



Information Sheet for Requesting Medical Records of Detainees

This Information Sheet provides guidance to Detainees and/or third parties authorised by the Detainees on how to request copies of Detainees' medical records from the Medical Officer.

I. ROLE AND RECORDS OF THE MEDICAL SERVICE

1. The Medical Officer shall be responsible for the care of the physical and mental health of Detainees and shall perform medical examinations of Detainees.¹ This primary function necessarily takes priority over the provision of records.
2. The Medical Officer shall maintain a medical record for each Detainee, which shall be confidential and stored separately from a Detainee's Personal Record.² The Medical Officer is therefore the focal point for all medical information and the custodian of each Detainee's medical record.
3. The records retained by the Medical Officer and comprising the medical record are similar to those retained by a general practice, which includes the following:
 - a. records of diagnostic testing (and results obtained) by staff of the medical service within the Detention Facilities; and
 - b. clinical specialists' interpretations of examinations and diagnostics conducted (and results obtained) by medical practitioners external to the Detention Facilities.

The raw data used by any clinical specialists to help prepare their interpretations is generally retained by the external medical facilities.

II. GUIDING PRINCIPLES AND STANDARDS

A. Relevant ethical principles and professional standards

1. The relationship between the Medical Officer or other health-care professionals and Detainees shall be governed by the same ethical and professional standards as those applicable to patients in the Host State, in particular:
 - a. the duty of protecting Detainees' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;
 - b. adherence to Detainees' autonomy with regard to their own health;
 - c. the principle of confidentiality of medical information;

¹ KSC-BD-08-Rev1, Rules of Detention, 23 September 2020 ('Detention Rules'), Detention Rule 30(4). The Medical Officer is seconded by the Host State and appointed by written agreement between the KSC and the Custodial Institutions Agency of the Host State for the care of the physical and mental health of Detainees in accordance with the Rules of Detention. As set forth in the Rules of Detention, the Medical Officer refers to the responsible treating physician at the Detention Facilities, his or her deputy, or any other physician seconded by the Host State for this purpose. See Detention Rule 2.

² Detention Rule 36(1).



- d. an absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman, or degrading treatment or punishment; and
 - e. the principle of Detainees' informed consent to treatment.³
2. Detainees shall enjoy at least the same standards of health care as are available in the Host State.⁴
 3. For physicians practicing in the Netherlands, the ethical principles and professional standards are laid down and enforced by the Royal Dutch Medical Association ("KNMG"). In the international community, for physicians practicing worldwide, the medical ethical principles and professional standards are defined and updated by the World Medical Association ("WMA"), of which the KNMG is a member.⁵

B. Physician-patient relationship and patient autonomy

1. The physician-patient relationship is built on trust and open communication as to the wishes and expectations of the patient and the options for treatment.⁶
2. The principle of patient autonomy requires a physician to respect a patient's opinions and choices, which must be without undue influence from others, fully informed, and not contrary to the physician's ethical obligations.

C. Confidentiality

1. The Detainee's medical record, including the information contained therein, is subject to the principle of medical confidentiality.⁷ While confidentiality is the right of any patient, maintaining confidentiality is also a professional obligation of the physician.⁸
2. The Medical Officer retains an overall responsibility and accountability for upholding the obligation of medical confidentiality for records held within the medical service, even if such records originate from medical facilities external to the Detention Facilities.⁹

D. Informed consent

1. Prior to the disclosure of a Detainee's medical information, the Medical Officer shall ask the Detainee

³ Detention Rule 30(4).

⁴ Detention Rule 30(2).

⁵ The WMA was established "to ensure the independence of physicians, and to work for the highest possible standards of ethical behaviour and care by physicians, at all times". See <https://www.wma.net/who-we-are/about-us/>). The WMA has revised the Hippocratic Oath to bring it up to date with the Declaration of Geneva and has issued the International Code of Medical Ethics, as amended periodically. See <https://www.wma.net/policies-post/wma-declaration-of-geneva/> and <https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/>.

⁶ Detention Rule 30(4).

⁷ Detention Rule 36(1).

⁸ Detention Rule 30(4)(c).

⁹ Detention Rule 36(1).



- to give his or her informed consent.¹⁰
2. Any disclosure without the Detainee's informed consent shall be necessary to achieve a legitimate aim and proportionate to the aim pursued. A Detainee's medical information may only be disclosed by the Medical Officer without the Detainee's prior informed consent for the purpose of protecting against a serious and imminent threat to the health or safety of the Detainee or to others, or where otherwise required by a legitimate interest justifying disclosure, in accordance with Law No. 05/L-053, applicable Host State regulations, and the rules of professional ethics.¹¹
 3. Informed consent can be obtained by the Medical Officer in writing or verbally. This consent can only be obtained by way of a consultative process between the Medical Officer and the Detainee. During this process, it is important that the Detainee understands the purpose, content and potential consequences of the intended disclosure. Throughout this process, the Medical Officer remains bound and informed by the relevant ethical principles and professional standards.
 4. Following the consultative process regarding informed consent, the Medical Officer shall release only those specific records covered by the informed consent.¹² Accordingly, informed consent can only be given in relation to records existing at the time of the consultative process, and the Medical Officer shall not provide any records that fall outside the scope of the informed consent given by the Detainee.

III. REQUESTS FOR OBTAINING MEDICAL RECORDS

A. Request for access to medical records by a Detainee

1. Pursuant to Detention Rule 36(5), a Detainee shall have the right to access all information contained in his or her medical record in accordance with any applicable instruction adopted or issued pursuant to Detention Rule 4, except where there are reasonable grounds to believe that the disclosure of certain information to the Detainee could cause serious physical or mental harm to the Detainee.
2. The Detainee should make such request for access directly to the Medical Officer, clearly explaining the purpose of the request and the specific type and subject of records requested. Alternatively, such a request may be submitted to the Chief Detention Officer. If the request is received by the Chief Detention Officer, it shall be transmitted to the Medical Officer for consideration.
3. Taking into consideration the available resources of the medical service, requests for medical records will be considered in accordance with section I, paragraph 1 above. The provision of duplicates will be at the discretion of the Medical Officer.
4. Upon receiving the request, the Medical Officer will engage in a consultative process with the Detainee.¹³
5. If the Medical Officer approves the request, the medical service will prepare the copies of the

¹⁰ Detention Rule 36(3).

¹¹ Detention Rule 36(4).

¹² A consultative process will not be required where Detention Rule 36(4) applies.

¹³ See section II(D) regarding informed consent and the consultative process.



approved records, with the aim to provide them within two weeks following such approval. If the request includes records held by medical facilities external to the Detention Facilities, such records can only be requested through the Medical Officer.¹⁴ Records held by medical facilities external to the Detention Facilities may take longer to acquire and will be provided to the Detainee upon receipt by the medical service. The Detainee will be expected to confirm receipt of the records.

6. Should a Detainee wish to obtain additional information or clarification regarding details from any of the provided medical records, these questions should be addressed to the Medical Officer.
7. In the event that the Medical Officer decides to refuse or restrict access to particular information in a Detainee's medical record pursuant to Detention Rule 36(5), the Medical Officer shall inform the Detainee accordingly and provide the reasons for refusal or restriction of access to information. Any such refusal or restriction of access to information will be documented in the Detainee's medical record.

B. Request for third party access to medical records

1. Any request from a Detainee to permit a third party to access information contained in his or her medical record on the Detainee's behalf pursuant to Detention Rule 36(3) shall be addressed to the Chief Detention Officer or directly to the Medical Officer. Third parties, including Defence Counsel, may also directly submit to the Chief Detention Officer a Detainee's authorisation to request access to information contained in a Detainee's medical record. Annex 1 contains the Authorisation Form.
2. Requests for access shall clearly explain the purpose of the request, the specific type and subject of records requested, and the intended recipients. If the request is received by the Chief Detention Officer, then it shall be transmitted to the Medical Officer for consideration. The Chief Detention Officer shall only act as a conduit for communications with third parties regarding the request.
3. Taking into consideration the available resources of the medical service, requests for medical records will be considered in accordance with Section I, paragraph 1 above. The provision of duplicates will be at the discretion of the Medical Officer.
4. The Medical Officer will engage in a consultative process with the Detainee and may seek further information to ensure any consent is adequately informed.
5. If the Medical Officer approves the request, the medical service will prepare the copies of the approved records, with the aim to provide them within two weeks following such approval. The medical records will be provided in one of the following ways:
 - a. directly to the Detainee, who will be expected to confirm receipt;
 - b. in a sealed envelope for collection by the named recipient at the Host Prison entrance upon presentation of an identity document and signing for receipt; or
 - c. in exceptional circumstances and in agreement with the Detainee, via secured email process including electronic signing for receipt.

Records held in medical facilities external to the Detention Facilities may take longer to acquire and

¹⁴ See section II(C)(2) above.



will be provided following receipt by the medical service.

6. Third party recipients must respect the confidentiality of any medical records provided by the medical service. The named recipients shall protect the records provided against further dissemination beyond the scope of the consent.
7. Third party recipients also have an obligation to return or destroy the medical records provided once the purpose has been achieved.
8. Any subsequent dissemination by third party recipients beyond the scope of the consent would require a new request. Similarly, if there is a request for additional recipients and/or should the purpose change, a new request for authorisation shall be required.
9. In the event that the Medical Officer decides to refuse or restrict access to particular information in a Detainee's medical record pursuant to Detention Rule 36(5), the Medical Officer shall inform the Detainee and provide the reasons for the refusal or restriction of access to information. If relevant, the Medical Officer shall also inform the third party to the extent that medical confidentiality permits. Any refusal or restriction of access to information will be documented in the Detainee's medical record.



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ANNEX 1

**TO THE INFORMATION SHEET REGARDING REQUEST FOR
MEDICAL RECORDS OF DETAINEES**



Medical Records Authorisation Form

Patient:

Surname: _____ First name: _____

Date of Birth: _____
dd/mm/yyyy

Authorised third-party:

Surname: _____ First name: _____

Address: _____
street & no. city postcode country

Contact: _____
email telephone

Medical records authorised for release

specific type and subject of records (i.e. relating to which medical condition(s)/medical issue(s)):

over which time period (dates cannot exceed date of request):

from: _____ to: _____
dd/mm/yyyy dd/mm/yyyy

for what purpose (the more information provided, the better your request can be facilitated):

I confirm that the above named “authorised third-party” may request access to the “medical records authorised for release” as specified above from the Detention Facilities Medical Service. I understand that no records will be released to the authorised third-party until after I have had a consultative process with the Medical Officer to help inform my consent.

Signature of Patient: _____ Date: _____