

Paper on Physician's Position Against Human Rights Violations

Dear Colleagues,

This paper on physician's position against human rights violations is prepared by the Turkish Medical Association, the Forensic Medicine Specialists Association, and the Human Rights Foundation of Turkey, to support your professional practices in the face of claims of human rights violations and the problems associated with the forensics practices that became a current issue following the coup attempt of 15 July 2016 in our country.

This document is predicated on the World Medical Association's "Tokyo Declaration"; "the Declaration on Physician Independence and Professional Freedom"; "the Declaration of Hamburg concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment"; and the Istanbul Protocol. The Istanbul Protocol is a UN manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. In all local and international lawsuits and investigations involving states, whether medical documentation and legal investigation procedures are conducted in accordance with the Istanbul Protocol is examined, and the decisions are given accordingly. Our colleagues conducting pre- and postdetention medical examinations, and practicing medicine in penal institutions can access the Istanbul Protocol at www.ttb.org.tr/eweb/istanbul_prot/ist_protokolu.html

Within the frame of the principles of the Istanbul Protocol;

- The declaration of state of emergency, and the decrees having force of law do not alter the obligation of the physicians to follow the principles of the Istanbul Protocol during medical examinations of the detained and imprisoned individuals. Against claims of torture, the State, all institutions and the physicians are liable to conduct any actions related to evaluation and documentation in accordance with the principles highlighted in this Protocol.
- Detained individuals should be periodically examined following arrest, in transfers between detention units, and at the prison entry -in case they are received in prisons-

Examination environment

- Detention examinations cannot be conducted in detention places. It is compulsory that the interview takes place in a health environment where any pressure by the official authority is not felt, and where medicine can be practiced freely and according to the universal ethical principles and scientific standards.
- Confidentiality is essential in medical interview and examination. Each detainee must be examined in an environment where confidentiality is provided, law enforcement officials are not present, and in the absence of any restraining appliances such as handcuff, blindfold, etc. placed on the concerned person.
- The World Medical Association's "Tokyo Declaration" and "the Declaration on Physician Independence and Professional Freedom" clearly express that the physicians

should insist being independent in order to act in patient's interest, whatever the interests of other parties are. The physicians should withdraw from medical evaluation processes, stating the ethical and legal motives, if they are forced to make their medical evaluation and examination in an unsuitable environment and in the existence of restraining implements (handcuffs, blindfolds, etc.) placed on the concerned person.

- If the physicians are forced to examination in an unsuitable environment, if they are under threat, or if their requests are ignored;
 - the evaluation report should include possible medical and legal inconveniences of the unsuitable environment;
 - if the physicians are summoned to medical evaluation or to drawing up a forensic report outside the health institutions, they should inform the affiliated health institution and the Medical Association, of the situation.
 - Despite all these, if the physician is forced to make an evaluation under circumstances such as "intense pressure, threat toward him/herself, etc.":
 - Under any conditions, the consent of the person to be interviewed and examined should be taken. If the person does not give consent, examination cannot take place. In such a situation, the physician should record that the examination did not take place, by stating the concerned person's motive of not giving consent.
 - If the person gives consent, the report should include the conditions of the interview and examination environment, and the identity information of other people present during interview and examination.
 - The physician needs to report to the Medical Association all the difficulties experienced during the evaluation processes.

Examination

- The first step of the forensic evaluation is the story. The story should include, as narrated by the detainee, all the physical and psychological conditions faced, since the moment of arrest (treatments such as forcing, insulting, threatening; restraints such as depriving of sleep, water, food; accounts of psychological and physical violence).
- The report should separately mention the start and end time of the interview, and the start and end time of the examination.
- The medical examination should not be limited to the complaints reported, but cover all the systems. Even when the detainee mentions that he/she does not have a particular complaint, a comprehensive and systematic examination is required. If the detainee rejects a detailed examination, this should be recorded.
- Psychological and physical complaints should be reported, and a detailed physical examination should be conducted. Findings of the physical examination should be photographed using a measuring device, should be marked in the diagrams, and be recorded in detail.
- A comprehensive psychological evaluation should be made; frequent psychological symptoms and findings that might occur in possible traumatic processes should be

explored; and all the psychological signs such as posture, eye contact, tone, etc. should be observed and reported.

- The physician should absolutely request necessary radiological examination, and medical laboratory analysis, and required consultations, in the light of the story taken, the complaints reported, and the examinations (for instance in the case of claims of keeping without water, biochemistry including urea, creatinine, and electrolytes). These requests should be indicated in the report.
- In detention reports, commenting on whether the story taken is consistent with the findings of the examination is important. The physician should make such an evaluation, if possible. Physicians who are not forensic experts should request a consultation by asking the detainee to be evaluated by a forensic expert, if they experience any difficulty in evaluating the consistency.
- If at the end of the medical evaluation, the physician arrives at the conclusion that the findings are in compliance with torture and ill-treatment, he/she should record this as “torture by official authorities, included in other maltreatment syndromes” as defined by the ICD-10 code Y.07.3.

The WMA Hamburg Declaration states that individuals and organized medical professions throughout the world are responsible of supporting the physicians who resist against torture and the coercions to act against ethical principles. The Turkish Medical Association will continue supporting the colleagues who take an ethical stance; and will defend their rights.

Non-respect of the medical ethics and of the principles of the Istanbul Protocol in the medical examination of the detainees and prison inmates, and in the writing of forensic reports; is considered within the frame of “concealing findings of torture”, “physician involvement in torture”, and of “malpractice”.

We believe that in this period of extraordinary circumstances, our colleagues will be the guardian of the core values of medicine, and will play a crucial role in securing medical examination and care conditions pertaining to human dignity. With this belief, we share this information with you.

Turkish Medical Association

Forensic Medicine Specialists Association

Human Rights Foundation of Turkey

Also see:

- “In the judicial examination and reporting processes, the core values of medicine cannot be compromised”

<http://www.ttb.org.tr/index.php/Haberler/adli-6227.html>

-The Istanbul Protocol: www.ttb.org.tr/eweb/istanbul_prot/ist_protokolu.html

-The Istanbul Protocol: http://www.tihv.org.tr/wp-content/uploads/2015/06/Istanbul_Protokolu.pdf

August 9, 2016