비스에 의해 이루어져야 한다.

E. 치료 거부와 단식 투쟁

60. 치료 거부의 경우 의사는 증인 출석하에 환자가 서명한 문서를 요청해야한다. 의사는 환자에게 약물치료가 가져올 이득과 치료상 가능한 대안들과 같은 모든 정보를 주어야 하며 피구금자가 그의 거부로 발생할 위험들에 대해 경고해 주어야 한다. 그것은 환자가 그 자신의 상황에 대한 전체적인 이해를 할 수 있도록 해주어야 한다. 만일 환자가 사용하는 언어에서 비롯된 이해의 어려움이 있을 경우 경험있는 통역자의 서비스를 받을 수 있도록 해야 한다.

61. 단식 투쟁의 임상적 판단은 피구금자가 정신치료 기관으로의 이송이 요구되는 심각한 정신적 장애로 고통받고 있지 않는 한 환자의 표현의 용인 정도로 수행되어져야 한다.

62. 그들이 단식투쟁의 지연이 갖는 위험을 이해할 수 있도록 단식 투쟁은 그들이 신체적으로 건강한 상태에서도 그들의 행동이 유해한 영향을 끼칠 수 있다는 객관적인 설명이 해주어야 한다.

63. 만일 의사의 의견이 단식 투쟁의 상태가 심각하게 악화되어지고 있다면 전문적인 기준을 포함한 국내법의 따라 어떠한 조처를 취하고 적절한 당국에게 그 사실을 의사가 보고해야하는 것은 기본적인 것이다.

F. 교도소내의 폭력 : 징계 절차 그리고 처벌, 징계 구금, 신체적 구속, 기밀 체제

64. 어떤 적절한 이유로 다른 피구금자로부터 가능한 성적 공격을 포함한 폭력 행위에 두려움을 느끼거나, 혹은 교도소 집단내의 다른 수용자들에 의해 최근까지 상해를 입거나 폭행을 당한 피구금자는 보호기관 직원의 완전한 보호에 접근할 수 있어야 한다.

65. 의사의 역할은 반드시 징벌과 질서를 유지해야하는 책임을 져야하는 교도소 직원들에 의한 무력 사용을 비난하고 인정하는 것에 관여하지 않는다.

66. 징계적 구금의 처벌의 경우나 다른 어떤 징벌이나 의료 관리 직원이나 피구금자의 신체적 육체적 건강에 영향을 끼칠수 있는 보안 조치들은 교도소 직원이나 피구금자들의 요구에 따라 치료하거나 의료적 도움을 제공해야한다.

G. 건강 관리 특별 프로그램 : 사회적 치료 프로그램, 외부 세계와의 접촉과 가족 연대, 부모와 자녀

67. 사회적응을 위한 프로그램은 사회 공동체와 맥락을 같이하여 만들어지고 신중하게 감독한다. 의사들은 피구금자들이 그러한 프로그램으로부터 출감 이후에도 상습적 범행의 위험을 줄이는데 도움이 되는 사회적 기술을 습득할 수 있고 그것을 통해 이득을 가질 수 있도록 한다는 취지로 관련된 모든 서비스들과 건설적인 방법으로 협력하려고 해야한다.

68. 고려해야할 것은 수용자들이 방문기간동안 가시적인 감시없이 자시들의 성적 상대를 만날 수 있도록 허용하는 가능성에 대한 것이어야 한다.

69. 감금되어 있는 모친은 그들의 아주 어린 자녀들이 그들과 함께 지내며 심리적 감정적 유대를 유지할 수 있고 건강의 양호 상태를 지켜주기 위한 관심과 돌봐줄 수 있도록 허용한다는 취지로 가능해야만 한다.

70. 탁아소나 놀이방 같은 특별한 시설은 아이들을 동반하는 모친들을 위해 제공되어야 한다.

71. 의사들은 아이들이 일정한 나이에 그들의 모친으로부터 분리되는 것과 관련된 행적적 결적에 관여해서는 안된다.

H. 신체 검사, 의학적 보고서, 의학적 조사

72. 건강 검사는 행정적 당국의 문제로 교도소 의사들은 그렇나 절차에 관여해서는 안된다. 하지만 수용자들의 의료 검사는 의사가 관련되어야하는 객관적인 의학적 이유가 있을 때만 의사에 의해서 이뤄진다.

73. 교도소 의사들은 법정에서 지시나 피구금자의 공식적 요구를 지켜주기 위해 기소자측이나 피고측을 위한 심리학적 의학적인 보고서를 준비할 필요가 없다. 그들은 피구금자들의 구류와 관련된 사법적 절차와 연관된 의료 전문가로서의 어떤 임무도 피할 수 있다. 그들은 단순히 의학적인 이유와 진단상의 검사를 위한 견본을 분석하고 수집해야한다.

74. 피구금자들에 대한 의학적 조사는 유럽 재소자 규칙 제 87 3(No. R(87) 3), 인류에 대한 의학적 조사에 관한 제 90 3(No. R (90)3) 권고와 그리고 교도소내 건강과 관련된 문제와 에이즈를 포함한 전염가능한 질병의 통제에 대한 범죄학상의 측면에 따른 원칙들에 따라 실행되어져야 한다.