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**EUROPEAN COMMITTEE FOR THE PREVENTION  
OF TORTURE AND INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT**

**(CPT)**

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**BODY SEARCHES: THE PROBLEMS AND GUIDELINES TO SOLUTIONS**

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**Document prepared for the meeting of the Medical Group  
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## **A. Introduction**

1. Body searches can be experienced as degrading and can be inescapable for the person involved, and can be used as a form of punishment. A search by a medical professional can cause ethical dilemmas. A body search is done by pat down or strip-search, and can include a search of body cavities and orifices, either manually or with the use of scanning equipment. Related to this is the collection of body fluids for drug testing and biological samples for DNA analysis. The degrading and threatening effects of dog searches should be kept in mind.

2. The reasons for searches are suspicion of smuggling and concealed, illegal carrying of any kind, or collection of evidence. Customs officials, police, prison officers or medically trained professionals carry out searches. Healthcare professionals' dual obligations can easily cause conflicts. Those who are searched are travelers, passengers, arrested persons, suspects and prisoners. Searches are also carried out on patients in psychiatric wards and treatment centers and institutions for addicts and alcoholics, both voluntary and involuntary patients, and youths in centers for delinquents. Allegations have been made of improper use of searches, race bias, etc., and the use of searches for the specific intent of intimidation and degradation. Few specific guidelines exist regarding body searches, and no international agreements.

3. The similarity between body search methods and common torture techniques shows how easily searches by authority representatives can traumatize and be degrading and inhuman, even if that is not the intent. The humiliation of nudity is often used by torturers and insertion of objects into body orifices is also used as a torture method.

## **B. The problems**

### **1. Customs**

4. Travelers can be detained by customs officials when suspected of smuggling. If they refuse searches or x-rays, they can be detained until they urinate or pass stools. The officials can then examine the excrements. This delay can be life threatening to a person carrying drugs internally, in case of rupture of the container. Health personnel are usually not called upon to carry out pat-down searches and not even for strip searches.

Detainees can be transferred to a hospital for internal searches, collection of urine or excrements or x-rays. The hospital staff are then put into the dilemma of carrying out invasive procedures for non-medical purposes, at the request of authorities. They might have difficulties differentiating between prison doctors' duties towards authorities and their medical duties toward their "patient". The detainee has no realistic choice to refrain, consent is not free because of the pressure put on the detainee and lack of options. Many body searches are carried out in airports because orthopedic implants cause positive results at detection arches (Grohs 1997).

## **2. Immigration/illegal entry and police arrests**

5. Searches can be carried out for concealed weapons, or objects that can be used as weapons or to inflict self-harm. A refusal could lead to a forced search. Health care staff will not be present during such searches in most instances, and it may not be realistic to expect that they be present. Body search of an immigrant already traumatized, even tortured, could cause further permanent damage.

## **3. Prisons**

6. In prisons searches may be necessary of individuals or even of groups of prisoners, suspected of concealing drugs or dangerous or illegal objects. Dog searches are related to this. All types of searches can be intimidating and degrading. In the prison setting there is the danger that searches are motivated by the intent of intimidation. Even in cases where other indications exist, i.e. suspicion of drug smuggling without specific need for a search, a search is carried out anyway, because of the intimidation factor. Objection may not be a realistic option for the prisoner. There should not be undue coercion or pressure to consent to intimate body searches (Pownall 1999).

## **4. Youth institutions**

7. Searches of youths confined in institutions for delinquents is an even more delicate matter because of the danger of degradation and traumatisation.

## **5. Racial bias**

8. Allegations of **racial bias**, with media disclosure and Senate hearings, led US Customs to revise rules and issue a Personal Search Handbook, with details on approval of searches, selection criteria, registration, outside contact by those delayed, removal to a medical facility etc. 'Diversity training' is offered to customs officials to prevent racial discrimination.

## **6. Biological specimens**

9. Specimens are collected from prisoners for testing for illicit drugs. The handling of such specimens and the results of tests is a complicated matter, and the border between medical and non-medical purposes is easily crossed. Results of a compulsory drug test can be used to refer a prisoner to medical treatment.

10. Compulsory drug and DNA testing for people arrested for indictable offenses before they have been convicted has been proposed by some governments but raise important ethical issues for healthcare professionals (Forrest 2000). Such information has a high potential for abuse, and ethical implications are wide-ranging. Every alleged shoplifter could be held down forcibly while a mouth swab is taken. Collecting sweat for a drug test by wiping the forehead of a restrained and resisting subject with a swab would be no more dignified. Guidelines for healthcare professionals in these specific situations do not exist yet.

### C. Guidelines

11. The 29th World Medical Assembly, in Tokyo 1975, adopted Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment. **The Declaration of Tokyo** states that the doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment are used or threatened. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.

12. The **World Medical Association** issued a Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly 1993. The WMA urged all governments and public officials with responsibility for public safety to recognize that such invasive search procedures are a serious assault on a person's privacy and dignity, and also carry some risk of physical and psychological injury. If a body cavity search must be conducted, the responsible public official shall ensure that the search is conducted by personnel with sufficient medical knowledge and skills to perform the search safely; and that the same responsible authority ensure that due regard for the individual's privacy and dignity be guaranteed. Finally, the World Medical Association urged all governments and responsible public officials to provide for such searches by a physician whenever warranted by the individual's physical condition. A specific request by a prisoner for a physician shall be respected, so far as possible.

13. Individual countries may have specific legislation regarding body searches. **Norwegian law** regulates police searches of suspects. A court order is required if the suspect does not consent to the search, which can include collection of biological specimens i.e. for DNA analysis. Only search methods that are not painful are allowed, and the use of gastroscopy and collection of urine with catheters are prohibited. Specific search procedures can only be carried out by qualified medical personnel, preferably physicians, among others collection of blood samples, use of x-ray examination, rectal and vaginal exploration and the use of laxatives and emetics.

14. The **British Medical Association** published 'Guidelines for doctors asked to perform intimate body searches' 1994 (revised in April 1999). According to the guidelines, the doctor should satisfy him or herself that proper authorisation for the search has been obtained and that the authorisation, and the patient's consent, has been recorded in the custody record. If the patient refuses consent, and has been informed of the consequences and options, the refusal should be respected and the doctor should withdraw from any further involvement with the search.

15. In the case of *Valašinas v. Lithuania*, 24 July 2001, the **European Court of Human Rights** held that a body search of a male prisoner was degrading treatment and violated Article 3, because of the procedures used:

117. The Court considers that, whilst strip searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands, showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him. The Court concludes, therefore, that the search of 7 May 1998 amounted to degrading treatment within the meaning of Article 3 of the Convention.

118. Accordingly, there has been a violation of Article 3 in this respect.

#### **D. CPT**

16. A prison doctor acts as a patient's personal doctor. He should not carry out body searches or examinations requested by an authority, except in an emergency when no other doctor can be called in. (Source Book, p.22, General Reports, Substantive sections, paragraph 73.)

#### **E. Recommendations**

17. The CPT should develop recommendations regarding body searches, based on the discussion paper CPT (2001) 51 (Lycke Ellingsen 2001). In addition to recommendations in that paper, note could be made of concerns for special populations, the traumatized, refugees, youths, etc. The danger of further traumatising caused by searches should be mentioned, and the possibility of abuse of searches for intimidation purposes.

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