

# EDITORIAL

## Prison Health: an outside view

The President of the Society invites me to write an editorial for this number, an undeserved honor to which I pleurably respond. Prison Health is the great unknown, not only for the society, but for health professionals too. For many, it is not even a type of emergency medicine but a contextual one, carried out by civil service physicians with no specific training and submitted to the authorities. A past when things were more or less like that might carry a lot of weight – hired physicians most of the time, who worked in the prison as one of their other many jobs. Today the reality is poles apart from this negative opinion that one could have of Prison Health, what is more, I would say that it is the medicine which has advanced the most in the last thirty years. As a forensic physician and specialist I've had to visit a lot of prisons in Spain throughout my 44 years of professional career, besides, the Regulations of the National Association of Forensic Physicians included the obligation of the forensic to substitute the penitentiary physician upon leave or holiday. I have therefore witnessed the evolution of prison health and the important strides that have been made in its physicians' human and professional qualities. For the medical coroner, the penitentiary colleague is an exceptional ally. A lot of examination could not be carried out with the appropriate scientific basis without their cooperation. I remember the 70s when all the clinical information that you could get from an inmate was the one nurses provided – no clinical history, no complementary tests, nothing. Nowadays, experts usually find cooperating physicians, standardized clinical histories, with a comprehensive examination before the admittance, thorough serological determinations, psychological examination, etc, which are of extraordinary value for the expertise activity. I would therefore like to show my appreciation to all the penitentiary physicians who treated me with care and affection.

When I took over the 6<sup>th</sup> edition of *Tratado de Medicina Legal y Toxicología* (Treatise on Forensic Medicine and Toxicology) from Professor Gisbert Galabuig<sup>1</sup> I introduced an extensive chapter on the medical and forensic aspects of penitentiary medicine. For this task I counted on the exceptional alliance of

my disciple and friend Dr. Eloy Girela López. He was both an expert in Forensics and a prison physician, with substantial experience and a solid training derived from countless years of practice and responsibility charges in the penitentiary background. Thereby he wanted to draw attention to a real and important setback- not only due to the number of people who must be attended: over 70,000, but because of their varied, particular and complicated circumstances which may entail ethic and medical-legal important issues. Furthermore he wanted to enhance the rapprochement and cooperation between these two specialties which seem so intellectually close in so many issues and so institutionally set apart. There was a time when both shared the Department of Justice, but then the opposition was intellectual; nowadays there is significant cooperation taking place in many subjects but institutionally we are set apart. I want this master chapter by Dr. Girela to acknowledge penitentiary medicine and those who make it possible.

I would be daringly irresponsible to approach from these pages those issues that entail the daily routine of prison physicians-which, on the other hand, are well-known by this Journal's readers. I therefore intend to share with the readers some ideas on mutual issues with other disciplines, but which on the whole involve sensitive concerns which all the society should be aware of or at least, about which they should receive different messages than the usual ones.

The society is not acquainted with the fact that being imprisoned does not entail losing one's human condition and personal rights except for those that confinement itself restrains. This is also known as the principle of preservation of the rights. This restraint will always be submitted to the principle of legality and effective judicial protection by means of the Penitentiary Surveillance Judge (Spanish Constitution section 25-2). There is a social trend towards depriving prisoners from the rights that the law provides and that sentences don't grant either, for example the full and complete possession of the principle of autonomy which act 41/2002 provides to all individuals within medical acts; the ability of participating as a free individual in clinical trials and establishing a patient-doc-

tor relationship based on mutual trust with no other boundary than the unevenness between someone who suffers and someone who heals.

The relationship between a prison physician and the patient is similar to the one established between occupational physicians and workers. Occupational physicians share their loyalty between their employer, who pays them, and the patient, who they must treat with no interference in accordance with their ethic and deontological duties, but being submitted to the fact that sometimes they will need to give precedence to collective interests over individual ones. Prison physicians are civil servants who must share their loyalties – due to security reasons - between the duties derived, not only from the prison system but from the social defense itself, and the penitentiary treatment of the patient. Although inmates may enjoy intact rights as free citizens, as far as medical care is concerned, it is also true that their regime requires measures which would not be needed in other circumstances- compulsory treatments, restraints to medical confidentiality, suicide attempts, third-party risks, etc.

On the other hand, prison physicians share with forensic physicians the obstruction that lies between them and their patients- mistrust. Inmates as well as people under forensic examination consider that the physician in charge is able of telling apart their simulation or concealment, to identify the drug user, the carrier of an infectious and transmissible disease which will entail compulsory treatment or isolation measures, or a mentally diseased patient entailed to some security measure – I use the classical terminology on purpose. Freedom restraints are not the circumstances that inspire this special relationship between the physician and his/her theoretical patients, but patients themselves, who due to their special pathology, personality disorders or proved dangerousness require special clinical and ethic behaviors that should perhaps be handled by the central commission on deontology and the deontological code, that so seriously lacks any reference to this matter.

Another important concern is the presence of mental patients within prisons. Prisons should not host mental patients, yet studies reveal that a high percentage of prisoners, between 6 and 8%, suffer from some type of major psychosis (schizophrenia or depression) and over 50% suffer from psychopathological disorders. In my experience – although I only know inmates who already have charge issues- over 90% of prisoners have been prescribed some kind of sedative or tranquilizer, particularly during the first days after admittance. The psychiatric reform brought about good things, but also several problems that

remain unsolved, such as the fact that no one knows what to do with a lot of patients suffering from mental illnesses, terminal in most of the cases, dementia, alcohol-induced psychosis in phase of dementia, etc. who wander around and end up in prison because of small crimes. This concerns not only Spanish but all the countries in the world. I consider that it has been long since the psychiatric reform first took place and it is high time politicians handled this major issue.

Once more the law is laid down on the back burner. Once more lawmaking is ahead of reality, lead by a wishful thinking that considers that the Government's duties are restricted to writing down a rule in the official gazette. The rule carries more weight than its compliance. Lawmaking is more important than solving these issues. This is not a new matter, at least for me. When the Act on Dangerousness and Social Rehabilitation (*Ley de Peligrosidad y Rehabilitación Social*) (Act 16/1970 of 4<sup>th</sup> August) was first passed, in Spain there were no facilities to host those people who were supposedly dangerous (homosexuals and drug addicts mainly) and who had to be rehabilitated, thus their destination was prison for most of them. Today, people who are declared non-imputable by a court and who are sentenced to an alternative confinement security measure, do not count on specific internment unities in accordance with the law; specifically designed for rehabilitation purposes and in compliance with security measures. Under no circumstances such people should be sent to prison, nor to psychiatric penitentiary hospitals or psychiatric unities within general hospitals. Section 60 of the criminal code is clear and conclusive<sup>2</sup>- subjects must not only comply with chargeable conditions to be declared guilty, but they must be able to fulfill the compliance of the sentence too. We could therefore talk about a capability of sentence- alluding to someone who does not fulfill the psychological requirements to understand the punitive character of the sentence, because he/she is deprived of his/her freedom, and so that he/she was not imprisoned. Here, as well as in other circumstances, the physician acts as the guarantor of the rights of these prisoners, who due to their psychological condition have lost the ability to decide and therefore they must be represented, firstly by the Government and if it didn't perform its duties, I consider that this responsibility, at least ethically would fall back on to the attending physician, therefore acting as guarantor. What physician among all those included in the prison's staff? - The one who is in charge. I know that I am dealing this with a utopian approach, but at least prison physicians must be aware of this responsibility.

Finally I would like to note two issues with a deep ethic background. Physicians must act as defenders of the rights of those citizens under their responsibility. The only restraint to the patient's principle of autonomy is third-party damages derived from it. The medical deontological code forbids any interference of the physician's execution of this right when the patient takes a valid decision. The only thing that the physician must ensure is if this patient's psychological condition entitles him for decision making and if third-party damages are derived from it. With regard to force-feeding of prisoners on hunger strike or compulsory medical treatments I have declared myself on many occasions and so have done other physicians performing their duties within the penitentiary context 3,4 ; the special consideration that the Constitutional Court provided for such prisoners to adopt their forced-feeding is of no appliance for physicians. In my opinion those sentences (STC 120/30 and 137/90) cannot clash with the superior principles that entails human beings to exercise their freedom. If hunger strike is lawful for the free individual so it is for the prisoner. I seriously doubt that since the act 41/2002 article 210 from the penitentiary regulation was passed, it is legal, but in any case physicians will be able to claim the right to conscientious objection, which will never be as justified as in this situation.

Biomedical experimentation also entails issues in this context. The only thing that ascertains the legitimacy of human experimentation is the individual's consent, appropriately expressed and after exhaustive information, to participate on the trial or experiment

and this right is not forbidden for prisoners either. I do not think that there are ethical restraints for an inmate to take part in a clinical trial under the same circumstances as a free individual. If the requirements of the declaration of Helsinki are fulfilled, experimentation will be acceptable. Nevertheless there are many scientific reasons that reveal that imprisoned individuals are a very qualified sample for many clinical trials that can only be carried out in this environment.

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