

# EXAMINATION OF DETAINEES

*A detainee can be defined as a person held in custody in police holding cells or in a prison, or as a suspect.*

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A doctor's greatest duty of care is to the detainee, taking precedent over all other aspects of the relationship. Dual loyalty complicates this relationship, as the doctor has both a forensic and therapeutic role. A detainee must be treated according to the best clinical practice possible without the doctor or the custodians incurring unnecessary risk.<sup>1</sup>

Detainees retain their basic common law<sup>2</sup> and constitutional rights,<sup>3</sup> which include their rights to bodily security, reputation, liberty and privacy (which may be qualified), sleep, exercise, food, clothing, calls of nature and acceptable levels of hygiene. Detainees may not be assaulted or tortured.<sup>3</sup> South Africa ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1993. The South African Police Services (SAPS) has also published policy guidelines on the prevention of torture and the treatment of detainees in their custody.<sup>4</sup>

## INTERNATIONAL CODES IN MEDICAL ETHICS

There are also other conventions and declarations on the rights of detainees (Table I).

## ETHICAL AND MEDICAL PRINCIPLES REGARDING DETAINEES

### Special considerations

When treating detainees the doctor should always follow best medical practice. Instructions and advice to the custodial authorities must always be given in writing, allowing them to provide proper care for the detainee and to take the necessary precautions to prevent potential medical hazards. Custodial authorities must not interfere with the medical treatment of the detainee or the clinical independence of the doctor.

Table I. **Detainees: international codes of medical ethics**

Declaration, principle or convention	Purpose
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (United Nations)	To impose an obligation on states to outlaw physical or mental torture
World Medical Association (WMA): The Declaration of Tokyo (1975)	To impose a duty on the medical profession not to participate in, condone or countenance, and to prevent torture and cruel, inhuman or degrading treatment
WMA: The Declaration of Malta on Hunger-Strikers (Malta 1991, Marbella 1992)	To provide guidelines for doctors responsible for the health of hunger-strikers

Table I adapted from Dada and McQuoid-Mason.<sup>5</sup>

*Detainees retain their basic common law and constitutional rights, which include their rights to bodily security, reputation, liberty and privacy (which may be qualified), sleep, exercise, food, clothing, calls of nature and acceptable levels of hygiene.*

*The closed setting of custody places exceptional pressure on the doctor-detainee relationship, with the potential for manipulation by both the detainee and the custodial authorities.*

The closed setting of custody places exceptional pressure on the doctor-detainee relationship, with the potential for manipulation by both the detainee and the custodial authorities. The detainee may be reluctant to reveal his/her entire medical history and the doctor may have to obtain collateral information from other sources. Management plans and clinical monitoring facilities may be limited, especially in patients in short-term custody (prisoner awaiting trial and detainee in police holding cells).

### DOCTOR-PATIENT RELATIONSHIP IN CUSTODY<sup>1,5</sup>

Normal ethical principles governing the doctor-patient relationship apply to patients in custody, even though this relationship is complex. Certain special circumstances may arise around issues of informed consent, impartiality, confidentiality and dual loyalty.

#### Informed consent

The autonomy of the detainee is restricted by loss of liberty, which can affect his or her ability to make an informed choice and make the detainee feel vulnerable or afraid. If a detainee refuses to be examined

after having been informed of the consequences of his/her conduct, it should be respected.

#### Impartiality

International ethical codes demand that the doctor is impartial when treating detainees. The doctor must not allow his/her clinical independence or opinion to be influenced by the custodial authority (police/prison), neither should he/she make personal or moral judgements. This impartiality should extend to dealing with victims of assault/violence and when the doctor is an impartial expert for the police services, the legal profession and the courts. The doctor must always guard against manipulation by the detainee or custodial authority.

#### Confidentiality

The doctor shall not pass on information obtained from the detainee unless it is relevant to the detainee's treatment and is needed by the custodian so that he/she may carry out such treatment. Only the doctor has access to the detainee's medical records.

A doctor may not remain passive if aware that a detainee is being mentally or physically abused or is suffering from injuries or illnesses as a consequence of assault. It is the doctor's legal duty to take preventive steps to safeguard the patient's interest. This should be done, with the consent of the detainee, by obtaining a court order to prevent further abuse or by informing the relatives of the detainee so that they may procure such an order, or seek assistance from other bodies or persons.

#### Dual loyalty

There is real potential for conflict between the doctor's duty to the patient and his/her perceived responsibility to the custodial system. In clinical forensic medicine, where the doctor has a dual therapeutic and forensic role, the detainee must be told that therapeutic investigations/results will remain confidential. However, results of forensic examination may be

disclosed to the police, the prosecuting authority and the courts of law.

### CLINICAL EXAMINATION

#### Preparation

The custodian officers should not be present at the examination unless there is a risk of violence, which should be jointly assessed by him/her. Where possible a doctor of the same sex as the detainee should carry out the examination. If this is not possible, a chaperone of the same sex as the detainee should be present. If the detainee objects to the potential breach in confidentiality posed by the presence of a chaperone, an arrangement must be made where the chaperone is present but unable to hear the interview. A detainee's doctor or lawyer may be present at an examination provided it does not cause any undue delay or interfere with the course of justice, for example drawing blood in cases of alleged drunken driving. During the examination of juveniles a parent or guardian should be present.

#### Examination facilities

The examination room must guarantee the privacy of the detainee and should be in an appropriate clinical venue. It should be adequately equipped with the necessary instruments for specific examinations, procedures or treatment. Disposable instruments should be used to minimise the risk of infection. Clinical records need to be kept securely but should be easily accessible to the doctor, especially when a significant number of detainees are cared for.

#### Clinical records

The organisation of clinical records is set out in Table II.

#### Clinical history

The history should be recorded as told by the detainee. Checklists or pro forma may be helpful. Record any medication used as well as alcohol use and substance abuse, if any. Document past and present illnesses, injuries, specific complaints and

Table II. **The organisation of clinical records**

**Information**

When	<ul style="list-style-type: none"> <li>• Contemporaneous notes</li> <li>• Chronologically arranged notes and records</li> </ul>
How	<ul style="list-style-type: none"> <li>• Hand-written</li> <li>• Hard copy of notes must be available as a true reflection of the contemporaneous notes</li> </ul>
Content	<ul style="list-style-type: none"> <li>• Name, time, date, duration, place, examination requested by, reason, consent form for examination, history of relevant medical condition or incident, clinical examination findings, record of any procedures or referrals that may have been made, a copy of any instructions issued to the patient or the custodial authorities, copies of any prescription issued, copies of any correspondence related to the case, and copies of any J88 completed</li> </ul>
Safety	<ul style="list-style-type: none"> <li>• Records should be securely stored to preserve confidentiality,</li> <li>• Records to be in the care of the attending doctor</li> <li>• Records to be easily retrievable for subsequent consultation, referrals and use in court</li> </ul>

Table II adapted from Dada and McQuoid-Mason.<sup>5</sup>

expected outcome of the examination. Direct questions should be asked about incidents of abuse or violence by the authorities while in detention.

**Examining clothing**

Clothing worn at the time of an alleged crime, either by a victim or a perpetrator, should be examined and any abnormalities should be recorded. Clothing, and traces of evidence from the clothing, are collected for forensic examination where required. Special crime kits that facilitate the collection, preservation and transport of evidence to the laboratory should be available in all custodial centres and must be used (see article by Vellema p. ...).

**General examination**

Informed consent must be obtained and the procedure outlined to the detainee before starting the examination. A complete clinical examination, as well as an examination specific to the presenting complaint, should be done, and the findings should be interpreted.

**Treatment**

The detainee must be informed of the diagnosis, treatment schedule and any special diets and/or other

requirements. The appropriate custodial officer must also be informed, in writing, but the full medical records should not be disclosed. Other relevant health care workers should also be informed of the treatment prescribed. All communications to the custodian must be in writing and copies should be kept.

**SPECIFIC FORENSIC EXAMINATION**

Detainees may be examined for various reasons when in detention, including illness, injury, fitness for detention and complaints against police and correctional services staff.

**Examining for injury**

Where injury is suspected a comprehensive physical examination must be performed, and the mouth, genitals and web spaces of the fingers must be included, as injuries in these areas can easily be obscured. Record any injuries present and look at them in the light of any explanation of the cause. Self-inflicted injuries must always be considered and excluded. These are generally found on easily

accessible areas, are concentrated on the non-dominant side of the body, are superficial, may be multiple and may be of equal depth and parallel in distribution. Defensive injuries are observed when hands and arms are used to protect the face or the subject curls into a ball, protecting vital areas of the body.

**Fitness for detention**

A doctor may be asked if a detainee is fit to be detained. All doctors treating detainees in custody should be cautious and, if in any doubt, consider referring the detainee for review in hospital. If necessary, consider a prison hospital or a provincial hospital (under guard if necessary). Custodial officers are unable to provide health care or administer medical treatment. Male and female detainees must be detained separately and juveniles apart from the adults.

**Specific medical conditions**

The following conditions have specific needs:

- diabetes mellitus
- cardiac disease
- epilepsy
- asthma

- head injury
- alcohol abuse
- other substance abuse
- contagious/infective illness.

If there is a history of any of these conditions the detainee's file should be flagged accordingly, and all appropriate personnel should be

informed of the health risks and consequences for the detainee.

*References available on request.*

**IN A NUTSHELL**

Prisoners and detainees retain their common law and constitutional personal rights although their rights to liberty and privacy may be qualified.

Unless in an emergency, doctors should refuse to treat prisoners or detainees where the detaining authorities prevent proper treatment, the detained persons are held under cruel, inhuman or degrading circumstances or they cannot examine their patients in private.

Doctors must not remain passive if their patients have been exposed to 'third degree' interrogation methods or are suffering from illnesses or injuries resulting from assault. The doctor has a legal duty to safeguard the interests of the detainee (with his or her consent) by obtaining a court order to prevent further abuse or by informing the relatives of the imprisoned or detained person so that they may obtain such an order, having obtained consent from the detainee.

Doctors who collaborate with the detaining authorities in the treatment of prisoners or detainees in situations that constitute torture under the Tokyo Declaration could be liable for a breach of their ethical duties and face possible legal action.

The guiding principle concerning the treatment of prisoners and detainees by medical practitioners is that the welfare of the patient comes before the interests of the detaining authorities or anybody else. The detaining authorities may not circumscribe the ethical rules of the medical profession. Doctors are obliged to treat prisoners and detainees like any other patients.

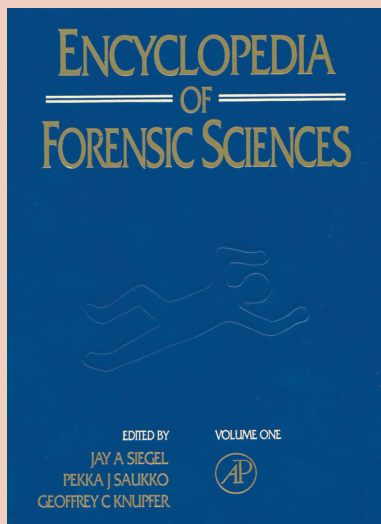
All doctors treating detainees in custody should err on the side of caution and refer them for hospital review if there is any doubt about their fitness.

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