

A close-up photograph of a pair of brass scales of justice. The scales are slightly out of balance, with the left pan hanging lower. A purple stethoscope is draped over the left pan. The background is a blurred bookshelf filled with books. The overall lighting is warm and focused on the scales.

Human Rights in Patient Care


A PRACTITIONER GUIDE

KYRGYZSTAN

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KYRGYZSTAN



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PREFACE

The right to health has long been treated as a “second generation right,” which implies that it is not enforceable at the national level, resulting in a lack of attention and investment in its realization. However, this perception has significantly changed as countries increasingly incorporate the right to health and its key elements as fundamental and enforceable rights in their constitutions and embody those rights in their domestic laws. Significant decisions by domestic courts, particularly in Asia, Africa, and Latin America, have further contributed to the realization of the right to health domestically and to the establishment of jurisprudence in this area.

Although these and other positive developments toward ensuring the highest attainable standard of physical and mental health represent considerable progress, the right to health for all without discrimination is not fully realized, because, for many of the most marginalized and vulnerable groups, the highest attainable standard of health remains far from reach. In fact, for many, interaction with health care settings and providers involves discrimination, abuse, and violations of their basic rights. As I explored in my report to the UN General Assembly on informed consent and the right to health, violations to the right to privacy and to bodily integrity occur in a wide range of settings. Patients and doctors both require support to prevent, identify, and seek redress for violations of human rights in health care settings, particularly in those cases in which power imbalances-created by reposing trust and by unequal levels of knowledge and experience inherent in the doctor-patient relationship are further exacerbated by vulnerability due to class, gender, ethnicity, and other socioeconomic factors.

Although there are a large number of publications on the principles of human rights, very little has been available in the area of the application of human rights principles in actual health care settings. In this context, the present guide fills a long-felt void. The specific settings detailed in this guide are Eastern European countries, but the guide is useful beyond this context in the international settings. I hope it will encourage the establishment of protective mechanisms and legislative action relating to violations within health care settings. Not only will it help to support health care providers, legal practitioners, and health activists to translate human rights norms into practice, it will also ultimately help communities to raise awareness, mobilize, and claim the rights they are entitled to.

The authors have done a huge service in furthering the right to health. They deserve full credit for undertaking this arduous task. The Open Society Foundation also needs to be thanked for funding and publishing this very important work. I have no doubt that this practitioner’s guide will generate a greater appreciation for the role of human rights in the delivery of quality health care in patient care settings and will also prove to be an invaluable resource for those working to realize the right to health.

Anand Grover

United Nations Special Rapporteur on the Right to Health

ACKNOWLEDGEMENTS

Stemming from the genuine concern about urgent need to further enjoyment of human rights in patient care, this Guide is the joint product of a number of dedicated persons and organizations committed to making a difference. The aim of the Guide is to support the rights of healthcare providers and patients and particularly to assist lawyers to promote equal realization of rights and secure human dignity in the field of patient care.

Organizations supporting this project include the Soros Foundation-Kyrgyzstan (SFK), the Open Society Public Health Program Law and Health Initiative (LAHI), and the Open Society Foundations' (OSF) Human Rights and Governance Grants Program (HRGGP). Much appreciation is owed to the individuals from these organizations who were most directly involved: **Aibek Mukumbetov, Zulaika Esentaeva; Tamar Ezer** (LAHI) and **Jonathan Cohen** (Open Society Public Health Program), who, in addition to general oversight and editing responsibilities, co-authored the international and regional procedures chapter and, with **Judith Overall**, co-authored the introduction; **Mariana Berbec Rostas** (HRGGP) for updating the regional procedures section; **Paul Silva** (Open Society Public Health Program, Communications Officer), for his advice and coordination of work on the Guide's design, and **Jeanne Criscola**, the designer. Special thanks are owed to **Iain Byrne**, Senior Lawyer formerly at INTERIGHTS, for writing the chapters on the international and regional framework for human rights in patient care, for preparing the glossary with **Judith Overall**, and for editorial review of the national chapters. Thanks are due as well to **Sara Abiola** for language and format editing of the international framework chapter and to **Anna Kryukova** for preparing the ratification chart. Also deserving thanks are **Zamir Djakupov** for review and final edits, updates to the guide, and preparation of the national ratification chart and to **Anna Kryukova** for reviewing international legal instruments.

Finally, this guide would not exist if it were not for the enthusiasm and personal dedication paid to this project by **Judith Overall**, OSF Consultant, M.Ed, MSHA, JD.

Not listed, but still deserving our thanks, are the many others who supported our working group and its work.

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1

Introduction

1.1 Background

This guide is part of a series published in cooperation with the Law and Health Initiative of the Open Society Foundation (OSF) Public Health Program, OSF's Human Rights and Governance Grants Program, OSI's Russia Project, and the Soros Foundations of Armenia, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Moldova, and Ukraine. Designed as a practical "how to" manual for lawyers, it aims to provide an understanding of how to use legal tools to protect basic rights in the delivery of health services. The guide systematically reviews the diverse constitutional provisions, statutes, regulations, bylaws, and orders applicable to patients and health care providers and categorizes them by right or responsibility. It additionally highlights examples and actual cases argued by lawyers.

The aim of the guide is to strengthen awareness of existing legal tools that can be used to remedy abuses in patient care. If adequately implemented, current laws have the potential to address pervasive violations of rights to informed consent, confidentiality, privacy, and nondiscrimination. As this effect can be accomplished through both formal and informal mechanisms, this guide covers litigation and alternative forums for resolving claims, such as enlisting ombudspersons and ethics review committees. It is hoped that lawyers and other professionals will find this book a useful reference in a post-Soviet legal landscape, which is often in rapid flux.

This guide addresses the concept of "human rights in patient care," which brings together the rights of patients and health care providers. The concept of human rights in patient care refers to the application of general human rights principles to all stakeholders in the delivery of health care. These general human rights principles can be found in international and regional treaties, such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the European Convention on the Protection of Human Rights and Fundamental Freedoms; and the European Social Charter. These rights are universal and can be applied in the context of health care delivery just as they can be in any other context.

1.2 Overview of the Guide

Chapter 2 of the guide covers the international laws governing human rights in patient care. It examines relevant "hard" and "soft" laws and provides examples of cases and interpretations of treaty provisions. This chapter is organized around the established human rights applicable to both patients and providers. These are the rights to liberty and security of the person; privacy; information; bodily integrity; life; highest attainable standard of health; freedom from torture, cruel, inhuman, and degrading treatment; participation in public policy; nondiscrimination and equality for patients; decent work conditions; freedom of association; and due process for providers. Chapter 3 provides information on the international procedures for protecting these rights.

Chapters 4, 5, 6, and 7 are country specific. Chapter 4 clarifies the legal status of international and regional treaties ratified, signed, or adopted by the Kyrgyz Republic; explains the country's use of precedent; and includes a brief description of the legal and health systems. Chapter 5 deals with

patient rights and responsibilities. The patient rights section is organized according to the rights in the European Charter of Patients' Rights, with the addition of any country-specific rights not specifically covered by the charter. Drawn up in 2002 by the Active Citizenship Network a European network of civic, consumer, and patient organizations the European Charter of Patients' Rights is not legally binding, but it is generally regarded as the clearest and most comprehensive statement of patient rights. The charter attempts to translate regional documents on health and human rights into 14 concrete provisions for patients: rights to preventive measures, access, information, informed consent, free choice, privacy and confidentiality, respect of patients' time, observance of quality standards, safety, innovation, avoidance of unnecessary suffering and pain, personalized treatment, the filing of complaints, and compensation. These rights have been used as a reference point to monitor and evaluate health care systems across Europe and as a model for national laws. Chapter 5 uses the rights enumerated in the European Charter of Patients' Rights as an organizing principle, but along with each right, the applicable binding provisions under the national laws are presented and analyzed. These rights are then cross-referenced with the more general formulation of rights in the international and regional chapters. Chapter 6 focuses on provider rights and responsibilities, including the right to work in decent conditions, the right to freedom of association, the right to due process, and other relevant country-specific rights.

Chapter 7 covers the national mechanisms for enforcement of both patient and provider rights and responsibilities. These mechanisms include administrative, civil and criminal procedures and alternative mechanisms, such as the Office of the Public Prosecutor, ombudspersons, ministries of internal affairs, ethics review committees, and inspectorates of health facilities. The chapter additionally contains an annex of sample forms and documents for lawyers to file.

The final section is a glossary of terms that are relevant to the field of human rights in patient care. Some versions of the guide also include a section of the glossary with country-specific terminology. The glossary will enable greater accessibility of law, health, and human rights material.

Uses of the Guide

The guide has been designed as a resource for both litigation and training. It may be particularly useful in clinical legal-education programs. Although designed for lawyers, the guide may additionally be of interest to medical professionals, health managers, Ministries of Health and Justice Personnel, patient advocacy groups, and patients who desire a firmer understanding of the legal basis for patient and provider rights and responsibilities and the available mechanisms for enforcement.

Companion Websites

The field of human rights in patient care is constantly changing and evolving, necessitating the

need for regular updates to the guide. Electronic versions of the guides will be periodically updated at www.health-rights.org. The Kyrgyzstan website is www.health-rights.kg. The international home page links to country websites, which include additional resources gathered by the country working groups that prepared each guide. These resources include relevant laws and regulations, case law, tools and sample forms, and practical tips for lawyers. The websites also provide a way to connect lawyers, health providers, and patients concerned about human rights in health care. Each of the websites provides a mechanism for providing feedback on the guides.

Note from the Authors

The material in this guide represents the views of an interdisciplinary working group composed of legal and medical experts. The guide does not carry judicial or legislative authority and it does not substitute for legal advice from a qualified lawyer. Rather, it represents the authors' attempt to capture the current state of the law and legal practice in the field of human rights in patient care in Kyrgyzstan. The authors welcome any comments concerning errors or omissions, suggested additions to the guide, and questions about how the law might apply to a particular factual scenario.

As this guide illustrates, in Kyrgyzstan, the field of human rights in patient care is still new and evolving. Many of the statutory provisions cited in the guide have not been authoritatively interpreted by courts, and those that have still remain open to additional application and interpretation. There remain huge gaps in understanding how, in practice, to apply human rights in patient care. This guide is, therefore, a starting point for legal inquiry, not a final answer. It is hoped that this guide will attract new professionals to the field of human rights in patient care, and that future editions will be much richer in their elaboration of legal protections.

ABBREVIATION TITLE

AC	ADVISORY COMMITTEE
CAT	CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT
CEI LO	COMMITTEE OF EXPERTS
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
CERD	COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
CES	CR COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
CHR	COMMISSION ON HUMAN RIGHTS
CMW	INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANTS WORKERS AND MEMBERS OF THEIR FAMILIES
COE	COUNCIL OF EUROPE
CRC	COMMITTEE ON THE RIGHTS OF THE CHILD
CRPD	CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
ECHR	EUROPEAN CONVENTION ON HUMAN RIGHTS
ECTHR	EUROPEAN COURT OF HUMAN RIGHTS
ECOSOC	UN ECONOMIC AND SOCIAL COUNCIL
ECSR	EUROPEAN COMMITTEE OF SOCIAL RIGHTS
EPHA	EUROPEAN PUBLIC HEALTH ALLIANCE
ES C	EUROPEAN SOCIAL CHARTER
EU	EUROPEAN UNION
FCNM	FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES
HRC	HUMAN RIGHTS COMMITTEE
IAPO	INTERNATIONAL ALLIANCE OF PATIENTS' ORGANIZATIONS
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICERD	INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
ICN	INTERNATIONAL COUNCIL OF NURSES
ILO	INTERNATIONAL LABOUR ORGANIZATION
OHCHR	OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
SR	SPECIAL RAPPORTEUR ON THE RIGHT TO HEALTH
TB	TUBERCULOSIS
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UN	UNITED NATIONS
UPR	UNIVERSAL PERIODIC REVIEW
WHO	WORLD HEALTH ORGANIZATION
WMA	WORLD MEDICAL ASSOCIATION

1.4 TABLE OF RATIFICATIONS

Data on participation of the Kyrgyz Republic in the core international human rights treaties

DOCUMENTS	SIGNING	RATIFICATION	APPLICABLE IN THE NATIONAL LEGISLATION
INTERNATIONAL			
International Covenant on Civil and Political Rights (ICCPR)	07/10/94	07/01/95	Yes
Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP)	07/10/94	07/01/95	Yes
International Covenant on Economic, Social and Cultural Rights (ICESCR)	07/10/94	07/10/94	Yes
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	10/02/97	12/03/97	Yes
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	05/09/97	05/10/97	Yes
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	05/09/97	05/10/97	Yes
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP)	29/12/2008	29/01/2009	Yes
Convention on the Rights of the Child (CRC)	07/10/94	06/11/94	Yes
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	29/01/2009	01/01/2004	Yes
Convention on the Rights of Persons with Disabilities (CRRD)	-	-	-

2.1 INTRODUCTION

2.2 KEY SOURCES

2.3 PATIENTS' RIGHTS

Right to liberty and security of the person

Right to privacy

Right to information

Right to bodily integrity

Right to life

Right to the highest attainable standard of health

Right to freedom from torture and cruel, inhuman, and degrading treatment

Right to participate in public policy

Right to nondiscrimination and equality

2.4 PROVIDERS' RIGHTS

Right to work in decent conditions

Right to freedom of association

Right to due process and related rights

2

International Framework for Human Rights in Patient Care

2.1 Introduction

This chapter presents the main standards that safeguard human rights in patient care internationally and examines how United Nations (UN) treaty-monitoring bodies have interpreted these standards. The chapter is divided into three parts. The first part describes the key International sources governing human rights in patient care. The second examines patients' rights, and the third focuses on the rights of providers. Each part includes subsections that discuss the standards and relevant interpretations connected to a particular right (e.g., the Right to Liberty and Security of the Person) and also provide some examples of potential violations. The standards addressed include binding treaties, such as the International Covenant on Civil and Political Rights (ICCPR), and nonbinding policies developed by the UN and nongovernmental organizations (NGOs), such as the World Medical Association's Declaration on Patients' Rights.

2.2 Key Sources

UNITED NATIONS

Universal Declaration of Human Rights 1948 (UDHR)

The UDHR is not a treaty but it is highly authoritative. It has shaped the evolution of modern human rights law, and many of its provisions are effectively reproduced in International treaties (see below). Many of its provisions have also achieved the status of customary international law they are universal and indisputable.

Key provisions include:

- Article 3 (right to life)
- Article 5 (prohibition on torture and cruel, inhuman, or degrading treatment)
- Article 7 (protection against discrimination)
- Article 12 (right to privacy)
- Article 19 (right to seek, receive, and impart information)
- Article 25 (right to medical care)

TREATIES

All of the seven major international human rights treaties contain guarantees relating to the protection of human rights in patient care. While these treaties are binding on those states that have ratified them, their standards have strong moral and political force even for non-ratifying

1. Office of the UN High Commissioner for Human Rights (OHCHR). status of the Ratifications of the Principle international Human Rights treaties. <http://www2.ohchr.org/english/bodies/docs/status.pdf>. Accessed November 14, 2009.

countries. Many, such as the two international covenants and the Convention on the Rights of the Child (CRC), have been widely (and, in the case of the later, almost universally) ratified.

The treaty-monitoring bodies have issued numerous General Comments (GCs) to serve as authoritative guides for the interpretation of treaty standards. For example, the Committee on Economic and Social Rights (CES CR) issued GC 14 on Article 12 of the International Covenant on Civil and Political Rights (ICES CR), interpreting the right to health as the right to control one's own health and body.

All of the treaty bodies monitor compliance through the consideration of periodic state reports and then issue concluding observations.² The majority—including the Human Rights Committee (HRC), Committee on the Elimination of Discrimination Against Women (CEDAW), Committee Against Torture (CAT), Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Rights of Persons with Disabilities (CRPD)—may now also consider individual complaints provided that, in most cases, the State has ratified the appropriate optional protocol to the treaty. Together, these materials can be used to further interpret the standards.

Torture (CAT), Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Rights of Persons with Disabilities (CRPD)—may now also consider individual complaints provided that, in most cases, the State has ratified the appropriate optional protocol to the treaty.³ Together, these materials can be used to further interpret the standards.

► **International Covenant on Civil and Political Rights (ICCPR)⁴**

Together with the UDHR and the ICES CR, the ICCPR forms part of the International Bill of Rights. The ICCPR is monitored by the HRC.

Relevant provisions include:

- Article 2(1) (prohibition on discrimination)
- Article 6 (right to life)
- Article 7 (prohibition on torture)
- Article 9 (right to liberty and security)
- Article 10 (right to dignity for detainees)
- Article 17 (right to privacy)
- Article 19(2) (right to information)
- Article 26 (equality before the law)

2. OHCHR. Human Rights bodies. <http://www.ohchr.org/en/HRbodies/Pages/HumanRightsbodies.aspx>. Accessed november 14, 2009.

3. OHCHR. Human Rights bodies: Complaint Procedures. <http://www2.ohchr.org/english/bodies/petitions/index.htm>. Accessed November 14, 2009. The ICESCR will also have its own complaints mechanism in the near future, following adoption of an optional protocol by the UN in December 2008 and its opening for ratification on September 24, 2009.

4. International Covenant on Civil and Political Rights (ICCPR). United Nations General Assembly Resolution 2200a [XXI]. December 16, 1966. <http://www2.ohchr.org/english/law/ccpr.htm>. Accessed November 14, 2009.

► **International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵**

The ICES CR is monitored by the CES CR.

Key provision:

- Article 12 (right to highest attainable standard of health) (See General Comment 14)⁶

The SR (currently Anand Grover who replaced Professor Paul Hunt in August 2008) is an independent expert who is mandated by the UN to investigate how the right to the highest attainable standard of health can be effectively realized. The SR conducts country visits, produces annual reports, and carries out in-depth studies into particular issues. For example, in September 2007, the SR produced draft guidelines for pharmaceutical companies on access to medicines.⁷

Other relevant provisions include:

- Article 2(1) (prohibition on discrimination)
- Article 10(3) (protection of children)
- Article 11 (adequate standard of living)

Note: Special Rapporteur (SR) on the Right to Health⁸

► **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁹**

The ICES CR is monitored by the CES CR.

Key provision:

- Article 12 (Elimination of discrimination against women in health care);
- Article 14(2)(b) (right of women in rural areas to have access to adequate health care facilities)

(See also General Recommendation 24 on Article 12 (women and health), a comprehensive analysis of women's health needs and recommendations for government action).¹⁰

► **Convention for the Elimination of All Forms of Racial Discrimination (CERD)¹¹**

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5. International Covenant on Economic, Social and Cultural Rights (ICESCR). United Nations General Assembly Resolution 2200a [XXI]. December 16, 1966. <http://www2.ohchr.org/english/law/cescr.htm>
 6. Official Documents Center of the United Nations. <http://daccessdds.un.org/doc/unDOC/gen/g00/439/34/PDF/g0043934.pdf?OpenElement>. Accessed November 14, 2009.
 7. <http://www2.ohchr.org/english/issues/health/right/docs/draftguid.doc>
 8. OHCHR. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. <http://www2.ohchr.org/english/issues/health/right/>. Accessed November 14, 2009.
 9. Convention on the elimination of all Forms of Discrimination against Women (CEDAW). UNited Nations General Assembly. December 18, 1979. <http://www2.ohchr.org/english/law/CEDAW.htm>. Accessed November 14, 2009.
 10. UN Committee on the elimination of Discrimination against Women. CEDAW general Recommendation no. 24: article 12 of the Convention (Women and Health) <http://www.un.org/womenwatch/daw/CEDAW/recommendations/recomm.htm#recom24>. Accessed November 14, 2009.
 11. <http://www.un.org/womenwatch/daw/CEDAW/recommendations/recomm.htm#recom24>. Accessed November 14, 2009.

Monitored by the Committee on the Elimination of Racial Discrimination.

Key provision:

- Article 5(1)(e) (prohibition on race discrimination in public health and medical care)

► **Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)¹²**

Monitored by the Committee Against Torture, the CAT introduced a new optional protocol in 2002 that focuses on prevention of torture.¹³

► **Convention on the Right of Child (CRC)¹⁴**

Monitored by the Committee on the Rights of the Child, the CRC contains a comprehensive range of civil, political, economic, social, and cultural rights guarantees.

Key provision:

- Article 24 (right to highest attainable standard of health)

► **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)¹⁵**

Monitored by the Committee on Migrant Workers, the CMW contains a comprehensive range of civil, political, economic, social, and cultural rights guarantees.

Key provisions:

- Article 28 (right to medical care)
- Articles 43 and 45(1)(c) (equal treatment in health care)

► **Convention on the Right of Persons with Disabilities (CRPD)¹⁶**

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11. International Convention for the elimination of all Forms of Racial Discrimination (ICERD). UN general assembly Resolution 2106 [XX]. December 21, 1965. <http://www2.ohchr.org/english/law/cerd.htm> Accessed November 14, 2009.
 12. Convention against torture and Other Cruel, inhuman, or Degrading treatment or Punishment UN general assembly Resolution 39/46. December 10, 1984. <http://www2.ohchr.org/english/law/cat.htm>. Accessed November 14, 2009.
 13. Optional Protocol to the Convention against torture and Other Cruel, inhuman, or Degrading treatment or Punishment. UN general assembly Resolution a/Res/57/199. December 18, 2002. <http://www2.ohchr.org/english/law/cat-one.htm>. accessed november 14, 2009
 14. Convention on the Rights of the Child (CRC). UN general assembly Resolution 44/25. November 20, 1989. <http://www2.ohchr.org/english/law/crc.htm>, Accessed November 14, 2009.
 15. International Convention on the Protection of the Rights of all migrant Workers and members of their Families. UN general assembly Resolution 45/158. December 18, 1990. <http://www2.ohchr.org/english/law/cmw.htm>. Accessed November 14, 2009.
 16. Convention on the Rights of Persons with Disabilities (CRPD). UN general assembly Resolution. December 13, 2006. <http://www2.ohchr.org/english/law/disabilities-convention.htm>. Accessed November 14, 2009.

The CRPD applies to people with “long-term physical, mental, intellectual or sensory impairments,” and seeks to “ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.”¹⁷ The CRPD contains a comprehensive range of civil, political, economic, social, and cultural rights guarantees. It was entered into force on May 12, 2008.

Key provision:

- Article 25 (health)
- Other relevant provisions include:
 - Article 5 (equality and nondiscrimination);
 - Articles 6 and 7 (women and children);
 - Article 9 (access to medical facilities and services);
 - Article 10 (right to life);
 - Article 14 (liberty and security);
 - Article 15 (freedom from torture, etc.)
 - Article 16 (freedom from exploitation, violence, and abuse)
 - Article 17 (protection of physical and mental integrity)
 - Article 19 (independent living)
 - Article 21 (access to information)
 - Article 22 (respect for privacy)
 - Article 26 (habilitation and rehabilitation)
 - Article 29 (participation in public life)

NONTREATY INSTRUMENTS

- ▶ **UN Standard Minimum Rules for the Treatment of Prisoners¹⁸**
- ▶ **UN Body of Principles for the Protection of All Persons Under Any Form of Detention¹⁹**
- ▶ **UN Principles for the Protection of Persons with Mental Illness and the**

17. CRPD, article 1.

18. Standard Minimum Rules for the Treatment of Prisoners. Economic and Social Council Resolution 663 C (XXIV). July 31, 1957. <http://www2.ohchr.org/english/law/treatmentprisoners.htm>. Accessed November 14, 2009.

19. Body of Principles for the Protection of all Persons Under any Form of Detention. UN general assembly Resolution 43/173. December 9, 1998. <http://www2.ohchr.org/english/law/bodyprinciples.htm>. Accessed November 14, 2009.

20. Principles for the Protection of Persons with mental illness and improvement of mental Health Care. UN general assembly Resolution 46/119. December 17, 1991. <http://www2.ohchr.org/english/law/principles.htm>. Accessed November 14, 2009.

Improvement of Mental Health Care²⁰

ADDITIONAL INTERNATIONAL DOCUMENTS

There are also a number of other important International consensus documents that do not have the binding force of a treaty but exert considerable political and moral force.

► **WHO Alma-Ata Declaration 1978²¹**

This Declaration reaffirms that health is a state of complete physical, mental, and social well-being, not merely the absence of disease or infirmity, and is a fundamental human right (Article 1). It focuses on the importance of primary health care.

► **Charter on the Right to Health 2005 (International Union of Lawyers)²²**

This charter addresses issues such as privacy and informed consent.

► **Declaration on the Rights of the Patients 2005 (revised) (World Medical Association (WMA)²³**

This declaration addresses issues such as the rights to confidentiality, information, and informed consent. The following is an excerpt from the preamble:

The relationship between physicians, their patients and broader society has undergone significant changes in recent times. While a physician should always act according to his/her conscience, and always in the best interests of the patient, equal effort must be made to guarantee patient autonomy and justice. The following Declaration represents some of the principal rights of the patient that the medical profession endorses and promotes. Physicians and other persons or bodies involved in the provision of health care have a joint responsibility to recognize and uphold these rights. Whenever legislation, government action or any other administration or institution denies patients these rights, physicians should pursue appropriate means to assure or to restore them.

► **Declaration on the Patient-Centred Healthcare 2007, International Alliance of**

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21. Declaration of Alma-Ata. September 6, 1978. http://www.who.int/hpr/NPH/docs/declaration_almaata.pdf. Accessed November 14, 2009.
 22. Charter on the Right to Health. International Union of Lawyers. UIA General Assembly. August 31, 2005. www.uianet.org/documents/qquia/resolutions/sante4gb.pdf. Accessed November 15, 2009.
 23. Declaration on the Rights of the Patient. World Medical Association. WMA Assembly September/October 1981. <http://www.wma.net/en/30publications/10policies/l4/index.html>. Accessed November 15, 2009.
 24. International Alliance of Patients' Organizations (IA PO). Declaration on Patient-Centred Healthcare. www.patientsorganizations.org/. Accessed November 15, 2009.

Patients' Organizations (IAPO)²⁴

This Declaration was produced by IAPO as part of its effort to advocate internationally, with a strong voice for patients, on relevant aspects of health care policy, with the aim of influencing International, regional, and national health agendas and policies.

The document espouses five principles:

- **Respect:**

Patients and caregivers have a fundamental right to patient-centred healthcare that respects their unique needs, preferences and values, as well as their autonomy and independence.

- **Choice and empowerment:**

Patients have a right and responsibility to participate, to their level of ability and preference, as a partner in making healthcare decisions that affect their lives. This requires a responsive health service which provides suitable choices in treatment and management options that fit in with patients' needs, and encouragement and support for patients and caregivers that direct and manage care to achieve the best possible quality of life. Patients' organizations must be empowered to play meaningful leadership roles in supporting patients and their families to exercise their right to make informed healthcare choices

- **Patient involvement in health policy:**

Patients and patients' organizations deserve to share the responsibility of healthcare policy-making through meaningful and supported engagement in all levels and at all points of decision-making, to ensure that they are designed with the patient at the center. This should not be restricted to healthcare policy but include, for example, social policy that will ultimately impact patients' lives.

- **Access and support:**

Patients must have access to the healthcare services warranted by their condition. This includes access to safe, quality and appropriate services, treatments, preventive care and health promotion activities. Provision should be made to ensure that all patients can access necessary services, regardless of their condition or socio-economic status. For patients to achieve the best possible quality of life, healthcare must support patients' emotional requirements, and consider non-health factors such as education, employment and family issues which impact their approach to healthcare choices and management.

- **Information:**

24. International Alliance of Patients' Organizations (IAPO). Declaration on Patient-Centred Healthcare. www.patientsorganizations.org/. Accessed November 15, 2009.

Accurate, relevant and comprehensive information is essential to enable patients and caregivers to make informed decisions about healthcare treatment and living with their condition. Information must be presented in an appropriate format according to health literacy principles considering the individual's condition, language, age, understanding, abilities and culture.

► **Jakarta Declaration on Leading Health Promotion into the 21st Century (1997)²⁵**

This declaration is the final outcome document of the Fourth International Conference on Health Promotion. It lays down a series of priorities for health promotion in the twenty-first century, including social responsibility, increased investment and secured infrastructure, and empowerment of the individual.

Position Statement: Nurses and Human Rights 1998, International Council of Nurses(ICN)²⁶

The ICN views health care as the right of all individuals, regardless of financial, political, geographic, racial, or religious considerations. This right includes the right to choose or decline care, including the rights to acceptance or refusal of treatment or nourishment; informed consent; confidentiality; and dignity, including the right to die with dignity. The ICN addresses the rights of both those seeking care and the providers. Nurses have an obligation to safeguard and actively promote people's health rights at all times and in all places. This obligation includes assuring that adequate care is provided within the scope of the available resources and in accordance with nursing ethics. In addition, the nurse is obliged to ensure that patients receive appropriate information in understandable language prior to giving their consent for treatment or procedures, including participation in research.

2.3. Patient's Rights

This section explores International protection of nine critical patients' rights: the rights to liberty and security of the person; privacy and confidentiality; information; bodily integrity; life; highest attainable standard of health; freedom from torture, cruel, inhuman, and degrading treatment; participation in public policy; and nondiscrimination and equality for patients.

25. Jakarta Declaration on Leading Health Promotion into the 21st Century. World Health Organization (WHO). July 21–25, 1997. www.who.int/hpr/NPH/docs/jakarta_declaration_en.pdf. Accessed November 15, 2009.

26. Position Statement: Nurses and Human Rights. International Council of Nurses. www.icn.ch/pshumrights.htm. Accessed November 15, 2009.

The CES CR has provided the most significant International legal commentary on the rights of patients. Its elaboration on UN General Comment 14 on the right to the highest attainable standard of health (under Article 12 of the ICES CR) has been particularly influential. In addition, the CES CR has frequently condemned governments for failing to devote adequate resources to health care and services for patients. At this writing, however, the lack of an individual complaint mechanism has hampered the ability of the CES CR to examine specific violations beyond the systemic failures identified in country reports. The expected introduction of such a mechanism should provide the CES CR with an opportunity to mirror the work of its sister body, the HRC, in developing significant case law on human rights in patient care.

Although the CES CR has elaborated on the right to health with the most detail, other UN monitoring bodies have also provided significant comments on patients' rights. The HRC has frequently cited Articles 9 and 10 of the ICCPR to condemn the unlawful detention of mental health patients and the denial of medical treatment to detainees, respectively. It has also upheld the need to protect confidential medical information under Article 17 of the ICCPR and has used the right to life under Article 6 of the ICCPR to safeguard medical treatment during pretrial detention. Additionally, as detailed below, UN bodies concerned with monitoring racial and sex discrimination have examined equal access to health care.

In addition to binding treaty provisions, other International standards, such as the Standard Minimum Rules for the Treatment of Prisoners, also provide significant reference points regarding patients' rights. Although these standards cannot be directly enforced against states, patients and their advocates can use them to progressively interpret treaty provisions.

Right to Liberty and Security of the Person

EXAMPLES OF POTENTIAL VIOLATIONS

- A person is detained indefinitely on mental health grounds without any medical opinion being sought
- Residents of an institution are not informed about their right to apply to a court or tribunal to challenge their involuntary admission
- A female drug user is detained in hospital after giving birth and denied custody of her child

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

- ▶ **Art 9(1) ICCPR:** Everyone has the right to liberty and security of person. No one shall be

subjected to arbitrary arrest or detention. No one shall be deprived of his liberty exception such grounds and in accordance with such procedure as are established by law.

- The HRC has stated that treatment in a psychiatric institution against the will of the patient constitutes a form of deprivation of liberty that falls under the terms of Article 9 of the ICCPR²⁷. In this context, the HRC has considered a period of 14 days of detention for mental health reasons without review by a court incompatible with Art 9(1) of the ICCPR²⁸.
- The HRC has stated, in relation to arbitrary comital under mental health legislation where the victim was at the time considered to be legally capable of acting on her own behalf²⁹.

[T]he State party has a particular obligation to protect vulnerable persons within its jurisdiction, including the mentally impaired. It considers that as the author suffered from diminished capacity that might have affected her ability to take part effectively in the proceedings herself, the court should have been in a position to ensure that she was assisted or represented in a way sufficient to safeguard her rights throughout the proceedings.... The Committee acknowledges that circumstances may arise in which an individual's mental health is so impaired that so as to avoid harm to the individual or others, the issuance of a comital order, without assistance or representation sufficient to safeguard her rights, may be unavoidable. In the present case, no such special circumstances have been advanced. For these reasons, the Committee finds that the author's comital was arbitrary under Article 9, paragraph 1, of the Covenant³⁰

► **Art 25 CRC:** States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

► **Art 14 DRC:**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:
 - (a) Enjoy the right to liberty and security of person;
 - (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.
2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with

27. UN Human Rights Committee (HRC). *A. v. New Zealand*, Communication no. 754/1997. (CCPR/C/66/D/754/1997). Views adopted July 15, 1999. See also UN Human Rights Committee (HRC). *Fijalkowska v. Poland*. Communication no. 1061/2002: Poland. (CCPR/C/84/1061/2002). Views adopted July 26, 2005.

28. HRC. Concluding Observations of the Human Rights Committee: Estonia, 2003. (CCPR/CO/77/est).

29. HRC. *Fijalkowska v. Poland*. Communication no. 1061/2002(CCPR/C/84/1061/2002). Views adopted July 26, 2005.

30. *Ibid* para 8.3

the objectives and principles of this Convention, including by provision of reasonable accommodation.

- ▶ **UN Body of Principles for the Protection of All Persons Under Any Form of Detention**
- ▶ **UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care**
- ▶ **Article 6 Charter on the Right to Health:** No one may be deprived of liberty on the ground of medical danger to oneself or others unless this danger is certified by competent and independent physicians and by a judicial ruling made in accordance with the due process of law.

Right to Privacy

EXAMPLES OF POTENTIAL VIOLATIONS

- A doctor discloses a patient's history of drug use or addiction without his or her consent
- Government requires disclosure of HIV status on certain forms
- Health care workers require young people to obtain parental consent as a condition of receiving sexual health services
- Residents of an institution have no place to keep their personal possessions

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

- ▶ **Art 17(1) ICCPR:** No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
- ▶ **Art 16(1) CRC:** No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.
 - **CESCR GC 14 para 12:** Accessibility of information should not impair the right to have personal health data treated with confidentiality.
 - **CESCR GC 14 para 23:** The realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.

- ▶ **Art 22 DRC: 1.** No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honor and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks. 2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

- ▶ **Article 8 Charter on the Right to Health:** Physicians are bound by professional confidentiality to ensure due respect for patient privacy. This confidentiality...contributes to the effectiveness of medical care. Exceptions to medical confidentiality, strictly limited by law, may serve only the goals of protection of health, safety or public hygiene. Patients are not bound by medical confidentiality. Physicians may be relieved of their obligation to maintain professional confidentiality if they become aware of attacks on the dignity of the human person

- ▶ **Principle 8 WMA Declaration on the Rights of the Patients**

Right to confidentiality

- a. All identifiable information about a patient's health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind must be kept confidential, even after death. Exceptionally, descendants may have a right of access to information that would inform them of their health risks.
- b. Confidential information can only be disclosed if the patient gives explicit consent or if expressly provided for in the law. Information can be disclosed to other health care providers only on a strictly "need to know" basis unless the patient has given explicit consent.
- c. All identifiable patient data must be protected. The protection of the data must be appropriate to the manner of its storage. Human substances from which identifiable data can be derived must be likewise protected.

Clearly the need to protect the confidentiality of medical information can have an impact across a range of health issues. However, confidentiality is particularly vital in relation to sexual and reproductive health. Examinations by UN treaty bodies in the context of right to privacy have included (i) the condemnation of a legal duty imposed on health personnel to report cases of abortions as part of a general criminalization of the procedure without exception thereby inhibiting women from seeking medical treatment and jeopardizing

31. HRC. Concluding Observations of the Human Rights Committee: Chile, 1999. (CCPR/C/79/add.104); Concluding Observations: Venezuela, 2001. CCPR/CO/71/Ven).

32. HRC. Concluding Observation of the Human Rights Committee: Mexico, 1999. (CCPR/C/79/add.109). Requirement for women to have access to appropriate remedies where their equality and privacy rights had been violated.

their lives³¹; (ii) the need to investigate allegations that women seeking employment in foreign enterprises are subjected to pregnancy tests and are required to respond to intrusive personal questioning followed by the administering of anti-pregnancy drugs³² and (iii) the need to address the concerns and need for confidentiality of adolescents with respect to sexual and reproductive health including those married at a young age and those in vulnerable situations³³.

Right to Information

EXAMPLES OF POTENTIAL VIOLATIONS

- Government bans publications about drug use or harm reduction, claiming it promotes illegal activity
- Young people are deliberately denied information about STDs and the use of condoms
- Roma women lack access to information on sexual and reproductive health

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

- ▶ **Art 19(2) ICCPR:** Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
 - In the case of *Zheludkov v. Ukraine* it was noted by a member of the HRC that³⁴: “A person’s right to have access to his or her medical records forms part of the right of all individuals to have access to personal information concerning them. The State has not given any reason to justify its refusal to permit such access, and the mere denial of the victim’s request for access to his medical records thus constitutes a violation of the State’s obligation to respect the right of all persons to be ‘treated with humanity and with respect for the inherent dignity of the human person,’ regardless of whether or not this refusal may have had consequences for the medical treatment of the victim.”³⁵
- ▶ **Article 12 ICESCR:** The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
 - **CESCR GC 14 para 12(b)(iv):** Health care accessibility “includes the right to seek,

33. CRC. Concluding Observations of the Committee on the Rights of the Child: Djibouti, 2000. (CRC/C/15/add.131).

34. HRC. *Zheludkov v. Ukraine*. Communication no. 726/1996. (CCPR/C/76/D/726/1996). Views adopted October 29, 2002.

35. Individual Opinion by Ms. Cecilia Medina Quiroga (concurring)

receive and impart information and ideas concerning health issues.

- **CESCR GC 14 para 23:** States Parties should provide a safe and supportive environment for adolescents, that ensures the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counseling and to negotiate the health behavior choices they make.
- ▶ **Art 17 CRC:** States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and International sources, especially those aimed at the promotion of his or her social, spiritual, and moral well-being and physical and mental health.³⁶
 - ▶ **Art 21 DRC:** States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive, and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in Article 2 of the present Convention, including by: (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.
 - ▶ **Principle 7 WMA Declaration on the Rights of the Patients:**
 - a. The patient has the right to receive information about himself/herself recorded in any of his/her medical records, and to be fully informed about his/her health status including the medical facts about his/her condition. However, confidential information in the patient's records about a third party should not be given to the patient without the consent of that third party.
 - b. Exceptionally, information may be withheld from the patient when there is good reason to believe that this information would create a serious hazard to his/her life or health.
 - c. Information should be given in a way appropriate to the patient's culture and in such away that the patient can understand.
 - d. The patient has the right not to be informed on his/her explicit request, unless required for the protection of another person's life.
 - e. The patient has the right to choose who, if anyone should be informed on his/her behalf.
 - ▶ **Principle 5 IAPO Declaration on Patient-Centred Healthcare³⁷ :**
Accurate, relevant, and comprehensive information is essential to enable patients and carers to make informed decisions about healthcare treatment and living with their condition. Information must be presented in an appropriate format according to health literacy principles considering the individual's condition, language, age, understanding, abilities, and culture.

36. CRC. general Comment 4 of the Committee on the Rights of the Child: adolescent Health and Development in the Context of the Convention on the Rights of the Child. (CRC/gC/2003/4).

37. IAPO. IAPO Policy statement on Health Literacy. <http://www.patientsorganizations.org/showarticle.pl?id=126&n=962>. Accessed November 6, 2009.

Note: Access to Sexual and Reproductive Health Information

The provision of appropriate and timely information with respect to sexual and reproductive health is particularly crucial. UN treaty bodies have urged States to improve access in light of increasing teenage abortions and sexually transmitted diseases³⁸ including HIV/AIDS³⁹, with such information also extending to children⁴⁰ and to people in areas with prevalent alcohol and tobacco use.⁴¹

Right to Bodily Integrity

EXAMPLES OF POTENTIAL VIOLATIONS

- A Roma woman is sterilized against her will
- Doctors compel a drug-using pregnant woman to undergo an abortion
- Treatment is routinely given to residents of an institution without their consent as they are assumed to lack the capacity to make decisions about their treatment and care
- Patients at a psychiatric hospital are treated as part of a clinical medication trial without being informed that they are included in the research
- Patients are given ECT (electro-convulsive therapy) having been told that this is “sleep therapy”

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

Note: Right to Bodily Integrity

The right to bodily integrity is not specifically recognized under the ICCPR or ICESCR, but has been interpreted to be part of the right to security of the person (ICCPR 9), the right to freedom from torture and cruel, inhuman, and degrading treatment (ICCPR 7), the right to privacy (ICCPR 17), and the right to the highest attainable standard of health (ICESCR 12).

38. UN Committee on Economic, Social and Cultural Rights (CESCR). Concluding Observations of the Committee on Economic, Social and Cultural Rights: Lithuania, 2004. (E/C.12/1/add.96). UN Committee on Elimination of Discrimination against Women (CEDAW). Concluding Observations of the Committee on Elimination of Discrimination against Women: Costa Rica, 2003. (A/58/38 [suPP]). See also UN Committee on Economic, Social and Cultural Rights (CESCR). Concluding Observations of the Committee on Economic, Social and Cultural Rights: China, 2005. (E/C.12/1/add.107).

39. CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Chile, 2004. (E/C.12/add.105). See also CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cameroon, 1999. (E/C.12/add.40). See also CEDAW. Concluding Observations of the Committee on the Elimination of Discrimination against Women: Ethiopia, 2004. (A/59/38 [SUPP]).

40. CRC. Concluding Observations of the Committee on the Rights of the Child: Mozambique, 2002. (CRC/C/15/add.172). See also CRC. Concluding Observations of the Committee on the Rights of the Child: Indonesia, 2004. (CRC/C/15/add.203).

41. CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ukraine, 2001. (E/C.12/1/add.65).

- ▶ **Arts 12(1)CRC** - States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- ▶ **Art 39 CRC:** States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect, and dignity of the child.
- ▶ **Art 17 DRC:** Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.
- ▶ **Article 12 ICESCR:** The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
 - **CESCR GC 14 para 8:** the right to health includes “the right to be free from non-consensual medical treatment and experimentation.
- ▶ **International Ethical Guidelines for Biomedical Research involving Human Subjects⁴²**
- ▶ **Article 5 Charter on the Right to Health:** Consent of the patient must be required before any medical treatment, except in case of emergency only as strictly provided by law.
- ▶ **Principles 2-6 WMA Declaration on the Rights of the Patients:**

2. Right to freedom of choice

- a. The patient has the right to choose freely and change his/her physician and hospital or health service institution, regardless of whether they are based in the private or public sector.
- b. The patient has the right to ask for the opinion of another physician at any stage.

3. Right to self-determination

- a. The patient has the right to self-determination, to make free decisions regarding himself/herself. The physician will inform the patient of the consequences of his/her decisions.
- b. A mentally competent adult patient has the right to give or withhold consent to any diagnostic procedure or therapy. The patient has the right to the information necessary to make his/her decisions. The patient should understand clearly what is the purpose of any

42. Council for International Organizations of Medical Sciences (CIOMS). International Ethical Guidelines for Biomedical Research Involving Human Subjects. Geneva 2002. http://www.cioms.ch/frame_guidelines_nov_2002.htm. Accessed November 15, 2009.

test or treatment, what the results would imply, and what would be the implications of withholding consent.

- c. The patient has the right to refuse to participate in research or the teaching of medicine.
4. The unconscious patient
 - a. If the patient is unconscious or otherwise unable to express his/her will, informed consent must be obtained whenever possible, from a legally entitled representative.
 - b. If a legally entitled representative is not available, but a medical intervention is urgently needed, consent of the patient may be presumed, unless it is obvious and beyond any doubt on the basis of the patient's previous firm expression or conviction that he/she would refuse consent to the intervention in that situation.
 - c. However, physicians should always try to save the life of a patient unconscious due to a suicide attempt.
 5. The legally incompetent patient
 - a. If a patient is a minor or otherwise legally incompetent, the consent of a legally entitled representative is required in some jurisdictions. Nevertheless the patient must be involved in the decision-making to the fullest extent allowed by his/her capacity.
 - b. If the legally incompetent patient can make rational decisions, his/her decisions must be respected, and he/she has the right to forbid the disclosure of information to his/her legally entitled representative.
 - c. If the patient's legally entitled representative, or a person authorized by the patient, forbids treatment which is, in the opinion of the physician, in the patient's best interest, the physician should challenge this decision in the relevant legal or other institution. In case of emergency, the physician will act in the patient's best interest.
 6. Procedures against the patient's will

Diagnostic procedures or treatment against the patient's will can be carried out only in exceptional cases, if specifically permitted by law and conforming to the principles of medical ethics.

Note: Genital Mutilation and the Right to Bodily Integrity

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43. CEDAW. Concluding Observations of the Committee on the Elimination of Discrimination against Women: Burkina Faso, 2000. (A/55/38 [SUPP]). See also CEDAW. Concluding Observations of the Committee on the Elimination of Discrimination against Women: Cameroon, 2000. (A/55/38 [SUPP]).

Treaty bodies have recognized that practices such as genital mutilation can infringe girls' right to personal security and their physical and moral integrity by threatening their lives and health.⁴³

Right to Life

EXAMPLES OF POTENTIAL VIOLATIONS

- Doctors refuse to treat a person who is experiencing a drug overdose because drug use is illegal, thus resulting in the person's death
- Drugs users die in locked hospital wards
- Government places unjustified legal restrictions on access to life-saving HIV-prevention or treatment
- The mortality rate of an institution is high particularly during the winter months due to the poor condition of the building, inadequate sanitation and heating, and poor quality of care
- A patient of a psychiatric hospital known to be at risk of suicide is not monitored adequately and subsequently takes her own life

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

- ▶ **Article 6(1) ICCPR:** *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

- **ICCPR GC 6 paras 1 and 5:** the right to life “*should not be interpreted narrowly*” or “*in a restrictive manner,*” and its protection “*requires that States adopt positive measures... to increase life expectancy.*”

- **The HRC, in finding a violation of Art 6 of the ICCPR (in addition to Art 10(1)) where a healthy young man who fell ill in a pre-trial detention center did not receive any medical treatment despite repeated requests for assistance and subsequently died, noted that:**

“It is incumbent on States to ensure the right to life of detainees, and not incumbent on the later to request protection...it is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably be expected. Lack of financial means cannot reduce this responsibility.”⁴⁴

Because the detention center had a properly functioning medical service within and should

44. HRC. *Lantsova v. the Russian Federation*. Communication no. 763/1997). (CCPR/C/74/763/1997). Views adopted March 26, 2002.

45. HRC. General Comment 20 of the Human Rights Committee. (A/47/40/ [SUPP]).

have known about the dangerous change in the victim's state of health, the state was required to take immediate steps to ensure that the conditions of detention were compatible with its obligations under Articles 6 and 10. Such obligations are retained even where private companies run such institutions.⁴⁵

- While not explicitly recognizing the right to an abortion, the HRC has stated that States have a duty to take measures to ensure the right-to-life of pregnant women whose pregnancies are terminated thereby ending the blanket ban on the procedure.⁴⁶
- ▶ **Article 10 DRC:** States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Right to the Highest Attainable Standard of Health

EXAMPLES OF POTENTIAL VIOLATIONS

- State fails to take progressive steps to ensure access to ant -retroviral drugs to prevent mother-to-child HIV transmission
- Doctors and health facilities are not located in close proximity to certain poor neighborhoods
- State fails to provide training in palliative care for its medical personnel
- A child in a social care home becomes bedridden due to malnutrition
- Adults and children are placed on the same wards in a psychiatric hospital
- Women with mental disabilities are treated as genderless and denied reproductive health services

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

- ▶ **Art 12 ICESCR:** 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

46. HRC. Concluding Observations of the Human Rights Committee: Chile, 1999. (CCPR/C/79/add.104) See also UN Committee on the Elimination of Discrimination against Women (CEDAW). General Comment 19 of the Committee on the elimination of Discrimination against Women: Violence against Women. (A/47/38 [SUPP]).

- **CESCR GC 14 paras 4, 11 and 12:** The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.
 - **CESCR GC 14 para 12:** Health care and services must be available, in sufficient quantity, accessible (ie physically and economically) to all without discrimination, culturally acceptable and of good quality.
 - **CESCR GC 14 paras. 30-37:** In delivering such services states are under a duty to progressively realize the right to health while ensuring that they respect people's own resources, protect them against the negative actions of third Parties and fulfill or provide sufficient resources where there are none..⁴⁷
 - **CESCR GC 14 paras. 46-52:** Violations of the right to health can be caused by deliberate acts or failures to act by the State.
 - In the context of obligations under Article 12 ICESCR, the CESCR has frequently condemned states for failing to devote adequate resources to health care and services because of the obviously detrimental impact of that failure on patients..⁴⁸
 - The CESCR has required that states should introduce appropriate legislation to safeguard patient rights, including redress for medical errors..⁴⁹
- ▶ **Article 3(3) CRC:** States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.
 - ▶ **Article 24 CRC: 1.** States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. **2.** States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the

47. Some obligations such as non discrimination are immediately realizable without qualification.

48. CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights:Uruguay, 1997. (E/C.12/1/ add.18). Alarm expressed at fact that very low wages paid to nurses led to a low ratio of nurses to doctors (lower than 1:5), tending to diminish the quality and accessibility of medical care available to the community. See also UN Committee on Economic, Social and Cultural Rights (CESCR). Concluding Observations of the Committee on Economic, Social and Cultural Rights: Congo, 2000. (E/C.12/1/add.45). Grave concern expressed at decline of standard of health, due in part to ongoing financial crisis, which resulted in serious shortage of funds for public health services; UN Committee on Economic Social and Cultural Rights (CESCR). Concluding Observations of the Committee on Economic,Social and Cultural Rights:Mongolia, 2000. (E/C.12/1/ add.47). Deteriorating health situation for population since 1990 in light of decreasing government expenditure on health from 5.8 percent of GDP in 1991 to 3.6 percent in 1998.

49. CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russia, 2003. (E/C.12/1/ aDD.94).

development of primary health care;..(d) To ensure appropriate pre-natal and post-natal health care for mothers.

- ▶ In the context of the right to health, the Committee on the Rights of the Child has criticized the incompatibility of a proposed free trade agreement being negotiated by three Latin American countries and the United States and, in particular, the right to access low-cost drugs and social services by poor people.⁵⁰ The committee went to recommend that a study on the impact of a trade standards should be carried out.⁵¹
- ▶ **Art 25 DRC:** States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:
 - (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programs as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs;
 - (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
 - (c) Provide these health services as close as possible to people's own communities, including in rural areas;
 - (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
 - (e) Prohibit discrimination against persons with disabilities in the provision of health

50. CRC. Concluding Observations of the Committee on the Rights of the Child: Ecuador, 2005. (CRC/C/15/add.262). Examen de los informes presentados por los Estados bajo el artículo 44 de la Convención Internacional de los Derechos del Niño (13/09/05).

51. In so doing, the committee was reiterating the recommendations issued by the CESCR in June 2004 (E/C.12/1/add.100), which urged Ecuador to "conduct an evaluation of the effects of international trade standards on the right to health of all persons and to make ample use of the flexibility clauses allowed by the agreement on Trade-Related aspects of intellectual Property of the World Trade Organization (WTO), so as to provide access to generic drugs and, more generally, to enable the Universal enjoyment of the right to health in Ecuador."

insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Right to Freedom from Torture and Cruel, Inhuman, and Degrading Treatment

EXAMPLES OF POTENTIAL VIOLATIONS

- Fearing prosecution by the state, a doctor refuses to prescribe morphine to relieve a patient's pain
- A prisoner suffering from cancer is denied treatment
- A drug user is denied mental health treatment while in detention
- Residents of an institution have no place to keep their personal possessions
- The medical records of residents are available to all staff, including those who are not involved in their care
- Residents of an institution are not allowed to keep their own clothes; all clothes are communal
- Female residents of an institution are required to have showers together, supervised by male staff

HUMAN RIGHTS STANDARDS AND INTERPRETATIONS

- ▶ **Art 7 ICCPR:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- ▶ **Art 10(1) ICCPR:** All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
 - The HRC has made clear that Article 10(1) of the ICCPR applies to any person deprived of liberty under the laws and authority of the State, who is held in prisons, hospitals-particularly psychiatric hospitals-detention camps or correctional institutions or elsewhere, and that

52. HRC. General Comment 21 of the Human Rights Committee. (A/47/40 [SUPP]).

53. HRC. *Kelly v. Jamaica*. Communication no. 256/1987. (CCPR/C/41/D/253/1987). Views adopted April 8, 1991. breach of article 10(1), where a prisoner contracted health problems as a result of a lack of basic medical care and was only allowed out of his cell for 30 minutes each day. see also UN Human Rights Committee (HRC). *Linton v. Jamaica*. Communication no. 255/1987. (CCPR/C/46/D/255/1987). Views adopted October 22, 1992. Denial of adequate medical treatment for injuries sustained during aborted escape attempt breached articles 7 and 10(1); UN Human Rights Committee (HRC). *Bailey v. Jamaica*. Communication no. 334/1988. (CCPR/C/47/D/334/1988); UN Human Rights Committee (HRC). *Thomas v. Jamaica*. Communication no. 321/1988. (CCPR/C/49/D/321/1988). Views adopted October 19, 1993; UN Human Rights Committee (HRC). *Mika Miha v. equatorial guinea*. Communication no. 414/1990. (CCPR/C/51/D/414/1990). Views adopted July 8, 1994; UN Human Rights Committee (HRC). *Colin Johnson v. Jamaica*. Communication no. 653/1995. (CCPR/C/64/D/653/1995). Views adopted October 20, 1998; UN Human Rights Committee (HRC). *Kalenga v. Zambia*. Communication no. 326/1988. (CCPR/C/48/D/326/1988). Views adopted July 27, 1993.

States Parties should ensure that the principle stipulated therein is observed in all institutions and establishments within their jurisdiction where persons are being held.⁵²

The HRC has reaffirmed on a number of occasions that the obligation under Art 10(1) of the ICCPR to treat individuals with respect for the inherent dignity of the human person encompasses the provision of, *inter alia*, adequate medical care during detention⁵³ and, often in conjunction with Article 7, has gone on to find breaches of this obligation on numerous occasions.⁵⁴ Specifically, in relation to the mentally ill in detention facilities (both in prisons and mental health institutions), the HRC has required improvements in hygienic Conditions and the provision of regular exercise and adequate treatment.⁵⁵ Failure to adequately treat a mental illness condition exacerbated by being on death row can also amount to a breach of Articles 7 and/or 10(1).⁵⁶

In relation to Art 10(1) the HRC has found a violation where a prisoner on death row was denied medical treatment⁵⁷ and where severe overcrowding in a pre-trial detention center resulted in inhuman and unhealthy conditions leading eventually to the detainee's death.⁵⁸

Other examples of violations of Articles 7 and 10(1) include a case in which a detainee had been held in solitary confinement in an underground cell, was subjected to torture for three

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54. HRC. *Whyte v. Jamaica*. Communication no. 732/1997. (CCPR/C/63/D/732/1997). Views adopted July 27, 1998. Failure to treat asthma attacks and injuries sustained through beatings. see also *un Human Rights Committee (HRC). Leslie v. Jamaica*. Communication no. 564/1993. (CCPR/C/63/D/564/1993). Views adopted July 31, 1998. Lack of adequate medical treatment for beatings and stabbing on basis that Leslie was due to be executed imminently; UN Human Rights Committee (HRC). *Henry v. Jamaica*. Communication no. 610/1995. (CCPR/C/64/D/610/1995). Views adopted October 20, 1995. Lack of medical treatment despite a recommendation from a doctor that prisoner be operated on; UN Human Rights Committee (HRC). *Pennant v. Jamaica*. Communication no. 647/1995. (CCPR/C/64/D/647/1995). Views adopted October 20, 1998; UN Human Rights Committee (HRC). *Levy v. Jamaica*. Communication no. 719/1996. (CCPR/C/64/D/719/1996). Views adopted November 3, 1998; UN Human Rights Committee (HRC). *Marshall v. Jamaica* Communication no. 730/1996. (CCPR/C/64/D/730/1996). Views adopted November 3, 1998; UN Human Rights Committee (HRC). *Morgan and Williams v. Jamaica*. Communication no. 720/1996. (CCPR/C/64/D/720/1996). Views adopted November 3, 1998; UN Human Rights Committee (HRC). *Morrison v. Jamaica*. Communication no. 663/1995. (CCPR/C/64/D/663/1995). Views adopted November 3, 1998; UN Human Rights Committee (HRC). *Brown v. Jamaica*. Communication no. 775/1997. (CCPR/C/65/D/775/1997). Views adopted March 23, 1999; UN Human Rights Committee (HRC). *Bennett v. Jamaica*. Communication no. 590/1994. (CCPR/C/65/D/590/1994). Views adopted March 25, 1999; UN Human Rights Committee (HRC). *Smith and Stewart v. Jamaica*. Communication no. 668/1995. (CCPR/C/65/D/668/1995). Views adopted April 8, 1999; UN Human Rights Committee (HRC). *Mulezi v. Democratic Republic of the Congo*. Communication no. 962/2001. Views adopted July 6, 2004; UN Human Rights Committee (HRC). *Saidov v. Tajikistan*. Communication no. 964/2001. Views adopted July 8, 2004.
55. HRC. Concluding Observations of the UN Human Rights Committee: Bosnia and Herzegovina, 2006. (CCPR/C/BIH/CO/1)
56. HRC. *Williams v. Jamaica*. Communication no. 609/1995. (CCPR/C/61/D/609/1995). Views adopted November 4, 1997..
57. HRC. *Lewis v. Jamaica*. Communication no. 527/1993. Views adopted July 18, 1996. Appointments to treat skin condition not kept over period of 2S years. See also *Pinto v. Trinidad and Tobago*. Communication no. 232/1987. (CCPR/a/45/40 [vol. II SUPP]). Views adopted July 20, 1990. The HRC reaffirmed that the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention and that this obligation, obviously, extends to persons under the sentence of death. However, the facts did not disclose a violation where the allegations of ill treatment and lack of medical care were uncorroborated and made at a late stage in the application; UN Human Rights Committee (HRC). *Henry and Douglas v. Jamaica*. Communication no. 571/1994. (CCPR/a/51/40 [vol. II SUPP]), CCPR/C/57/D/571/1994). Views adopted July 25, 1996. Keeping Henry in a cold cell after he was diagnosed for cancer breached articles 7 and 10(1); UN Human Rights Committee (HRC). *Leehong v. Jamaica*. Communication no. 613/1995. (CCPR/a/54/40 [vol. II]), (CCPR/C/66/D/613/1995). Views adopted July 13, 1999. Prisoner on death row only allowed to see a doctor once, despite sustained beatings by warders and request for medical attention.
58. HRC. *Lantsova v. the Russian Federation*. Communication no. 763/1997. Views adopted March 26, 2002..
59. HRC. *Setelich/Sendic v. Uruguay*. Communication no. R.14/63. (CCPR/a/37/40). Views adopted October 28, 1981.
60. HRC. *Howell v. Jamaica*. Communication no. 798/1998. (CCPR/a/59/40 [vol. ii], C/79/D/798/1998). Views adopted October 21, 2003).
61. HRC. *Zheludkov v. Ukraine*. Communication no. 726/1996. (CCPR/a/58/40 [vol. ii], CCPR/C/76/D/726/1996). Views adopted October 29, 2002. See concurring opinion of Quiroga, which states that committee's interpretation of article 10(1) relating to access to medical records is unduly narrow and that mere denial of records is sufficient to constitute a breach, regardless of consequences.

months, and was denied the medical treatment his condition required⁶⁰; while in another case the combination of the size of the cells, hygienic conditions, poor diet and lack of dental care resulted in a finding of a breach of Arts 7 and 10(1).⁶⁰

Denying a detainee direct access to his medical records, particularly where this may have consequences for his treatment, can constitute a breach of Art 10(1).⁶¹

Where a violation has occurred, the obligation to provide an effective remedy under Art 2(3) (a) of the ICCPR can include the provision of appropriate medical and psychiatric care.⁶²

- ▶ **Article 1 CAT:** (1) For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (2) This Article is without prejudice to any International instrument or national legislation which does or may contain provisions of wider application.
- ▶ **Article 2 CAT:** (1) Each State Party shall take effective legislative, administrative, judicial or circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture. (3) An order from a superior officer or a public authority may not be invoked as a justification of torture.
- ▶ **Article 4 CAT (1)** Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. (2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature
- ▶ **Article 16 CAT (1)** Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article

I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10,

II, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. (2) The provisions of this Convention are without prejudice to the provisions of any other International instrument or

62. Sahadath v. Trinidad and Tobago (684/1996), ICCPR, A/57/40 vol. II (2 April 2002) 61 (CCPR/C/684/1996) at para 9.

63. HRC. Sahadath v. Trinidad and Tobago. Communication no. 684/1996. (CCPR/a/57/40 [vol. ii], CCPR/C/684/1996). Views adopted April 2, 2002.

64. OHCHR. Concluding Observations: Russia. (Cat/C/Rus/CO/4).

national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

The Committee Against Torture has identified overcrowding, inadequate living conditions, and lengthy confinement in psychiatric hospitals as “tantamount to inhuman or degrading treatment.”⁶³ It has also condemned, in similar terms, extreme overcrowding in prisons where living and hygiene conditions would appear to endanger the health and lives of prisoners⁶⁴ in addition to lack of medical attention.⁶⁵

The Committee has also emphasized that medical personnel who participate in acts of torture should be held accountable and punished.⁶⁶

Note: Special Rapporteurs on Torture

Successive UN Special Rapporteurs on Torture have found numerous abuses of detainees’ health and access to health services that amount to breaches of prohibitions against torture and/or cruel, inhuman, or degrading treatment. Special Rapporteurs have noted that conditions and the inadequacy of medical services are often worse for pretrial detainees than for prisoners.⁶⁷ Some of the worst abuses include: failure to provide new detainees with access to a medical professional and with sanitary living conditions;⁶⁸ failure to segregate those with contagious diseases such as tuberculosis;⁶⁹ completely unacceptable quarantine procedures;⁷⁰ and insufficient provision of food, leading in some instances to conditions approaching starvation.⁷¹

Another issue repeatedly raised by UN Special Rapporteurs on Torture is the impact on the mental health of children who enter the justice system and the accompanying threats presented by inhuman and violent conditions.⁷²

- ▶ **Article 37 CRC:** States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment
- ▶ **Article 39 CRC:** States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

65. OHCHR. Concluding Observations: Nepal. (CAT /C/NPL/CO/2). See also observations on Paraguay (CAT /C/SR.418) and Brazil (CAT /C/ SR.471).

66. OHCHR. Concluding Observations: Argentina. (A/48/44).

67. M. Nowak. Report of the Special Rapporteur on Torture, mission to Jordan (addendum), 2007a. (UN doc. A/HRC/33/Add.3); T. van Boven. Report of the Special Rapporteur on torture, mission to Uzbekistan (addendum), 2003. (UN doc. E/CN.4/2003/68/Add.2).

68. N. S. Rodley. Report of the Special Rapporteur on Torture, mission to the Russian Federation (addendum), 1994. (UN doc CN.4)

69. Rodley. Report of the Special Rapporteur on Torture, mission to Azerbaijan, 2000. (UN doc. E/CN.4/2001/66/Add.1).

70. Rodley. Report of the Special Rapporteur on Torture, mission to Azerbaijan, 2000. (UN doc. E/CN.4/2001/66/Add.1); Nowak. Report of the Special Rapporteur on Torture, mission to Moldova, 2009. (UN doc. A/HRC/10/44/Add.3)

71. Rodley. Report of the Special Rapporteur on Torture, mission to Kenya (addendum), 2000. (UN doc. E/CN.4/2000/9/Add.4).

72. Nowak. Report of the Special Rapporteur on Torture, mission to Nigeria, 2007. (UN doc. A/HRC/7/3/Add.4.0); Nowak. Report of the Special Rapporteur on Torture, mission to Moldova, 2009. (UN doc. A/HRC/10/44/Add.3); Rodley. Report of the Special Rapporteur on Torture, mission to Kenya (addendum), 2000. (UN doc. E/CN.4/2000/9/Add.4).

- ▶ **Art 15 DRC:** 1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. 2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.
- ▶ **Code of Conduct for Law Enforcement Officials**
- ▶ **Article 2:** In the performance of their duty, law enforcement officials shall respect and protect, human dignity and maintain and uphold the human rights of all persons.
- ▶ **Article 5:** No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official in-voke superior orders or exceptional circumstances...as a justification of torture or other cruel, inhuman or degrading treatment or punishment.
- ▶ **Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).** ⁷³
- ▶ **UN Body of Principles for the Protection of All Persons Under Any Form of Detention:**

Principle 1: All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6: No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.
- ▶ **UN Standard Minimum Rules for Treatment of Prisoners** ⁷⁴

Rules 22-26 on Medical Services

Rule 22(1) requires that every institution should have at least one qualified medical officer who has some knowledge of psychiatry. More generally, medical services should be organized in collaboration with the public health system and should include appropriate psychiatric services.

Rule 22(2) requires the transfer of sick prisoners to specialist institutions as appropriate while also ensuring that prison hospitals are properly equipped and staffed. Under Rule 22(3), the services of a qualified dental officer shall be available to every prisoner.

73. OHCHR <http://www.wtrf.net/humanrts/instree/h3pmerph.htm>

74. See also IAPO's Policy Statement on Patient Involvement at <http://www.patientsorganizations.org/showarticle.pl?id=590&n=962>.

Rule 23 focuses on the provision of pre- and postnatal care and nursery care for women and their children and ensures that, whenever practicable, babies will be born in an external hospital.

Rule 24 requires that the medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view to diagnose any physical or mental illnesses and to segregate prisoners with infectious or contagious conditions.

Under Rule 25, the medical officer should see all sick prisoners on a daily basis and report to the prison director whenever he determines that a prisoner's physical or mental health is being adversely affected by his detention. In addition, in line with Rule 26, the medical officer shall regularly inspect and report upon prisoners' food, hygiene, sanitation, heating, lighting, clothing, and bedding. The director shall, after considering the reports, take immediate action as required.

- ▶ **Physicians for Human Rights Principles on the Effective Investigation and Documentation of Torture: the Istanbul Protocol** ⁷⁵

Right to Participate in Public Policy

EXAMPLES OF POTENTIAL VIOLATIONS

- An indigenous group is denied any say in policy decisions affecting their health and well being on the grounds of their perceived lack of competence
- LGBT groups are deliberately excluded from participating in the development of policies on addressing HIV/AIDS

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Art 25 ICCPR:** Every citizen shall have the right and the opportunity, without distinctions (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.
- ▶ **Art 7 CEDAW:** State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (b) [t]o participate in the formulation of government policy and the implementation thereof.

75. Physicians for Human Rights. Istanbul Protocol. www.physiciansforhumanrights.org/library/istanbul-protocol.html

- ▶ **Art 14(2)(a) CEDAW:** the right of rural women to participate in development planning.
- ▶ **Art IV WHO Alma-Ata Declaration:** The people have the right and the duty to participate individually and collectively in the planning and implementation of their healthcare.
- ▶ **Principle 2 IAPO Declaration on Patient-Centered Healthcare: Choice and empowerment**
Patients have a right and responsibility to participate, to their level of ability and preference, as a partner in making healthcare decisions that affect their lives. This requires a responsive health service which provides suitable choices in treatment and management options that fit in with patients' needs, and encouragement and support for patients and careers that direct and manage care to achieve the best possible quality of life. Patients' organizations must be empowered to play meaningful leadership roles in supporting patients and their families to exercise their right to make informed healthcare choices.
- ▶ **Principle 3 IAPO Declaration on Patient-Centered Healthcare : Patient involvement in health policy:⁷⁶**
Patients and patients' organizations deserve to share the responsibility of healthcare policy-making through meaningful and supported engagement in all levels and at all points of decision-making, to ensure that they are designed with the patient at the center. This should not be restricted to healthcare policy but include, for example, social policy that will ultimately impact patients' lives.
- ▶ **Article 12 ICESCR:** The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ... (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
- ▶ **CESCR GC 14, paras. 43 and 54:** The CESCR has called for countries to adopt “a national public health strategy and plan of action” to be “periodically reviewed, on the basis of a participatory and transparent process.” In addition, “[promoting health must involve effective community action in setting priorities, making decisions, planning, Implementing and evaluating strategies to achieve better health. Effective provision of health services can only be assured if people’s participation is secured by States.”

77. CESCR. General Comment 14 of the Committee on Economic, Social and Cultural Rights: The right to the highest attainable standard of health. (E/C.12/2004/4).

78. CESCR. General Comment 16 of the Committee on Economic, Social and Cultural Rights: The equal right of men and women to enjoyment of all economic, social, and cultural rights (article 3 of the International Covenant on Economic, Social and Cultural Rights). (E/C.12/2005/4).

Right to Nondiscrimination and Equality

EXAMPLES OF POTENTIAL VIOLATIONS

- Asylum seekers are denied access to all health care apart from emergency treatment
- Hospitals routinely place Roma women in separate maternity wards
- Drug users are underrepresented in HIV treatment programs despite accounting for a majority of the people living with HIV
- A woman with a diagnosis of schizophrenia is told by nursing staff that her abdominal pains are “all in your mind”; she is later diagnosed as having ovarian cancer

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Article 26 ICCPR:** *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- ▶ **Article 2(2) ICCPR; Article 2(2) ICESCR:** *The States Parties to the present Covenant undertake to guarantee the rights enunciated in the present Covenant shall be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status.*
- **CESCR GC 14, para. 12:** The CESCR has stated that health facilities, goods, and services have to be accessible to everyone without discrimination “and especially to the most vulnerable and marginalized sections of the population.” In particular, such health facilities, goods, and services “must be affordable for all,” and “poorer households should not be disproportionately burdened with health expenses as compared to richer households.” The CESCR has further urged particular attention to the needs of “ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS.”
- **CESCR GC 5, para. 15:** The CESCR has defined disability-based discrimination as “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.” It has gone on to emphasize the need “to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.”⁷⁷

77. CESCR. General Comment 14 of the Committee on Economic, Social and Cultural Rights: The right to the highest attainable standard of health. (E/C.12/2004/4).

To ensure equality between men and women in accessing health care, the CESCR has stated that it requires, at a minimum, the removal of legal and other obstacles that prevent men and women from accessing and benefiting from health care on the basis of gender. This requirement includes, inter alia, addressing the ways in which gender roles affect access to determinants of health, such as water and food; the removal of legal restrictions on reproductive health provisions; the prohibition of female genital mutilation; and the provision of adequate training for health care workers to deal with women's health issues.⁷⁸

- ▶ **Article 5 CERD:** *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ... (iv) The right to public health, medical care, social security and social services.*
 - CERD GR 30, para. 36: The CERD has recommended that the States that are party to the Convention, as appropriate to their specific circumstances, ensure that they respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.
- ▶ **Article 12 CEDAW:** *(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (2) Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*
- ▶ **Article 14(2)(b) CEDAW:** *States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: To have access to adequate health care facilities, including information, counselling and services in family planning.*
- ▶ **Article 23 CRC:** *(1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. (2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. (3) Recognizing the special needs of a disabled child,*

78. CESCR. General Comment 16 of the Committee on Economic, Social and Cultural Rights: The equal right of men and women to enjoyment of all economic, social, and cultural rights (article 3 of the International Covenant on Economic, Social and Cultural Rights). (E/C.12/2005/4).

assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development. (4) States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

- ▶ **Article 28 CMW:** *Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.*
- ▶ **Article 43 CMW:** *(1) Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met; (2) States Parties shall promote conditions to ensure effective equality of treatment to enable migrant workers to enjoy the rights mentioned in paragraph 1 of the present article whenever the terms of their stay, as authorized by the State of employment, meet the appropriate requirements.*
- ▶ **Article 45(1)(c) CMW:** *(1) Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to: Access to social and health services, provided that requirements for participation in the respective schemes are met.*
- ▶ **Article 1 CRPD:** *The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*
- ▶ **Article 12 CRPD:** *(1) States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law. (2) States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. (3) States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. (4) States Parties shall ensure that*

all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.

- ▶ **Article 25 CRPD:** *States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation.*

- ▶ **Article 23 Convention Relating to the Status of Refugees**

- ▶ *The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.*

- ▶ **Article 3 Charter on the Right to Health:** *Duty of states to institute health services that are available, accessible, and affordable for every individual.*

- ▶ **Principle 1 WMA Declaration on the Rights of the Patients:** *Every person is entitled without discrimination to appropriate medical care.*

- ▶ **Principle 4 IAPO Declaration**

Patients must have access to the health care services warranted by their condition. This includes access to safe, quality and appropriate services, treatments, preventive care and health promotion activities. Provision should be made to ensure that all patients can access necessary services, regardless of their condition or socio-economic status. For patients to achieve the best possible quality of life, health care must support patients' emotional requirements, and consider non-health factors such as education, employment and family issues which impact on their approach to health care choices and management.

- ▶ **Resolution on Medical Care for Refugees (World Medical Association)⁷⁹**

Physicians have a duty to provide appropriate medical care regardless of the civil or political status of the patient, and governments should not deny patients the right to receive, nor should they interfere with physicians' obligation to administer, adequate treatment; and

Physicians cannot be compelled to participate in any punitive or judicial action involving refugees or IDPs or to administer any non-medically justified diagnostic measure or treatment, such as sedatives to facilitate easy deportation from the country or relocation; and

Physicians must be allowed adequate time and sufficient resources to assess the physical and psychological condition of refugees who are seeking asylum.

Note: The right to nondiscrimination and equal access to medical services

79. World Medical Association. Resolution on Medical Care for Refugees. www.wma.net/e/policy/m10.htm. Accessed November 22, 2009.

UN treaty bodies have frequently condemned states for failing to ensure equal access to medical services (often due to a lack of sufficient resources) for marginalized and vulnerable groups. These groups have included indigenous people living in extreme poverty;⁸⁰ refugees of a particular nationality;⁸¹ children, older persons, and persons with physical and mental disabilities;⁸² and those living in rural areas where the geographical distribution of health services and personnel shows a heavy urban bias.⁸³ In one country, the CESCR noted with regret that 90 percent of the population had no access to health services.⁸⁴ In another case, a state was criticized for inadequate medical care provided to low-income patients and was urged to subsidize expensive drugs required by chronically ill and mentally ill patients.⁸⁵

Treaty bodies have emphasized the importance of ensuring that those infected with particular diseases, such as HIV/AIDS, should not be the subject of discrimination and stigmatized as a result of their medical condition.⁸⁶

Two groups that continue to suffer from unequal access to health services are women and young people, which frequently leads to high mortality rates.⁸⁷ Both groups, particularly women living in rural areas⁸⁸ and especially vulnerable groups of children (such as girls, indigenous children, and children living in poverty), will often experience multiple discrimination, requiring specific targeted measures and sufficient budgetary allocations.⁸⁹

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80. CERD. Concluding Observations of the Committee on the Elimination of Racial Discrimination: Bolivia, 1996. (CERD/C/304/Add.10). See also CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mexico, 1999. (E/C.12/1/Add.14). State was urged to take more effective measures to ensure access to basic health care services for all children and to combat malnutrition, especially among children belonging to indigenous groups living in rural and remote areas.
 81. CERD. Concluding Observations: Japan, 2001. (A/56/18 [SUPP]). Different standards of treatment are applied to Indochinese refugees compared to those from other nationalities.
 82. CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Finland, 2000. (E/C.12/1/Add.52). Failure of certain municipalities to allocate sufficient funds to health care services, resulting in inequality with regard to levels of provision depending on the place of residence.
 83. CESCR. Concluding Observations: Mali, 1994. (E/1995/22). See also concluding observations Guatemala, 1996. (E/1997/22); Paraguay, 1996. (E/1997/22 (1996)). Noting the very small number of medical and paramedical personnel in the country; Mongolia, 2000. (E/2001/22). Noting the long-term deterioration in health situation and need to improve access to health care services for the poor and in rural areas.
 84. CESCR. Concluding Observations: Nepal, 2001. (E/2002/22). The committee notes that under the current national health plan for 1997–2017, the role of the state in the development of a national health care system, consistent with the structural adjustment programs, is minimized. It further notes that the mental health service was insufficient and that no community mental health program was available.
 85. CESCR. Concluding Observations: China, 2005. (E/C.12/1/ADD.107). See also concluding observations Russian Federation, 2003. (E/C.12/1/ADD.94). Committee criticizes Russia for frequent failure of hospitals and clinics in poor regions to stock essential drugs.
 86. CEDAW. Report of the Committee on the Elimination of Discrimination against Women, 2001. (A/56/38 [SUPP]). See also CESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation, 2003. (E/2004/22).
 87. ICESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Peru, 1997. (E/1998/22). See also concluding observations Ukraine, 2001. (E/2002/22). Noting deterioration in the health of the most vulnerable groups, especially women and children, and in the quality of health services. Committee urges state to ensure that its commitment to primary health care is met by adequate allocation of resources and that all persons, especially from the most vulnerable groups, have access to health care.
 88. CEDAW. Report of the Committee on the Elimination of Discrimination against Women: Burkina Faso, 2000. (A/55/38).
 89. CRC. Convention on the Rights of the Child. Concluding Observations: Bolivia, 1993. (CRC/C/16).

2.4 Providers' Rights

Numerous international treaties and conventions include rights that are designed to protect workers and ensure safe and healthy work environments. The United Nations and its agencies, including the International Labor Organization, have developed some of these international labor standards and monitor their implementation. This section presents several standards and how they have been interpreted in relation to three key rights for health care providers. These include the right to (i) work in decent conditions, including the receipt of fair pay; (ii) freedom of association, including association with trade unions and the right to strike; and (iii) due process and related rights to receive a fair hearing and an effective remedy, protection of privacy and reputation, and freedom of expression and information.

Part I of this section covers the right to work in decent conditions. Part II discusses the right to freedom of association. Part III explores the right to due process and related rights. Each section begins with a discussion of the significance of that particular right for health providers and is followed by examples of potential violations. The relevant standards from various UN treaties are reproduced, including those of general application and the standards that refer to particular groups. Key interpretative materials are then summarized, and interpretive guidelines are drawn from the concluding observations, general comments, and case law of official monitoring bodies.

Right to Work in Decent Conditions

UN treaty-monitoring bodies have made it clear that there is no right that requires an individual be provided with work or the occupation of one's choice. States must, however, refrain from unduly hindering the ability of individuals to freely pursue their chosen careers. Furthermore, states are required to ensure the fair treatment of migrant workers, a requirement that is particularly relevant for medical professionals, who are often recruited from other countries to staff hospitals and clinics. The Convention on Migrant Workers emphasizes states' obligation to foreign-born employees.

The UN bodies have conducted surveys of workers' pay and conditions, and these investigations have resulted in specific references to the treatment of health care personnel. The concern for medical professionals is driven in part by the poor remuneration that they receive in some countries.

Right to Work

EXAMPLES OF POTENTIAL VIOLATIONS

- All overseas migrant workers from country X, including a number who are employed as doctors and nurses, are summarily expelled after diplomatic relations are broken off following a trade dispute
- Female employees are subject to frequent sexual harassment by other members of staff with no action taken to stop harassment
- There is no regulation of working hours for medical staff, who are frequently required to work in excess of 80 hours per week

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Article 23(1) Universal Declaration of Human Rights (UDHR):** *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- ▶ **Article 6(1) International Covenant on Economic, Social and Cultural Rights (ICESCR):** *(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
 - **CESCR GC 18, para. 1:** *The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.*
 - **CESCR GC 18, para. 4:** *The right to work, as guaranteed in the ICESCR, affirms the obligation*

of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. This definition underlines the fact that respect for the individual and his dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the importance of work for personal development as well as for social and economic inclusion.

- **CESCR GC 18, paras. 6, 23, and 25:** The right to work does not mean there is an absolute and unconditional right to obtain employment but that rather that the state should ensure that neither itself or others (such as private companies) do anything unreasonably or in a discriminatory way to prevent a person from earning a living or practicing their profession.
- **CESCR GC 16, para. 23:** *Implementing article 3, in relation to article 6, requires inter alia, that in law and in practice, men and women have equal access to jobs at all levels and all occupations and that vocational training and guidance programmes, in both the public and private sectors, provide men and women with the skills, information and knowledge necessary for them to benefit equally from the right to work.*
- In addition to frequent criticisms of states' high levels of unemployment, the CESCR has also condemned (a) the expulsion of HIV-positive foreign workers with valid work permits;⁹⁰ (b) the disproportionate number of women in low paid part time work;⁹¹ and (c) the downsizing of the public sector with significant social repercussions.⁹²

▶ **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**

- The CERD has expressed concern on numerous occasions about the failure of states to address the lack of employment opportunities for ethnic minorities and migrant workers.⁹³
- The CERD has held that the examination and quota system for doctors trained overseas did not breach a migrant worker's right, under Article 5(e)(i) of the ICERD. Article 5(e)(i) guarantees the right to work and freely choose employment without distinction as to race, color, or national or ethnic origin.⁹⁴

Article 11 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998:⁹⁵ *Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those*

90. ICESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Libyan Arab Jamahiriya, 1997. (E/1998/22 (1997)).

91. ICESCR. Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 1997. (E/1998/22). See also concluding observations on Ukraine, 1995 (E/1996/22).

92. ICESCR. Concluding Observations: Solomon Islands, 1999. (E/2000/22).

93. CERD. Concluding Observations of the Committee on the Elimination of Racial Discrimination: Poland, 1997. (A/52/18). See also concluding observations Norway, 1994 (A/49/18); United Kingdom of Great Britain and Northern Ireland, 1991 (A/46/18); Israel, 1998 (A/53/18); The Netherlands, 1998 (A/53/18); Lebanon, 1998 (A/53/18); Azerbaijan, 1999 (A/54/18); Denmark, 2000 (A/55/18); Latvia, 2003 (A/58/18); Iceland, 2005 (A/60/18); and Turkmenistan, 2005 (A/60/18).

94. CERD. Opinion regarding B. M. S. v. Australia, 1996. (C/54/D/8/1996); Procedural Decisions, 1999. (A/54/18).

95. UN General Assembly Resolution 53/144. December 9, 1998.

rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Standards related to women

- ▶ **Article 11(1) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

(a) *the right to work as an inalienable right of all human beings; ...*

(c) *The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;...*

Standards related to migrant workers

- ▶ **Article 51 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:** *Migrant workers who in the State of employment are not permitted freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permit, except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. Such migrant workers shall have the right to seek alternative employment, participation in public work schemes and retraining during the remaining period of their authorization to work, subject to such conditions and limitations as are specified in the authorization to work.*

Right to Fair Pay and Safe Working Conditions

EXAMPLES OF POTENTIAL VIOLATIONS

- Nurses and ancillary staff are paid less than the national minimum wage
- A staff canteen remains open despite repeatedly failing to meet basic hygiene standards
- Medical staff in the X-ray department are frequently exposed to dangerously high levels of radiation due to faulty equipment that has not been checked or replaced
- A nurse is infected with HIV due to improperly sterilized medical equipment

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Article 7 ICESCR:** *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration*

which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

▶ **Article 12 ICESCR: (1)** *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for ... (b) [t]he improvement of all aspects of environmental and industrial hygiene. ...*

- The CESCR has expressed concern about a range of working-condition issues, including: the need to harmonize the labor code with international standards, especially with regard to maternity leave;⁹⁶ disparities in pay and conditions between the private and public sectors (in teaching);⁹⁷ discrimination in employment on the grounds of political opinion;⁹⁸ the lack of a national minimum wage for public sector employees and the serious deterioration of some of those employees' (specifically, teachers') salaries in terms of purchasing power; the conflictual nature of relations between teachers and the state and the apparent ineffectiveness of the measures taken to remedy that situation;⁹⁹ ineffective campaigns to increase awareness of hygiene and safety in the workplace where they are frequently below established standards;¹⁰⁰ the fact that standards for the protection of workers concerning limits on the duration of the working day and weekly rest are not always fully met due to some areas of the private sector being dilatory in enforcing the relevant legislation; the lack of legislation to protect workers who are not covered by collective bargaining agreements in relation to a minimum wage, health and maternal benefits, and safe working conditions;¹⁰² unsafe working conditions and lack of compensation for workplace injury;¹⁰³ the privatization of labor inspections and control systems;¹⁰⁴ legislation that favors individual negotiation with employers over collective bargaining;¹⁰⁵ the need for effective implementation of legislative

96. ICESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ecuador, 1990. (E/1991/23).

97. ICESCR. Concluding Observations: Spain, 1991. (E/1992/23); Concluding observations Columbia, 1991 (E/1992/23).

98. ICESCR. Concluding Observations: Germany, 1993. (E/1994/23).

99. ICESCR. Concluding Observations: Uruguay, 1994. (E/1995/22). See also concluding observations Finland, 1996. (E/1997/22).

100. ICESCR. Concluding Observations: Argentina, 1994. (E/1995/22).

101. ICESCR. Concluding Observations: Austria, 1994. (E/1995/22).

102. ICESCR. Concluding Observations: Suriname, 1995. (E/1996/22).

103. ICESCR. Concluding Observations: Russian Federation, 1997. (E/1998/22). The committee later condemned the large number of illegal dismissals and nonpayment of wages.

104. ICESCR. Concluding Observations: Argentina, 1999. (E/2000/22).

105. ICESCR. Concluding Observations: Australia, 2000. (E/2001/22).

provisions concerning job security,¹⁰⁶ and the allowance of excessive working hours in both the public and private sectors.¹⁰⁷

▶ **International Convention on Civil and Political Rights (CCPR)**

- The UN Human Rights Council (HRC) has condemned sexual harassment in the workplace¹⁰⁸ and the lack of implementation of laws concerning labor standards. Laws concerning labor standards include those that call for adequate monitoring of working conditions and sufficient funding for labor inspection workforce.¹⁰⁹

▶ **Article 4 International Labour Organization (ILO) Occupational Safety and Health Convention No. 155, 1981:**¹¹⁰ *The state is under an obligation to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment with the aim of preventing accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.*

▶ **Article 3(1) ILO Occupational Health Services Convention No. 161, 1985**¹¹¹

States undertake to develop progressively occupational health services for all workers, including those in the public sector.

▶ **Article 2(1) ILO Promotional Framework for Occupational Safety and Health Convention No. 187, 2006:**¹¹² *States under a duty to promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases and deaths, by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system and national programme.*

Standards related to nursing staff

▶ **ILO Nursing Personnel Convention**¹¹³ **No. 149, 1977:**¹¹⁴

106. ICESCR. Concluding Observations: Finland, 2000. (E/2001/22).

107. ICESCR. Concluding Observations: Japan, 2001. (E/2002/22).

108. ICCPR. Chile, 1999. (A/54/40 [vol. 1]). See also ICCPR. Trinidad and Tobago, 2001. (A/56/40 [vol. I]).

109. ICCPR. Dominican Republic, 1993. (A/48/40 [vol. I]). See also ICESCR. El Salvador, 1996. (E/1997/22).

110. International Labour Organization (ILO). Occupational Health Services Convention No. 155, 1981. http://www.ilocarib.org.tt/projects/cariblex/conventions_19.shtml.

111. ILO. Occupational Health Services Convention No. 161, 1985. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C161>.

112. ILO. Promotional Framework for Occupational Safety and Health Convention. <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C187>

113. ILO. Nursing Personnel Convention No. 149, 1977. <http://www.ilo.org/public/english/dialogue/sector/publ/health/c149.pdf>. The preamble states: *Recognising the vital role played by nursing personnel, together with other workers in the field of health, in the protection and improvement of the health and welfare of the population, and Recognising that the public sector as an employer of nursing personnel should play an active role in the improvement of conditions of employment and work of nursing personnel, and Noting that the present situation of nursing personnel in many countries, in which there is a shortage of qualified persons and existing staff are not always utilised to best effect, is an obstacle to the development of effective health services, and Recalling that nursing personnel are covered by many international labour Conventions and Recommendations laying down general standards concerning employment and conditions of work, such as instruments on discrimination, on freedom of association and the right to bargain collectively, on voluntary conciliation and arbitration, on hours of work, holidays with pay and paid educational leave, on social security and welfare facilities, and on maternity protection and the protection of workers' health, and Considering that the special conditions in which nursing is carried out make it desirable to supplement the above-mentioned general standards by standards specific to nursing personnel, designed to enable them to enjoy a status corresponding to their role in the field of health and acceptable to them, and Noting that the following standards have been framed in co-operation with the World Health Organisation and that there will be continuing co-operation with that Organisation in promoting and securing the application of these standards...*

114. ILO. Table of ratifications. <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C149>.

Article 1(2): *This Convention applies to all nursing personnel, wherever they work.*

- ▶ **Article 2:** *(1) Each Member which ratifies this Convention shall adopt and apply, in a manner appropriate to national conditions, a policy concerning nursing services and nursing personnel designed, within the framework of a general health programme, where such a programme exists, and within the resources available for health care as a whole, to provide the quantity and quality of nursing care necessary for attaining the highest possible level of health for the population. (2) In particular, it shall take the necessary measures to provide nursing personnel with— (a) education and training appropriate to the exercise of their functions; and (b) employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it. (3) The policy mentioned in paragraph 1 of this Article shall be formulated in consultation with the employers' and workers' organisations concerned, where such organisations exist. (4) This policy shall be co-ordinated with policies relating to other aspects of health care and to other workers in the field of health, in consultation with the employers' and workers' organisations concerned.*

Article 6: *Nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned in the following fields: (a) hours of work, including regulation and compensation of overtime, inconvenient hours and shift work; (b) weekly rest; (c) paid annual holidays; (d) educational leave; (e) maternity leave; (f) sick leave; (g) social security.*

Article 7: *Each Member shall, if necessary, endeavour to improve existing laws and regulations on occupational health and safety by adapting them to the special nature of nursing work and of the environment in which it is carried out.*

Note: Working Conditions and Health Care Professionals

UN treaty-monitoring bodies have made specific reference to health personnel on numerous occasions. There is general consensus about the need to take measures to increase the salaries of nurses.¹¹⁵ The failure to pay medical staff their salaries for extended periods also presents an issue, as it leads many doctors to seek employment overseas. Monitoring bodies have also noted the pressing need to allocate funds to hospitals and health care services on a priority basis in order to restore health services to an operational level and to ensure that doctors, nurses, and other medical personnel are able to resume work as soon as possible.¹¹⁶ The low wages of the medical staff and the suboptimal living and working conditions in hospitals have also generated concern.¹¹⁷ Finally, the "brain drain" associated with the exodus of health professionals due to poor working conditions in the health sector in their home countries has been cited as problematic.¹¹⁸

115. ICESCR. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Uruguay, 1997. (E/1998/22).

116. CRC. Concluding Observations of the Committee on the Rights of the Child: Solomon Islands, 2003. (CRC/C/132).

117. ICESCR. Concluding Observations: Georgia, 2002. (E/2003/22).

118. ICESCR. Concluding Observations: Zambia, 2005. (E/2006/22).

Standards related to women

- ▶ **Article 10(2) ICESCR:** *Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
- ▶ **Article 7 ICESCR:** *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*
- **CESCR GC 16, para. 24:** *Article 7 (a) of the Covenant requires States parties to recognize the right of everyone to enjoy just and favourable conditions of work and to ensure, among other things, fair wages and equal pay for work of equal value. Article 3, in relation to article 7 requires, inter alia, that the State party identify and eliminate the underlying causes of pay differentials, such as gender-biased job evaluation or the perception that productivity differences between men and women exist. Furthermore, the State party should monitor compliance by the private sector with national legislation on working conditions through an effectively functioning labour inspectorate. The State party should adopt legislation that prescribes equal consideration in promotion, non-wage compensation and equal opportunity and support for vocational or professional development in the workplace. Finally, the State party should reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members.*
- ▶ **Article 11(1)(f) CEDAW:** *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... [t]he right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*
- ▶ **Article 11(2) CEDAW:** *In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*

- **CEDAW General Recommendation 24 on Article 12, para. 28:** *When reporting on measures taken to comply with article 12, States parties are urged to recognize its interconnection with other articles in the Convention that have a bearing on women's health. Those articles include ... article 11, which is concerned, in part, with the protection of women's health and safety in working conditions, including the safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and with the provision of paid maternity leave.*
- CEDAW has offered frequent criticism of the disproportionate number of women occupying low-paid, low-skilled, and part-time work, including in the health sector.¹¹⁹ The CEDAW committee has also highlighted the relative absence of women from high decision-making professional and administrative positions in both the public and private sectors (evidence of the so-called "glass-ceiling" phenomenon).¹²⁰
- CEDAW has also condemned: the lack of regulations to penalize and remedy sexual harassment in the workplace in the private sector;^{121, 122} the poor working conditions of women workers in both the private and the public sectors, particularly with respect to the nonimplementation of minimum wage levels and the lack of social and health benefits;¹²³ discrimination against women on the grounds of pregnancy and maternity in spite of policies that prohibit this practice;¹²⁴ the lack of affordable childcare;¹²⁵ and the need to expand the number of crèches available for working mothers.¹²⁶

Standards related to workers with disabilities

- ▶ **Article 7 CESCR:** *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular...*
- **CESCR GC 5, para. 25:** The right to "the enjoyment of just and favourable conditions of work" (Article 7) applies to all disabled workers, whether they work in sheltered facilities or in the open labor market. Disabled workers may not be discriminated against with respect to wages or other conditions if their work is equal to that of nondisabled workers. States parties have a responsibility to ensure that disability is not used as an excuse for creating low standards of labor protection or for paying below-minimum wages.

119. CEDAW. Report of the Committee on the Elimination of Discrimination against Women: Belarus, 2004. (A/59/38 [part II]).

120. CEDAW. Report of the Committee: Finland, 1995. (A/50/38). See also reports of the committee on Ethiopia, 1996 (A/51/38) and Albania, 2003 (A/58/38 [part II]).

121. CEDAW. Report of the Committee: Argentina, 1997. (A/52/38/Rev. 1 [part II]). See also report of the committee on Cuba, 2000 (A/55/38 [part II]).

122. CEDAW. Report of the Committee: China, 1999. (A/54/38/Rev.1 [part II]).

123. CEDAW. Report of the Committee: Bangladesh, 1997. (A/52/38/Rev.1 [part II]).

124. CEDAW. Report of the Committee: Guyana, 2001. (A/56/38 [part II]). The committee recommended development of a national policy for the private and public sectors to include minimum mandatory and paid maternity and parental leave and also to include provisions for effective sanctions and remedies for violation of laws regarding maternity leave. It also recommended establishment of training programs for the staff of the labor office to facilitate prosecution and ensure the effective enforcement of existing laws for both the public and private sectors.

125. CEDAW. Report of the Committee: Ireland, 2005. (A/60/38 [part II]).

126. CEDAW. Report of the Committee: Bangladesh, 2004. (A/59/38 [part II]).

Standards related to race, noncitizens, and migrant workers

- ▶ **Article 5(e)(i) CERD:** *In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.*
- **CERD GC 30, paras. 33–35:** *[The committee recommends] that the States parties to the Convention, as appropriate to their specific circumstances, adopt the following measures: ... (33) Take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects; (34) Take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, in particular by non-citizen domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault; (35) Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.*
- ▶ **Article 25 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1)** *Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and: (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms; (b) Other terms of employment, that is to say, minimum age of employment, restriction on home work and any other matters which, according to national law and practice, are considered a term of employment. (2) It shall not be lawful to derogate in private contracts of employment from the principle of equality of treatment referred to in paragraph 1 of the present article. (3) States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity.*
- ▶ **Article 70:** *States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.*

Right to Freedom of Association

The ability of workers to be able to form, join, and run associations without undue interference is critical to their ability to effectively defend their rights. Health care professionals enjoy the same collective action rights as other employees. Although the health sector provides an essential service, this fact only precludes its members from work stoppage in certain exceptional circumstances. Although UN jurisprudence on freedom of association has focused on the treatment of NGOs and political parties, the interpretation of the core aspects of the right can also be applied to professional associations and trade unions. The latter are also the subject of relevant ILO standards.

Certain provisions of the UN Human Rights Defenders Declaration emphasize the role of health care providers as human rights defenders who implement and protect social rights and fundamental civil rights, such as life and freedom from torture and inhuman or degrading treatment.¹²⁷

Right to Freedom of Association and Assembly

EXAMPLES OF POTENTIAL VIOLATIONS

- A professional medical association is not approved by the Ministry of Health because its president is a leading member of an opposition political party
- Authorities prevent a rally for improved pay and conditions for health workers from taking place without any justification

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

General standards

- ▶ **Article 20 Universal Declaration of Human Rights (UDHR):** *(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.*
- ▶ **Article 21 International Covenant on Civil and Political Rights (ICCPR):** *The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*
 - Although freedom of assembly is not an absolute right, any restrictions on the ability of people to peacefully protest must be justified in line with the conditions explicitly stated in Article 21 of the ICCPR.¹²⁸

127. UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. (A/RES/53/144). [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En).

▶ **Article 22 ICCPR:** (1) *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. (3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

- It is not clear whether Article 22 of the ICCPR also includes the freedom not to join an association, in which case trade union "closed shop" practices would amount to a breach, although it is probable that the article does include this freedom.¹²⁹
- Procedural formalities for recognition of associations must not be so onerous as to amount to a substantive restriction on Article 22 of the ICCPR.¹³⁰
- Although legislation governing the incorporation and status of associations may be, on its face, compatible with Article 22, de facto state practice restricting the right to freedom of association through a process of prior licensing and control has been condemned.¹³¹

▶ **Article 2 ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise:**¹³² *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

- The right to establish and to join organizations for the promotion and defense of workers' interests without previous authorization is a fundamental right under Article 2 of ILO Convention No. 87 that should be enjoyed by all workers without any distinction whatsoever; hospital personnel are entitled to take full advantage of this right.¹³³
- A law providing that the right of association is subject to authorization granted by a government department purely in its discretion is incompatible with the principle of freedom of association as guaranteed by ILO Convention No. 87.¹³⁴

▶ **UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**

128. S. Joseph, J. Schultz, and M. Castan. *The ICCPR: Cases, Materials and Commentary*. (Oxford: Oxford University Press, 2004), 569.

129. *Ibid.*, 582. See also HRC. *Gauthier v. Canada*. Communication No. 633/1995. Views adopted May 5, 1999.

130. HRC. *Concluding Observations of the Human Rights Committee: Belarus, 1997*. (CCPR/C/79/Add.); *Concluding Observations: Lithuania, 1997*. (CCPR/C/79/Add.87).

131. HRC. *Concluding Observations: Lebanon, 1997*. (A/52/40 [vol. I]).

132. ILO. *Table of ratifications*. <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C087>.

133. ILO. *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee, 2005*.

134. ILO. *Freedom of Association: Digest of Decisions and Principles, 2005; Digest of Decisions and Principles, 1996; and 332nd Report of the Freedom of Association Committee. Case No. 2225*.

(the Human Rights Defenders Declaration) 1998¹³⁵

Article 1: *Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.*

Article 5: *For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; (b) To form, join and participate in non-governmental organizations, associations or groups; (c) To communicate with non-governmental or intergovernmental organizations.*

Standards related to women

- ▶ **Article 7(c) CEDAW:** *States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.*
- ▶ **Article 3 CEDAW:** *States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*
- **CESCR GC 16 on Article 3: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, E/2006/22 (2005) 116, para. 25:** *Article 8, paragraph 1 (a), of the Covenant requires States parties to ensure the right of everyone to form and join trade unions of his or her choice. Article 3, in relation to article 8, requires allowing men and women to organize and join workers' associations that address their specific concerns. In this regard, particular attention should be given to domestic workers, rural women, women working in female-dominated industries and women working at home, who are often deprived of this right.*

Standards related to race

- ▶ **Article 5(d)(ix) CERD:** *In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [t]he right to freedom of peaceful assembly and association.*

135. UN General Assembly Resolution 53/144. December 9, 1998. [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En).

Trade Unions and the Right to Strike

EXAMPLES OF POTENTIAL VIOLATIONS

- Health sector trade unions or professional associations have not been approved by the Ministry of Health to represent members
- A nurse cannot work at a particular hospital unless she joins the only trade union recognized by the management, as part of a "closed shop" agreement
- Some doctors and nurses are dismissed after taking collective action over their poor pay and conditions

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Article 22 ICCPR: (1)** *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. (3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*
 - Trade unions have specific protection under Article 22(1) of the ICCPR;¹³⁶ Article 22(3) emphasizes preexisting obligations under ILO Convention 87.
 - The need for multiple trade unions to be lawfully guaranteed has been emphasized by both the HRC and the CESCR,¹³⁷ and the absence of enabling legislation has been condemned.¹³⁸
 - Workers' rights—including collective bargaining, protection against reprisals for exercising free association rights, and freedom from unnecessary interference in trade union activities—have been reaffirmed by the HRC¹³⁹ and the CESCR¹⁴⁰ on numerous occasions.
 - The HRC has found breaches of both Article 22 and 19 (free expression) for the unlawful detention of individuals because of their trade union activities.¹⁴¹
 - Trade union protection includes ensuring that foreign workers are not barred from holding

136. Article 22(1) of the ICCPR reads: *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

137. ICCPR. Brazil, 1996. (A/51/40 [vol. I]); ICESCR. Rwanda, 1989. (E/1989/22).

138. ICCPR. Georgia, 1997. (A/52/40 [vol. I]).

official positions and that unions are not dissolved by the executive.¹⁴²

- Article 22(3) does not implicitly guarantee the right to strike.¹⁴³
- The denial to civil servants of the right to form associations and to bargain collectively has been condemned as a violation of Article 22 of the ICCPR.¹⁴⁴
- An absolute ban on strikes by public servants who are not exercising authority in the name of the state and are not engaged in "essential services," as defined by the ILO, may violate Article 22 of the ICCPR.¹⁴⁵

▶ **Article 23(4) UDHR:** *Everyone has the right to form and to join trade unions for the protection of his interests.*

▶ **Article 8 ICESCR**

1. *The States Parties to the present Covenant undertake to ensure:*

(a) *The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

(b) *The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;*

(c) *The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

(d) *The right to strike, provided that it is exercised in conformity with the laws of the particular country.*

2. *This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*

3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a*

139. ICCPR. Costa Rica, 1999. (A/54/40 [vol. I]). "Freedom of association, including the right to collective bargaining, should be guaranteed to all individuals. Labour legislation should be reviewed and, where necessary, reformed to introduce measures of protection against reprisals for attempts to form associations and trade unions and to ensure that workers have access to speedy and effective remedies." See also Dominican Republic, 2001. (A/56/40 [vol. I]); Argentina, 1995. (A/50/40 [vol. I]); Guatemala, 1996. (A/51/40 [vol. I]); Nigeria, 1996. (A/51/40 [vol. I]); Bolivia, 1997. (A/52/40 [vol. I]); Venezuela, 2001. (A/56/40 [vol. I]).

140. ICESCR. Jamaica, 1990. (E/1990/23).

141. Burgos v. Uruguay. (R.12/52); ICCPR. A/36/40. July 29, 1981; Pietraroia v. Uruguay. (R.10/44); ICCPR. A/36/40. March 27, 1981; Weinberger v. Uruguay. (R.7/28); ICCPR. A/36/40. October 29, 1980; Sohn v. Republic of Korea. (518/1992); ICCPR. (A/50/40 [vol. II]). July 19, 1995. (CCPR/C/54/D/518/1992).

142. HRC. Concluding Observations of the Human Rights Committee: Senegal, 1997. (CCPR/C/79/Add.).

143. Majority view in J. B. and Ors v. Canada. (118/82). A sizeable minority of the committee dissented, however.

144. HRC. Concluding Observations: Lebanon, 1997. (A/52/40 [vol. I]); ICCPR. Chile, 1999. (A/54/40 [vol. I]).

145. ICCPR. Germany, 1997. (A/52/40 [vol. I]).

manner as would prejudice, the guarantees provided for in that Convention.

- In contrast to Article 22(3) ICCPR, Article 8(1)(d) ICESCR contains an explicit guarantee of the right to strike, which the CESCR has stated could be self-executing.¹⁴⁶
- "Consultation and co-operation are no substitute for the right to strike" under Article 8(1) of the ICESCR.¹⁴⁷
- The CESCR has condemned the refusal of some employers to recognize or deal with new, "alternative" unions and the fact that some employers take adverse action, including dismissal, against union activists.¹⁴⁸
- The apparent lack of measures to enable workers' and employers' organizations to participate in discussions about the determination of minimum wages for public sector employees has been criticized by the CESCR,¹⁴⁹ as has been the failure to enact legislative measures to regulate the access of employers' and workers' organizations to the National Labour Council and other relevant organs.¹⁵⁰

▶ **ILO Convention 87 on the Freedom of Association and Protection of the Right to Organise**¹⁵¹

Article 2: *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

Article 3: (1) *Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. (2)* *The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

Article 4: *Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.*

Article 5: *Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.*

▶ **ILO Convention 98 on Right to Organize and Collective Bargaining:**¹⁵²

146. ICESCR. Luxembourg, 1990. (E/1991/23). It is questioned whether the covenant, virtually alone among applicable international human rights treaties, is considered a non-self-executing in its totality. It was observed that, by contrast, the covenant contained a number of provisions that the great majority of observers would consider to be self-executing. These included, for example, provisions dealing with nondiscrimination, the right to strike, and the right to free primary education.

147. ICESCR. Rwanda, 1989. (E/1989/22). See also Peru, 1997. (E/1998/22). Convention expresses concern about the ineffectiveness of labor legislation to protect the rights of trade unions, including the right to strike.

148. ICESCR. Russian Federation, 1997. (E/1998/22).

149. ICESCR. Uruguay, 1994. (E/1995/22).

150. ICESCR. Belgium, 1994. (E/1995/22).

151. ILO. Table of ratifications. <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C087>.

Article 1: (1) Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. **(2)** Such protection shall apply more particularly in respect of acts calculated to: (a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2: (1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

Article 6: This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

- Although there is no explicit recognition of the right to strike in any ILO convention or recommendation, the ILO's Freedom of Association Committee frequently states that the right to strike is a fundamental right of workers and of their organizations¹⁵³ and defines the limits within which it may be exercised. In addition, two resolutions of the International Labour Conference, which provide guidelines for ILO policy, have emphasized recognition of the right to strike in member states in at least two resolutions.¹⁵⁴
- Persons employed in public hospitals should enjoy the right to collective bargaining as guaranteed by ILO Convention No. 98.¹⁵⁵
- Recognition of the principle of freedom of association in the case of public servants does not necessarily imply the right to strike.¹⁵⁶
- The ILO Freedom of Association Committee has acknowledged that the right to strike can be restricted or even prohibited in the public service or in certain essential services when striking could cause serious hardship to the national community, provided that the limitations are accompanied by certain compensatory guarantees.¹⁵⁷
- The ILO Committee has expressly stated that the hospital sector is considered an essential service for the purposes of prohibiting work stoppages.¹⁵⁸ More broadly, to determine situations in which a strike could be prohibited in an essential service, there must be a clear and imminent threat to the life, personal safety, or health of the whole or part of the population.¹⁵⁹ Within those services considered essential, however, certain categories of

152. ILO. Table of ratifications. <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C098>.

153. ILO. Digest of Decisions and Principles of the Freedom of Association Committee, 1952. Fourth (revised) edition. During its second meeting, in 1952, the Committee on Freedom of Association declared strike action to be a right and laid down the basic principle underlying this right, from which all others to some extent derive and which recognizes the right to strike to be one of the principal means by which workers and their associations may legitimately promote and defend their economic and social interests.

154. ILO. Resolution Concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation, 1957. Resolution called for the adoption of "laws ... ensuring the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers. See also Resolution Concerning Trade Union Rights and Their Relation to Civil Liberties, 1970. Resolution invited the governing body to instruct the director-general to take action in a number of ways "with a view to considering further action to ensure full and universal respect for trade union rights in their broadest sense," with particular attention to be paid, inter alia, to the "right to strike."

155. ILO. 306th Report of the Freedom of Association Committee. Case No. 1882.

156. ILO. Digest, 2005; Digest, 1996; and 304th Report of the Freedom of Association Committee. Case No. 1719.

employees, such as hospital laborers and gardeners, should not be deprived of the right to strike.

Right to Due Process and Related Rights

This section outlines the relevant due process standards that health care providers enjoy when commencing or responding to civil proceedings, including disciplinary matters. It does not deal with the rights of the accused in criminal proceedings.¹⁶⁰ As in previous sections, material that elaborates on the interpretation of standards in relation to health sector personnel has been highlighted. Relevant standards from the 1998 UN Human Rights Defenders Declaration underscore the fact that health care providers, in addition to enjoying the same core rights as patients, are defenders of rights in their daily work.

The first part of this section examines the right to a fair hearing. The second part focuses on the related right to an effective remedy. The interpretation of what is meant by a "suit at law" under Article 14(1) of the ICC PR continues to evolve, although regulation of the activities of a professional body and scrutiny of such regulations by the courts may fall within its scope.

This section also details those standards that protect the privacy rights of health care providers—and outside the workplace—and their honor and reputations. In addition, there is a brief discussion of standards that address the right to free expression and the right to impart information. These liberties are particularly important as they might offer protection to whistle-blowers who seek to place certain information in the public domain. This protection is important because public sector employees are often reluctant to disseminate information due to fear of adverse consequences.

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157. ILO. Digest of Decisions and Principles of the Freedom of Association Committee, 2005; Digest, 1996; 300th Report of the Freedom of Association Committee. Case No. 1791; 302nd Report. Case No. 1849; and 318th Report. Case No. 2020.
 158. ILO. Digest, 2005; Digest, 1996; 300th Report of the Freedom of Association Committee. Case No. 1818; 306th Report. Case No. 1882; 308th Report. Case No. 1897; 324th Report. Case No. 2060 and Case No. 2077; 329th Report. Case No. 2174; 330th Report. Case No. 2166; and 338th Report. Case No. 2399.
 159. ILO. Digest, 2005; Digest, 1996; 320th Report. Case No. 1989; 324th Report. Case No. 2060; 329th Report. Case No. 2195; 332nd Report. Case No. 2252; 336th Report. Case No. 2383; and 338th Report. Case No. 2326 and Case No. 2329.
 160. The United Nations Human Rights Treaties. Rights of the accused in criminal proceedings. <http://www.bayefsky.com/bytheme.php/id/1041>.

Right to a Fair Hearing

EXAMPLES OF POTENTIAL VIOLATIONS

- A doctor facing disciplinary proceedings is unable to obtain access to all of the evidence presented against him in advance of the hearing
- A nurse facing a medical negligence suit has still not been given a hearing date five years after commencement of the proceedings

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

▶ Article 14(1) ICCPR

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

- The concept of "suit at law" under Article 14(1) of the ICCPR is based on the nature of the right in question rather than on the status of one of the parties (whether state or nonstate). The particular forum that the legal systems employ to adjudicate individual claims does not determine the nature of the right (an especially important condition in the case of common law systems).¹⁶¹
- The regulation of the activities of a professional body and the scrutiny of such regulations by the courts may raise issues under Article 14.¹⁶²
- Purely administrative proceedings will fall outside the scope as not amounting to a determination of civil rights and obligations.¹⁶³
- The notion of a "tribunal" in Article 14(1) refers to a body—regardless of denomination—that is a) established by law; b) independent of the executive and legislative branches of government; and c) in specific cases enjoys judicial independence in deciding legal matters in proceedings that are judicial in nature.¹⁶⁴
- Determination of public law rights falls within the scope of Article 14(1) if, within the relevant municipal legal system, it is conducted by a court of law or if the administrative determination is subject to judicial review.
- Article 14 does not, however, appear to guarantee a right of judicial review of public law determinations by administrators or administrative tribunals and does not guarantee that

161. HRC. General Comment 32 of the Human Rights Committee; *Y. L. v. Canada*. (112/81). Applying this interpretation, claim for disability pension did amount to a "suit at law." See also *Casanovas v. France*. (441/90). Covers procedure concerning employment dismissal; *Jansen-Gielsen v. The Netherlands*. (846/99). Tribunal proceedings to determine the psychiatric ability of people to perform their jobs amounted to "suit at law."

162. *J. L. v. Australia*. (491/92).

163. *Kolanowski v. Poland*. (837/98). Challenge to the fact that denied promotion of police officer was not covered but dismissals from public service are (*Casanovas v. France* [441/90]). See also *Kazantzis v. Cyprus*. (972/01). Procedure for appointing public servants (in this case, judicial appointments) did not fall within scope of Article 14.

164. HRC. General Comment 32 of the Human Rights Committee, paras. 18 and 19.

any such review entails evaluation of the merits.

- The right to a fair hearing in a civil suit encompasses:
 - ==> Equality before the courts:¹⁶⁵ This distinction is narrower than the right of equality before the law under Article 26 of the ICCPR as the latter applies to all organs involved in the administration of justice and not just to judicial power.¹⁶⁶
 - ==> Access to courts:¹⁶⁷ Access includes the provision of legal aid.¹⁶⁸ Article 14 ICCPR requires that states provide for particular causes of action "in certain circumstances" and for competent courts to determine those causes of action, although it is not clear what those circumstances are.¹⁶⁹
 - Article 14, in guaranteeing procedural equality, cannot be interpreted as guaranteeing equality of results or absences of error on the part of the competent tribunal.¹⁷⁰
 - Elements of a fair hearing in a civil suit encompass equality of arms,¹⁷¹ respect for the principle of adversarial proceedings, preclusion of ex officio worsening of an earlier verdict, and an expeditious procedure.¹⁷²
 - Public hearings in civil suits have been explicitly recognized by the HRC, subject only to limited public interest exceptions.¹⁷³
 - Placing the burden of proof on defendants in civil cases is permissible.¹⁷⁴
 - Examples of breaches of Article 14 include: refusing to allow a complainant to attend the proceedings and to have the opportunity to brief legal representatives properly,¹⁷⁵ failing to inform the author of his appeal date until after it has taken place,¹⁷⁶ refusal of an administrative tribunal to admit crucial evidence,¹⁷⁷ and failure to permit one litigant to submit comments on the other side's submissions.¹⁷⁸
- ▶ **Article 26 ICCPR:** *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law*
- ▶ **Article 5(a) CERD:** *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its*

165. Ibid., paras. 3 and 7.

166. Ibid., para. 65.

167. Ibid., paras. 8, 9, and 12.

168. Bahamonde v. Equatorial Guinea. (468/91); Avellanal v. Peru. (202/86); and HRC GC 32, para. 10.

169. Mahuika v New Zealand. (547/93).

170. HRC. GC 32, para. 26; B. D. B v. The Netherlands. (273/88).

171. HRC. GC 32, para. 13. See concurring individual opinion of Prafullachandra Natwarlal Bhagwati in Pezoldova v. The Czech Republic. (757/1997). "As a prerequisite to have a fair and meaningful hearing of a claim, a person should be afforded full and equal access to public sources of information. ..."

172. Morael v. France. (207/86). See also Fei v. Colombia. (514/92); HRC. GC 32, para. 27 on delay.

172. HRC. GC 32, paras. 28 and 29. See also van Meurs v. The Netherlands. (215/1986).

174. HRC. GC 32, para. 9.4.

175. Wolf v. Panama. (289/88).

176. Thomas v. Jamaica. (272/88).

177. Jansen-Gielen v. The Netherlands. (846/99). Proceedings to determine psychiatric ability to perform job.

178. Aarela and Anor v. Finland. (779/97).

forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: The right to equal treatment before the tribunals and all other organs administering justice

- ▶ **Article 15(1) CEDAW:** States Parties shall accord to women equality with men before the law.

Right to an Effective Remedy¹⁷⁹

EXAMPLES OF POTENTIAL VIOLATIONS

- No damages are awarded to a doctor after his reputation has been damaged following the appearance of unsubstantiated and false accusations of medical negligence in the media
- A nurse is unable to appeal an employment tribunal decision to a court

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

▶ **Article 2(3) ICCPR**

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

- There is a clear link between the right to an effective remedy and the right to a fair hearing and/or due process and, in general, this provision needs to be respected whenever any guarantee of Article 14 has been violated.¹⁸⁰
- Remedies must be accessible and effective. Although a remedy generally entails appropriate compensation, reparation can, where appropriate, involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of nonrepetition and changes in relevant laws and practices, and actions to bring to justice the perpetrators of human rights violations.¹⁸¹
- States are required, as part of the obligation under Article 2(3)(a) of the ICCPR, to ensure determination of the right to a remedy by a competent judicial, administrative, or legislative authority,¹⁸² a guarantee that would be void if it were not available in cases in which a violation of the ICCPR had not been established. The State is not obliged to make such

179. UN. Human Rights Defenders Declaration. Article 9.

180. HRC. General Comment 32 of the Human Rights Committee, para. 58.

181. HRC. General Comment 31 of the Human Rights Committee, paras. 15 and 16.

182. Ibid., para. 15.

procedures available, however, regardless of how unmeritorious the claim might be.¹⁸³

▶ **Article 2(1) ICESCR**

- Each state party to the present covenant undertakes to take steps, individually and through international assistance and cooperation, especially in economic and technical matters, to the maximum extent allowed by its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including, particularly, the adoption of legislative measures.
- Administrative remedies will, in many cases, be adequate. Any such remedies should be accessible, affordable, timely, and effective. The ultimate right of judicial appeal from administrative procedures is also often appropriate, however. There are some obligations, such as (but by no means limited to) those concerning nondiscrimination, for which the provision of some form of judicial remedy is indispensable.¹⁸⁴

▶ **Article 9 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders Declaration) 1998¹⁸⁵**

- All human rights defenders have the right to an effective remedy and to protection in the event of the violation of their rights. This right includes the right to complain about the policies and actions of government bodies and officials. In turn, the state should conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation has occurred in any territory under its jurisdiction

Right to Protection of Privacy and Reputation

EXAMPLES OF POTENTIAL VIOLATIONS

- The phone of a hospital chief executive is bugged without any prior lawful authorization
- A doctor involved in a civil suit against a hospital for unfair dismissal finds out that his correspondence has been routinely intercepted and read without his knowledge

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Article 17 ICCPR: (1)** *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.*

183. Kazantzis v. Cyprus. (972/01).

184. ICESCR, General Comment 9. (E/C.12/1998/24, CESCR). December 3, 1998.

185. UN General Assembly Resolution 53/144. December 9, 1998.

▶ **HRC General Comment 16 on the Right to Privacy**

- The term "home" is to be understood to indicate the place where a person resides or carries out his usual occupation.¹⁸⁶
- Even with regard to interferences that conform to the covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. Compliance with Article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Surveillance, whether electronic or other; interceptions of telephonic, telegraphic, and other forms of communication; wiretapping; and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.¹⁸⁷
- The gathering and holding of personal information on computers, data banks, and other devices, whether by public authorities or by private individuals or bodies, must be regulated by law.¹⁸⁸
- The state is obliged to provide protection under the law against any unauthorized interferences with correspondence¹⁸⁹ and to ensure strict and independent (ideally, judicial) regulation of any such practices, including wiretapping.¹⁹⁰ Searches—of a home (and workplace) and of a person—should also be subject to appropriate safeguards.¹⁹¹
- The protection of honor and reputation under Article 17 is probably limited to unlawful rather than arbitrary attacks—in other words, attacks that fail to comply with an established legal procedure.¹⁹² Given the HRC's interpretation of "lawful" in the context of another ICCPR provision (Article 9[4]), the term may extend beyond domestic law.¹⁹³
- Professional duties of confidence, such as those undertaken by the medical profession, are an important aspect of the right to privacy, and any limitations on professional privilege must be specified in detail.¹⁹⁴

▶ **Article 19(3) ICCPR:** *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.*

186. HRC. General Comment 16 of the Human Rights Committee. August 4, 1988.

187. *Ibid.*, para. 8.

188. *Ibid.*, para. 10.

189. *Ibid.*, para. 8; HRC. Concluding Observations of the Human Rights Committee: Zimbabwe, 1998. (CCPR/C/79/Add.89).

190. HRC. Concluding Observations: Poland, 1999. (CCPR/C/79/Add.10). See also Concluding Observations: Lesotho, 1999. (CCPR/C/79/Add. 106).

191. HRC. General Comment 16 of the Human Rights Committee, para. 8.

192. *I. P. v. Finland.* (450/91); Joseph, Schultz, and Castan. *The ICCPR*, 494.

193. Joseph, Schultz, and Castan. *The ICCPR*, 494.

194. HRC. Concluding Observations of the Human Rights Committee: Portugal, 2003. (CCPR/CO/78/PRT).

195. See also Human Rights Defenders Declaration 1998, Article 6.

Right to Free Expression and Information¹⁹⁵

EXAMPLES OF POTENTIAL VIOLATIONS

- A senior health service manager is dismissed after revealing that a hospital has been purchasing unlicensed drugs
- State authorities intervene to prevent employees from learning that their hospital contains dangerously high levels of radiation

HUMAN RIGHTS STANDARDS AND RELEVANT INTERPRETATIONS

- ▶ **Article 19(2) ICCPR:** *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
 - The right to free expression under Article 19 of the ICCPR includes the freedom to impart information, and any restrictions that do not accord with acceptable limitations contained in Article 19(3), such as public order or public health, could result in a breach.¹⁹⁶
 - Therefore, in theory, whistleblowers within the medical profession could be protected from unlawful prosecution provided that the information they are seeking to put into the public domain cannot legitimately be restricted.
 - Permissible limitations on public health grounds under Article 19 are unclear, although it has been suggested that prohibiting misinformation on health-threatening activities could be justified.¹⁹⁷
 - Freedom of expression (including that of the media) can be lawfully restricted to protect the rights and reputation of others, through, for example, the use of reasonable civil defamation laws.¹⁹⁸
- ▶ **Article 5(d)(viii) CERD:** *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: The right to freedom of opinion and expression. ...*
- ▶ **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders Declaration) 1998¹⁹⁹**

196. Laptsevich v. Belarus. (780/97).

197. Joseph, Schultz, and Castan. *The ICCPR*, 525.

198. *Ibid.*, 541.

199. UN General Assembly Resolution 53/144. December 9, 1998.

Article 6: *Everyone has the right, individually and in association with others:*

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;*
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;*
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.*



3.1 INTRODUCTION

3.2 THE INTERNATIONAL SYSTEM

3

International Procedures

3.1 Introduction

International and regional human rights mechanisms play an important role in the implementation of rights. These mechanisms were established to enforce governments' compliance with the international and regional human rights treaties they have ratified. These treaties make up the so-called "hard law" of international human rights, and the interpretations of the treaty mechanisms make up "soft law" that is not directly binding on governments. There are two main types of enforcement mechanisms:

- ▶ courts, which act in a judicial capacity and issue rulings that are binding on governments in the traditional sense; and
- ▶ committees, which examine reports submitted by governments on their compliance with human rights treaties and, in some cases, examine individual complaints of human rights violations.

3.2 The International System

Human Rights Committee

MANDATE

The Human Rights Committee (HRC) oversees government compliance with the International Covenant on Civil and Political Rights (ICCPR). The HRC has two mandates: to monitor country progress on the ICCPR by examining periodic reports submitted by governments and to examine individual complaints of human rights violations under the Optional Protocol to the ICCPR.

CIVIL SOCIETY PARTICIPATION

NGOs can submit "shadow reports" to the HRC on any aspect of a government's compliance with the ICCPR. Shadow reports should be submitted through the HRC Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the committee. The HRC meets three times a year. Individuals and NGOs can also submit complaints to the HRC under the Optional Protocol.

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Committee on Economic, Social, and Cultural Rights

MANDATE

The Committee on Economic, Social, and Cultural Rights (CESCR) oversees government compliance with the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The CESCR monitors country progress on the ICESCR by examining periodic reports submitted by governments.

CIVIL SOCIETY PARTICIPATION

NGOs can submit “shadow reports” to the CESCR on any aspect of a government’s compliance with the ICESCR. Shadow reports should be submitted through the CESCR Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the committee. The CESCR meets twice a year.

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 Web: <http://www2.ohchr.org/english/bodies/cescr/index.htm>

Committee on the Elimination of Racial Discrimination

MANDATE

The Committee on the Elimination of Racial Discrimination (CERD) is the body of independent experts that monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) by states. It monitors country progress on ICERD by examining periodic reports submitted by governments. The committee then addresses its concerns and recommendations to the country in the form of “concluding observations.” Besides commenting on country reports, CERD monitors state compliance through an early-warning procedure and through the examination of interstate and individual complaints.

CIVIL SOCIETY PARTICIPATION

NGOs can submit “shadow reports” to the CERD on any aspect of a government’s compliance with the ICERD. Shadow reports should be submitted through the CERD Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the committee. CERD meets twice a year.

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 Web: <http://www2.ohchr.org/english/bodies/cerd/>

International Labour Organization

MANDATE

The International Labour Organization (ILO), located within the United Nations, is primarily concerned with respect for human rights in the field of labor. In 1989, they adopted the Convention concerning Indigenous and Tribal Peoples in Independent Countries. States must provide periodic reports on their compliance with the convention to the ILO and to national employers' and workers' associations. National employers' and workers' associations may submit comments on these reports to the ILO. The ILO Committee of Experts (CE) evaluates the reports and may send "Direct Requests" to governments for additional information. The CE then publishes its "observations" in a report, which is presented at the International Labour Conference. On the basis of this report, the Conference Committee on the Application of Standards may decide to more carefully analyze certain individual cases and publishes its conclusions. Additionally, an association of workers or employers may submit a representation to the ILO alleging that a member state has failed to comply with the convention, and a member state may file a complaint against another member state.

CIVIL SOCIETY PARTICIPATION

The convention encourages governments to consult indigenous peoples in preparing their reports. Indigenous peoples may also affiliate with a workers' association or form their own workers' association in order to more directly communicate with the ILO. The CE meets in November and December of each year, and the International Labour Conference is held in June.

CONTACT

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Committee on the Elimination of All Forms of Discrimination Against Woman

MANDATE

The Committee on the Elimination of All Forms of Discrimination Against Women oversees government compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The committee has three mandates: to monitor country progress on CEDAW by examining periodic reports submitted by governments, to examine individual complaints of violations of women's rights under the Optional Protocol to CEDAW, and to conduct missions to state parties in the context of concerns about systematic or grave violations of treaty rights.

CIVIL SOCIETY PARTICIPATION

NGOs can submit "shadow reports" to the committee on any aspect of a government's compliance with CEDAW. Shadow reports should be submitted through the Division for the Advancement of Women in New York, which also keeps a calendar of when governments come before the committee. The committee meets twice a year. Individuals and NGOs can also submit complaints to the committee under the Optional Protocol or they can encourage the committee to undertake country missions as part of its inquiry procedure.

CONTACT

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 Web: <http://www.un.org/womenwatch/daw/cedaw/cedaw38/NGOnote.pdf>

Committee on the Rights of the Child

MANDATE

The Committee on the Rights of the Child oversees government compliance with the Convention on the Rights of the Child (CRC). It monitors country progress on the CRC by examining periodic reports submitted by governments.

CIVIL SOCIETY PARTICIPATION

NGOs can submit “shadow reports” to the committee on any aspect of a government’s compliance with the convention. Shadow reports should be submitted through the CRC Secretariat based at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva, which also keeps a calendar of when governments come before the committee. The committee meets three times a year.

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UN Charter Bodies

In addition to the treaty bodies listed above, there are a number of bodies created for the protection and promotion of human rights under the Charter of the United Nations.

The principal charter body is the Human Rights Council (HRC), which replaced the Commission on Human Rights (CHR) in 2006. The HRC is a subsidiary organ of the United Nations General Assembly with a mandate “to address situations of violations of human rights, including gross and systematic violations.”

The responsibilities of the HRC include: the Universal Periodic Review (UPR), the Special Procedures, the Human Rights Council Advisory Committee (formerly the Sub-Commission on the Promotion and Protection of Human Rights), and the Complaints Procedure. These responsibilities are summarized at <http://www2.ohchr.org/english/bodies/hrcouncil/>.

UNIVERSAL PERIODIC REVIEW (UPR)

Beginning in 2008, the HRC will periodically review the human rights obligations and commitments of all countries. All UN member states will be reviewed for the first time within four years. A working group will meet for two weeks, three times a year, to carry out the review. The review will take into account a report from the state concerned, recommendations from the Special Procedures and

Treaty Bodies, and information from nongovernmental organizations and national human rights institutions.

SPECIAL PROCEDURES

“Special Procedures” is the general term given to individuals (known as Special Rapporteurs, Special Representatives, or Independent Experts) or to groups (known as Working Groups) that are mandated by the HRC to address specific country situations or thematic issues throughout the world. The HRC currently includes 28 thematic and 10 country Special Procedures.

Special Procedures activities include responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities. The Special Procedures are considered “the most effective, flexible, and responsive mechanisms within the UN system.”

Special Procedures cited in this practitioner guide include:

- Working Group on Arbitrary Detention
- Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions
- Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Special Rapporteur on Violence against Women, Its Causes and Consequences
- For more information about the Special Procedures, see <http://www.ohchr.org/english/bodies/chr/special/index.htm>.

HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

The Human Rights Council Advisory Committee functions like a think tank, providing expertise and advice and conducting substantive research and studies on issues of thematic interest to the HRC at its request. The committee is made up of 18 experts who serve in their personal capacity for a period of three years.

COMPLAINTS PROCEDURE

This confidential complaints procedure allows individuals or organizations to bring complaints about “gross and reliably attested violations of human rights” to the attention of the HRC. The procedure is intended to be “victims oriented” and is expected to conduct investigations in a timely manner. Complaints are reviewed by two working groups that meet for five days at least twice a year.

ECONOMIC AND SOCIAL COUNCIL

The UN Economic and Social Council (ECOSOC) coordinates the work of 14 specialized UN agencies, functional commissions, and regional commissions working on various international economic, social, cultural, educational, and health matters. The ECOSOC holds several short sessions per year and an annual substantive session for four weeks every July.

The ECOSOC consults regularly with civil society, and nearly 3,000 NGOs enjoy consultative status. ECOSOC-accredited NGOs are permitted to participate, present written contributions, and make statements to the council and its subsidiary bodies. Information about NGOs with consultative status can be found at <http://www.un.org/esa/coordination/ngo/>.

ECOSOC agencies and commissions that may be cited in or that may be relevant to this practitioner guide include the following:

- Commission on the Status of Women
- Commission on Narcotic Drugs
- Commission on Crime Prevention and Criminal Justice
- Committee on Economic, Social and Cultural Rights
- International Narcotics Control Board

- 4.1. STATUS OF INTERNATIONAL LAW
- 4.2. THE STATUS OF PRECEDENT
- 4.3. LEGAL SYSTEM OF THE KYRGYZ REPUBLIC
- 4.4. HEALTHCARE SYSTEM OF THE KYRGYZ REPUBLIC

4

Country-Specific Notes

4.1 STATUS OF INTERNATIONAL LAW

Status of International Legislation

In accordance with Article 6 of the Kyrgyz Republic Constitution(2010), when becoming effective in the order prescribed by law, international treaties involving the Kyrgyz Republic, as well as generally-recognized principles and norms of international law, are integral parts of its legal system. If other rules rather than those stipulated by civil legislation are established by an international treaty ratified by Jogorku Kenesh (Parliament) of the Kyrgyz Republic, regulations of that international treaty are applied. The norms of international human rights treaties have a direct effect and precedence over the norms of other international treaties.

The Kyrgyz Republic is a member of two organizations, whose documents on issues of human rights can also be used for protection of human rights in patient care:

- United Nations Organization (UNO)
- Commonwealth of Independent States (CIS)

Unfortunately, the documents adopted within the Commonwealth of Independent States do not set forth the effective control mechanisms that could ensure execution of the agreements. Thus, for the Kyrgyz Republic, the only available international mechanisms of protection of human rights are limited to the system of basic agreements on human rights of the UNO.

Also for the Kyrgyz Republic, agreements of the European Council are open, that admit participation of non-European countries that are not member of this organization²⁰⁰. Currently, the Kyrgyz Republic is not a signatory of these agreements.

The status of international agreements is established by the Constitution of the Kyrgyz Republic. The following provisions are considered sources of rights:

- ~ Enforced international agreements and agreements to which the Kyrgyz Republic is a signatory;
- ~ Generally accepted principles and norms of international law.

The enlisted sources are considered part of the legal system of the Kyrgyz Republic.²⁰¹

This provision enables reference directly to the relevant provisions of the agreements on human rights, particularly, relating to human rights in patient care.

200. Please refer to the list of agreements at: <http://conventions.coe.int/Agreement/Commun/ListeTraites.asp?CM=12&CL=ENG>

201. Part 3, Article 12 of the Constitution of the Kyrgyz Republic

4.2. STATUS OF PRECEDENT

After the collapse of the USSR, many countries which were members of the former Soviet Union maintained the previous system of law. The Kyrgyz Republic is no exception; judicial legislation is not applied. The Kyrgyz Republic belongs to the Romano-Germanic (continental) legal system,²⁰² where the sources of law are the normative legal acts. Court decisions are not normative acts and thus they cannot legally be the sources of law. In contrast to the Anglo-Saxon legal system, where there are both statutory and case laws, the legal system of Kyrgyzstan is based on the recognition of the law/legal acts as the source of law. All other normative legal acts must come from it and not contradict it.

4.3 LEGAL SYSTEM OF THE KYRGYZ REPUBLIC

Legal System

As noted above, the Kyrgyz Republic is a country with the Romano-Germanic (Continental) system of law. The main source of law in the Kyrgyz Republic is legislation.

The Constitution shall have supreme legal force and direct application in the Kyrgyz Republic. The Constitution shall serve the basis for the adoption of constitutional laws and other laws as well as other regulatory legal acts. International treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally- recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic. The provisions of international treaties on human rights shall have direct action and be of priority in respect of provisions of other international treaties (Article 6 of the *Constitution of the KR*).

By the degree of legal power, the normative legal acts are in the following hierarchy:

- Constitution, and the law making amendments to the Constitution
- Constitutional law
- Code (accepted by Parliament)
- Law (accepted by Parliament)
- Decree of the President
- Resolution of Jogorku Kenesh (Parliament)
- Resolution of the Government

202. The Roman-Germanic legal system is the system which is characterized by an optimal generalization (abstraction) of standards, the division of rights into public and private, highlighting the various branches of law. The main source of law is recognized by the law; moreover, legislation seeks to codify all the main branches of law. Other sources of law (administrative acts, practices, etc.) play a minor role, and the judicial practice is generally not considered a source of law.

201. Part 3, Article 12 of the Constitution of the Kyrgyz Republic

- Acts of the National Bank, Central Commission for Elections and Referenda
- Normative legal acts of the state bodies authorized to issue normative legal acts, in accordance with acts of delegation of the law-making authorities
- Normative legal acts of the representative self-government bodies.²⁰³

A normative legal act should not contradict the normative legal act which has higher legal force (Article 6 of the Law On Normative Legal Acts of the Kyrgyz Republic).

In case of a conflict between the normative legal acts, parties to a legal relationship follow normative legal acts which have higher legal force.

In case of a conflict between normative legal acts having equal legal force, and if none of them contradict the act with a higher legal force, there are legal acts/statutes regulating this sphere of legal relationship.

4.4 HEALTHCARE SYSTEM OF THE KYRGYZ REPUBLIC

National Healthcare System

In the Kyrgyz Republic there is a comprehensive integrated healthcare system consisting of state, municipal, and private healthcare sectors.

The Ministry of Health of the Kyrgyz Republic is the central state body implementing state policy in the area of protection of citizens' health in the Kyrgyz Republic.

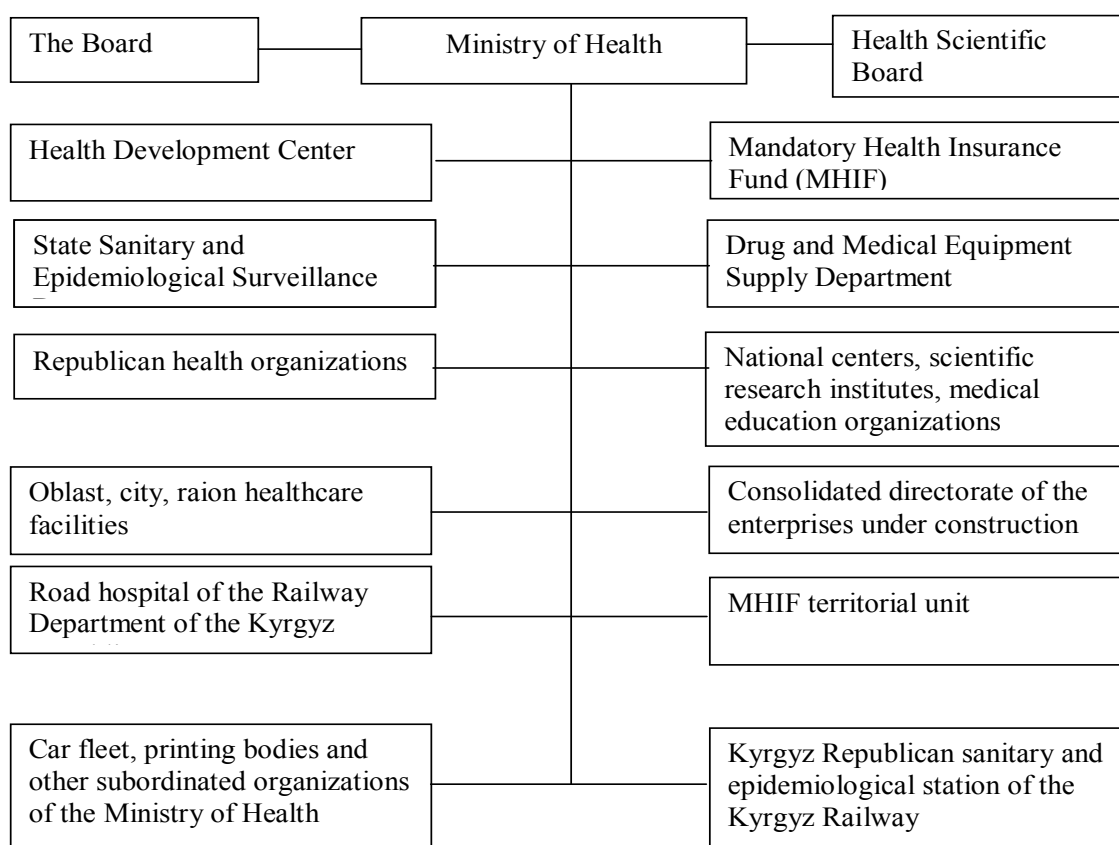
The main task of the Ministry of Health is to create a unified state policy in:

- health protection and promotion;
- sanitary and epidemiological well-being;
- healthcare financing and economy;
- staffing of the healthcare system;
- pharmacological support of the population;
- medical science and education;
- mandatory health insurance of citizens;
- others.

Activities of health care organizations are regulated by the Law of the KR On Health Care Organizations, of August 13, 2004, # 116 and other regulatory legal acts of the Kyrgyz Republic.

203. Law of the Kyrgyz Republic On Normative Legal Acts of the Kyrgyz Republic, of July 20, 2009, # 241.

TYPES	KINDS	LEVEL
<ul style="list-style-type: none"> - State - Municipal - Private/mixed 	<ul style="list-style-type: none"> - Therapeutic and Preventive - Public Health Organizations - Scientific Research - Education - Medical and Social - Rehabilitation - Pharmaceutical - Other Organizations 	<ul style="list-style-type: none"> - Primary - Secondary - Tertiary



The Constitution of the Kyrgyz Republic provides its citizens with social security in old age, in case of sickness and disability, and when there is loss of a breadwinner, in the order stipulated by law. In accordance with the Law № 112 On Health Insurance of the Citizens of the Kyrgyz Republic of October 18, 1999, in the Kyrgyz Republic, there are three types of health insurance:

1. Basic public health insurance;
2. Compulsory health insurance;
3. Voluntary health insurance.

5.1 PATIENT RIGHTS

- 5.1.1. RIGHT TO PREVENTIVE MEASURES
- 5.1.2. RIGHT OF ACCESS
- 5.1.3. RIGHT TO INFORMATION
- 5.1.4. RIGHT TO CONSENT
- 5.1.5. RIGHT TO FREE CHOICE
- 5.1.6. RIGHT TO PRIVACY AND CONFIDENTIALITY
- 5.1.7. RIGHT TO RESPECT OF PATIENTS' TIME
- 5.1.8. RIGHT TO THE OBSERVANCE OF QUALITY STANDARDS
- 5.1.9. RIGHT TO SAFETY
- 5.1.10. RIGHT TO AVOID UNNECESSARY SUFFERING AND PAIN
- 5.1.11. RIGHT TO INNOVATION
- 5.1.12. RIGHT TO PERSONALIZED TREATMENT
- 5.1.13. RIGHT TO COMPLAIN
- 5.1.14. RIGHT TO COMPENSATION

5.2. PATIENT RESPONSIBILITIES/OBLIGATIONS

- 5.2.1. DUTY TO TAKE MEASURES TO MAINTAIN AND IMPROVE HIS HEALTH
- 5.2.2. DUTY NOT TO COMMIT ACTS DETRIMENTAL TO THE HEALTH OF OTHER CITIZENS.
- 5.2.3. DUTY TO FOLLOW MEDICAL PRESCRIPTIONS AND COMPLY WITH INTERNAL RULES OF THE MEDICAL INSTITUTION

5

National Patients' Rights and Responsibilities

5.1. PATIENTS' RIGHTS

5.1.1. RIGHT TO PREVENTIVE MEASURES

a. Right 1 as Stated in the European Charter of Patients' Rights (ECPR)

Every individual has the right to proper service in order to prevent illness.

Clarification

Exercise of the right to preventive measures is a precondition for elimination or reduction of harmful impact on a human being of factors of life environment, prevention of occurrence and spreading of communicable diseases, and prevention of gross non-communicable diseases. In accordance with *Article 27 of the Law On Health Protection of Citizens in the Kyrgyz Republic*, the following refer to the sanitary and prophylactic aid in the Kyrgyz Republic: sanitary and hygienic surveillance; epidemiological surveillance; and formation of healthy lifestyle.

b. Right as Stated in Country Constitution/ Legislation

Constitution

The Constitution of the Kyrgyz Republic (hereinafter – the Constitution) does not directly stipulate the right to preventive measures, however it provides general wording:

- Everyone shall have the right to the protection of health (*Part 1 Article 47 of the Constitution*).
- Everyone shall have the right to a healthy, safe environment (*Article 48 of the Constitution*).

Legislation

In more details, the right to preventive measures is exercised by the Law On Health Protection of Citizens in the Kyrgyz Republic, where the principles of accessibility of the sanitary prophylactic care, scientific justification of the sanitary-preventive measures, preventive area of healthcare, formation of the population's adherence to the healthy life style were set as the general principle (**Article 4**).

The right to preventive measures is an integral part of a citizen's right to health protection, which is supported by:

- Environmental protection, creation of favorable working conditions, everyday life, recreation, mentoring and education of citizens, production and implementation of safe food product and pharmaceuticals (*Article 61 of the Law On Health Protection of Citizens in the Kyrgyz*

204. Thus, for instance, it is not allowed to place people affected by communicable forms of TB in hostels or shared apartments

*Republic)*²⁰⁴

- Providing information on issues of preventive medicines, hygiene, and formation of healthy life style (*Article 61 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).

In this, the government should provide the sanitary-preventive measures (*Article 66 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)

General rights of citizens to preventive measures:

- to regular provision of reliable and updated information on factors contributing to health protection or having harmful impact on it, including information on the environmental, sanitary-epidemiological welfare of the district of residence, rational food standards, works, services, their compliance with the sanitary standards and rules, and other factors (*Article 64 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- to receive information on the sanitary and epidemiological situation, condition of the life environment, quality and safety of the technical and industrial goods, food products, goods for personal household needs, potential risk of the ongoing works and rendered services for the human health, in the state authorities, local self-governance bodies, state sanitary-epidemiological bodies and agencies, and from legal entities (*Article 7 of the Law On Sanitary and Epidemiological Welfare of the Population*)
- to free prophylactic immunization in the state healthcare establishments under the Program of State Guarantees of Provision of the Medical Aid to the Population (*Article 5 of the Law On Immunoprophylactic Communicable Diseases*)
- to paid prophylactic immunization not included in the national calendar of prophylactic immunization in state, municipal, private property healthcare establishments (*Article 5 of the Law On Immunoprophylaxis of Communicable Diseases»*)
- to free of charge medical screening, and medical examination if needed, before the prophylactic immunization in the state healthcare establishments (*Article 5 of the Law On Immunoprophylaxis of Communicable Diseases*)
- to prevention in the conditions compliant with the sanitary and hygienic requirements (*Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- to medical examination and counseling on medical-genetic issues and family planning when marrying (*Article 16 of the Family Code*)

Special rights of citizens to the preventive measures in certain areas:

- to access to the guaranteed minimum of true information on HIV/AIDS and prevention measures (*Article 5 of the Law On HIV/AIDS in the Kyrgyz Republic*)
- to participate in preventive programs and to access to preventive measures (disinfecting means, clean syringes, needles and condoms) (*Article 5 of the Law On HIV/AIDS in the*

Kyrgyz Republic)

- to prevention of ontological diseases implemented through: medical screening when hiring to the job associated with health risks; timely dispensary observation of the persons of the “risk” groups; implementation of the sanitary – awareness activity among the population; timely treatment of the diseases that may be complicated by growth of malignant neoplasm (*Article 12 of the Law On Ontological Aid to the Population*)
- voluntary application of the surgical method of prevention of unwanted pregnancies, i.e. operative sterilization (*Article 22 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)²⁰⁵

Additional guarantees of the right to preventive measures are set forth in the law for the insured citizens, in particular:

to receive medical, prophylactic, rehabilitation and health - improving services under the program of mandatory health insurance in the entire territory of the Kyrgyz Republic in those medical and preventive institutions with which agreements on mandatory health insurance were signed (*Article 13 of the Law on Health Insurance of Citizens of the Kyrgyz Republic*).

For certain categories of persons, the legislation of the Kyrgyz Republic provides for additional guarantees of exercise of the right to preventive measures:

- right of pregnant women to work in an environment complying with the physiological specifics and health condition (*Article 67 of the Law on Health Protection of Citizens in the Kyrgyz Republic*);
- rights of minors:
 - to prevention of communicable and dangerous communicable diseases (*Article 30 of the Children’s Code*)
 - to prevention of trauma and promotion of healthy life style (*Article 30 of the Children’s Code*)
 - to dispensary observation (*Article 68 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
 - to sanitary and hygienic education, training and labor in an environment complying with the physiological specifics and health conditions and preventing the impact of adverse factors on them (*Article 68 of the Law On Health Protection of Citizens in the Kyrgyz Republic; Article 294 of the Labor Code; Resolution of the Government On Approval of the Maximum Allowable Standards of Load in Lifting and Movement of*

205. Implementation of this right has specifics. Under general rule, the right may be exercised only by the persons having reached the marriage age, with their written consent. The operative sterilization can be implemented after compulsory provision of the patient with information on its inconvertibility of the process. Thus, implementation of such right to the preventive measures is closely related with the right to freedom of choice, right to information and right to consent

Heavy Things by Hand by Women and Employees under 18; list of works where it is prohibited to use labor of people under 18; list of industries, professions and jobs with heavy and harmful labor conditions where it is prohibited to use labor of people under 18)

- right of employees who work under deleterious conditions to receive free milk and therapeutic and prophylactic meals (*Article 219 of the Labor Code*)
- right of disabled people to prevention of further disability (*Article 22, 26 of the Law On Rights and Guarantees of Disabled Persons*);
- right of diabetes patients to training on principles of compensation for diabetes, to receive necessary time to get insulin injection and timely taking meals during the training process; right to prevention of severe complications (*Article 7 of the Law On Diabetes*).

c. Supporting Regulations/ Bylaws/ Orders

There are no relevant bylaws and orders.

d. Provider Code(s) of Ethics

A healthcare worker shall bear the responsibility, including the moral responsibility for ensuring the quality and safe medical and prophylactic care within the available resources (*Article 3, Code of the Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

- ▶ Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Medical Care, *approved by the Decree of the Government of the KR dated July 1, 2011 N 350*;
- ▶ Order of the Ministry of Health On Implementation of the Law of the Kyrgyz Republic On Amendments to the Law of the of the Kyrgyz Republic “*On Immunoprophylaxis of Communicable Diseases*” of 26 October, 2005.

f. Practical Examples

1. Example(s) of Compliance

- In all maternity houses, family medicine centers, children’s pre-school and school institutions, the prophylactic vaccination is provided in accordance with the National prophylactic immunizations schedule, approved by the Ministry of Health of the KR.
- When enrolling to school, the administration demands the vaccination card, which includes all vaccines received by a child. Further, vaccination by age is held in secondary schools.

2. Example(s) of Violation

The right to prevention is violated in some children’s pre-school institutions where during naptime two children are put into one bed. Thus, the right of children to personal hygiene is violated. This is

observed almost in all municipal overloaded children pre-school institutions.

3. Actual Case(s)

In the healthcare facility, because of improper observance of by healthcare workers of the sanitary, hygienic, and anti-epidemiological rules, several patients were affected by nosocomial infection. The chief physician of this institution was brought to administrative sanction – money penalty for breach of the above rules.

g. Practice Notes for Lawyers

As a rule, non-observance of the right to preventive measures is a reason for occurrence of the disease, the transition of the acute disease into the chronic, and possible occurrence and growth of complications that may result in loss of working ability. Therefore, primarily, special consideration should be given to protection of this right. Protection of the infringed right to preventive measures may be provided in the judicial (i.e. with the help of state authorities) and non-judicial (without such recourse) form.

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right to Preventive Measures under the Right to the Highest Attainable Standards of Health in Chapter 2.

5.1.2. RIGHT OF ACCESS

a. Right 2 as Stated in ECPR

Every individual has the right of access to the health services that his or her health needs require. The health services must guarantee equal access to everyone, without discriminating on the basis of financial resources, place of residence, kind of illness, or time of access to services.

Clarification

Each person in the Kyrgyz Republic is guaranteed access to public health and medical-social assistance regardless of gender, race, nationality, language, social origin, employment status, residence, attitude to religion, convictions, membership of public associations, and other circumstances.²⁰⁶

b. Right as Stated in the Country Constitution/Legislation

Constitution

206. Art. 61 of the Law On Health Protection of Citizens in the Kyrgyz Republic

- Everyone shall have the right to health protection (*p. 1 Article 47 of the Constitution*)
- Free medical service as well as medical service on preferential terms shall be ensured within the volume of state guarantees envisaged in the law (*Part 3 Article 47 of the Constitution*).
- The Kyrgyz Republic respects and provides all people living within its territory and under its jurisdiction with human rights and freedoms. No one can be subjected to discrimination based on their sex, race, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, and other circumstances (*Part 2, Article 16 of the Constitution of the Kyrgyz Republic*).

Legislation

The Law On Health Protection of Citizens in the Kyrgyz Republic contains general principles of observance of citizens' rights to the following: health protection; social fairness, equality, accessibility of medical and sanitary and sanitary-prophylactic care; free use of the network of state and municipal healthcare institutions by citizens under the Program of State Guarantees (*Article 4, Article 61 of the Law On Health Protection of Citizens in the Kyrgyz Republic*). It is an integral part of citizens' right to health protection, which is secured by:

- Providing equal opportunities in exercise of the right to medical, sanitary, and social aid to all citizens irrespective of gender, race, ethnic nationality, language, social origin, official post, place of residence, attitude to religion, convictions, belonging to public associations, and other circumstances
- Providing medical and sanitary care in the entire territory of the country
- Providing medical and sanitary aid under the Program of State Guarantees

However, the right to health protection in accordance with legislation of KR and international agreements of the Kyrgyz Republic is provided not only to citizens of the KR, but also to foreign citizens staying in its territory, persons without citizenship permanently residing in the KR, and refugees.

The procedure of providing the medical and sanitary aid to foreign citizens, persons without citizenship, and refugees is established by the authorized state authority (Ministry of Health) of the KR in the health area (*Article 36 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).

General rules of citizens to accessibility:

- to receive affordable quality medical care in health organizations, and from the persons engaged in private medical practice (*Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic*);
- to receive beneficial medical, pharmaceutical, orthopedic and other services in health in institutions of healthcare in the procedure established by the Government of the Kyrgyz

Republic (*Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic*);

- to receive safe, effective and high quality medicinal care (*Article 15 of the Law On Pharmaceuticals*);
- to receive medicinal care in the guaranteed volume of medical care or free of charge in the procedure established by the Government (*Article 15 of the Law On Pharmaceuticals*).

Special rights of citizens to accessibility in certain areas:

- rights of a **woman** having reached the marriage age: if there are no medical contraindications, the woman has a right to **artificial insemination** (*Article 20 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- rights of **citizens, expatriates and non-citizens** living or being on the territory of the Kyrgyz Republic: voluntary, confidential medical examination for **HIV** and medical observation in institutions of health care independent of their ministerial and departmental subordination and ownership type (*Article 5 of the Law On HIV/AIDS in the Kyrgyz Republic*);
- to receive specialized, qualified medical aid in **HIV/AIDS** area (*Article 5 of the Law On HIV/AIDS in the Kyrgyz Republic*);
- right of **full-aged persons (18 years old and older)** to medical sterilization as a medical intervention with the purpose of disablement to reproduce generation (*Article 36 of the Law On Health Protection of Citizens in the Kyrgyz Republic*);²⁰⁷

In addition, certain guarantees of receipt of medical, prophylactic, rehabilitation and health-improving services under the mandatory health insurance program throughout the KR in those medical-prophylactic institutions with which agreements on the mandatory health insurance agreements are signed, are set for in Article 13 of the Law On Health Insurance of Citizens of the Kyrgyz Republic.

For certain categories of persons, the legislation of the Kyrgyz Republic provides for additional guarantees of exercise of the right to access:

- rights of **women** during pregnancy, during and after delivery, to necessary medical care in institutions of healthcare (*Article 67 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- rights of **minors** to receive medical and social care (*Article 67 of the Law On Health Protection of Citizens in the Kyrgyz Republic*); to health protection and promotion (*Article*

207. With compulsory receipt of written consent of the patient. Besides, the Law On Reproductive Rights of Citizens and Guarantee of their Implementation states that the right to access to such method may be exercised notionally directly by citizens, but also by their legal representatives “in prevention of unwanted pregnancy of persons with severe forms of diseases.” Such provision is a direct violation of the constitutional law to physical integrity which under part 1 of Article 19 of the Constitution, may be restricted only by court decision based on the law, as punishment for the committed crime. In addition, the health condition of the person recognized as disabled (who may be represented by legal representatives), may change and his/her capabilities may be re-established by the court decision. If sterilization was applied to such person, his reproductive rights will be irrevocably violated, since sterilization is non-reversible.

36 of the Children Code)

- rights of **elderly persons** (having achieved the aged for the old age pension) to medical care at home at home, in state and municipal healthcare facilities, in social protection institutions and to pharmaceutical support, including that on a beneficial basis, under the Program of State Guarantees (*Article 69 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- rights of **handicapped people** to medical care at home, rehabilitation, supply of pharmaceuticals, prosthesis devices, prosthesis-orthopedic articles, and means of locomotion on preferential basis (*Article 70 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- rights of **disabled persons** to health protection, medical care at home and in medical in-patient medical and prophylactic institutions of healthcare (*Articles 21, 24 of the Law On Rights and Guarantees of Disabled Persons*)
- rights of **diabetic patients** to receive medical care for free and on preferential basis under the Program of State Guarantees and to pharmaceutical support, supply of self-control and diagnostic devices (*Article 7 of the Law On Diabetes*)
- rights of **persons in custody** to medical and sanitary support (*Article 23 of the Law On the Procedure and Conditions of Detention in Custody of Persons Apprehended on Suspicion and Accused of Committing Crimes*)
- rights of **honored donorsto** special treatment in the state healthcare facilities; special free dental prosthesis (except for prosthesis of precious metal, ceramics and metal-ceramics); to purchase the medicines in the healthcare facilities with 50% discount of its cost (*Article 15 of the Law On Donorship of Blood and its Components*)
- rights of persons **affected by TB** to stay in the in-patient department of a hospital for the period necessary for examination and treatment; to treatment in specialized sanatoria and day patient facilities (*Article 15 of the Law On Protection of the Population from TB*)
- rights of the **asylum - seeker** and his/her family to use healthcare services (*Article 6 of the Law On Refugees*)
- rights of persons with **mental problems** to psychiatric care in the least- restricting conditions, at the place of residence where possible; to be kept in the in-patient psychiatric facility only for the period necessary for examination and treatment; to all types of treatment (including the sanatorium - resort) based on medical indications, and if there are not contraindications (*Article 5 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)
- rights of persons **with infertility** problems to receive treatment of infertility by safe and

effective methods, including use of supporting reproductive methods and technologies that are allowed to be applied in the territory of the Kyrgyz Republic (*Articles 15, 17, 18, 22 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)²⁰⁸

- rights of the **donor of organs and tissues** to receive free treatment in healthcare facilities after the surgeries, and at the expense of the recipient if needed in specific cases (*Article 12 of the Law On Transplantation of Human Organs and (or) Tissues*).

c. Regulations/Bylaws/Orders

- *Regulation On Arrangement of Activity of the Unit (Substation) of the First and Emergency Station/ Center for Emergency Outpatient Medical Care approved by Order of the Ministry of Health of the KR dated January 30, 2004 N32.*
- *Regulation On Psychiatric Team of First and Emergency Outpatient Medical Care (First and Emergency Aid Station/ Center of Emergency Outpatient Medical Care) approved by Order of the Ministry of Health of the KR dated January 30, 2004 N32.*

d. Provider Code(s) of Ethics

A healthcare worker should provide medical care to any person regardless of gender, age, race and ethnic nationality, place of residence, social status, religious and political convictions, and other non-medical factors (*Article 3 of the Code of Professional Ethics of a Healthcare worker of the Kyrgyz Republic*).

e. Other Relevant Sources

Government Regulation of the Kyrgyz Republic *On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011*, approved by the Decree of the Government of the KR dated July 1, 2011 N 350

f. Practical Examples

1. Example(s) of Compliance

An example of observance of the right to access is the distribution of free insulin and other antihyperglycemic drugs to diabetic patients in a city endocrinological dispensary. In addition, such drugs may be provided to disabled diabetic patients at home (for instance, persons with sight-disability caused by diabetes).

2. Example(s) of Violation

- Examples of violation of the right access are the violation of the right of persons in custody to

208. Exercise of the right to access of artificial fertilization has its own specifics. This procedure (extracorporeal fertilization, embryo implanting, artificial insemination) is provided upon written application by a woman above 18, and if she is married, her husband's consent is also required (Article 35 of the Law On Health Protection of Citizens in the Kyrgyz Republic)

receive high quality medical care and the delayed arrival of an ambulance and refusal to provide it. In the latter, dispatchers of the first aid services refuse to record the calls in cases of drug over dosage that usually, without timely medical intervention, causes death. Real facts and problems of providing first aid can be found in materials of the board of the Ministry of Health of the KR “On the State of First Aid Medical Care in the Kyrgyz Republic” (www.med.kg).

- Violation of some rights may be caused by the level of development of the medical science and health, lack of necessary equipment and materials, specialists in this field, and lack of or inadequate legal regulation. Thus, for instance, currently no “gender affirming” surgeries are held in Kyrgyzstan. (Opinion of the authors)
- There are many cases of violation of the right to access to high quality medical care, for instance, in penitentiary facilities. In line with other reasons, this is caused by poor equipment with both medical tools and pharmaceuticals, and the most essential things – bed-clothes, food and other. The situation is aggregated by insufficient number of competent medical staff.

3. Actual Case(s)

There are no actual court cases.

g. Practice Notes for Lawyers

As a rule, non-observance of the right to accessibility often takes place in relation to socially-disadvantaged groups of the population – persons without specific place of residence, persons having no documents, commercial sex workers, or people who use drugs, for example. One more factor that puts citizens in different positions in access to medical care is their place of residence in remote areas. The evidence of violation of the right to access may be, for instance, registration of calls of ambulance by the dispatcher and lack of documents confirming the visit of doctors to the patient. Undoubtedly, people living in the capital and regional centers have better enforcement of the right to access. Protection of the protected right to accessibility may be provided in the judicial (i.e. with the help of state bodies, such as the MOH, etc.) and non-judicial (without such recourse, such as human rights organizations) form.

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right of Access in Chapter 2 on international standards of human rights in patient care.

5.1.3. RIGHT TO INFORMATION

a. Right 3 as Stated in the ECPR

Every individual has the right to access all kinds of information regarding their state of health, the health services and how to use them, and to all that scientific research and technological innovation makes available.

Clarification

Securing the patient's right to information is a necessary condition of exercise of his/her right to receive of medical care. Right to information is closely connected with the right to consent, and is its necessary condition, since consent of the patient should be informed that in turn effects the right to free choice.

b. Right as Stated in in the Country Constitution / Legislation

Constitution

- Everyone shall have the right to freely seek, receive, keep and use information and disseminate it orally, in writing or otherwise (*Part1, Article 33*).
- Everyone shall have the right to acquaint with the information on himself/herself in state authorities, local self-governance bodies, institutions and organizations (*Part2, Article 33*).
- Each individual is guaranteed access to information held by public bodies, local authorities and their officials. The procedure for providing information is defined by law (*Part 4, Article 33*).

Legislation

The right to information is protected by provisions of the *Law On Health Protection of Citizens in the Kyrgyz Republic*. In Article 61 of this law, one of the aspects of support of the right to health protection is the right to information on issues of prophylactic medicine, hygiene, and formation of the healthy life style.

General citizens' right to information:

Right to information may be considered in two areas:

1. right to receive information on factors affecting health;
2. right of patients to information on their health conditions.
 1. **Right to receive information on factors affecting health** is closely connected with the right to preventive measures, since it is one of conditions of its exercise. Thus, citizens shall have a right:

- to regularly receive reliable and timely information about factors facilitating protection of health or having adverse impact, including information on the environmental, sanitary-epidemiological well-being of the area of residence, rational food, on products, works, services, and their compliance with the sanitary standards and rules, on other factors. Such information is provided by local and state authorities through mass media or directly to citizens upon their request, in the procedure established by the Government (*Article 64 of the Law On Health Protection of Citizens in the Kyrgyz Republic*);
- to receive information on the sanitary and epidemiological situation, condition of the life environment, quality and safety of the technical and industrial goods, food products, goods for personal household needs, potential risk of the ongoing works and rendered services for the human health in the state authorities, local self-governance bodies, state sanitary-epidemiological bodies and agencies, and from legal entities (*Article 7 of the Law On Sanitary and Epidemiological Well-being of Population*);
- to receive information on quality and safety of pharmaceuticals in drug stores, and in medical and prophylactics and sanitary-epidemiological organizations (*Article 15 of the Law On Pharmaceuticals*).

2. Right of patients to information on their health conditions is connected with the right to consent and freedom to choose. Consent of the patient to receive diagnostics and treatment, or to deny them, should be informed. Choice of the persons should not be intuitive or uninformed.

Article 73 of the Law On Health Protection of Citizens in the Kyrgyz Republic contains the general rule:

“Any patient has a right to receive the available information on his/her health condition, including data on the results of examination, existence of disease, its diagnosis and forecast, methods of treatment, related risk, possible options of medical intervention, their consequences and results of the applied treatment,” in a form understandable for him/her.”

The right to information includes the right to receive reliable data on the following:

- types and procedures of provided medical services;
- availability of the certificates of accreditation of the healthcare institutions;
- first and last names, position and qualification of healthcare workers participating in his examination and treatment;
- labor regime and food engaged in physical culture and sports, rehabilitation activities related to his/her disease;

- procedure of taking medicines and possible side effects.
- Receive a copy of medical documents reflecting his/her state of health, if the documents do not affect interests of a third party.²⁰⁹

The opportunity to receive information on the state of his/her health is the right, rather than obligation of the patient. Article 73 states that “information on the state of health” may not be provided to the patient against his will. If the forecast for treatment and cure of the diseases is not good, information should be provided to the patient and members of his family with observance of the medical and ethics standards, unless the patient prohibits informing them on this or appoints a person to whom such information should be disclosed.”

Special rights of citizens to receive information in certain areas:

- on the state and protection of **reproductive health**, on contraception methods, on conditions and methods of receipt of the reproductive health protection services (*Article 11 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- on the **procedure of artificial fertilization**, medical and legal aspects of its consequences, data of the medical and genetic examination of the donor, external data and ethnic nationality of the donor²¹⁰
- on the need to get **prophylactic vaccinations**, consequences of their denial, possible post-vaccination complications (*Article 5 of the Law On Immunoprophylaxis of Communicable Diseases*)
- on HIV/AIDS and prevention measures (*Article 5 of the Law On HIV/AIDS in the Kyrgyz Republic*)

Additional guarantees of the right to information are set forth by the law for the insured citizens, in particular:

to receive information on payments under the mandatory health insurance from the from insuring company; (*Article 13 of the Law On Health Insurance of Citizens of the Kyrgyz Republic*).

For certain categories of persons, legislation of the Kyrgyz Republic provides for additional guarantees of exercise of the right to information:

- rights of **pregnant women**, having decided to make artificial interruption of pregnancy by medical indications, on possible negative consequences for her health (*Article 16 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)

209. Persons obliged to provide information on the health condition of the patient include: attending medical doctor, chief of department of the healthcare facility, other specialists directly involved in examination and treatment.

210. Relevant information is provided by the doctor implementing medical intervention

- rights of **minors** to information on health condition in an easily accessible form (*Article 68 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- rights of **donors of the blood and its components** to know the results of medical examination (*Article 9 of the Law On Donorship of Blood and its Components*)
- rights of **a donor of organs and tissues** to demand complete information on possible complications for his/her health due to the forthcoming surgery to remove organs and/(or) tissues from the healthcare facility (*Article 12 of the Law On Transplantation of Human Organs and/or Tissues*)
- rights of a **personsuspected or convicted of committing a crime**, if he/she was subject to bodily injuries, to receive information on results of medical examination (*Article 23 of the Law On the Procedure and Conditions of Detention in Custody of Persons Apprehended on Suspicion and Accused of Committing Crimes*)
- rights of a **person with mental problems** to receive information on his/her rights, in accessible form,taking into consideration of his/her mental state, information on the mental disturbances of the person and applied methods of treatment (*Article 5 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)²¹¹
- rights of **diabetes patients** to information on their rights, obligations, types and procedure of receiving medical and social care; (*Article 7 of the Law On Diabetes*)
- rights of a **TB patient** to receive information on his/her own rights, which are fixed in the constitution and laws, the nature of his disease, and the applied methods of treatment (*Article 15 of the Law On Protection of the Population from TB*)
- rights of the **oncologic patient** to receive information on his/her own rights, which are fixed in the constitution and laws on the nature of his/her disease, applied methods of diagnostics, and treatment, in accordance with medical ethics, unless otherwise stipulated by legislation (*Article 9 of the Law On Ontological Aid to the Population*)
- right of the **patient participating in the clinical studies of pharmaceuticals** to information on the medicine and substance of its clinical studies, on the expected effectiveness of the medicine and degree of risk for the patient, on actions of the patient in case of unexpected effects of the medicine on the his health condition, and on conditions of insurance of health of the patient (*Article 28 of the Law On Pharmaceuticals*)²¹²
- rights of the **person living with HIV/AIDS** to receive full information on the procedure of medical examination for HIV and its results, and to pre-test and post-test counseling; to receive reliable and full information on his/her own rights, which are fixed in the constitution and laws, nature of the disease and applied methods of observation and treatment (*Article*

211. In this, Under Article11 of this Law, “a record is made in the medical documentation of the provided information”

212. The patient’s consent to participate in the clinical studies should be provided in writing

6 of the Law On HIV/AIDS in the Kyrgyz Republic)**c. Supporting Regulations/Bylaws/Orders**

There are no relevant by-laws and orders.

d. Provider Code(s) of Ethics

There are no significant provisions in the Code of Medical Ethics.

e. Other Relevant Sources

There are no other relevant sources.

f. Practical Examples**1. Example(s) of Compliance**

- The patient receives information on the forthcoming medical procedure during conversation at the doctor's office. Thus, for instance, the dentist explains advantages and disadvantages of the procedure of implantation and prosthesis, based on which the patient makes a choice.
- Another example of observance is the accessibility of information on treatment, diagnosis, and rehabilitation that is contained on the information boards, posters, booklets available in the health institution.

2. Example(s) of Violation

- The oculist does not inform the diabetic patient and therefore, the diabetic retinopathy patient, on opportunity to receive treatment that would help to avoid retinal detachment in the private ophthalmological clinic. As a result, the process becomes non-reversible, and the patient's sight is failing.
- The patient requests the dentist and gives consent to expensive anesthesia. After treatment, it turned out that a double dose of narcosis was needed that naturally affects the cost of treatment. The patient was not warned about it before beginning of treatment.

3. Actual Case(s)

There are no court cases on this right

g. Practice Notes for Lawyers

When protecting the patient it is necessary to check if his right to information was upheld. Lack of information deprives the patient of the right to make an independent decision. In practice, there are situations when the patient was not warned of possible complications of surgical intervention and the necessity to make an additional intervention for additional payment. As a result, the repeated

surgery may become inevitable. There is no reliable information about list of provided paid medical services, including their cost, procedure of payment, conditions and procedure of rendering.

In protection of the patient's right to information, it is recommended to clarify whether it was adequately provided to him, in which form it was provided (oral or writing), and whether the patient was able to perceive and understand it.

Protection of the infringed right to preventive measures may be provided in the judicial (i.e. with the help of state authorities) and non-judicial (without such recourse, such as the Ombudsman or the Human Rights Committee) form.

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right to Information in Chapter 2 on international standards of human rights in patient care.

5.1.4. RIGHT TO CONSENT

a. Right 4 as Stated in ECPR

Each individual has the right to freely choose from among different treatment procedures and providers on the basis of adequate information.

Clarification

Right to consent is one of the necessary conditions for providing medical care to the person, since he/she has a right to resolve issues on his/her own health. Besides, it is necessary for medical personnel to receive the patient's consent for medical intervention in order to observe the Constitutional right to personal inviolability that consists of the somatic and mental inviolability.²¹³

Right to consent is highly connected with the patient right to information since the patient's consent to medical intervention, or its denial, should be informed.

b. Right as Stated in the Country Constitution / Legislation

Constitution

The Constitution does directly establish the right to consent; however, it includes general statements:

- Conducting of medical, biological or psychological experiments on people without their duly expressed and verified voluntary consent is prohibited (*Part3 Article22*).

213. O.V.Leontiev, A.A. Krukova, S.F. Sluchevskaya, S.L.Plavinski. Critical issues of exercise of patient's rights in Russia (comparative legal analysis of the international, external and internal law). СПб, 2008. P32

- Everyone shall have the right to freedom of thought and opinion (*Part 1 Article 31*).
- Everyone shall have the right to free expression of opinion, freedom of speech and press (*Part 2 Article 31*).
- No one may be forced to express his/her opinion or deny it (*Part 3 Article 31*).

Legislation

In more details, the right to consent is protected by provisions of the Law On Health Protection of Citizens in the Kyrgyz Republic. Article 74 of this Law established the general rule under which the necessary preliminary condition for medical intervention is voluntary consent of the citizen. With regard to medical intervention into the body of a pregnant woman, who is married, under Article 14 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement, consent of both marriage partners is required.

The Law envisages cases when the consent of a person should be given in writing:

- **in surgical intervention, blood transfusion and application of complicated invasive methods of diagnosis** (*Article 74 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- in conducting **clinical and methodological and biological experiments** on a human being (*Article 34 of the Law On Health Protection of Citizens in the Kyrgyz Republic*), including those related to reproductive health (*Article 10 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- in the person's participation in the **clinical study of the pharmaceuticals** (*Article 28 of the Law On Pharmaceuticals*)
- involving **people living with HIV/AIDS** as an object for testing medicines, scientific research or educational process, photographing, video or film shooting (*Article 6 of the Law On HIV/AIDS in the Kyrgyz Republic*)
- in treatment of the **person with mental disturbances**, except for cases of application of coercive medical measures, and non-voluntary hospitalization, if the person represents direct threat for himself and people around, helpless, i.e. is unable to meet his own life needs without support, or significant harm will be brought to health by worsening of the mental state, if the person is not provided with psychiatric care (*Part 5 Article 28, Part 1 Article 11 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)
- when performing **artificial insemination** (*Article 20 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- in use of the **surrogacy method** (*Article 18 of the Law On Reproductive Rights of Citizens*)

*and Guarantees of their Enforcement, and Part. 4 Article 54 of the Family Code)*²¹⁴

- in performing operative **sterilization** (*Article 22 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- in **transplantation of human organs and/or tissues**: If the patient has not reached 18 years of age or is recognized as mentally incapacitated in the routine examination, such transplantation is carried out with the written consent of the parents or legal representative. (*Article 7 of the Law On Transplantation of Human Organs and/or Tissues*)

Revocation of patient consent

The consent given by the patient for medical intervention may be revoked, except for cases in which doctors already have started the medical intervention or its termination or reversal is impossible due to threat to life and health of that person (*Article 74 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).

Refusal to give consent

The reverse of the right to consent is the patient's right to refuse treatment:

- denial of participation of students of medical education organizations in the process of his/her diagnostics and/or treatment (*Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- denial of a person with mental disturbances, at any stage of treatment, of being used as an object for testing medicines and methods, for scientific research or education process, or for photographing, video or film shooting (*Part 2 Article 5 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)
- refusal of a pregnant women for artificial interruption of pregnancy by medical reasons indications (*Article 16 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*).

The Law envisages cases when the refusal of a person should be given in writing, for instance, rejection of prophylactic vaccination (*Article 5 of the Law On Immunoprophylaxis of Communicable Diseases*).

In some cases, exercise of the citizen's right to denial/refusal may make it impossible for him/her to perform certain works and take certain job posts or positions.

Compulsory treatment

In certain cases, implementation of some examination and treatment is **compulsory**. Thus, for instance:

214. The surrogacy agreement is subject to notary certification (Article 18 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement)

- Test for TB is compulsory (*Article 12 of the Law On Protection of the Population from TB*)
- Persons ill with infectious diseases, persons suspected of such diseases and in contact with those ill with infectious diseases, as well as persons who are carriers of infectious pathogens shall be subject to laboratory tests and medical surveillance or treatment; and if they are dangerous for surrounding people, they shall be subject to compulsory hospitalization or isolation in a manner set forth in legislation of the Kyrgyz Republic. (*Article 20 of the Law of the KR on Public Health*)

No patient consent required

The *Law On Health Protection of Citizens in the Kyrgyz Republic (Article 74)* sets forth general cases when no consent for medical care is required:

- if the citizen's condition does not allow him to express his will, while medical intervention is necessary by emergency indications ²¹⁵
- if intervention should be implemented to a person under 16 or recognized as disabled and he/she has no legal representatives ²¹⁶

Legislation in certain areas of medical activity stipulates cases when no consent of a patient for medical intervention is required:

- in application of compulsory medical measures
- in non-voluntary hospitalization to provide psychiatric care. (*Part 5 Article 28, Part 1 Article 11 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)
 - The use of compulsory medical treatment is carried out only by a court decision based on the medical committee's concluding decision. Compulsory medical measures may be appointed by the court for:
 - a) people who are mentally ill and have committed socially dangerous acts;
 - b) prisoners who suffer from: alcoholism, drug addiction, substance abuse tuberculosis, sexually transmitted diseases and HIV infection.

A person with a mental disorder may be hospitalized in an in-patient psychiatric facility without his/her consent or without the consent of his/her legal representative before the judge's ruling if his/her examination or treatment is possible only in stationary (steady-state) conditions, and his/her mental illness is severe and leads to: a direct danger to himself/herself, or surrounding people; his/her helplessness i.e. his/her inability to meet basic living needs; or a significant damage to his/her health due to deterioration of mental state if the person is left without psychiatric care.

215. The issue on its implementation for the benefit of a citizen is considered by the board of doctors, and if it is not possible to organize the board of doctors, it is done by the attending (on-duty) doctor with following notification of officials of healthcare institution.

216. Here, the issue of implementation is also considered by the board of doctors and if it is not possible to organize the board of doctors, it is done by the attending (on-duty) doctor with following notification of officials of healthcare institution and legal representatives

Only in special cases, psychiatric examination may be held without consent of the patient of his/her legal representative. This is allowed only in cases when based on the available data the person under examination commits actions giving grounds to think that he/she has severe mental disorder that causes: his direct threat for himself/herself or surrounding people, or his helpless, i.e. is unable to meet his own life needs without support, or significant harm will be brought to health by worsening of the mental state, if the person is not provided with psychiatric care. Psychiatric examination of a person may be held without his consent or consent of his/her legal representative, if the examinee is under dispensary observation and suffers chronic and heavy mental disorder with severe or often painful aggravation (*Art. 23, 24, 27 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)

The law stipulates a specific procedure of exercise of the right to consent in relation to persons without full abilities. Under general rule set forth by *Article 73 of the Law On Health Protection of Citizens in the Kyrgyz Republic*, consent for medical intervention in relation to persons under 16, and citizens duly recognized as disabled, is given by their legal representatives after they are informed of the health condition, results of examination, disease, its diagnosis and forecast, methods of treatment, related risk, possible options of medical intervention, their consequences, etc. The need to receive consent of legal representatives may be included in special laws. For instance, Article 16 of the *Law On Reproductive Rights of Citizens and Guarantees of their Enforcement* states that “artificial interruption of pregnancy of minors is made with mutual consent of minors, parents or their legal representatives,”

In the area of psychiatric care, consent to medical intervention (treatment and examination) is issued by legal representatives of persons under 15 (parents, adoptive parents, tutors, curators, tutorship and guardianship authority) (*Art. 23 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*).

c. Supporting Regulations/Bylaws/ Orders

- *Government Regulation of the Kyrgyz Republic On The Program Of State Guarantees Of Provision Of Citizens Of The Kyrgyz Republic With Health Care In 2011 approved by the Decree of the Government of the KR dated July 1, 2011 N 350;*
- *Order of the Ministry of Health On Implementation of the Law of the Kyrgyz Republic “On Amendments to the Law of the of the Kyrgyz Republic “On Immunoprophylaxis of Communicable Diseases” approved by Order of the Ministry of Health of the KR dated October 26, 2005 № 457;*
- *Instruction On the Procedure of Prophylactic Medical Examination in the Educational Establishments of the Kyrgyz Republic to Identify Minors Using Drugs and Psychotropic Substances approved by Order of the Ministry of Health of the KR dated January 30, 2004 № 32;*
- *Regulation On Psychiatric Team of First and Emergency Outpatient Medical Care (First and Emergency Aid Station/ Center of Emergency Outpatient Medical Care) approved by Order of the Ministry of Health of the KR dated November 15, 2002 №468*

- *Temporary Instruction On the Procedure of Emergency Hospitalization of Mentally Disturbed Patient's Non-voluntary Order approved by Order of the Ministry of Health of the KR dated August 4, 2003 №332*
- *Temporary Instruction On the Procedure of Reporting on the Mental State of Citizens approved by Order of the Ministry of Health of the KR dated August 4, 2003 №332*
- *Temporary Instruction On the Procedure of Primary Psychiatric Examination of Citizens approved by Order of the Ministry of Health of the KR dated August 4, 2003 №332*

d. Provider Code(s) of Ethics

- A healthcare worker has no right to apply medical measures or refuse to provide them without adequate grounds (*Article. 4 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).
- A doctor makes any studies, testing and experiments with participation of the patient, only upon his/her consent, and in accordance with legislation of the Kyrgyz Republic. The doctor carrying out the studies should guarantee the patient's right to deny participation in the research program at any stage and for any reason. Such denial should not have any adverse impact on the doctor's attitude to the patient and or cause refusal to provide further medical care to him (*Article 13 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

There are no other relevant sources

f. Practical Examples

1. Example(s) of Compliance

An example of observance of the right to consent is making a record in the case history on the patient's consent for surgery, certified with patient's signature.

2. Example(s) of Violation

An example of violation of the right to consent is sterilization, without her consent, of a woman – a disabled person of group II - during surgery to remove her appendix. The group "Equality" that worked in Issyk-kul oblast with disabled people informed of severe and insulting dignity violations of rights of disabled women, including forced sterilization. Thus, for instance, a 33-years old woman with axis trauma was sterilized after she gave birth to healthy child. The doctors failed to receive consent for surgery, and it became known to her only after several months. (Meerim Musaeva, "Sun Shines to All Equally")

3. Actual Case(s)

According to the verdict of the Sverdlovsk district court of Bishkek city on March 17, 2011, citizen X was found guilty of committing a crime under Article 247 of the Criminal Code (illegal possession of narcotics with intent to sell). According to Article 96 of the Criminal Code, he was assigned to pass compulsory treatment of drug addiction.

g. Practice Notes for Lawyers

In protection of the patient's right to consent, it is necessary to consider that the law allows the opportunity of providing medical care without his/her consent. Thus, under Article 74 of the Law

On Health Protection of Citizens in the Kyrgyz Republic, no consent is required for providing medical care if:

- the citizen's condition does not allow him/her to express his/her will, while medical intervention is necessary by emergency indications (the issue of its implementation for the benefit of a citizen is considered by a board of doctors; and if it is not possible to organize the board of doctors, it is done by the attending/on-duty doctor, with following notification to officials of the healthcare institution);
- intervention should be implemented to a person under 16 or recognized as disabled and he/she has no legal representatives (the issue of implementation is also considered by the board of doctors; and if it is not possible to organize the board of doctors, it is done by the attending/on-duty doctor with following notification of officials of healthcare institution).

In protection of the violated right to consent, it is necessary to pay attention to whether the patient was subject to forced pressure in the process of making his/her decision. Such pressure may consist of directly forcing the patient to make a certain decision, and/or providing only the information that leads the patient to making decision convenient for the doctor. Unfortunately, in fact it is difficult to prove this. The statement of claim is submitted under general rules at place of residence of the defendant to the district court.

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right to Consent in Chapter 2 under:

- Right to Liberty and Security of the Person
- Right to Privacy
- Right to Freedom from Torture and Cruel, Inhuman and Degrading Treatment
- Right to Bodily Integrity
- Right to the Highest Attainable Standard of Health

5.1.5. RIGHT TO FREE CHOICE

a. Right 5 as Stated in the ECPR

Each individual has the right to freely choose from among different treatment procedures and providers on the basis of adequate information.

Clarification

In general, the right to free choice may be enforced in the following areas:

- right to choose a doctor and health institution
- right to be diagnosed and treated, or to deny either or both

However, in cases stipulated by legal acts, these rights may be restricted. Such restriction is first of all based on Part 2 Article 18 of the Constitution:

"The rights and freedoms of a person and citizen can be limited by the Constitution and laws to protect the health and morality of the population and the rights and freedoms of other people. Imposed restrictions must be commensurate with the mentioned aims."

Exercise of the right to free choice is impossible without security of the right to information, since a citizen's choice should be informed, based on the reliable data.

b. Right as Stated in the Country Constitution / Legislation

Constitution

The Constitution of the Kyrgyz Republic does not directly set forth the right to free choice with regard to exercise of the right to health. However, it is closely connected with such Constitutional rights as:

- right to life (*Article 21 of the Constitution*)
- right to integrity of private life, to protection of honor and dignity. (*Part 1 Article 29 of the Constitution*)
- right to freedom of thought and opinion (*Part 1 Article 31 of the Constitution*)
- right to free expression of opinion, freedom of speech and press (*Part 2 Article. 31 of the Constitution*)
- right to health protection (*Part 1 Article 47 of the Constitution*)

Legislation

The right to free choice is provided in more details in provisions of the Law On Health Protection of Citizens in the Kyrgyz Republic. As a general rule, in Article 61 of this normative legal act, there is the opportunity of free choice of a family doctor and a general practice doctor.

General rights of citizens to free choice:

- right of each family member to choose a family doctor who provides medical care at place of residence (*Article 66 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- right of each patient to choose the attending doctor in out-patient and in-patient healthcare facilities (*Article. 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic, Article 13 of the Law On Health Insurance of Citizens of the Kyrgyz Republic*)
- right of each patient to hold the board of doctors and consultations with other specialists (*Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)
- right of each patient to participate in scientific and medical experiments (*Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)

Special rights of citizens to free choice in certain areas:

- to choose artificial termination of pregnancy with duration of gestation of no more than 12 weeks irrespective of the reason ; with duration of gestation under 22 weeks as determined by social indicators, regardless of the duration by medical indications (*Article 16 of the Law On Reproductive Rights of Citizens and Guarantees of Their Enforcement*)
- to refuse artificial termination of pregnancy as recommended by medical indications (*Article 16 of the Law On Reproductive Rights of Citizens and Guarantees of Their Enforcement*)
- freedom to make decisions with regard to number of children and time of their birth, in marriage or out of marriage, with intervals between births necessary to preserve health of the mother and child (*Article 9 of the Law On Reproductive Rights of Citizens and Guarantees of Their Enforcement*)
- to use contraception devices (*Article 17 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- where needed, to use methods of artificial fertilization: insemination, embryo implantation, and extracorporeal fertilization, or to apply the surrogacy method (*Articles 18, 20 of the Law On Reproductive Rights of Citizens and Guarantees of Their Enforcement*)
- right of a woman in labor to choose a comfortable position during the labor and delivery and to choose the person for the psycho-emotional support, who may her husband, or a family member, or one of her friends (*Parts 6, 7 of the Order of the Ministry of Health On Arrangement of Activity of Maternity Houses (Departments) and further Improvement of Quality of the Obstetric-Gynecologic and Neonatal Care in the Kyrgyz Republic*)
- to change or correct gender (*Article 38 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)

For certain categories of persons, legislation of the Kyrgyz Republic provides for additional

guarantees of exercise of the right to free choice:

- rights of a person living with HIV/AIDS to free choice of the doctor and healthcare facility for medical examination, treatment and observation (Article 6 of the Law On HIV/AIDS in the Kyrgyz Republic)
- right of a person living with HIV/AIDS to participate in testing medicines, in scientific research or the educational process, or in photographing, video or film shooting (Article 6 of the Law On HIV/AIDS in the Kyrgyz Republic)
- right of diabetes patients to choose insulin in consultation with the attending doctor (Article 7 of the Law On Diabetes)
- right of the oncologic patient to free choice of the attending doctor-oncologists and the medical institution that, irrespective of ownership, should provide him/her with medical services in compliance with current requirements (Article 9 of the Law On Ontological Aid to the Population).

c. Supporting Regulations/Bylaws/Orders

The Order of the Ministry of Health of the Kyrgyz Republic On Approval of the Rules of Population Registration of the Kyrgyz Republic to the Groups of Family Doctors of May 19, 2009 N 270

d. Provider Code(s) of Ethics

A health care worker does not have the right to interfere with a patient who has decided to entrust his/her further medical treatment to another specialist (*Article 11 of the Code of Professional Ethics of a Medical Worker of the KR*).

e. Other Relevant Sources

The registration rules of the population of the Kyrgyz Republic to the groups of family doctors

f. Practical Examples

1. Example(s) of Compliance

An example of observance of the right to free choice is the opportunity to choose the medical institution. Thus, for instance, a pregnant woman may be registered at the private or state healthcare institution, may choose the maternity house, or choose the attending doctor.

2. Example(s) of Violation

Citizen B. went to one of the capital's clinics with complaints of abdominal pain. Having examined citizen B, the doctor on duty sent her to have an ultra-sound examination of the abdominal cavity. He insisted that she should have an ultrasound in a specific private medical clinic. Citizen B paid 300 soms for ultrasound in a private clinic. Later she found out that she could have had an ultrasound in the same clinic for 70 soms.

3. Actual Case(s)

There are no actual court cases based upon violation of this right.

g. Practice Notes for Lawyers

Since the right to free choice is closely connected with the right to information and right to consent, in its protection it is necessary to check whether these rights are violated. Any evidence may be used (medical documents, evidence, etc.). Protection of the infringed right to preventive measures may be provided in the judicial (i.e. with the help of state authorities) and non-judicial (without such recourse, such as the Ombudsman of the Human Rights Committee) form.

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right to Free Choice in Chapter 2 under:

- Right to Liberty and Security of the Person
- Right to Privacy
- Right to Freedom from Torture and Cruel, Inhuman and Degrading Treatment
- Right to Bodily Integrity
- Right to the Highest Attainable Standard of Health

5.1.6. RIGHT TO PRIVACY AND CONFIDENTIALITY

a. Right 6 as Stated in the ECPR

Every individual has the right to the confidentiality of personal information, including information regarding his or her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his or her privacy during the performance of diagnostic exams, specialist visits, and medical/surgical treatments in general.

Clarification

The right of a patient to privacy and confidentiality is based on the Constitutional right to integrity of private life and the respect and protection of honor and dignity. Securing the patient's right to inviolability is a condition of enforcement of other rights in the process of receiving treatment. Without protection of rights to privacy and confidentiality, the patient may not provide full information to the healthcare workers- the data necessary in order to prescribe adequate diagnostic procedures and adequate treatment.

b. Right as Stated in the Country Constitution/Legislation

Constitution

The Constitution does not directly set forth the right to privacy and confidentiality when providing medical care. However, there are general wordings:

- Everyone shall have the right to inviolability of one's private life and the protection of honor

and dignity (*Part 1 Article 29 of the Constitution*).

- Collection, storage, use and dissemination of confidential information as well as information on the private life of a person without his/her consent shall not be allowed except for cases envisaged in the law (*Part 3 Article 29 of the Constitution*).

Legislation

The legislation of the Kyrgyz Republic governs criminal liability for divulgence of medical confidentiality (*Article 145 of the Criminal Code of the KR*) and for violation of privacy (*Article 135 of the Criminal Code of the KR*).

Under *Article 20 of the Civil Code*, Citizens shall have a right to the protection of personal privacy: secrecy of correspondence, diaries, memoirs, notes, intimate life, birth, adoption, medical or legal information, investment information, etc. Disclosure of personal privacy information is possible only in cases established by law.

The Kyrgyz Republic adopted the Law On Personal Information, in which, in line with others, the personal data includes the data on health condition (*Article 3*). The subject of personal data made an independent decision on providing any of his/her personal data, except for cases stipulated by law.

The Law on Health Protection of Citizens in the Kyrgyz Republic

As a general rule, *Article 73 of the Law On Health Protection of Citizens in the Kyrgyz Republic* states that the information contained in medical documents of the patient is a medical secret and may be disclosed without consent of the patient only for reasons set forth in *Article 89 of the Law On Health Protection of Citizens in the Kyrgyz Republic*.

More detailed information on the right to privacy and confidentiality is provided in *Article 91 of the Law On Health Protection of Citizens in the Kyrgyz Republic*. It states that information on the following is a medical secret: the fact of recourse for medical aid, health condition of the citizen, diagnosis of his/her disease and other data received during examination and treatment. The citizen should receive confirmation of the guarantee of confidentiality of the disclosed data from both the doctor and the health care organization.

Upon consent of the citizen or his/her legal representative, it is allowed to disclose confidential (medical secret) data to other citizens, including officials, for the benefit of examination and treatment of the patient, for the purpose research, publication in scientific literature, use of these data in the educational process, and for other purposes (*Article 91*).

The law establishes the general prohibition of disclosure of the confidential (medical secret) data by persons who have learned them in training, or in the discharge of professional, official and other obligations. Such persons include: the attending doctor, nurse, feldsher, aidman, pharmaceutical worker, laboratory assistant, student of the medical school or institute, and other (*Article 91*).

Data that is confidential/medical secret may be disclosed without consent of the citizen or of his/her legal representative in the following cases:

- for purposes of examination and treatment of the citizen who is unable to express his/her will due to his/her health status/condition
- if there is threat of spreading of communicable diseases, mass poisoning and damages
- upon request of the bodies of inquiry and investigation, prosecutor's office and court with regard to investigation or judicial trial

- where aid is provided to a minor (under 16 years of age), to inform his/her relatives or legal representatives
- if there are grounds to suggest that the health of the citizen was harmed through unlawful actions.

The persons who received the confidential/medical secret data in the procedure established by law bear equal responsibility with medical and pharmaceutical workers proportionate to the damage/harm to the citizen for disclosure of the medical secret in accordance with legislation of the Kyrgyz Republic. (*Article 91 of the Law On Health Protection of Citizens in the Kyrgyz Republic*)

Persons receiving the doctor diploma from higher education establishments of the KR take an oath of doctor in which they swear not to abuse the confidence of their patients and to keep the medical secrecy (*Article 92 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).

Special rights of citizens to privacy and confidentiality in specific areas:

- when providing psychiatric care (on mental disturbance of the citizen, facts of recourse for psychiatric aid and treatment in the institutions providing such care, and other data on the state of mental health)
 - However, for enforcement of rights and legal interests of a person with mental disorder, upon his/her request or the request of his/her legal representative, the person, or his/her legal representative, may receive information on the state of the mental health of that person and the psychiatric care provided to him, in an understandable form and with consideration of the mental condition of the patient (*Article 9 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*).
- keeping confidentiality of the information related to exercise by the citizens of their reproductive rights by the state authorities, local self-governance bodies, and legal entities and individuals; data on the implemented artificial fertilization is confidential/medical secret (*Article 9 and Article 20 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*).
- right of the donor of organs and/or tissues to confidentiality of information on extraction of his organ (or tissues) for transplantation to the recipient (*Article 12 of the Law On Transplantation of Human Organs and/or Tissues*)
- Information on a person being infected by the Human immunodeficiency virus or HIV/AIDS is an official secret protected by the law (*Article 9 On HIV/AIDS in the Kyrgyz Republic*).
- Results of the examination required for a marrying person is a medical secret; it may be revealed to the person whom that person is going to marry, but only with the consent of the examined person (*Part 2 Article 16 of the Family Code*).

c. Supporting Regulations/Bylaws/Orders

- *Government Regulation of the Kyrgyz Republic On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011 approved by the Decree of the Government of the KR dated July 1, 2011 N 350;*
- *Instruction On the Procedure of Prophylactic Medical Examination in the Educational*

217. Receipt of written consent of the person or his legal representative is compulsory.

Establishments of the Kyrgyz Republic to Identify Minors Using Drugs and Psychotropic Substances approved by Order of the Ministry of Health of the KR dated November 15, 2002 №468;

- *Temporary Instruction On the Procedure of Reporting on the Mental State of Citizens approved by Order of the Ministry of Health of the KR dated August 4, 2003 №332;*
- *Temporary Instruction On the Procedure of Primary Psychiatric Examination of Citizens approved by Order of the Ministry of Health of the KR dated August 4, 2003 №332*

d. Provider Code(s) of Ethics

The patient has a right to rely on a healthcare worker's keeping confidentiality of all the medical and entrusted personal information. A healthcare worker has no right to disclose the information having become known in the course of examination or treatment, including the fact of recourse for medical care, without permission of the patient or his/her legal representative. The healthcare worker should take measures to prevent disclosure of a medical secret. Death of the patient does not release the healthcare worker from the obligation to keep the medical secret. Disclosure of medical secret/confidential information is allowed in cases directly specified by legislation of the Kyrgyz Republic (*Article 9 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

There are no other relevant sources.

f. Practical Examples

1. Example(s) of Compliance

An example of observance of the right to privacy and confidentiality is the refusal to issue the medical card of the pregnant woman to her husband, without her consent.

2. Example(s) of Violation

An example of violation of the right to privacy and confidentiality is disclosure of information that a patient is a drug addict by providing the parents of the patient the information on his/her diagnosis and methods of treatment or by writing the diagnosis in sick leave information. Examples are widely spread in practice.

3. Actual Case(s)

The chief doctor of one healthcare institution permitted disclosure of the HIV-positive status of a patient through mass media. According to the court verdict, the chief medical officer was found guilty of an offense specified in *Article 145 of the Criminal Code of the Kyrgyz Republic*, "the disclosure of medical confidentiality," on the basis of which he had a suspended sentence for a term of two years with the deprivation of the right to occupy the corresponding position in health care.

g. Practice Notes for Lawyers

Protection of the infringed right to privacy and confidentiality may be provided in the judicial (i.e. with the help of state authorities) and non-judicial (without such recourse) form. As one of the ways of protection, it is recommended to seek compensation for moral damage.

h. Cross-referencing of Relevant International Rights

Please find a discussion of international standards relevant to the Right to Privacy and Confidentiality in Chapter 2 on international standards of human rights in patient care.

5.1.7. RIGHT TO RESPECT FOR PATIENTS' TIME

a. Right 7 as Stated in ECPR

Each individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment.

Clarification

The health services have the duty to fix waiting times within which certain services must be provided, on the basis of specific standards and depending on the degree of urgency of the case. The health services must guarantee each individual access to services, ensuring immediate sign-up in the case of waiting lists.

Every individual who so requests has the right to consult the waiting lists, within the bounds of respect for privacy norms. Whenever the health services are unable to provide services within the predetermined maximum times, the possibility to seek alternative services of comparable quality must be guaranteed, and any costs borne by the patient must be reimbursed within a reasonable time.

Doctors must devote adequate time to their patients, including the time dedicated to providing information.

b. Right as Stated in Country Constitution / Legislation

Constitution

- The Constitution sets forth the right of citizens to health protection (*Part 1 Article 47*).
- In addition, the basic law states that "Free medical service as well as medical service on preferential terms shall be ensured within the volume of state guarantees envisaged in the law" (*Part 3 Article 47 of the Constitution*).

Legislation

In more details, protection of the right to respect of patients' time is proved for in the *Law On Health Protection of Citizens in the Kyrgyz Republic*. In particular, *Article 22* states that "primary medical care is the main accessible medical service for every citizen" However, in line with others, it includes providing emergency medical care and the ensuring of the inter-connection of various health services irrespective of ownership: patient referral to specialists rendering the specialized medical care, in- service providing of medical and social care, and rehabilitation.

A separate variety of primary medical care is emergency medical care rendered to patients by life indications. The first medical aid is provided to patients in conditions requiring emergency medical intervention (accident, trauma, intoxication, other conditions and disease), and it is carried out immediately by the first aid service (*Article 23 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).

With the purpose of observing rights of other patients in respect of their time, the law sets forth the liability for a false call to the first aid services (*Article 101 of the Law On Health Protection of Citizens in the Kyrgyz Republic*). In accordance with *Article 374 of the Administrative Code*- "knowingly false calling police, fire, ambulance and other specialist services is punishable by a fine of between one to two specified rates."

The right to respect of patients' time consisting in providing aid immediately may entail violation of the right to consent and free choice in emergency cases:

- Transplantation of organs and/or tissues to the recipient without this consent or consent of his parents or his/her legal representative is carried out in extraordinary circumstance when delay in performing the relevant surgery threaten the life of the recipient, and it is not

possible to get such consent (*Article 7 of the Law On Transplantation of Human Organs and/or Tissues*).

- In cases when the condition of the person does not allow him to express his/her will, while medical intervention is needed as shown by emergency indications, the issue of its implementation for the benefit of a citizen is considered by the board of doctors; and if it is not possible to organize the board of doctors, it is done by the attending (on-duty) doctor with following notification to officials of the healthcare institution (*Article 74 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).
- In emergency cases, in which the receipt of information about his/her condition might cause the person/patient to represent a threat for himself and surrounding people, the statement to allow the psychiatric examination of the person without his consent or the consent of his/her legal representative may be done orally. The decision for the psychiatric examination in such a situation is made by the psychiatrist immediately and is registered by documentation in the patient's medical record (*Article 25 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*).

c. Supporting Regulations/ Bylaws/ Orders

The right to respect of patients' time is not directly regulated by the legislation of the KR; however its separate aspects are included in it.

- Thus, under *Part 1.4 of Annex 2 to Order of the Ministry of Health of January 30, 2004, # 32* On Arrangement of Activity of the Unit (Substation) of the First and Emergency Station/ Center for Emergency Outpatient Medical Care, areas of coverage of the first and emergency aid stations are arranged in view of 15-minute transportation accessibility. The areas of coverage by the departments are determined based on the number, density and age composition of the population, specifics of site development, density of industrial enterprises in the district, availability and condition of the transportation roads, and intensity of traffic.
- Government Regulation of the Kyrgyz Republic On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011 approved by the Decree of the Government of the KR dated July 1, 2011 N 350
- Regulation On Psychiatric Team of First and Emergency Outpatient Medical Care (First and Emergency Aid Station/ Center of Emergency Outpatient Medical Care) approved by Order of the Ministry of Health of the KR dated January 30, 2004 N 32
- Regulation On Arrangement of Activity of the Unit (Substation) of the First and Emergency Station/ Center for Emergency Outpatient Medical Care approved by Order of the Ministry of Health of the KR dated January 30, 2004 N 32

d. Provider Code(s) of Ethics

There are no relevant sections of the Code of Medical Ethics pertaining to this right.

e. Other Relevant Sources

Development Program for Emergency Medical Care in the Kyrgyz Republic for 2008-2017 approved by Order of the Ministry of Health of the KR dated December 17, 2008 №660

f. Practical Examples

1. Example(s) of Compliance

Examples of upholding the right to respect of patients' time include:

- the doctor receiving patients by previous appointment and on time
- providing emergency medical care regardless of time of the day

- possibility to call the doctor to the patient's home

2. Example(s) of Violation

Hypothetical examples of violation of this right are contained in the materials of the board of the Ministry of Health “On the State of First Aid Medical Care in the Kyrgyz Republic” (www.med.kg)

- The delayed arrival of an ambulance
- The absence of all necessary physicians and specialized experts in regional hospitals creates long waiting lists to see a doctor, thereby violating the right to respect patients' time. For example, there is a lack of oncologists, psychologists, endocrinologists, pediatricians, and others in regional healthcare facilities. Instead a general physician treats patients.

3. Actual Case(s)

There are no actual court cases.

g. Practice Notes for Lawyers

As a rule, failure to observe the right to respect of patients' time, in particular to the treatment without delay, may entail serious consequences. Thus, delayed arrival of the ambulance may make it impossible to provide timely medical care, and therefore may cause the development of irreversible processes. In protection of this right, it is recommended to pay attention to the existing standards for time of providing aid.

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right to Respect for Patients' Time under the Right to the Highest Attainable Standard of Health in Chapter 2.

5.1.8. RIGHT TO THE OBSERVANCE OF QUALITY STANDARDS

a. Right 8 as Stated in ECPR

Each individual has the right of access to high quality health services on the basis of the specification and observance of precise standards.

Clarification

The right to the observance of quality standards in providing medical care is an integral part of the right to health protection. In the international practice, the quality of medical care means a set of characteristics confirming the provided medical care meets the patient's needs, his expectations, and an advanced level of medical science and technology.²¹⁸

b. Right as Stated in Country Constitution/Legislation

Constitution

The Constitution does not provide for the right to the observance of quality standards with respect to health services. There is just the general provision:

Citizens of the Kyrgyz Republic shall have the right to health protection (*Part 1 Article. 47 of the Constitution*).

218. R.U. Khabriev, A.S. Juriev, A.L. Vertkin, E.L. Nikonov. Evaluation of quality of medical care with use of indicators //Chief doctor. – 2006, # 7

Legislation

As a general principle, Article 4 of the Law On Health Protection of Citizens in the Kyrgyz Republic establishes the liability of persons providing medical care for non-observance of safety and quality standards. The principle of observance of quality is also set forth in special health laws.

As guarantees of the exercise of the right to observance of the quality standards, such procedures as licensing of the medical and pharmaceutical activity and accreditation of individuals and legal entities engaged in healthcare activity have been established.

Thus, under *Article 5 of this Law*, “medical and pharmaceutical activity in the territory of the Kyrgyz Republic is performed by individuals and legal entities only if there is special permission (license). As for accreditation, in accordance with Article 6 of this Law, it is held with the purpose of improving the quality of medical care, and is included in the compulsory procedure established by the authorized state health authority of the Kyrgyz Republic.

The right to receive high quality medical care in institutions of healthcare, and from the persons engaged in private medical practice, is provided for in Article 72 of the Law On Health Protection of Citizens in the Kyrgyz Republic.

Special rights and principles in the area of observance of quality standards in specific areas:

- rights of persons living with HIV/AIDS to receive qualitative, qualified, special medical and drug aid, for free and on preferential basis under the Program of State Guarantees (*Article 6 of the Law On HIV/AIDS in the Kyrgyz Republic*)
- principle of securing safety of donor blood and its components; guarantees protection of health of the donor in implementation of donor functions (*Article 3 of the Law On Donorship of Blood and its Components*)
- principle of securing quality of medicines, state control of their safety, and the right of citizens to receive safe, effective and high-quality medicinal care (*Articles 5, 6, 15 of the Law On Pharmaceuticals*)
- guarantee of state quality control of insulin preparation, diagnostic and self-control devices, and rights of diabetic persons to quality medical care, for free and on preferential basis under the Program of State Guarantees (*Articles 4, 7 of the Law On Diabetes*)

c. Supporting Regulations/Bylaws/Orders

- *Order of the Ministry of Health On Approval of the New Clinical Protocols approved by Order of the Ministry of Health of the KR dated September 6, 2010 N 437*
- *Government Regulation of the Kyrgyz Republic On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011 approved by the Decree of the Government of the KR dated July 1, 2011 N 350;*

d. Provider Code(s) of Ethics

Article 3 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic provides the following:

- The healthcare worker should do his/her best to provide high quality of the care he/she provides.
- The healthcare worker should continuously improve his/her professional knowledge and skills and erudition.
- The healthcare worker bears responsibility, including moral responsibility, for ensuring good quality and safe medical and prophylactic care within the available resources.

e. Other Relevant Sources

There are no other relevant sources

f. Practical Examples

1. Example(s) of Compliance

Examples of observance of this right include:

- the doctor prescribes medicines included in the State register of medicines to the patient
- development of criteria for medical education levels, refresher training for the health staff, and the qualification requirements of the persons engaged in the private medical activity (This requirement results from *Article 84 of the Law On Health Protection of Citizens in the Kyrgyz Republic*).

2. Example(s) of Violation

- When carrying out a medical examination for HIV, pre-test and post-test psychosocial consultations are not often conducted by a medical worker in the regions. Whereas, in accordance with *Article 7 of the Law On HIV / AIDS in the Kyrgyz Republic*, conducting psychosocial counseling is a mandatory requirement.
- An example of a violation of the right to compliance with standards of quality is the placement of hospital patients in the corridors instead of in the wards.

3. Actual Case(s)

On 29 March, the resident Dj. of Talas town, at the age of 18 months, died in the nursery school while sleeping. During the period from 5 to 17 March, the child did not attend the school due to acute respiratory infections. On 18 March, the child was admitted back to the nursery school by the doctor of the school, with residual effects of the disease (profuse discharge of nasal mucus and dry rales in the lungs). An additional medical examination took place on 26 March. The child was lethargic, sleepy, and had no appetite. The diagnosis of pneumonia was not identified; the child took cough syrup and nose drops. There was inflammation of the mucous membranes of the upper respiratory tract; and he had no fever. On 29 March, after nap time the citizen Dj. showed no signs of life, but his body was still warm. The head nurse of the nursery immediately began doing resuscitation and gave him an injection of caffeine. When the emergency personnel arrived, they were not able to resuscitate the child. The forensic medical examination revealed the presence of catarrhal bronchitis, increased serocattarrhal pneumonia, and local hemorrhage in the lung tissue, which was the cause of death of the child. A legal action was filed with the court. Medical error was alleged: to discharge an unhealthy child from a health care organization, not to provide an active clinical recording of a child's illness, and not to conduct additional examinations (X-rays, blood tests). The child should have been treated in a medical facility.

According to the court verdict, the physician of the nursery was found guilty of an offense specified in *Article 119 of the Criminal Code*, "Improper performance of professional duties of a medical worker," on the basis of which he was sentenced to imprisonment for a term of three years.

g. Practice Notes for Lawyers

The right to the observance of quality standards affects the outcome of treatment (death, recovery, disability, etc.). Ideally, competent medical care should comply with advanced levels of medical science. However, in real conditions, it is impossible to demand equal quality in different circumstances. In protection of the right to observance of quality, it is necessary to evaluate the competence of its provision.

Competency is the activity of a specialist with proper qualification confirmed by appropriate

documents showing a special background.

It is recommended to determine the quality of the medical service by its professionalism, degree of relevance, and objective demand in certain circumstance.²¹⁹

In the situation where low quality of health care or defects in rendering health care, and a discrepancy between the quality and volume of medical care and established standards, do not cause harm to the patient's health:

A complaint to court may contain information about the substandard treatment and doubts about the treatment without causing real harm to the patient's health. When a complaint is received from a patient, examination of the quality of medical care is carried out by the State Forensic Science Centre. In case of medical care defects during the examination, the question of impleading of health care facilities to civil liability is raised, and the patient may require from the health care facility:

- free remedial medical treatment;
- rerendering of the services;
- indemnity for the costs of eliminating deficiencies of the service rendered by the healthcare facility or the third parties; and/or
- indemnity for moral harm either in a pre-trial (of claims) or in the claim procedure.

Low quality of health care or defects in rendering health care, and the discrepancy between the quality and volume of medical care and established standards, cause harm to the patient's health or death of the patient.

When a patient makes a complaint to the court, an examination of the quality of medical care is carried out by the State Forensic Science Centre. The experts solve the following issues:

- whether there has in fact been harm to life and health of the patient; if so, the nature of the caused harm;
- whether there were illegal actions of medical personnel;
- a causal connection between the illegal actions, if any, of health workers and harm caused to the patient.

In case of harm to life or health, the health facility may be held civilly responsible, in accordance with the rules stipulated in *Chapter 51 of the Civil Code of the KR* (Obligations as a Consequence of Injury). The right to restitution is the patient's or his/her relatives,' or in the event of the patient's death, his/her legal representatives.

Health facilities can be subjected to administrative responsibility: fines imposed on health care facilities by the suitable bodies of the Ministry of Health of the KR for avoidance or untimely fulfillment of their regulations to cease violations of the rights of consumers of medical services.

After the guilt of a specific health worker is established, he/she may be prosecuted for disciplinary or criminal liability (causing death due to carelessness, *Article 101 of the Criminal Code of the Kyrgyz Republic*; improper execution of professional duties of medical workers, *Article 119 of the Criminal Code of the Kyrgyz Republic*; or illegal termination of treatment of the patient, *Article 120 of the Criminal Code of the Kyrgyz Republic*).

h. Cross-referencing Relevant International Rights

Please find a discussion of international standards relevant to the Right to Observance of Quality Standards under the Right to the Highest Attainable Standard of Health and the Right to Life in

219. A.V. Tikhomirov. Medical Law. Practical manual. – , 1998. p. 206-207

Chapter 2 on international standards.

5.1.9. RIGHT TO SAFETY

a. Right 9 as Stated in the ECPR

Each individual has the right to be free from harm caused by the poor functioning of health services, medical malpractice and errors, and the right of access to health services and treatments that meet high safety standards.

Clarification

Safety should be a necessary condition of medical care to citizens. The right to safety is based on the ancient principle – “Primum non nocere.” Risk of harm that a patient may receive as a result of treatment should be less than the benefit from treatment.

Security of health care is provided by demand of legislative consolidation of the order of its provision. All health professionals must be fully responsible for the safety of all phases and elements of a medical treatment.

Medical doctors must be able to prevent the risk of errors by monitoring precedents and receiving continuous training.

Health care staff that report existing risks to their superiors and/or peers must be protected from possible adverse consequences. (Wording of the **ECPR**)

To guarantee this right, hospitals and health services must continuously monitor risk factors and ensure that electronic medical devices, for example, are properly maintained and operators are properly trained.

b. Right as Stated in Country Constitution/Legislation

Constitution

The Constitution does not directly set forth this right to safety in health services, however there are some provisions:

- Conducting of medical, biological or psychological experiments on people without their duly expressed and verified voluntary consent is prohibited (*Part 3 Article 22 of the Constitution*).
- Citizen’s right to health protection (*Part 1 Article 47*)

Legislation

In more details, protection of the right to safety is prescribed in the *Law On Health Protection of Citizens in the Kyrgyz Republic*. As a general principle, the Law establishes the principle liability of persons providing medical care, for non-observance of safety and quality standards (*Article 4*). One of the tasks of the authorized state authority in healthcare is to ensure quality control safety and effectiveness of medicines, health products and medical equipment (*Article 10*). In addition, the right to health protection is supported by production and sale of safe food products and medicines (*Article 61*).

Special measure of securing the right of citizens to safety in specific areas:

- ensuring the **safety of the medical procedures, biological liquids and tissues** used for diagnostic, curative and scientific purposes (*Article 3 of the Law On HIV/AIDS in the Kyrgyz Republic*)

- ensuring the **safety of donor blood and its components** (Article 3 of the Law On Donorship of Blood and its Components)
- ensuring access to, and the **safety, effectiveness and quality of medicines, and the right to receive safe, effective and good quality medicinal care**(Article 5, Article 15 of the Law On Pharmaceuticals)
- Ensuring safety of the **person hospitalized to a psychiatric in-patient department** (*Article 30 of the Law On Psychiatric Care and Guarantees of Rights of Citizens in Its Provision*)
- Ensuring treatment of **infertility by safe and effective methods** (*Article 15 of the Law On Reproductive Rights of Citizens and Guarantees of Their Enforcement*)
- Ensuring the **state quality control and the effectiveness and safety of medical immunobiological preparations** (*Article 4 of the Law On Immunoprophylactics of Communicable Diseases*)

c. Supporting Regulations/Bylaws/Orders

- *Regulation On the Procedure of Sanitary and Epidemiological Examination of Products for Safety for Human Health approved by the Decree of the Government of the KR dated June 6, 2003 N 329*

d. Provider Code(s) of Ethics

The healthcare worker bears responsibility, including the moral responsibility, for ensuring good quality and safe medical and prophylactic care within the available resources (Article 3 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic).

e. Other Relevant Sources

There are no other relevant sources

f. Practical Examples

1. Example(s) of Compliance

An example of observance of the right to safety is the use of disposable medical tools during medical procedures (intravenous and intramuscular injections, blood sampling, and others).

2. Example(s) of Violation

An example of violation of the right to safety is direct transfusion of blood from donor to recipient without checking it for communicable diseases.

3. Actual Case(s)

In one of the Osh regional hospitals, emergency doctors made an urgent direct blood transfusion to a patient who was in critical condition. A young man, a resident of Osh, gave his blood to the patient. Later it was revealed that the blood donor was HIV-positive. By these actions of not checking the donor's blood prior to the transfusion, the hospital medical staff violated the Law of the KR "On the donation of blood and its components." The Osh region prosecutor's office instituted criminal proceedings under *Article 117 of the Criminal Code*, "Infection with HIV" and sent them to court. The Osh regional court found the physician of the resuscitation department and the head of the surgical department of the hospital guilty of an offence under *Article 117 Part 4 of the Criminal Code*, "Another person's infection with HIV due to improper implementation of a health worker's professional duties, " as a result of which both were assigned to punishment of imprisonment of

up to three years, with disqualification to hold certain posts or practice certain (medical) activities for up to three years.

g. PracticeNotesforLawyers

The condition of any medical intervention is to prevent harm and damage to the patient. Medical staff and the management of medical institutions must take all possible measures to ensure the safety of patient care.

If a patient is harmed, lawyers will need to assess the material and immaterial damage caused to him/her as a result of misconduct of doctors or other medical workers. It is also necessary to take into account the importance of receiving the findings of medical examinations, which could prove the existence of the offence, for example, to determine the existence of safe treatments that could have been used, and to prove that they were available at the time of treatment, but were not used.

h. Cross-referencing of Relevant International Rights

Please find a discussion of international standards relevant to the Right to Safety under the Right to the Highest Attainable Standard of Health in Chapter 2 on international standards of human rights in patient care

5.1.10 RIGHT TO INNOVATION

a. Right 10 as Stated in ECPR

Each individual has the right of access to innovative procedures, including diagnostic procedures, according to international standards and independently of economic or financial considerations.

Clarification

Health care institutions and providers of medical services are required by the government to initiate and support research in the biomedical field, focusing on rare diseases. Research results must be appropriately distributed to the population.

Enforcement of the right to innovation, or the lack of opportunity of such enforcements, may affect the outcome of the disease (lead to recovery, disability, death). The right to innovation is closely connected with development of science and technology and the funding of the healthcare institution.

b. Right as Stated in Country Constitution/Legislation

Constitution

The Constitution does not directly provide for the right to innovation, however there is general formulation:

- Conducting of medical, biological or psychological experiments on people without their duly expressed and verified voluntary consent is prohibited (*Part 3 Article 22 of the Constitution*).
- Everyone shall have the right to health protection (*Part 1 Article 47*).
- The State creates conditions for the medical care of everyone and takes measures to develop state, municipal and private sector health care standards (*Part 2 Article 47*).
- Everyone is guaranteed freedom of literary, artistic, scientific, technical and other forms of creativity, teaching (*Part 1 Article 49*).

Legislation

In the *Law On Health Protection of Citizens in the Kyrgyz Republic*, one of the tasks of the authorized state authority in healthcare is medical and pharmaceutical science (*Article 10*). Scientific activity in healthcare is carried out by the scientific research organizations (scientific research institutes, scientific–practical centers, and other scientific organizations), higher medical (and pharmaceutical) educational establishments, and organizations of refresher training of medical and pharmaceutical workers (*Article 13*).

Medical equipment used in clinical and medical-biological experiments and the application of new recommended methods of diagnostics and treatment are subject to state registration by the authorized state body (Ministry of Health) of the KR in healthcare sector.

The state guarantees scientific research in the area of protection of reproductive health of citizens and the implementation of advanced methods and technologies to improve their reproductive health (*Article 5 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*).

According to the program of state guarantees to provide the citizens of KR with health care, citizens of the KR who need high-technology and expensive treatments can receive treatment partly or fully paid by the Fund of High Technologies (hereinafter - FHT) in the manner prescribed by the Government of the KR. The decision to provide services and the amount of reimbursement for treatment of every patient at the expense of FHT is made by the advisory council under the authorized state body (Ministry of Health) of the KR in the field of health on the basis of the request of health care organizations and waiting lists. Waiting lists are formed by specialized commissions of health care organizations that provide high-technology and expensive types of medical services in accordance with the approved regional quota for treatment of patients and the timing of referral for hospitalization. Medical care at the expense of FHT is provided to the population according to the List of high-technology and expensive medical care approved by the Government of the KR on May 11, 2009 N 288.

c. Supporting Regulations/Bylaws/Orders

Government Regulation of the Kyrgyz Republic *On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011* approved by the Decree of the Government of the KR dated July 1, 2011 N 350;

d. Provider Code(s) of Ethics

- A doctor conducts any research, testing and experiment with participation of the patient only upon the patient's consent in accordance with legislation of the Kyrgyz Republic. The doctor conducting the survey should guarantee the patient's right to refuse to participate in the research program at any stage and for any cause. Such refusal should not have any negative impact on the doctor's attitude to the patient or his/her providing further medical aid to the patient (*Article 13 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).
- A healthcare worker should be extremely careful in the practical application of new methods of diagnostics and treatment. The healthcare worker should critically analyze and interpret the scientific data in their use in practice (*Article 14 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

- *Operational Guidance for the formation and use of the means of the Fund of High-Technology (expensive) medical care of the Ministry of Health of the Kyrgyz Republic*
- *The list of high-technology (expensive) health care financed by the Fund of High-Technology (expensive) medical care of the Ministry of Health of the Kyrgyz Republic*

a. Practical Examples

1. Example(s) of Compliance

- Since citizens of the KR are not always able to pay the full cost of high-technology operations, the Government of the KR helps patients to acquire supplies for the high-technology procedures and operations through the Fund of High-Technology (expensive) health care of the Ministry of Health of the KR.
- Other examples of observance of the right to innovation include use of new methods of treatment by foreign specialists, at the invitation of the health authorities, and the referral to other countries of patients to whom no care may be provided in the Kyrgyz Republic.

2. Example(s) of Violation

An example of violation of the right to innovation is the inability of doctors or health care institutions to provide adequate treatment and diagnostics for lack necessary equipment (lack of funds for repair of the tomography scanner).

3. Actual Case(s)

There are no actual court cases regarding this right.

g. Practice Notes for Lawyers

In the Kyrgyz Republic the rights to innovation are not explicitly stipulated; implementation is of a formal character. If a patient or his/her representative considers that an approved and widely - used treatment or medical service exists in modern medicine and is also used to treat other patients, he/she has the right to require its use for himself/herself. However, there are a number of obstacles, such as lack of appropriately- qualified professionals or specialized medical equipment, or there is a limited number of such professionals who are capable (trained/qualified) of providing such treatment for the needs of patients.

This right can be protected in both court and pretrial order. Features of the rights protection can be seen in Section 7 (National Procedures).

h. Cross-referencing of Relevant International Rights

Please find a discussion of international standards relevant to the Right to Innovation under the Rights to the Highest Attainable Standard of Health in Chapter 2 on international standards of human rights in patient care

5.1.11 . RIGHT TO AVOID UNNECESSARY SUFFERING AND PAIN

a. Right 11 as Stated in ECPR

Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness.

Clarification

WHO definition of palliative care

Palliative care is an approach that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.

Palliative care:

- provides relief from pain and other distressing symptoms;
- affirms life and regards dying as a normal process;
- intends neither to hasten or postpone death;
- integrates the psychological and spiritual aspects of patient care;
- offers a support system to help patients live as actively as possible until death;
- offers a support system to help the family cope during the patient's illness and in their own bereavement;
- uses a team approach to address the needs of patients and their families, including bereavement counseling, if indicated;
- will enhance quality of life, and may also positively influence the course of illness;
- is applicable early in the course of illness, in conjunction with other therapies that are intended to prolong life, such as chemotherapy or radiation therapy, and includes those investigations needed to better understand and manage distressing clinical complications.²²⁰

WHO Definition of Palliative Care for Children

Palliative care for children represents a special, albeit closely- related field to adult palliative care. WHO's definition of palliative care appropriate for children and their families is as follows; and the principles apply to other pediatric chronic disorders (WHO; 1998 a):

- Palliative care for children is the active total care of the child's body, mind and spirit, and also involves giving support to the family.
- It begins when illness is diagnosed, and continues regardless of whether or not a child receives treatment directed at the disease.
- Health providers must evaluate and alleviate a child's physical, psychological, and social distress.
- Effective palliative care requires a broad multidisciplinary approach that includes the family and makes use of available community resources; it can be successfully implemented even if resources are limited.
- It can be provided in tertiary care facilities, in community health centers and even in children's homes.

b. Statement of Right in Country Constitution/Legislation**Constitution**

The Constitution does not directly provide for the right to avoid unnecessary suffering and pain. There are just general provisions:

- No one can be subjected to torture or other inhuman, cruel types or treatment degrading one's dignity, or punishment (*Part 1 Article 22*).
- Everyone deprived of freedom shall have the right to humane treatment and respect for human dignity (*Part 2 Article 22*).
- It is banned to carry out medical, biological, and psychological experiments on people without their consent (*Part 3 Article 22*)

220. <http://www.who.int/cancer/palliative/definition/en/>

- Everyone has the right to privacy, protection of the honor and dignity (*Part 1 Article 29*)
- Everyone shall have the right to health protection (*Part 1 Article 47*).
- Conducting of medical, biological or psychological experiments on people without their duly expressed and verified voluntary consent is prohibited (*Part 3 Article 47*).

Legislation

The right to avoid unnecessary suffering and pain is protected by the *Law On Ontological Aid to the Population, Article 9*, which states that persons with cancer shall have a right to receive free drug preparations in sufficient amount, by prescription, and the right to stay in mercy institutions (such as a hospice).

Article 21 of the Law On Drugs, Psychotropic Substances and Precursors states that citizens shall have a right to purchase drugs or psychotropic medicines only with a prescription.

Exercise of the right to avoid unnecessary suffering and pain is expressed in the opportunity to receive palliative treatment and care in terminal states. Thus, Annex # 6 to the Order of the Ministry of Health of the KR On Approval of the New Clinical Protocols states that palliative care may be provided at home (by healthcare workers of family group practitioners, social workers, relatives, non-government organizations working with people living with HIV/AIDS), in hospitals, and in hospices.

The right to avoid unnecessary suffering and pain is also stipulated by Order of the Ministry of Health On Arrangement of Activity of Maternity Houses (Departments) and Further Improvement of Quality of the Obstetric-Gynecologic and Neonatal Care in the Kyrgyz Republic, Part 9, which provides a right to a woman in labor to use anesthetic pharmaceuticals (narcotic medicines, nitrogen oxide, epidural analgesia). After hospitalization, all advantages and risks of each method must be discussed. Consent of the woman in labor should be executed in writing.

c. Supporting Regulations/ Bylaws/ Orders

- *Government Regulation of the Kyrgyz Republic On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011* approved by the Decree of the Government of the KR dated July 1, 2011 N 350
- *Order of the Ministry of Health On the Procedure of Storage, Account of Issue and Use in Medical Practice of Narcotics, Poisons, Psychotropic, Potent Substances and Precursors in the Kyrgyz Republic* approved by Order of the Ministry of Health of the KR dated February 26, 2009 N15
- *Order of the Ministry of Health On Arrangement of Activity of Maternity Houses (Departments) and Further Improvement of Quality of the Obstetric-Gynecologic and Neonatal Care in the Kyrgyz Republic* approved by Order of the Ministry of Health of the KR dated March 5, 2009 N92

d. Provider Code(s) of Ethics

The healthcare worker should relieve suffering of a dying person through all available and legal ways (*Article 10 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

- *State Register of Medicines*
- *Government Regulation of the Kyrgyz Republic On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011* approved by the Decree of the Government of the KR dated July 1, 2011 N 350
- *Rules for storage, account and sale of narcotic, psychotropic, potent, poisonous substances*

in drug stores approved by Order of the Ministry of Health of the KR dated August 24, 2005 N348

- *Rules for storage and account of narcotic, psychotropic, potent, poisonous substances in healthcare facilities approved by Order of the Ministry of Health of the KR dated August 24, 2005 N348*
- *Rules for issue of prescription for medicines approved by Order of the Ministry of Health of the KR dated January 5, 2011 N 2*
- *List of narcotic substances subject to the national control in the territory of the Kyrgyz Republic approved by Order of the Ministry of Health of the KR dated May 4, 2000 N3*
- *List of potent substances subject to the national control in the territory of the Kyrgyz Republic approved by Order of the Ministry of Health of the KR dated May 4, 2000 N3*

f. Practical Examples

1. Example(s) of Compliance

Examples of observance of this right include the implementation of painful medical interventions with use of local and general anesthesia and the prescription of anesthetic narcotic and non-narcotic substances to patients who need them.

2. Example(s) of Violation

- An example of violation of this right is refusal of a doctor to treat pain in stomachs of mental patients because the doctor doubts the existence of such pain.
- Error of the anesthesiologist in estimation of dosage of anesthetic substances
- A doctor does not apply an anesthetic (pain reliever) to the patient for any reason due to conflict between patient and doctor.

3. Actual Case(s)

There are no actual court cases regarding this right.

g. Practice Notes for Lawyers

In case of violation of the patient's right to prevent the suffering and pain as far as possible, it should be taken into consideration that there are no direct norms governing this right in the legislation of the KR. One of the most important evidences is the conclusion of medical experts that the patient could or should have been provided with pain-relieving drugs, but because of illegal activities by medical workers/doctors he could not receive them.

h. Cross-referencing of Relevant International Rights

Please find a discussion of international standards relevant to the Right to Avoid Unnecessary Suffering and Pain under the Right to the Highest Attainable Standard of Health in Chapter 2 on international standards of human rights in patient care.

5.1.12. RIGHT TO PERSONALIZED TREATMENT

a. Right 12 as Stated in ECPR

Each individual has the right to diagnostic or therapeutic programs tailored as much as

possible to his or her personal needs.

The health services must guarantee, to this end, flexible programs, oriented as much as possible to the individual, making sure that the criteria of economic sustainability does not prevail over the right to health care.

Clarification

Personalized treatment is a necessary condition for provision of good quality and effective medical care. Diagnosis and approach to treatment may be gradually clarified and supplemented after observation of the patient, checking his/her reaction for the prescribed treatment and achieved progress.

b. Right as Stated in Country Constitution/Legislation**Constitution**

The Constitution does not directly provide for the right to personalized treatment, however there is general formulation:

- Everyone shall have the right to health protection (*Part 1 Article 47 of the Constitution*).
- Free medical service as well as medical service on preferential terms shall be ensured within the volume of state guarantees envisaged in the law (*Part 3 Article 47 of the Constitution*).

Legislation

A general approach to health protection is stipulated in the Law On Health Protection of Citizens in the Kyrgyz Republic, which states the general principles of observance of rights of citizens to health protection, social fairness, accessibility of medical care, development of healthcare in accordance with needs of the population, and formation of the complex integrated system of providing medical care (*Article 4*).

Protection of the right to personalized treatment is enforced by provisions of special laws in the healthcare sector, oriented to providing care depending on the individual needs (*for instance, Law On Diabetes, On Ontological Aid to the Population and others*).

The right of the patient to personalized treatment corresponds to his obligations without which the right may not be enforced. Thus, for instance, *Article 94* obliges the patient to provide the medical care supplier with information on the state of his health, including contraindications to application of medicines, and earlier and inherited diseases.

For exercise of the right to personalized treatment, when prescribing the diagnostic procedures and treatment, the doctor should base them on the indications and contraindications that are also included in the provisions of the laws:

- Prophylactic vaccination is made on citizens without medical contraindications (*Article. 12 of the Law On Immunoprophylaxis of Communicable Diseases*)
- Right of a diabetic patient to choose insulin upon consultations with the attending doctor, to provide emergency medical care according to the medical indications/conditions of the patient, to receive necessary time to get an insulin injection and timely taking meals during the training process (*Article 7 of the Law On Diabetes*)
- Right of oncologic patients at the terminal stage of disease to receive narcotic and anesthetic preparations in necessary quantities (*Article 5 of the Law On Ontological Aid to the Population*)

- Right of a woman at the marriage age (18 years old) to artificial insemination if there are no medical contraindications (*Article 20 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- Right of a pregnant woman to artificial interruption of pregnancy (abortion) with duration of gestation under 22 weeks by social indicators, regardless of the duration by medical indications (*Art. 16 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)

c. Supporting Regulations/Bylaws/Orders

- Government Regulation of the Kyrgyz Republic *On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011* approved by the Decree of the Government of the KR dated July 1, 2011 N 350
- Order of the Ministry of Health of the Kyrgyz Republic *On Implementation of the Law of the Kyrgyz Republic "On Amendments to the Law of the of the Kyrgyz Republic "On Immunoprophylaxis of Communicable Diseases" approved by Order of the Ministry of Health of the KR dated October 26, 2005 № 457*
- Order of the Ministry of Health *On Approval of the New Clinical Protocols*

d. Provider Code(s) of Ethics

The healthcare worker bears responsibility, including moral responsibility, for ensuring good quality and safe medical-prophylactic care within the available resources (Article 3 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic).

e. Other Relevant Sources

There are no other relevant sources

f. Practical Examples

1. Example(s) of Compliance

Example of observance of the right to personalized treatment is prescription of treatment to the patient with consideration of his indications and contraindications, individual intolerance to some medicines, and data on existing allergic signs.

2. Example(s) of Violation

An example of violation of the right to personalized treatment is the prescription of dosage of medication without consideration of the weight of the patient.

3. Actual Case(s)

In one of the capital city yards, a 10-year-old girl fell off a swing and broke her collarbone. She was taken to hospital where medical staff reassured her parents, saying that she would have a simple operation. As a result of an incorrectly- calculated anesthetic, the girl died on the operating table. According to the forensic medical examination, the anesthesiologist did not take into account the physiological characteristics and condition of the patient when administering the dosage of anesthesia. According to the Decision of the Lenin district court of Bishkek from 07.07.2003, the anesthetist was found guilty of committing a crime in accordance with Paragraph 2 of Article 119 of the Penal Code, "Improper discharge of professional responsibilities healthcare worker, which leads to the death of the patient," on which he was sentenced to imprisonment for a term of 4 years.

g. Practice Notes for Lawyers

The core of the right to an individual approach to treatment is the principle "do not harm," one of the main provisions in the Hippocratic Oath. A necessary condition for the provision of care for a patient is a treatment taking into account his/her personal and special needs, which does not hurt his/her health. In the case of violation of the right to an individual approach to treatment, to achieve a positive result (restoration of the violated right) will require an expert's opinion.

Violation of the right to an individual approach can be expressed in the form of supply of medicine or treatment without prior diagnosis, or in cases when no appropriate procedures have been used in the diagnosis of disease.

In the study of medical documentation, it is necessary to analyze the appropriate clinical standards and protocols in order to determine whether a doctor runs a full range of necessary diagnostic and therapeutic services. This can be achieved by comparing the patient's medical history, on the one hand, and clinical standards and protocols on the other.

It is also important to note that when choosing individual methods of diagnosis and treatment of the patient, a physician must obtain the consent of the patient. In the development of individual treatment (diagnosis, prophylaxis, rehabilitation), a physician should consider the overall requirements of the rules and principles of evidence-based medicine.

When prosecuting a health care worker, it is necessary to establish the range and nature of professional duties under the relevant regulations, motive, purpose and circumstances of the actual act, a causal link between the act and the consequences and to check whether there has been a real opportunity for an offender to adequately perform professional responsibilities.

h. Cross-referencing of Relevant International Rights

Please find a discussion of international standards relevant to the Right to Personalized Treatment under the Right to the Highest Attainable Standard of Health and the Right to Nondiscrimination and Equality in Chapter 2 on international standards

5.1.13. RIGHT TO COMPLAIN

a. Right 13 as Stated in ECPR

Each individual has the right to complain whenever he or she has suffered harm and the right to receive a response or other feedback.

A complaint must be followed up by an exhaustive written response by the health service authorities within a fixed period of time.

The complaints must be made through standard procedures and facilitated by independent bodies and/or citizens' organizations and cannot prejudice the patients' right to take legal action or pursue alternative dispute resolution. (ECPR)

Clarification

In the Kyrgyz Republic, in case of violation of his/her rights, a patient may complain directly to the head or another official of the health care organization, where he/she was provided medical assistance, the relevant public health organization or the court. In the presence of components of crime, an applicant must submit a request to one of the authorized agencies: law enforcement agencies, office of a public prosecutor, and court.

b. Right as Stated in Country Constitution/Legislation

Constitution

The Constitution does not provide for the right to complain in the area of medical care, but there

are general provisions:

- The Kyrgyz Republic shall respect and ensure human rights and freedoms to all persons on its territory and under its jurisdiction (*Part 2 Article 16*).
- Everyone shall have the right to protection of honor and dignity (*Part 1 Article 21*).
- Everyone shall be guaranteed judicial protection of his/her rights and freedoms envisaged in the present Constitution, laws, international treaties to which the Kyrgyz Republic is a party as well as universally recognized principles and norms of international law (*Part 1 Article 40*).
- Everyone has the right to defend their rights and freedoms by all means not prohibited by law. (*Part 20 Article 40*).
- Everyone shall have the right to appeal to state authorities, local self-governance bodies as well as officials thereof; these officials should provide a substantiated answer within the deadlines envisaged in the law (*Part 1 Article 41*).
- According to international treaties, everyone has the right to appeal to international human rights bodies for the protection of violated rights and freedoms. In case of the violation of human rights and freedoms admitted by the mentioned authorities, the Kyrgyz Republic takes measures for their rehabilitation and / or reparation (*Part 2 Article 41*).
- Everyone shall have the right to health protection (*Part 1 Article 47*).

Legislation

The formulation of the law in the Civil Procedure Code of the KR:

Any interested person has the right to apply to the court for the protection of his/her violated or contested rights, freedoms or legitimate interests in the manner prescribed by law. Waiver of right to appeal to the court is not valid (*Part 1 Article 4*).

The formulation of the law in the Criminal Procedure Code of the KR:

- Everyone is guaranteed the judicial protection of their rights and freedoms at any stage (*Part 1 Article 9*);
- The victim is ensured access to justice and compensation for damages in cases and manner established by law (*Part 2 Article 9*).

The formulation of the right in the Law of the KR On the Procedure of Consideration of Citizens' Appeals:

- In the Kyrgyz Republic, every citizen has the right to appeal personally or through his/her representative to the state agencies, local governments and their officials who are required to provide a substantiated reply within the statutory term (*Part 1, Article 4*).
- The protection of the right to file a complaint is also carried out by the norms of the KR Law On protection of the citizens' health in the Kyrgyz Republic, which, as a general principle, enshrine the principle of responsibility of state and local self-government entities, juridical people and officials for not providing state guarantees for the preservation and improvement of the health of citizens (*Article 4*).
- As a general rule, the Law On Health Protection of Citizens in the Kyrgyz Republic states that "in case of violation of the patient's rights, he/she may file a complaint directly to the manager or other official of the healthcare facility where he is provided with medical care, to relevant professional medical public organizations, or to the court" (*Article 72*), and he/she can challenge the expertise opinion (*Articles 46 - 50*). In addition, the right to complain about service provision is stipulated by the Law On Consumer Rights Protection.

The Law provides for the rights of citizens to complain in the field of provision of medical service:

- violation of rights of people living with HIV/AIDS and affected by HIV/AIDS (*Article 17 of the Law On HIV/AIDS in the Kyrgyz Republic*)
- in unlawful actions by healthcare workers, officials, workers of the social protection bodies, and medical-social expert commissions violating the rights of citizens in the field of protecting them from TB and in providing anti-TB care (*Article 21 of the Law On Protection of the Population from TB*)
- right of insured persons to apply to the insurance company if they are not satisfied with quality of the rendered medical, prophylactic and/or other services (*Article 13 of the Law On Health Insurance of Citizens of the Kyrgyz Republic*)
- right to challenge actions on providing psychiatric care (*Section VI of the Law On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*)
- right of citizens to protection of their reproductive rights by means of challenging actions (or inactions) and/or decisions of the bodies, organizations and officials related to the exercise of reproductive rights, in the state bodies or in court, in accordance with legislation (*Article 9 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)

The Law of the KR On the Order of Consideration of Citizens' Appeals guarantees security to citizens in connection with their appeal. Thus, *Article 11 of the Law* " prohibits prosecution of the citizen or his/her relatives in connection with his/her appeal to the state agency or official with criticism of the public body or an official's activity either to restore or to protect his/her rights, freedoms and legitimate interests or those of others. Prosecution of the citizen, or his/her relatives, in connection with his/her appeal to the state agency or official entails the liability of officials in accordance with the regulations of the KR. In considering the appeal, it is not allowed to disclose information contained in the appeal or information concerning the private life of a citizen without his/her consent. "

c. Supporting Regulations/Bylaws/Orders

There are no other relevant regulations, bylaws, or orders for this right.

d. Provider Code(s) of Ethics

- A healthcare worker has a moral responsibility for maintenance of cleanness of the medical community, impartial analysis of errors of both, their colleagues and their own errors (*Article 3 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

As a participant in experiments, boards of doctors, commissions, consultations, etc., the healthcare worker should clearly and openly state his/her position, defend his/her point of view, and, in case of pressure on him/her, to recourse to legal and public protection (*Article 5 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

Government Regulation of the Kyrgyz Republic *On the Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Health Care in 2011*, approved by the Decree of the Government of the KR dated July 1, 2011 N 350

f. Practical Examples

1. Example(s) of Compliance

- Filing a complaint to the territorial mandatory health insurance fund, prosecutor's office, or court
- For exercise of this right, information on the patients' rights and obligations and on

opportunities to recourse to the MHIF is posted in the state and municipal healthcare institutions in conspicuous places, with specification of addresses and phone numbers, etc., of the MHIF.

2. Example(s) of Violation

Vulnerable groups of the population do not often file complaints against illegal actions of health workers due to lack of knowledge about the procedures for filing complaints to various authorities, or the threat of disclosure of information about them by medical personnel. For example, citizen G.(a former commercial sex worker) accidentally cut her hand with a knife as a result, she had to go to a local clinic, where the treatment of her wound caused infection to her hand. After the treatment at another medical facility, she wrote a complaint against that clinic. However, in the clinic doctors refused to take the complaint and was told "If you're going to complain further, your close relatives will learn about your profession." In fear of disclosure of information about herself, citizen G. stopped any further attempts to complain about the misconduct of doctors.

3. Actual Case(s)

Citizen N. appealed to the hospital administration with a written complaint against the illegal actions of a doctor; but despite repeated requests, he did not receive a response within the statutory period. Citizen N. then filed a complaint in court against the illegal actions of the doctor and the administration of the medical institution. Having considered the complaint of citizen N, the Leninsky district court passed a judgment which obliged the administration to eliminate the violations and to provide a reasoned response to citizen N's complaints; and it imposed an administrative fine on the administration of the medical institution for the violation without good reason of consideration of citizens' appeal.

g. Practice Notes for Lawyers

In the KR, everyone has the right to appeal personally or through his/her representative to the state agencies, local governments and their officials who are required to provide a substantiated reply within the statutory period. Applications and complaints in the interests of juveniles or incapacitated people can be submitted by their legal representatives, as well as child welfare authorities.

When filing a complaint, a patient has the right to choose a pre-trial or judicial form of protection of his/her rights or to take advantage of both forms of protection simultaneously (for details, see Section 7, National Procedures). A complaint may be filed in a written or oral form.

A written complaint should be sent by post allowing the sender to establish the fact that it has been received by the addressee (preferably by registered mail with notice and list of contents), or to hand a written complaint to the authorized representative of the agency or organization, making him/her sign for the second copy of the complaint. The complaint must contain the name of the public authority, organization or position of the person who is going to receive a written request, as well as the sender's contact details (name, mailing address to which a response should be directed), an explanation of the essence of the complaint and personal signature and date.

A written request shall be registered within one day from the date of its arrival and shall be considered within 30 days from the date of registration of the written appeal. In cases in which it is necessary to conduct a special check (expert examination), to apply for additional materials, or to take other measures in order to consider the appeal, the timing of resolution of complaints can be extended in exceptional cases, but not more than 30 days; the applicant must be informed about the decision on this in a written form.

It is necessary to address an oral complaint to the officials and heads of state bodies or organizations authorized to take decisions on the merits of appeals, who are obliged to carry out personal reception of citizens at least once a week. At a personal reception, a citizen must show a personal document proving his/her identity. Citizens who come from distant regions of the republic are entitled to an extraordinary reception. Deferment is not allowed.

Written applications are thought to be dealt with if they are considered, necessary measures to the issues raised in them are taken, and citizens are given responses in a written form in the statutory period stipulated by law. If the appeal is denied or the applicant has not received an answer within one month from the date of its filing, he/she has the right to appeal to the court. If the superior body has not responded within the prescribed time, the applicant can lodge a complaint against not only the appealed violation but also against a failure to act by the superior body (i.e., leaving complaints unanswered).

h. Cross-referencing of International Rights

Please find a discussion of international standards relevant to the Right to Complain in Chapter 2 on international standards of human rights in patient care.

5.1.14. RIGHT TO COMPENSATION

a. Right 14 as Stated in ECPR

Each individual has the right to receive sufficient compensation within a reasonably short time whenever he or she has suffered physical or moral and psychological harm caused by a health service treatment.

The health services must guarantee compensation, whatever the gravity of the harm and its cause (from an excessive wait to a case of malpractice), even when the ultimate responsibility cannot be absolutely determined (ECPR).

Clarification

Right to compensation is “the final” right of the patient, occurring in non-observance or improper observance of other patient’s rights. It is directly connected with the right to complain and is the output of its enforcement.

Right to compensation in the field of provision of medical care is a specific case of the general civil and legal concept of “recovery” that may include both recovery of losses (damage and lost profit) and compensation of the moral damage.

b. Right as Stated in Country Constitution/Legislation

Constitution

The Constitution does not provide for the right to compensation in the field of providing medical care, but there are general provisions:

- Everyone shall have the right to compensation for any damage caused by illegal acts of state authorities, local self- governance bodies or officials thereof in their official capacity (*Article 39*).
- Everyone shall have the right to health protection (*Part 1 Article 47*).
- Everyone shall have the right to compensation of damage to health or property resulting from actions in the area of nature management (*Part 2 Article 48*).

Legislation

In accordance with *Article 16 of the Civil Code of the KR*, “If one does moral harm (physical or moral suffering) to a citizen with acts infringing upon the nonmaterial wealth of a citizen or violating his/her personal rights, as well as in other cases stipulated by law, the court may impose a duty of monetary or other material compensation for the mentioned damage on the offender. In determining the amount of compensation for moral damage, the court will take into account the degree of

culpability of the offender and other relevant circumstances.”

The order of compensation for harm caused to health, and to people who have suffered damage because of the death of a citizen, is regulated by the *Articles 1012-1022 of the Civil Code of the KR*.

When causing injury or other damage to the health of a citizen, the victim will be reimbursed for lost earnings (income), which he/she had or definitely could have, as well as expenses incurred caused by the injury to health, including medical expenses, additional meals, purchase of medicines, prosthetics, nursing care, health-resort treatment, purchase of special vehicles, training for another profession if it is established that the victim needs these types of assistance and care and is not entitled to them free of charge (*Part 1 Article 1013 Civil Code of KR*). In determining lost earnings (income), or disability pension, appointed to the victim due to injury or other harm to health, as well as other pensions, allowances and other similar payments, prescribed both before and after the injury, reducing the amount of compensation for damage (not counted as compensation for harm) is not taken into account and involved. Earnings (income) received by the victim after the damage to health are also not counted as reparation (*Part 2 Article 1013 Civil Code of the KR*).

In case of injury or other harm to the health of a minor who has not attained the age of fourteen (minor) and has no earnings (income), the person responsible for the damage shall reimburse the costs connected to damage to health. Upon the juvenile's reaching the age of fourteen years, and in case of injury to a minor under the age of fourteen to eighteen years who has no earnings (income), the person responsible for the injury, shall compensate the victim in addition to costs resulted from damage to health, also harm connected to loss or reduction of his/her disability on the basis of five times of the specified rate. If at the time of damage to his/her health a minor had earnings, the damage shall be compensated based on the amount of earnings, but not less than five times of the specified rate (*Article 1015 Civil Code of the KR*).

In the case of the death of a citizen, the following individuals have the right to compensation:

- disabled persons who were dependent on the deceased, or had the right to receive maintenance from him/her by the day of his/her death
- a child of the deceased who was born after his death
- a parent, spouse or other family member, regardless of his/her disability, who does not work and is busy taking care of the deceased's children, grandchildren, brothers and sisters being dependent on him/her who have not attained fourteen years or reached specified age, but being in need of someone's care for health reasons according to the medical report of medical bodies
- persons who were dependent on the deceased and have become disabled for five years after his/her death
- One parent, spouse or other family member who is not working and is taking care of children, grandchildren, brothers and sisters of the deceased and becomes disabled during the period of maintenance of care reserves the right to compensation after the completion of care of these persons.

Harm shall be compensated to:

- minors until the age of eighteen;
- students over the age of eighteen until the end of the study in educational institutions for full-time education, but not more than the age of twenty-three;
- women over the age of fifty-five and men over the age of sixty- for life;
- the disabled for the period of disability;
- one parent, spouse or other family member, busy taking care of the deceased's children, grandchildren, brothers and sisters being dependent on him until they reach the age of

fourteen, or changes in state of health

Moreover, the right to compensation is implemented by the regulations of the Law of the KR On Protection of the Health of Citizens in the Kyrgyz Republic where in the capacity of a general principle, the principles of responsibility of state and local self-government entities and officials are consolidated for not providing state guarantees for the preservation and promotion of citizens' health and the responsibility of persons providing health care for not ensuring its safety and quality (*Article 4*).

General rule with regard to compensation is included in *Article 65 of the Law On Health Protection of Citizens in the Kyrgyz Republic*:

In case of damage to his/her health during provision of medical care, as a result of actions by individuals or legal entities, citizens of the Kyrgyz Republic shall have a right to recovery of damage:

- material – in the amount of actually incurred damage;
- moral – in the amount from 1 to 500 specified rates.

A specified rate is a normative monetary indicator to determine the amount of social benefits, compensation, economic sanctions, administrative penalties and fines, and other economic indicators not related to wages, including compensation for damage to health. A specified rate is approved by the Jogorku Kenesh of the KR Government and consists of 100soms.²²¹

In addition, the right to recovery for damage in receiving the medical service is stipulated by the Law On Consumer Rights Protection.

Special rights of citizens to compensation in specific areas:

- right to recovery of damage to health of the person caused by use of medicines (*Article 17 of the Law On Pharmaceuticals*)

Damage is recovered for harm caused by the following:

- by the producer having violated the technology of production of the medicine or the issuance of instructions on its application which contain a mistake;
 - by the wholesale supplier – in case of supply and sale of bad quality medicines;
 - by pharmacy institutions - in cases when, through its fault, the medicine is unsuitable for use for which it was sold, as a result violation of rules of pharmaceutical activity;
 - by the healthcare facility, irrespective of forms of ownership, or by the person engaged in the private medical practice, if the harm was brought by improper or irrational prescription of medicines;
 - by the advertiser – if damage is caused by the medicine taken by a person to whom the medicine was promoted by such advertiser.
- right to full payment of damages inflicted to health of a person as a result of violation of sanitary legislation by other citizens, natural persons and legal entities, as well as upon carrying out sanitary and epidemiological (prophylactic) measures in a manner prescribed by legislation of the Kyrgyz Republic (*Articles 7, 8 of the Law On Sanitary and Epidemiological Well-being of Population*)
 - right to repayment of damage to life and health received in execution of the donor function (*Part 4 Article 11 of the Law On Donorship of Blood and its Components*)
 - right of the donor of organs and tissues to receive free treatment in healthcare facilities caused by the implemented surgery and, if needed, at the expense of recipient, in extraordinary circumstances (*Article 12 of the Law On Transplantation of Human Organs and (or) Tissues*)
 - right of the donor to free in-patient and/ or out-patient treatment, if he/she has suffered damage connected with surgery for recovery of organs and/ or tissues (*Article 16 of the Law On Transplantation of Human Organs and (or) Tissues*)

- right to free treatment in the state health institutions in case of post-vaccination complications (*Article 6 of the Law On Immunoprophylaxis of Communicable Diseases*)
- right of citizens to repayment for damage to their health in growing and processing of tobacco or as a result of use of tobacco products (*Article 18 of the Law On Protection of Health of Citizens of the Kyrgyz Republic from Harmful Impact of Tobacco*)
- right to repayment of damage to health of citizens by producers, suppliers and distributor of salt (*Article 17 of the Law On Prevention of Iodine Deficiency Diseases*)
- right to repayment for damage to health of citizens in exercise of their reproductive rights (*Article 25 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- right of the TB patient to repayment for the damage to his health in the provision of medical care (*Article 4 of the Law On Protection of the Population from TB*)
- right of a surrogate mother to repayment of all the expenses related to her recovery during pregnancy, delivery, and postnatal period (*Article 18 of the Law On Reproductive Rights of Citizens and Guarantees of their Enforcement*)
- right to repayment for damage due to the provision of medical and social care to a HIV/AIDS- affected person (*Article 6 of the Law On HIV/AIDS in the Kyrgyz Republic*)
- right to repayment for damages if HIV infection has taken place as a result of implementation of medical manipulations (*Article 11 of the Law On HIV/AIDS in the Kyrgyz Republic*)
- right to repayment for harm to health as a result of non-compliance with standards of water supplied by the system of household drinking water supply (*Article 24 of the Law On Drinking Water*).

c. Supporting Regulations/Bylaws/Orders

- Order of the Ministry of Health of the KR *On Approval of Instructions for the Collection of Blood in Terms of Exit* of November 10, 2006 N 607
- Order of the Ministry of Health of the KR *On approval of instructions for medical examination of donor blood and blood components and quarantine of fresh frozen plasma* of November 21, 2007 N412
- Regulation *On the order of payment of lump-sum allowances to compensate for damage to persons exposed to infection by human immunodeficiency virus in the performance of official duties* approved by Order of the Ministry of Health of the KR dated April 4, 2006N№296
- Instructions *For the Collection of Blood in Terms of Exit* approved by Order of the Ministry of Health of the KR dated November10, 2006N№607
- Instructions *For Medical Examination of Donor Blood and its Components* approved by Order of the Ministry of Health of the KR dated November21, 2007N№412

d. Provider Code(s) of Ethics

- The healthcare worker bears responsibility, including the moral responsibility, for ensuring good quality and safe medical-prophylactic care within the available resources (*Article. 3 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).
- Degree of liability for violation of professional ethics is established by the commissions on ethics at health organizations and institutions. If violation of ethics is related to other provisions, the healthcare worker bears liability in accordance with legislation of the Kyrgyz Republic (*Article 16 of the Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*).

e. Other Relevant Sources

Practical recommendations on organization of off-budget activities in public institutions of health service of the republic approved by Order of the Ministry of Health of the KR dated May 6 1998 N 128

f. Practical Examples

1. Example(s) of Compliance

Citizen P. received poor-quality dentures in a dental clinic, after which he needed an emergent treatment on a fee basis. Citizen P. appealed to the administration of the dental clinic with a complaint about the poor quality of medical care and requesting compensation; he attached to the complaint the documents confirming expenses: payment slip and receipts proving purchase of medicines. The appeal of citizen P. was considered by the director of the dental clinic, and examination of the quality of rendered medical services was carried out. After the examination, the director gave an order to pay the citizen P. the claimed reimbursement for pecuniary harm (damage) indicating the duration of payments. A copy of the order was given to the citizen and then the sum of money was deposited into an account established by the patient.

2. Example(s) of Violation

There is no example(s) of violation

3. Actual Case(s)

A newborn baby was taken into an intensive care unit at a hospital for treatment. A physician prescribed a cleansing enema with sterile water for the newborn baby. Instead of sterile water, a nurse mistakenly injected ammonia spirit, causing serious injury to the child's health. After a short period of time the child died in the medical facility. According to the judgment of the district court, the nurse was found guilty of an offence stipulated by Part 2 Article 101 of the Criminal Code of the KR "causing death by negligence due to improper performance of his/her professional duties" on the basis of which she was sentenced to imprisonment for a term of 2 years with compensation of 200,000 soms.

g. Practice Notes for Lawyers

In preparing to seek the judicial protection of the right of the patient and of exercise of the right to compensation, it is recommended to read the Resolution of the Plenum of the Supreme Court of the KR *On Some Issues of Judicial Practice of Enforcement of Legislation on Compensation of Damage or Harm to Life and Health*, of November 30, 2006, # 14 and Resolution of the Plenum of the Supreme Court of the KR *On Some Issues of Judicial Practice of Enforcement of Legislation on Compensation of the Moral Damage*, of November 4, 2004, # 11, and "Review of the Judicial Practice of Consideration of Cases on Compensation of Moral Damage", for 2002 and 6 months of 2003" and the Resolution of the Plenum of the Supreme Court of the KR of July 16, 1993 *On Some Issues of Application of Articles of 7 and 7-1 by the Courts to Protect the Honor and Dignity of Citizens and Organizations*.

h. Cross-referencing of Relevant International Rights

Please find a discussion of international standards relevant to the Right to Compensation in Chapter 2 on international standards of human rights in patient care.

5.2. DUTIES/RESPONSIBILITIES OF PATIENTS

5.2.1. THE DUTY OF A CITIZEN (PATIENT) IS TO MAKE MEASURES TO PRESERVE AND STRENGTHEN HIS/HER HEALTH

a. Clarification

In accordance with the laws of the KR, a citizen is obliged to take measures to preserve and to enhance his/her health and to live a healthy lifestyle and to improve his/her knowledge in the field of health.

Article 23 of the Law of the KR On Public Health reveals the concept of "healthy lifestyle" which is a set of human behaviors aimed at maintaining and promoting health.

In order to protect their own health, the regulation of the KR requires the citizens, in the absence of medical contraindications, to take the required preventive measures, non-performance of which leads to a threat to their health.

b. Responsibility as Stated in Country Constitution/Legislation

Constitution

This obligation is not explicitly provided in the Constitution of the KR; however, there is a general formulation:

- a citizen by virtue of his/her citizenship has rights and duties (*Article 50*).

Legislation

The formulation of the duty in the Law of the KR On Protection of the Health of Citizens in the KR:

- citizens are obliged to take care of their health (*Part 1 Article 93*)
- citizens shall increase their knowledge in the areas of health, lead a healthy lifestyle to maintain health and prevent diseases (*Part. 1, Article 93*)
- the patient is obliged to take measures to preserve and strengthen his/her health (*Part 1 Article 94*)
- the patient is obliged to provide the person rendering medical care with information about his/her health condition, including the contraindications to the use of drugs, previously deferred and hereditary diseases (*Part 3 Article. 94*)

The formulation of the duty in the Law of the KR On Public Health:

- citizens shall take care of their health and health and hygiene education and training of their children (*Part 1 of Article 6*)

The formulation of the obligation in the Law of the KR On Diabetes in the Kyrgyz Republic:

- people with diabetes shall take measures to preserve and strengthen their health (*Article 8*)

221. Resolution of the Jogorku Kenesh of the KR On Approval of the size of the specified rate of 15 June 2006 N1115-III.

c. Supporting Regulations/Bylaws/Orders

There are no relevant regulations, bylaws and orders.

d. Provider Code(s) of Ethics:

There are no relevant sections of the Code of Medical Ethics pertaining to this right.

e. Other Relevant Sources

There are no other relevant sources.

f. Practical Examples**1. Example(s) of Compliance**

Citizens get immunoprophylaxis vaccination, promptly attend dental offices, etc., in order to preserve and promote their health.

2. Example(s) of Violation

Citizens consciously use narcotic drugs and psychotropic substances and abuse alcohol and tobacco products.

3. ActualCase(s)

There are no examples of court cases and judgments.

g. Practice Notes for Lawyers

It should be explained to the patient that in addition to rights, he/she also has corresponding duties that he/she must fulfill when receiving medical care. The main duties are stipulated in the *Law On Protection of the Health of Citizens in the Kyrgyz Republic*. Lawyers need to know that the legislation of the KR does not stipulate legal liability for the violation by a patient of the obligation to take measures to preserve and enhance his/her health.

5.2.2. THE DUTY OF A CITIZEN (PATIENT) IS NOT TO COMMIT ACTS DETRIMENTAL TO THE HEALTH OF OTHER CITIZENS

a. Clarification

The duties of citizens of the KR (patients) are not to commit acts harmful to the health of family members, medical personnel and other citizens.

The law imposes the duty of maintaining safety precautions upon a patient when dealing with other citizens, including health care workers, if he/she is aware of his/her illness presenting a danger to others.

The patient is obliged to inform a health care worker if he/she has a disease that represents a danger to others, in using blood, biological fluids, organs and tissues of the patient when used as a donor.

In order to provide the protection of the health of others, the law requires citizens, in the absence of medical contraindications, to take the required preventive measures, non-performance of which lead to a threat to the health of other individuals.

b. Responsibility as Stated in Country Constitution/Legislation**Constitution**

The Constitution of the KR does not explicitly stipulate the present obligation; however, there is a general formulation:

- a citizen by virtue of his/her citizenship has rights and duties (Article 50).

Legislation

Criminal Code of the KR

The formulation of the duty:

- infecting another person with HIV infection by a person who knows he/she has had the disease shall be punished by restraint of liberty for up to five years or imprisonment for a term of five years (Part 2 Article 117)
- infecting another person with venereal disease by a person who knows he/she has had such a disease shall be punished by a fine of fifty to one hundred specified rates, or restraint of liberty for up to three years, or imprisonment for up to three years (Part 1 Article 118)

Code of Administrative Responsibility

The formulation of the obligation:

violation of the mandatory rules established to prevent the outbreak or spread of quarantine and other dangerous infections to humans leads to the imposition of an administrative fine of five to ten specified rates on citizens, and from twenty to fifty specified rates on officials (Article 91).

Family Code of the KR

The formulation of the duty:

- parents (or surrogate parents) are required to create the conditions necessary for full development, upbringing, education, health promotion and preparation of the child for an independent life in the family and society; both parents (or both surrogate parents) are equally obliged to be involved in upbringing of the child, to properly provide care for him/her, to keep him/her financially, and to provide housing (*Article 68*).

Law on Protection of the Health of Citizens of the KR:

The formulation of the duty:

- Citizens are obliged to take care of their health, the health of their children, relatives and people surrounding them (*Article 93*).
- Citizens have a responsibility in accordance with the law of the KR:
 - for violation of sanitation, antiepidemic regulations and rules, environmental pollution entailing harm to their health or the health of others;
 - for avoidance of care and treatment if they have a contagious and dangerous diseases that can harm the health of others (*Article 101*).

Law on Medicines

The formulation of the duty:

- Citizens of the KR, foreign citizens and stateless individuals residing in the KR are required to take medications prescribed by doctors in case of a disease that represents a danger to the health of others (*Article 16*).

Law on Public Health

The formulation of the duty:

- Citizens are required not to carry out actions which involve violation of other citizens' rights

to health protection and favorable environment (*Part 3 Article 6*).

Law of the KR on Protection of the Population from Tuberculosis

The formulation of the obligation:

- Patients suffering from tuberculosis are required to protect the people surrounding them against infection with tuberculosis, not to hamper the implementation of anti-epidemic and sanitary and health measures in their places of residence (*Part 4 Article 16*);
- Patients suffering from tuberculosis, consciously deviating from the treatment and good hygiene standards, shall be subjected to involuntary hospital admission in a specially created anti-tuberculosis treatment facilities according to the judgment of the court (*Article 17*).

Responsibility:

Patients suffering from tuberculosis who are in the territory of the Kyrgyz Republic shall be administratively liable to a fine from five to ten times of the minimum wage for non-compliance with the requirements stipulated by *Article 16 of the Law*.

The Law of the KR on HIV/AIDS in the Kyrgyz Republic

The formulation of the obligation:

- People living with HIV / AIDS must take measures to prevent transmission of HIV to another person (*Article 6*).

Responsibility:

- Knowingly endangering infection or infecting another person (or several persons) by a person who knows that he/she has HIV entails criminal liability stipulated by the legislation of the KR. The person who is guilty of this also compensates the damage caused in connection with the provision of an infected person with health care and social assistance (*Article 6*).
- Donors of blood, body fluids, tissues and organs are subject to mandatory medical examinations. Individuals who refuse compulsory medical examination cannot be donors of blood, body fluids, organs and tissues (*Article 8*).

Liability:

Violation of the provisions of the law entails disciplinary, administrative, criminal and civil liability in the prescribed manner (*Article 16*).

The Law of the KR on Immunoprophylaxis of Infectious Diseases

The following people must be subjected to preventive vaccinations:

- citizens traveling to the country where in accordance with international health regulations or international treaties of the KR specific vaccinations are required;
- citizens when being accepted to work in educational institutions and health facilities in the case of a mass infectious disease or the threat of epidemics;
- citizens when being admitted to work, the implementation of which is associated with a high risk of infectious disease (*Article 5*).

The list of jobs that are associated with high risk of infectious disease, and requires mandatory vaccinations, is established by the Government of the KR (*Article 5*).

Liability: Violation of the law is punishable under the laws of the KR (*Article 19*).

The Law of the KR on the Donation of Blood and Its Components

The formulation of the responsibility:

- Citizens of the KR, wishing to give blood or its components are required to give all known information about their previous diseases for a medical examination report in accordance with the Ministry of Health of the KR. (*Article 10*).

Responsibility:

- A person who intentionally concealed or falsified information known to him/her about his/her health, which prevents the use of his/her blood and its components, is responsible under the legislation of the KR (*Part 2 Article 10*).

c. Supporting Regulations/Bylaws/Orders

There are no relevant regulations, bylaw sand orders.

d. Provider Code(s) of Ethics

There are no relevant sections of the Code of Medical Ethics pertaining to this right.

e. Other Relevant Sources

A list of production workers, jobs, professions and positions which are subject to mandatory medical examination.

f. Practical Examples

1. Example(s) of Compliance

- In the process of a medical examination it was revealed that citizen T. had tuberculosis. After that, he immediately began treatment for tuberculosis. In order to protect his family and others, he followed the necessary precautions, aired every living room, wore mask, and used separate cutlery and crockery.
- While pregnant, citizen X found out that she was HIV- infected .After giving birth, following the advice of doctors, in order to protect the new born from infection with human immunodeficiency virus, citizen X. fed her baby only with artificial feeding, not breastfeeding.

2. Example(s) of Violation

- Citizen N., an injecting drug user, HIV-positive for a long time, served a sentence in prison. After his release, citizen N. became acquainted with citizen Z. in one of the parks in the capital city. Two months later they began to cohabit together. A year later, in one of the clinics, she was informed of her HIV status. As it turned out, her boyfriend citizen N., who was aware of his positive status, did not warn her and took no precautions to prevent transmission of HIV infection to her. Citizen Z. refused to apply complaint against her cohabitant.(Interview with Citizen Z., Bishkek, 2010)

3. Actual Case(s)

There are no examples of court cases and their judgments.

g. Practice Notes for Lawyers

A lawyer should be familiar with all the relevant legislation related to a breach of obligation by a

patient not to commit acts harmful to the health of other citizens and, if necessary, to refer to the expert's opinion.

A lawyer should call a client's attention to the fact that the timely provision of information about the presence of his/her illness, which represents a danger to others, is not a right but the duty of the patient. If the concealment of such information leads to some undesirable consequences, he/she can be subjected to liability under the laws of the KR.

5.2.3 THE DUTY OF A CITIZEN (PATIENT) IS TO CARRY OUT MEDICAL REQUIREMENTS AND TO COMPLY WITH INTERNAL RULES OF THE MEDICAL INSTITUTION

a. Clarification

The patient, knowing about his/her illness, and having received the necessary guidance and a doctor's prescription, is required to follow the individual and public health requirements of medical personnel and to comply with internal rules, which are local normative acts governing the activities of health care organization.

Internal regulations of the organization of health services for patients include:

- the procedures for the patient's visit to the health care organization;
- the procedures for hospitalization and release of the patient;
- rights and responsibilities of the patient;
- the procedure for solving conflicts between the health care organization and patient;
- the procedure for providing information about the health of the patient;
- the procedure for issuing health certificates, extracts from patient medical records;
- work time of health care organization and its officials; information about the list of paid medical services and procedures for their rendering;
- other information vital for the realization of the rights of the patient (taking into account the specifics of health care organizations in which the patient receives counseling, diagnostic, or medical assistance).

b. Responsibility as Stated in Country Constitution/Legislation

Constitution

The Constitution of the KR does not explicitly provide the obligation; however, there is a general formulation: A citizen by virtue of his/her citizenship has rights and duties (*Article 50*).

Legislation

Law on Protection of the Health of Citizens in the KR

The formulation of the duty:

The patient must:

- respect medical personnel and others involved in health care;
- carry out medical prescriptions;
- observe the internal rules of the organization designed for patients and take good care of the property of health care organization (*Article 94*).

- In accordance with the laws of the KR, citizens bear responsibility for nonfulfillment of medical requirements in respect of their health and the health of minors, pregnant women (Article 101).

Law of the KR on Immunoprophylaxis of Infectious Diseases

The formulation of the duty:

- The patient must follow the requirements and recommendations of health care workers (Article 5).

Law of the KR on Health Care Organizations in the Kyrgyz Republic

The formulation of the obligation:

- It is the right of health care organization to receive from citizens who have applied for health care the necessary information about their condition and the results of treatment carried out by other persons engaged in medical activities (Article 22);
- it corresponds to the obligation of citizens to ensure this right.

Law on Medicines

The formulation of the duty:

- Citizens of the KR are required to take medications prescribed by doctors in case a disease is revealed that represents a danger to the health of others (Article 16).

Law on Protection of Population from Tuberculosis

The formulation of the obligation:

Patients suffering from tuberculosis are required to:

- strictly implement the recommendations of a medical worker in treatment regimen, behavior at home and at work;
- come to the tuberculosis facilities on-call of a medical worker;
- register with the local tuberculosis facilities within 10 days after changing the place of residence (Article 16).

Law on Psychiatric Care and Guarantee of Citizens' Rights in Its Provision

The formulation of the duty:

- Patients who are, by their mental state, capable of making conscious decisions, must comply with internal rules established for the psychiatric hospital. In case of not observing them, patients are brought to justice under the law of the KR (Part 4, Article 37).

c. Supporting Regulations/Bylaws/Orders

There are no relevant supporting regulations and orders.

d. Provider Code(s) of Ethics

There are no relevant sections of the Code of Medical Ethics pertaining to this right.

e. Other Relevant Sources

There are no other relevant sources.

f. Practical Examples

1. Example(s) of Compliance

Citizen B. asked for medical help in one of a city's hospitals. The doctor diagnosed kidney failure and ordered hospital treatment. Citizen B. complied with all health regulation prescribed to him by a doctor (he took medication regularly, followed a healthy diet, etc.), which had a positive effect on his health.

2. Example(s) of Violation

Patient G. had the necessary examination with exacerbation of chronic gastritis at the hospital before being discharged from the hospital. After the examination, the doctor issued a prescription for a drug application and assigned a specific diet and told patient G. about the importance of taking medication and the correct way of life. After discharge, the patient G. took no medications, and abused alcohol; as a result, in a few days he was admitted to hospital with severe exacerbation of gastritis again. In this case, after discharge from the hospital, the deterioration of his health is a result of no fulfillment of doctor's instructions.

3. Actual Case(s)

Patient M. resorted to the traumatology unit in the hospital with the complaint in the wrist of the right arm that occurred after lifting a physical load. In the polyclinic, health care personnel made the X-ray and a diagnosis of "silver-fork fracture." They applied plaster for one week and recommended the patient to return in a week for a repeated X-ray examination. The patient failed to follow the doctor's instructions, and did not come for the second examination. In a couple of weeks the arm began to ache severely under the plaster, the fingers became swollen, and sensitivity in the hand disappeared. However, hoping that pain would ease, the patient appeared in the traumatology department in 29 days. When medical personnel removed the plaster, it turned out that the patient's fingers on that hand did not function – the "compression neuropathy" occurred (damage of nerves by compression). According to the second examination of his X-ray picture, the patient did not have any fracture! The roentgenologist made a mistake in the very beginning; then (as it was identified by the court) the patient himself made a mistake by not coming to the traumatology department at the appointed time. As a result, the patient, originally having light tension of ligaments, was excluded from normal life for almost 2 years.

To protect his right, M. applied to the officials of the health authorities, thinking that in 2005 they would consider the case and take his side. He wanted to achieve just one thing: acceptance of violations and apologies before to him. However, the healthcare agency did not want to recognize its errors.

For 1.5 years, M. passed through 5 pre-trial stages:

- administration of the polyclinic
- municipal healthcare department
- expert commission at the mandatory health insurance fund
- commission of professors of the Kyrgyz State Medical Academy KSMA
- Ministry of Health

The received answers were all similar in meaning, and slightly differed by style and misprints. They had one meaning: there were no violations in the treatment of the fracture of the patient.

M. took legal action. After consideration of the case, the court of Pervomaiskii raion, Bishkek

city, recognized the plaintiff's claim of M. as being reasonable. However, since M. failed to follow the doctor's instructions, the obligation stipulated by Article 94 of the Law of the KR on Health Protection of Citizens in the Kyrgyz Republic, it rejected the claim.

However, the major outcome of this case, as both parties think, is that it demonstrated real opportunities for judicial protection of both the citizen and the healthcare worker.

g. Practice Notes for Lawyers

Undoubtedly, failure to fulfill obligations by the patient may not be a reason for sanctions against him. However, in the judicial trials initiated by the patient against the health service provider, it is extremely necessary to consider the patient's fulfillment of his/her obligations. The results of the medical intervention majorly depend on behavior of the health service user and fulfillment of his/her direct obligations to facilitate efforts by the healthcare worker for the patient's benefit.

The patient has both rights and responsibilities. As a rule, the duties of the patient are prescribed in the local hospital regulations (internal regulations, etc.) or in the contract for the provision of medical services. The patient must understand that in case of a critical health condition after a medical assistance is provided, it is not always necessary to speak about fault of a health care worker. In certain situations, the fact of non-fulfillment of medical prescriptions or ignoring the doctor's instructions or recommendations may be the direct cause of critical deterioration of health condition. In such cases, satisfying the patient's claim to recover damages will be denied.

Therefore, the lawyer having participated in consideration of cases between the health service user and provider should pay special attention to how fairly the patient fulfilled his/her obligations to recover his/her health. It is necessary to remember that the patient's support is required in the process of providing health service. Without such support, the health service will be ineffective and in some cases impossible.

6 NATIONAL PROVIDERS' RIGHTS AND RESPONSIBILITIES

6.1 PROVIDERS' RIGHTS

- 6.1.1. RIGHT TO DECENT WORKING CONDITIONS
- 6.1.2. RIGHT TO FREEDOM OF ASSOCIATION
- 6.1.3. RIGHT TO DUE PROCESS
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6.2 PROVIDERS' RESPONSIBILITIES

- 6.2.1. THE OBLIGATION TO HAVE A PROFESSIONAL MEDICAL EDUCATION AND PERMISSION (LICENSE) OF PUBLIC HEALTH AUTHORITIES
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- 6.2.4. THE OBLIGATION TO INFORM PATIENTS (LEGAL REPRESENTATIVES)
- 6.2.5. THE OBLIGATION TO OBTAIN FROM THE PATIENTS VOLUNTARY CONSENT TO MEDICAL INTERVENTION AND PARTICIPATION IN MEDICAL EXPERIMENTS
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- 6.2.7. OBLIGATION TO KEEP MEDICAL SECRECY

6

National Providers' Rights and Responsibilities

6. NATIONAL PROVIDERS' RIGHTS and RESPONSIBILITIES

6.1 Providers' Rights

This section focuses on providers' rights, including the rights to work in decent conditions, freedom of association, due process, and other relevant country-specific rights. The concept of human rights in patient care refers to the application of general human rights principles to all stakeholders in the delivery of health care and recognizes the interdependence of patients' and providers' rights. Health workers are unable to provide patients with good care unless their rights are also respected and unless they can work under safe and respectful conditions. For each right outlined in the section, there is a brief explanation of how that right relates to health providers; examination of its basis in country legislation, regulations and ethical codes; examples of compliance and violation; and practical notes for lawyers on litigation to protect provider rights.

6.1.1. RIGHT TO WORK IN DECENT CONDITIONS

a. Health workers enjoy a range of rights related to decent -safe and healthy-working conditions when providing care.

Clarification

Medical and pharmaceutical workers have the right to working conditions which are sufficient and necessary for the performance of their job duties without harm to their health and life.

In accordance with the labor legislation of the KR, safe working conditions are the working conditions either under which the exposure of employees working in harmful or dangerous factors of production is excluded, or the levels of their exposure do not exceed the established standards.

b. Right as Stated in Country Constitution/Legislation

Constitution

Everyone has the right to freedom of labor, to manage their abilities to work, to the choice of profession and occupation, protection of labor and working conditions that meet the requirements of safety and hygiene, as well as the right to remuneration for work that is not less than the statutory minimum wage (Part 3, Article 41).

Legislation

The formulation of the law in the Labor Code of the KR:

- The basic principles of legal regulation of labor and directly- related relations are recognized:
 - ensuring the right to work in conditions that meet the requirements of safety and hygiene;
 - ensuring the right to rest (*Article 2*)
- An employer has to provide the conditions for the workers to fulfill production standards. These conditions, in particular, include the working conditions that comply with the requirements of labor protection and safety of production (*Article 180*).
- Responsibilities for the creation of healthy and safe working conditions for the employees, and the implementation of labor protection requirements are imposed on the employer and shall be covered by the employer.

An employer shall provide:

- safety of employees in using buildings, structures, equipment, implementation of

- technological processes, as well as raw materials used in the production;
- the use of individual and collective protection of workers;
 - working conditions at each workplace, relevant to labor protection requirements;
 - development and approval of regulations on labor protection for workers;
 - employment conditions and the schedule of work and rest of workers in accordance with the laws of the KR;
 - free distribution of special clothing, footwear and other personal protective equipment, washes and detoxifying agents to employees in accordance with established standards;
 - training, coaching and validation of knowledge of workers' occupational safety requirements, and exclusion of persons who are not trained, instructed and tested on knowledge of labor protection requirements for work;
 - the organization of control over labor conditions at the workplace, as well as compliance with the requirements of labor protection by employees;
 - attestation of workplaces on working conditions;
 - the mandatory preliminary (before starting work), periodic medical examinations of workers, and extraordinary medical examinations (checkups) of employees;
 - refusal to allow employees to perform their job duties without going through the mandatory medical examinations, including the case of medical contraindications;
 - information to workers about the conditions and safety at the workplace, the current risk of damage to their health, compensation and means of personal protection, and compensation and benefits according to labor conditions;
 - measures to prevent emergencies and to save lives and health of workers in such situations, including the provision of first aid to victims;
 - an investigation of industrial accidents and occupational diseases in the prescribed manner stipulated by the Government of the KR;
 - sanitary- domestic, and medical-preventative maintenance of workers;
 - compulsory social insurance for workers against industrial accidents at work and occupational diseases;
 - acquaintance of employees with occupational safety requirements;
 - allocation of funding necessary to improve working conditions in accordance with occupational safety requirements;
 - easy access to the organization of representatives from relevant agencies to conduct investigations of accidents at work and occupational diseases and work inspections to prevent workplace injuries and accidents, providing them with information on labor protection in the manner prescribed by law (*Article 211*).

The formulation of the law in the Law On Protection of the Health of Citizens in the Kyrgyz Republic:

- In carrying out their professional duties to protect citizens' health, medical and pharmaceutical workers are entitled to working conditions providing a high-quality health-care system.
 - Medical and pharmaceutical workers have the right to insurance for professional errors, the result of which may bring harm or damage to the health of citizens, not connected to careless or negligent performance of professional duties (*Article 84*).
- They have the right to rest (*Article 86*).
- All medical and pharmaceutical workers are entitled to the protection of their health realized by carrying out sanitary, epidemiological, therapeutic and preventive measures in accordance with the laws of the KR.
 - Medical, pharmaceutical and other employees working in health care organizations which involve hazardous conditions and the possibility of damage to health are eligible for outpatient observation by means of this organization (*Article 87*).
- They are entitled to protection of honor, dignity and professional reputation.

- Nobody has the right to inflict physical, moral and material harm to medical and pharmaceutical personnel in the performance of their professional activities (Article 90).

The formulation of the right in the Law of the KR On Protection of Population from Tuberculosis:

Medical and other professionals of tuberculosis health facilities are entitled to additional leave of 14 calendar days and the supplement to their wages is 30 per cent of the salary; they are also subject to compulsory state insurance in case of an occupational disease, injury to their health, or death in office, with duties of up to 120 monthly salaries (*Article 23*).

The formulation of the right in the Law of the KR On Psychiatric Care and Guarantees of Rights:

Psychiatrists, other specialists, medical and other personnel involved in providing mental health care are entitled to benefits established by the legislation of the KR for persons engaged in activities in the special conditions, and they are also subject to compulsory state insurance against injury to their health or death while on duty. In the case of injury which caused a temporary loss of working ability of the persons participating in the provision of mental health services, as well as the onset of disability to them, and in case of their death, their heirs are compensated for damages in accordance with legislation of the KR (*Article 22*).

The formulation of the right in the Law On Labor Protection:

- Every employee has the right to:
 - the job meeting the occupational safety requirements;
 - compulsory social insurance against industrial accidents and occupational diseases in accordance with the laws of the KR;
 - obtain reliable information from the employer, relevant state bodies and public organizations about the conditions and safety in the workplace and the existing risk of damage to health, as well as measures to protect against exposure to harmful or hazardous working environments;
 - refusal to work in case of danger to his/her life and health due to violation of labor protection requirements, except what is provided by the law to eliminate such hazards;
 - a request for an inspection of conditions and safety at his/her workplace by public oversight and monitoring agencies for compliance with labor protection authorities or public control over observance of labor protection;
 - the appeal for the protection of labor to the public authorities of the KR and local authorities, employer, the employers' associations and trade unions, their associations and other authorized staff representative bodies;
 - the personal involvement or participation through their agents in dealing with issues related to ensuring safe working conditions at their workplace, and investigating what has happened to them during industrial accidents or occupational disease;
 - a special medical examination (check-up) in accordance with medical recommendations, keeping his/her place of work (position) and average earnings during this medical examination (*Article 6*).
- The state guarantees workers to protect their right to work in conditions that meet occupational safety requirements and health regulations.
 - The working conditions provided by the labor agreement (contract) shall comply with legislative and other normative acts on labor protection.
 - In case of refusal of the employee to perform work because of danger to his/her life and health, except in the events provided in the law of the KR, the employer shall give the employee another job until of removal of such dangers. In case the provision of other work, for objective reasons, cannot be possible, the downtime of an employee to eliminate the danger to his/her

life and health is paid by the employer in accordance with the regulations of the KR.

- In the case of failure to provide the employee with personal and collective security (in accordance with the regulations), the employer may not require an employee to perform job duties and has to pay him/her arising out of this simple reason, in accordance with the laws of the KR.
- Refusal of the employee to perform work in the case of danger to his/her life and health due to violation of labor protection requirements, or to perform heavy work and work in unhealthy or dangerous working conditions not covered in the employment agreement (contract), does not make him/her answerable for discipline; in such case, the employer cannot break the employment agreement (contract) with him/her.
- In the case of damage to an employee's life and/or health in the performance of job duties, specified injury compensation shall be paid in accordance with the laws of the KR (*Article 7*).

c. Supporting Regulations/Bylaws/Orders

- Order of the Ministry of Health of the KR *On measures to further improvement of the radio diagnosis in the Kyrgyz Republic* of June 3, 2005 N222a
- Order of the Ministry of Health of the KR *On improvement of hospital nursing services* of June 24, 2008N319
- Order of the Ministry of Health of the KR *On approval of regulations on safety of medical procedures and prevention of nosocomial infections in health care organizations of the Kyrgyz Republic* of April 6, 2010N181

d. Provider Codes of Ethics

There are no sections of the Health Ethics Code relevant to his right.

e. Other Relevant Sources

- A typical Instruction *On Safety Techniques in the Occupational Sanitation for Staff of X-ray Rooms of Health Care Facilities in Public Health System of the KR* approved by Order of the Ministry of Health of the KR dated June 3, 2005 №222 a
- *National Program for Health Care Reform "Manas Taalimi"* KR approved by Order of the Ministry of Health of the KR dated February 16, 2006 №100
- *National Strategy of the KR Integrated Rural Development till 2010* approved by Order of the President of the KR dated June 23, 2006 №100
- *The Charter of Social Rights and Guarantees of Citizens of Independent States (CIS)*

f. Practical Examples

1. Example(s) of Compliance

An example of compliance with this law is creation by the administration of health care organizations of all the necessary security conditions for health care workers when they perform their professional duties.

2. Example(s) of Violation

- One of the examples of violation of this law is the lack or absence of personal protective equipment (gloves, goggles, special clothes, etc.). It is not uncommon when health care workers buy personal protective equipment at their own expense in order to protect their security.
- Another example of violation of this law is a heavy work load of the medical staff. According to the clinical-diagnostic department of the Center of Maternal and Child Health, a pediatrician's approved workload was 9075 children in 2011, but a pediatrician actually had to deal with 13,783 children, which was, in fact, 152% performance of this norm.

3. Actual Cases

There are no examples of court cases and judgments.

g. Practice Notes for Lawyers

In the case of violation of a health care worker's right to favorable working conditions, he/she has the right to appeal to the appropriate government or judicial authorities for the protection and restoration of violated rights (Department of State Sanitary and Epidemiological Inspectorate of the Ministry of Health, the State Labor Inspection in Department of Labor, Employment and Migration of the KR).

If, as a result of medical procedures, a medical worker is injured, he/she should prepare a statement about the accident. For more information, see the regulation "on the investigation and accounting of occupational accidents," approved by *Decree of the Government of the KR of 27.02.2001, № 64*.

6.1.2. RIGHT TO FREEDOM OF ASSOCIATION

a. Health workers' ability to form, join, and run associations without undue interference is critical to their ability to effectively defend their rights and provide good care.

Clarification

The right to form and join unions (associations) is the common right of every citizen of Kyrgyzstan. In this respect, the scope of health care is not different from other areas where the trade unions, associations, civic associations and organizations are established.

b. Right as Stated in Country Constitution/Legislation

Constitution

The formulation of the right in the Constitution of the KR:

Everyone has the right to association (*Article 35*).

Legislation

According to the subject structure, the right to freedom of associations is divided into:

- The rights of individuals - the medical and pharmaceutical workers;
- The rights of legal entities - medical institutions and organizations.

According to legal regulation, the right to freedom of associations is divided into:

- Civil-law regulation;
- Labor Law;
- Special regulation.

The formulation of the right in the Civil Code of the KR:

• A Public Association is a voluntary association of citizens united in the manner prescribed by law on the basis of their common interests to meet spiritual and other non-material needs. Public associations are legal entities (nonprofit organizations). They are entitled to carry out production and other economic activities only for the purposes for which they are created, and only those appropriate to these purposes (*Article 161*).

- To coordinate their business activities, as well as to represent and protect common property interests, commercial organizations may contract with each other to form associations in the form of associations (unions). Public and other nonprofit organizations, including agencies, may voluntarily form associations (unions) of these organizations. The brand name of the association must indicate the main subject of its activities and the main subject of its members with the inclusion of the word "association" or "union" (*Article 165*).

The formulation of the right in the Labor Code of the KR:

Ensuring the right to association, including the right to form trade unions and other representative bodies of workers to protect their rights, freedoms and legitimate interests in the field of labor relations is a fundamental principle of legal labor regulation and directly connected to them (*Article 2*).

The formulation of the right in the Code of Administrative Liability:

Unlawful refusal to register or the delay of the deadline of registration of legal entities and individuals by a public officer or person responsible for the registration is punishable by an administrative fine from twenty to thirty of the specified rates (*Article 406*).

The formulation of the right in the Law On Trade Unions:

Every citizen who has attained the age of fourteen and is performing a career or studying at school, as well as senior citizens, have the right to form unisonant join trade unions, on conditions that they observe their charters. Trade unions may be established in enterprises, institutions and organizations irrespective of form of ownership with the number of three or more persons (*Article 2*).

The formulation of the right in the Law On protection of Citizens' Health:

- Medical and pharmaceutical workers are entitled to the establishment of professional medical and pharmaceutical public organizations in order to protect the rights of medical and pharmaceutical workers, to develop medical and pharmaceutical activities, to make contribution to research, and/or to solve other issues related to occupational activities of health and pharmaceutical workers (*Article 16*).
- Health organizations, professional medical and pharmaceutical public organizations to coordinate activities and to represent and protect common interests can contract among themselves to form associations in the form of non-profit associations.
 - According to the decision of the authorized state body of the KR in the sphere of health care (Ministry of Health), some of whose authorities may be delegated to professional medical and pharmaceutical public organizations, and associations (unions).
 - Support for associations (unions) is realized in the form of state funding of individual public useful programs aimed at development of medical facilities and professional medical facilities, membership fees of health care organizations at their own expense, and in other forms not prohibited by the laws of KR (*Article 17*).
- Health organizations may establish or enter into professional medical society organizations (*Article 78*).

c. Supporting Regulations/Bylaws/Orders

There are no relevant regulations, bylaws and orders

d. Provider Codes of Ethics

There are no sections of the Health Ethics Code relevant to his right.

e. Other Relevant Sources

The Procedure of Preliminary Check of Names of the Organizations Registering (reregistering) Legal Entities, and/or Branches (representative offices) 2011 approved by the Decree of the Government of the KR dated August 3, 2011 N 442

f. Practical Examples

1. Example(s) of Compliance

An example of observance (enforcement) of this right is the operation of such associations in Kyrgyzstan as: Association of Family Group Practitioners, Association of Hospitals, Internal Medicine Doctors Society, and others.

2. Example(s) of Violation

An example of a violation of this law would be unlawful refusal to register the association, by an authorized state body who performs registration of legal entities.

3. Actual Cases

There are no examples of court cases and judgments.

g. Practice Notes for Lawyers

The procedure of registration, re-registration and period of the registration of legal entities including associations are governed by the Law of the KR On State Registration of Legal Entity, and Branches (Representative Offices). Administrative responsibility is provided for illegal refusal to register or delay of the deadline of registration of legal entities and individuals.

The authorized state body performing registration of legal entities may refuse to register in the following cases:

- failure to show necessary documents for registration of a legal entity or branch (representative office) set forth in this Law;
- the presence of a registered (reregistered) legal entity or a branch (representative office) with the same name in the public register;
- detection of inaccuracies or inconsistencies in the information contained in the documents;
- the submission of documents to the wrong registration authority;
- non-compliance of the submitted documents of financial-credit institutions, non-profit organizations and branches (representative offices) of foreign and international organizations with the legislation of the KR;
- lack of information about the decision to establish the organization under the present Law;
- violations of the order of registration termination established by the present Law.

The decision to refuse to register shall contain the reasons for the refusal to the link to the norm of law. If an applicant for registration or reregistration disagrees with a decision of a refused registration, he/she (or the organization seeking registration or registration) may appeal this decision to the courts.

6.1.3. RIGHT TO DUE PROCESS

a. Health care and service providers are potentially subject to a range of civil and administrative proceedings-disciplinary measures, medical negligence suits, administrative measures such as warnings, reprimands, suspension of activities, etc. - and are entitled to enjoyment of due process and a fair hearing.

Clarification

Health care workers are guaranteed the protection of rights and freedoms by all means not prohibited in the law. The legislation of the KR provides both the judiciary and pre-judicial forms of

protection of the rights and freedoms.

b. Right as Stated in Country Constitution/Legislation

Constitution

- Everyone is guaranteed judicial protection of his/her rights and freedoms under this Constitution, laws, international treaties, whose participant is the Kyrgyz Republic, by the generally recognized principles and norms of international law. The State shall ensure the development of extra-judicial and pre-trial methods, forms and ways of protecting the rights and freedoms of a person and a citizen (*Part 1 Article 40*).
- Everyone has the right to defend his/her rights and freedoms by all means not prohibited by the law (*Part 2 Article 40*).
- Everyone has the right to qualified legal assistance. In cases provided by the law, legal assistance is provided by the State (*Part 3 Article 40*).

Legislation

The formulation of the right in the Civil Code of the KR:

Protection of violated or disputed civil rights shall be provided by the court in accordance with the jurisdiction of cases established by procedural legislation or contract (*Article 10*).

The formulation of the right in the Code of Civil Procedure of the KR:

Any interested person may apply to the court for protection of his/her violated or contested rights, freedoms or legitimate interests in the manner prescribed by law. Waiver of the right to appeal to the court is not valid (*Article 4*).

The formulation of the right in the Criminal Code of the KR:

No one may be convicted of a crime until his/her guilt is established by a valid court judgment (*Part 2 Article 3*).

The formulation of the right in the Criminal Procedure Code of the KR:

Everyone is guaranteed the judicial protection of his/her rights and freedom at any stage of a legal process (*Article 9*).

The formulation of the right in the Code of Administrative Liability of the KR:

The law on administrative proceedings is based on the principles of legality, equality of citizens before the law, democracy, humanity, justice, personal responsibility and the inevitability of punishment for committing an administrative offence (*Article 3*).

The formulation of the right in the Labor Code of the KR:

- The employee has the right to permit individual and collective labor disputes (*Article 2*).
- The employee has the right to protection of his/her labor rights and freedoms, using the methods provided by law including the right to judicial protection (*Article 19*).

The formulation of the right in the Law On Protection of the Health of Citizens of the KR:

Honor, dignity and professional reputation of the medical and pharmaceutical workers are protected by the legislation of the KR. Nobody has the right to inflict physical, moral and/or material damage to medical and pharmaceutical personnel in the performance of their professional activities (*Article 90*).

c. Supporting Regulations/Bylaws/Orders

Order of the Ministry of Health of the KR on Implementation of a Set of Measures of the Government of the KR for Execution of the Action Plan for Implementation of the State Anti-corruption Strategy in the KR dated July 16, 2009 N 529

d. Provider Codes of Ethics

The goal of the professional activity of a healthcare worker is to protect human life, carry out activities on protection of his/her own health, and improve quality of all kinds of medical-prophylactic services rendered (*Art. 2 of the Code*).

e. Other Relevant Sources

State anti-corruption strategy in the KR approved by Presidential Decree of February 2nd, 2012N 26

e. Practical Examples

1. Example(s) of Compliance

Patient H. filed a law suit in the District Court to recover the material and moral damages for the improper performance of a health worker's professional duties against the attending physician D. In turn, the doctor gave the court medical records proving that he performed his duties properly. Having examined the materials of the case, the court concluded that the allegations of the patient H. were unfounded and that the doctor D. carried out his duties in accordance with clinical protocols approved by the Ministry of Health of the KR. The court denied the patient H. the satisfaction of his claim.

2. Example(s) of Violation

An example of a violation of this right is a threat of dismissal of a health worker by the administration of a medical institution if he/she appeals to the court.

3. Actual Cases

In one of hospitals in Bishkek, the doctor N. was fired under Part 3 Article 83 of the Labor Code of the KR "mismatch of an employee with his/her position. "Disagreeing with the order of dismissal, citizen (doctor) N. appealed to the district court. According to the decision of the Alamedin district court on 16.08.2008, order of dismissal annulled and civil Nimpeccably renovated in its former position. The case was taken from the practice of the PF Legal Clinic "Adilet"

g. Practice Notes for Lawyers

The current legislation provides a variety of ways to protect the rights of health care workers and to provide redress for their violated rights. A health care worker can choose the pre-trial or judicial forms of protection.

The pre-trial form of protection is used in cases where a violation of human rights of health care workers is committed by officials (unwarranted prosecution of the employee) or by authorized public bodies (e.g., denial of a license to be engaged in private medical practice).

A paramedic, for example, is entitled to appeal to superior government agencies in the chain of command, public organizations, and/or officials against the actions of state bodies, public organizations, and/or officials violating his/her right.

A superior state organ in the chain of command, a public organization or an official shall consider the appeal within one month of the filing of the appeal. A health worker whose redress of grievance has been denied or who has not received a reply within the statutory period from the date of its filing may appeal to the court.

A medical worker has the right to resort to judicial methods of protection for the protection of an infringed right. Judicial procedure of dispute resolution is a rigorously- regulated procedure. The protection of the rights of medical workers arising from administrative legal relations is provided in accordance with *Chapter 26 of the Civil Procedure Code of the KR Features of Civil Proceedings in Administrative Cases*.

A certain period of time (statute of limitations) is determined to initiate a lawsuit or complaint. According to the Civil Code of the KR, the total period of limitation of action is three years.

However, there are special statutes of limitations of actions, for example, in disputes arising out of employment:

"the employee has the right to appeal to authorities to consider individual labor disputes for resolution of individual labor dispute within three months from the day when he/she found out about the violation of his/her rights in disputes of dismissal, within 1 month after the review to the order of dismissal or the date of obtaining a workbook " (*Article 414 Labor Code of the KR*).

If one misses the deadline for legitimate reasons, it can be restored, and the complainant will have the right to give his/her complaint to the court.

6.2. DUTIES/RESPONSIBILITIES OF HEALTH CARE PROVIDERS

6.2.1. THE OBLIGATION TO HAVE A PROFESSIONAL MEDICAL EDUCATION AND PERMISSION (LICENSE) FROM PUBLIC HEALTH AUTHORITIES

a. Clarification

A prerequisite for the provision of health services is that a health care worker has to have professional medical education and the appropriate permission (license) from public health authorities.

Medical education

Medical education is a process of lifelong learning, starting from the date of admission to a medical faculty and ending after the cessation of medical practice. Its goal is teaching students and training of medical practitioners, enabling them to use the latest scientific advances in the prevention and treatment of diseases, including incurable ones at the present time. Medical education should inculcate such ethical standards of thinking and behavior in a doctor that would place the health care of the people above personal interests and benefits. All physicians, regardless of specialty, are members of one profession. As a representative of the medical profession, every doctor should feel responsible not only for the maintenance of his/her own educational level, but also for the proper level of all his/her colleagues (*Declaration on Medical Education, Madrid, Spain, 1987*).

The obligation of the person who has the right to render health care is to obtain the appropriate approval from the state.

Specificity of activity in protecting the health of the population and high requirements for health professionals determine the characteristics of their training. It is carried out in institutions of higher and secondary vocational education with corresponding profiles in accordance with state educational standards (*Article 5 of the Law of the KR On Education*).

The professional training of specialists with higher medical and pharmaceutical education is carried out in two stages:

- undergraduate (general medical) training within a period of 6 years;
- postgraduate (actual professional) training, which may cover a period of one to four years depending on the chosen specialty.

At the undergraduate stage, training is carried out in accordance with state educational standards in the following fields:

- General Medicine
- Pediatrics

- Medical-care business
- Dentistry
- Pharmacy
- Nursing

Universities also carry out training in new areas:

- Social Work and Rehabilitation
- Sports Medicine
- Medical Psychology
- Disaster Medicine
- Management and Marketing in Health Care
- General Practitioners

Preparation of specialists ends with the final state interdisciplinary assessment. It involves testing that is conducted according to standard tasks of the Ministry of Health, based on a single bank of interdisciplinary evaluation assignments covering the content of the various disciplines (humanities, social- economic, scientific, biomedical, health-care, and clinical). Assignments include both a theoretical (e.g., tests) and practical part (the solution of situational problems, for example, a fragment of case histories, epicrisis, expert opinion, etc.). Testing is followed by a practical stage involving an assessment of professional training of graduates according to their abilities and skills. This step is carried out in hospitals and graduate departments of universities. The final stage of the graduate's qualification is the final interview. Persons who have successfully passed the final certification of the educational institution of vocational education receive a diploma, a document representing the level of education services that the graduate has completed (*Article 25 of the Law On Education*).

Postgraduate education is intended to provide:

- preparing graduates for independent professional activity
- training of practitioners
- retraining of specialists to meet the changing situation in the labor market
- training of specialists for certification
- introduction of new advanced technologies and methods of prevention, diagnosis,
- treatment and rehabilitation into health care practice

It is implemented in the following forms:

- Internship (1 year)
- Residency for in-depth study of a specialty (2 years)
- Training in one of the educational and professional programs (1-4 years)
- Retraining of doctors of all specialties in order to improve professional development and exam for the appropriate qualifying category (second, first or higher); organized in different durations and forms of training cycles
- Post-graduate or doctoral studies for the preparation of highly-qualified specialists for medical science and education (within 3 years)

b. Responsibility as Stated in Country Constitution//Legislation

Constitution

There is no formulation of this duty in the Constitution of the KR.

Legislation

The formulation of this duty in the Criminal Code of the KR:

- The illegal doctoring, if it causes a long-term health disorder or other grave consequences, shall be punished by a fine of from fifty to two hundred of specified rates, or hard labor for up to two years, or restraint of liberty for up to five years, or imprisonment for up to five years.
- Improper healing of a person with special permission from the Ministry of Health to engage in certain activities of medical care, resulting in the consequences provided by the first part of the law shall be punished by a fine of one hundred to two hundred of specified rates, or hard labor for up to one year, or restraint of liberty for up to three years, or imprisonment for up to three years (*Article 122*).
- An illegal abortion performed by a person who has no medical education of relevant profile is punishable by a fine of one hundred fifty to two hundred of specified rates, or hard labor for up to two years, or restraint of liberty for up to three years (*Article 116*).

The formulation of this obligation in the Code of Administrative Liability:

- Practicing the occupation of pharmaceutical activity without a license(permission)is punishable by an administrative fine of five to ten times the special rates for citizens, from twenty to fifty times the specified rates for officials (*Article 94*).
- Practicing the occupation of medical doctor by a person without medical education and a special permission (license) from health authorities is punishable by a fine of between ten to twenty times of specified rates (*Article 95*).

The formulation of this duty in the Law On Protection of the Health of Citizens in the Kyrgyz Republic:

- Medical and pharmaceutical activities in the territory of the Kyrgyz Republic are performed by individuals and legal entities only with special permission (license) (*Article 5*).
- Private health care organizations and private health care practitioners operate under a license issued for certain types of medical activities by the authorized state body of the KR in the health field (Ministry of Health). Private health organizations working in the single-payer system operate on the basis of a mandatory accreditation (*Article 14*).
- The right to practice traditional medicine is enjoyed by citizens of the KR, specially trained in medicine and traditional medicine; each must have received the diploma of a healer and a license to practice traditional medicine (*Article 15*).

Article 81:

- Medical and pharmaceutical workers conduct their practices after obtaining a license or passing their certification and registration in the manner prescribed by the authorized state body of the KR in the health field.

Certification of medical and pharmaceutical workers can be carried out by professional medical non-governmental organizations or associations (unions) in the manner prescribed by the authorized state body of the KR in the health field (Ministry of Health).

Registration of medical and pharmaceutical workers is performed by the authorized state body of the KR in the health field after they have certification.

Suspension from medical and pharmaceutical activities is performed in the manner prescribed by the Government of the KR (See Section “c,” Supporting Regulations, Bylaws, and Orders below).

Withdrawal of a certificate of qualification entails the suspension from the medical and pharmaceutical activity.

Persons deprived of their right to engage in medical and pharmaceutical activities, by the withdrawal of a certificate of qualification, shall have the right to appeal against this judgment in accordance with the laws of the KR.

In remote areas where there are no specialists who have pharmaceutical education, individuals with medical education are permitted to sell medicines and medical devices, in the manner prescribed by the authorized state body of the KR in the health field.

Individuals who have received medical and pharmaceutical education in foreign countries and foreign citizens are allowed to practice medical or pharmaceutical activity in the manner prescribed by the Government of the KR unless something else is provided by an international treaty of the KR (*Article 81*).

- Employment in a doctoring profession, including traditional healing carried out by a person not having proper medical education and a license from the authorized state agency of the KR in the field of health and the of conducting mass healing sessions also through the media is punishable under the law of the KR (*Article 100*).

The formulation of this obligation in the Law On Protection of Population from Tuberculosis:

A tuberculotherapist, who received a medical degree and proved his/her qualifications in accordance with the laws of the KR, has the right to practice medical activities to treat tuberculosis (*Article 6*).

The formulation of this obligation in the Law of the KR On the Oncology Care of the Population:

An oncologist, who received a medical degree and proved his/her qualifications in accordance with the relevant regulations of the KR, has the right to practice medical activities to help those suffering from cancer (*Article 7*).

The formulation of the duty in the Law On Psychiatric Care and Guarantees of Citizens' Rights in Its Provision:

A psychiatrist, expert in drug and alcohol abuse, psychotherapist, or clinical psychologist (hereinafter – psychiatrist) who has received a medical degree and proved his/her qualifications in accordance with the laws of the KR has the right to practice medical activity to provide mental health services (*Article 19*).

The formulation of the duty in the Law On Licensing:

- obtaining licenses necessary to carry out only those activities and acts of commission, the licensing of which is stipulated in and governed by the present Law

c. Supporting Regulations/Bylaws/Orders

- Order of the Ministry of Health of the KR *On the order of setting the licensing examination in private medical practice and the certification of private health care workers in the KR* of February 28, 2006N108
- Order of the Ministry of Health of the KR *On Approval of the Concept of improving the*

quality of medical services in the KR in 2004-2008, November 1, 2004 №499

- Regulation *On licensing of certain activities approved by the Decree of the Government of the KR of May 31, 2001№260*
- Regulation *On the order of setting the licensing examination in private medical practice in the KR approved by the Order of the Ministry of Health of February 28, 2006N108*
- Regulation *On the valuation of private health care workers in the Kyrgyz Republic approved by the Order of the Ministry of Health of February 28, 2006N108*

d. Provider Codes of Ethics

Medical workers are specialists with higher and secondary specialized medical education, taking part in the provision of medical and preventive care in the state, municipal, and private organizations and health institutions (*Article 1*).

e. Other Relevant Sources

- Declaration V of the World Conference of the World Medical Association on Medical Education, Malta, 1991
- 1st statement of World Medical Assembly on medical personnel training, Venice, Italy, 1983. In addition, statement in 1986, Rancho Mirage, California, USA
- 2nd statement of World Medical Assembly on medical personnel training, Singapore, 1984. In addition to 1986, Rancho Mirage, California, USA
- 3rd statement of World Medical Assembly on medical personnel training, Brussels, Belgium, 1985. In addition to 1986, Rancho Mirage, California, USA

f. Practical Examples

1. Example(s) of Compliance

Citizen A., who graduated from Kyrgyz State Medical Academy in the specialty of dentistry, decided to setup a private dental office. After completing all the necessary procedures, the Ministry of Health of the KR issued citizen A. a license to engage in private medical practice.

2. Example(s) of Violation

Citizen D. was engaged in doctoring without a license (quackery). As a result, he was brought to administrative responsibility for the illegal occupation of doctoring without a license and was imposed an administrative fine of 10 specified rates.

3. Actual Cases

Relatives of Citizen U. appealed to the Issyk-Ata district prosecutor's office against Citizen D. who performed an abortion resulting in Citizen U. suffering serious bodily injury. Issyk-Ata district court of Chui region tried a criminal case against Citizen D., who performed an illegal abortion that resulted in serious consequences. Issyk-Ata district court of Chui region found citizen D. guilty of committing an offense under *Part 3 Article 116 of the Criminal Code* (performing illegal abortion), and sentenced her to two years' imprisonment.

g. Practice Notes for Lawyers

If a lawyer has some doubts that a medical worker has an appropriate medical education or a license, in accordance with *Article 12 of the Law of the KR On Advocacy*, he/she can write a lawyer's request to the Ministry of Health of the KR and get an answer within the statutory one month.

6.2.2. OBLIGATION TO PROVIDE MEDICAL CARE

Treatment of the patient is the meaning and content of the physician's activity. The purpose of the doctor is to protect human health. His/her knowledge and experience must serve in reaching this goal (*Helsinki Declaration of the World Medical Association, 1964*).

a. Clarification

A medical worker has to provide medical assistance to an injured person, regardless of nationality, social status, race, religion, political beliefs, etc. When a citizen needs medical help for health reasons in conditions that require urgent medical intervention (accident, injury, poisoning, other conditions and diseases), health care is provided free of charge to all citizens of the KR for the elimination of a life-threatening state.

b. Responsibility as Stated in Country Constitution//Legislation

Constitution

The Constitution of the KR does not directly stipulate a duty of medical personnel in providing medical assistance, but there is a general formulation:

- The rights and freedoms are inalienable and belong to everyone from birth. Human rights and freedoms are the supreme value. They act directly and determine the meaning and content of the activity of legislative and executive authorities and local self-government (*Article 16*).
- Everyone has the inalienable right to life (*Article 21*).
- Everyone has the right to health protection (*Part 1 Article 47*).
- Free medical care and medical services on favorable terms are realized in the number of government guarantees provided by the law (*Part 3 Article 47*).

Legislation

The formulation of this duty in the Criminal Code of the KR:

- Non-performance or improper performance of professional duties by a medical worker, which caused long term health problems with persistent disability of not less than one-third, is punished by deprivation of the right to hold certain posts (the head of a department of surgery, for example) or practice certain activities (such as surgery) for up to five years or a fine from twenty to fifty specified rates.

The same act that caused the death of the victim is punishable by restraint of liberty for up to five years or imprisonment for up to five years, with disqualification to hold certain posts or practice certain activities for up to three years (*Article 119*).

- Unlawful termination by a medical professional of treating a patient who is in critical condition, which resulted in serious consequences, including death, because of carelessness, is punished by a fine of one hundred to two hundred specified rates, or hard labor for up to two years, or imprisonment for up to three years with deprivation of the right to hold certain posts or practice certain activities for up to three years (*Article 120*).
- Knowingly leaving a person without aid whose life or health is in danger, and who is deprived of the opportunity to take measures for self-preservation due to the early childhood, old age, illness, or their helplessness, in cases when the doctor could have rendered assistance to the victim and must have taken care of him/her either himself/herself or put the victim into a life-threatening condition, is punished by community service for a period of one hundred

twenty to one hundred and eighty hours, or a fine from fifty to one hundred specified rates, or hard labor for up to one year.

The act provided in the first part of the article, if it resulted in serious consequences, including death, shall be punished by a fine of five hundred to one thousand specified rates, or hard labor for up to two years, or restraint of liberty for up to three years, or imprisonment for up to three years (*Article 121*).

The formulation of this obligation in the Code of Administrative Liability of the KR:

- Violation of the legislation by officials on protection of citizens' health punishable by a fine of between five to ten times specified rates (*Article 85*).
- Violation of the established order of paid medical services at public health facilities, deliberate overpricing of paid medical services or deliberate implementation of paid medical assistance to persons who are entitled to free medical care shall entail the imposition of an administrative fine on officials from twenty to fifty specified rates (*Article 96*).

The formulation of the duty in the Law of the KR On Protection of the Health of Citizens in the Kyrgyz Republic:

- The basic principles of state policy in the field of protection of citizens' health in the KR are:
 - respect for the rights of citizens to health care;
 - the responsibility of persons providing health care for failure to provide safety and quality (*Article 4*).
- Medical and pharmaceutical workers agree to provide medical care to patients, regardless of nationality, social status, political views and religion, while respecting their human dignity (*Article 92*).
- Health organizations, providing medical care, must provide:
 - a) available, modern efficient medical assistance to the necessary extent, set for certain levels of health, in accordance with the selected material and financial resources;
 - b) provision of emergency medical services (*Article 95*).
- Individuals and legal entities engaged in private medical practice are obliged to provide emergency medical care to all citizens in conditions that threaten their lives (*Article 96*).

The formulation of the duty in the Law of the KR On Psychiatric Care and Guarantees of Rights:

Administration and medical staff of a psychiatric hospital must create conditions for the realization of the patients' rights and their legal representatives provided by the law, as well as provide patients in a psychiatric hospital with necessary medical assistance (*Article 39*).

The formulation of the duty in the Law of the KR On the Rights and Interests of Persons with Disabilities:

Health care is provided for persons with disabilities at home and in the medical inpatient hospitals and health care organizations in accordance with the laws of the KR in the field of health care and the program of state guarantees to provide the citizens of the KR with health care approved by the Government of the KR. Relevant health care organizations provide people with disabilities with health care in the home according to their residence and registration. Health care at home is provided to individuals with disabilities that do not require placement in inpatient facility, with an appropriate report of the treating physician. According to objective assessment of resources of each hospital facilities, necessary conditions for temporary residence must be provided in the

medical inpatient hospitals and health care organizations, along with medical care for persons with disabilities (*Article 24*).

The formulation of the duty in the Law of the KR On Diabetes in the Kyrgyz Republic:

Health care is provided for people with diabetes in health care organizations of the primary level and health care prophylactic institutions of the secondary and tertiary levels (*Article 15*).

The formulation of the duty in the Law On Protection of Population from Tuberculosis:

The state guarantees tuberculosis emergency assistance, specific prophylaxis of tuberculosis, consultative-diagnostic, therapeutic, and rehabilitative care in the state outpatient and inpatient tuberculosis facilities (*Article 4*).

The formulation of the duty in the Law of the KR On Narcotic Drugs and Psychotropic Substances:

If, in the result of medical examination, it is established that the person abuses drugs or psychotropic substances and a diagnosis is "drug addiction," and that he/she is in need of treatment, including in-patient or outpatient conditions, an expert in drug and alcohol abuse shall suggest to this person to undergo a voluntary treatment and shall issue a medical referral to a drug treatment facility for treatment (*Article 38*).

The formulation of the duty in the Law of the KR On the Cancer Care to the Population:

Oncological institutions are required to hospitalize persons with cancer in hospitals and to provide them with adequate treatment (*Article 11*).

The formulation of the duty in the Law of the KR On Health Care Organizations in the Kyrgyz Republic:

- Health care organizations, providing health care, must provide:
 - accessible, modern, high quality, efficient health care of the necessary amount prescribed for certain levels of health care;
 - provision of emergency medical care;
 - willingness to work in extreme conditions (epidemic, emergency, military situation, natural disasters, working in difficult and dangerous conditions) (*Article 23*).

c. Supporting Regulations/Bylaws/Orders

- Order of the Ministry of Health of the KR *On Measures on Improvement of Emergency Medical Aid / Emergency Outpatient Medical Care of the Population of the KR* dated January 30, 2004 N 32
- Regulation *On the Physician Team Ambulance and Emergency / Urgent Care of Center of Family Medicine*, approved by the order of the Ministry of Health of the KR of January 30, 2004 № 32
- Regulation *On the Organization of Ambulance Stations and Emergency Care / Center of Emergency Medical Care*, approved by the order of the Ministry of Health of January 30, 2004 N 32
- Regulation *On the Organization of the Department (substation) of Ambulance Stations and Emergency Care / Center of Emergency Medical Care*, approved by the Order of the Ministry of Health of the KR of January 30, 2004 N 32

- Regulation *On the Organization of the emergency department and urgent / emergency care of the Center of Family Medicine*, approved by the Order of the Ministry of Health of January 30, 2004 N 32
- Regulation *On the Organization of the Urgent / Emergency Outpatient Medical Care*, approved by the Order of the Ministry of Health of January 30, 2004 N 32
- Regulation *On the Main Physician of Emergency Station and Emergency Care / Center of Emergency Medical Services (The Station First Aid and Emergency Care / Community Center Emergency Medical Care)*, approved by the Order of the Ministry of Health of January 30, 2004 N 32
- Regulation *On the Physician Team of Ambulance and Emergency / Urgent Outpatient Health Care of Family Medicine Centre (The Station First Aid and Emergency Care / Community Center Emergency Medical Care)*, approved by the Order of the Ministry of Health of January 30, 2004 N 32
- Regulation *On the Paramedic Team of the Station First aid and Emergency Care / Community Center Emergency Medical Care (department of Family Medicine Centre,)*
- Regulation *On the Department of Emergency Medical Services (TB, GB, OOB, NC and research institute)*, approved by the Order of the Ministry of Health of the KR of October 27, 2010
- Regulation *On a Family Nurse*, approved by the Order of the Ministry of Health of the KR of July 12, 2005 N 289
- Regulation *On a Psychiatrist*, approved by the Order of the Ministry of Health of the KR of January 14, 2010 N 12
- Regulation *On the Psychotherapist* approved by the Order of the Ministry of Health of the KR of January 14, 2010 N 12
- *Job Description Physician-expert in Drug and Alcohol Abuse*, approved by the Order of the Ministry of Health of the KR of February 12, 2004 N 65

d. Provider Codes of Ethics

- A medical worker is required to provide medical care to anyone regardless of gender, age, race, nationality, place of residence, social status, religious and political beliefs, as well as other non-medical factors.

A medical worker should make every effort to make the quality of medical help at the highest level (*Article 3*).

e. Other Relevant Sources

- *Development program for emergency medical assistance in the KR in 2008-2017 approved* by the Order of the Ministry of Health of the KR of December 17, 2008 №660
- *National Reform Program for Health Care "ManasTaalimi"*, approved by the Decree of the Government of the KR dated February 16, 2006 N 100
- *Recommendations of the World Medical Assembly in providing health care in rural areas*, Helsinki, Finland, 1964; in addition to 1983, Venice, Italy
- *The statement of the World Medical Assembly on the professional responsibility of physicians in the treatment of persons with AIDS*, Vienna, Austria, 1988

f. Practical Examples

1. Example(s) of Compliance

Citizen M. phoned an ambulance emergency care with a request to provide the necessary care for her 25-year-old son, a user of drug injection who took an overdose of drugs. The ambulance arrived within 10 minutes and provided necessary medical care.

2. Example(s) of Violation

Citizen K. brought this pregnant wife who had lost amniotic fluid to the maternity hospital № 4 (urban perinatal center). The doctor on duty refused to hospitalize her and to deliver her baby due to the fact that she was not attached to the institution and directed her to the maternity hospital of her residence, despite the fact that the woman needed emergency medical care. Citizen K. addressed the chief physician of maternity hospital № 4 with an oral complaint of unlawful actions of the doctor on duty. As a result of interference of the chief physician, citizen K's spouse was hospitalized and received the proper medical care.

3. Actual Cases

At night from 2nd January to 3rd January, 2012, an 11-year-old citizen S. died at the National Center of Maternal and Child Protection. The official investigation into death was conducted. As a result of the investigation, deficiencies were identified at all levels: at the pre-hospitalization stage, hospitals, in Chui oblast hospital, in the third Children's Hospital's and Center for Maternal and Child Health.

In the course of the official investigation, it was found that there was only one car for the emergency room in Alamedin district, which was also in a bad condition, which caused late hospitalization of the child.

In the Chui oblast hospital, first aid was carried out for 2.5 hours without issuing a medical record for the hospital patient/child. A mandatory amount of clinical and laboratory research was not conducted. In preparation for transfer to another medical facility, the critical condition of the child was not taken into account.

The tactics of treatment in the intensive care unit of urban children's hospital emergency care in Bishkek was correctly chosen, but the treatment was not fully provided due to the lack of insulin.

Transfer of the child to the National Center for Maternal and Child health took longer than planned, from 2.30 to 7.30, in the absence of mutual coordination between the two health care organizations. At the National Center for Maternal and Child Health, necessary clinical and laboratory research was not conducted.

As a result of an official investigation into the death of 11-year-old citizen S., thirteen doctors were reprimanded and four were dismissed from their posts.

g. Practice Notes for Lawyers

When counseling patients, lawyers must know that health care, including emergency care, is the direct responsibility of medical workers. In the case of non-fulfillment or improper fulfillment of his/her professional duties, a medical worker shall be subject to civil or criminal liability.

The evidence of not respecting the obligation to provide medical care can be, for example, a registration call of the ambulance by a dispatcher, and the absence of a document confirming the visit of the doctors to the patient. If the dispatcher registered a call, an ambulance must be sent to the patient. If not, this is a violation. When an ambulance does go to the patient, ambulance personnel are to fill out a document; if there is no document, that is a violation.

6.2.3. THE OBLIGATION TO COMPLY WITH SANITARY-HYGIENIC AND ANTI-EPIDEMIOLOGICAL RULES AND REGULATIONS

a. Clarification

Sanitary and prophylactic care consists of organizational, administrative, sanitary-hygienic, anti-epidemic and other measures aimed at eliminating or reducing harmful effects on the factors of human environment, preventing the emergence and spread of infectious diseases and mass non-infectious diseases.

b. Responsibility as Stated in Country Constitution//Legislation

Constitution

The Constitution does not explicitly provide the obligation to comply with sanitary-hygienic norms and anti-epidemic norms.

However, there is a general statement:

- Everyone has the right to health (*Article 47*).

Legislation

The formulation of the obligation in the Code of Administrative Liability:

Violation of sanitary-hygienic and anti-epidemiological rules and norms of institutions, organizations and enterprises regardless of ownership results in imposing administrative penalties upon officials from ten to twenty times of the specified rates.

The same action provided in the first part of this article, performed within one year after the re-application of measures of administrative punishment, results in imposing administrative penalties upon officials from twenty to fifty times of the specified rates (*Article 90*).

The formulation of the duty in the Law of the KR On Protection of the Health of Citizens in the Kyrgyz Republic:

- sanitary-prophylactic care in the KR includes:
 - sanitary-hygienic inspectorate;
 - epidemiological inspectorate;
 - promoting a healthy lifestyle.

Sanitary-prophylactic care is rendered by both services of the state sanitary-epidemiological inspectorate and by promotion of health and health organizations of the primary level in order to protect and promote health of the population.

The sanitary-epidemiological well-being and public health are provided by a set of measures aimed at eliminating or reducing harmful effects on the factors of the human habitat, preventing the origin and spread of infectious diseases and mass non-infectious diseases, elimination of diseases, hygiene education and training of citizens, promoting healthy lifestyles, and the spread of hygienic knowledge among the population, carried out in accordance with the laws of the KR. (*Article 27*).

- Health Organizations providing health care, must:
 - carry out specific prophylactic health measures for prevention, diagnosis and treatment of diseases that pose a danger to others
 - observe sanitary-hygienic, anti-epidemic regimes
 - promote healthy lifestyles and sanitary-hygienic education of the population (*Article 95*)
- Individuals and legal entities engaged in private medical practice, must comply with sanitary-hygienic and anti-epidemic regulations (*Article 96*).
- Health care workers must comply with sanitary-hygienic and anti-epidemic norms (*Article 97*).

The formulation of the duty in the Law of the KR On Protection of Population from Tuberculosis:

- Antituberculosis care is provided by authorized health care facilities; advisory services can be performed by private phthisiatricians. In establishing the diagnosis of tuberculosis, a private phthisiatrician is obliged to report the case of detection of tuberculosis to the territorial antituberculosis establishment and the sanitary-epidemiological service (*Article 5*).
- The establishment of sanitary-epidemiological and veterinary services together with anti-tuberculosis agencies carry out activities to prevent human infection with tuberculosis, as well as provide mutual information on cases of tuberculosis of people and farm animals (*Article 13*).

The formulation of the obligation in the Law of the KR On Health Care Organizations in the Kyrgyz Republic:

- Organizations of public health provide sanitary inspectorate, conduct sanitary-hygienic and anti-epidemiological arrangements, and promote healthy lifestyles and health of citizens (*Article 10*).
- Health Organizations providing health care must provide:
 - observance of sanitary-hygienic, antiepidemiological regimes;
 - promotion of healthy lifestyles and sanitary-hygienic education of the population (*Article 23*).

c. Supporting Regulations/Bylaws/Orders

- Resolution of the Government of the KR *On Sanitary-epidemiological Control to Ensure Sanitary-epidemiological Safety of the Population Provided by Agencies and Institutions of Sanitary-epidemiological Service of the KR* of June 6, 2003 №329
- Order of the Ministry of Health of the KR *On Approval of Regulations on Safety of Medical Procedures and Prevention of Nosocomial Infections in Health Care organizations of the KR* of April 6, 2010 N 181
- Order of the Ministry of Health of the KR *On Approval of Instruction on Sanitary Regime of Pharmacies* of May 24, 2000 N 162
- Order of the Ministry of Health of the KR *On Approval of Clinical Protocols on HIV / AIDS* of September 6, 2010 N 437
- *The resolution of the chief state sanitary doctor of the KR and the chief state veterinary inspector of the KR On Approval of Sanitary and Veterinary Rules for the Prevention and Control of Communicable Diseases Common to Humans and Animals* of October 26, 1999 №54
- *Regulation On the State Sanitary-Epidemiological Service of the Kyrgyz Republic approved by the Decree of the Government of the KR* dated December 10, 2001 N 778;
- *Regulation On the Department of State Sanitary-Epidemiological Inspectorate of the Ministry of Health of the Kyrgyz Republic* approved by the Decree of the Government of the KR dated May 31, 2001 N 260
- *Regulation On licensing of separate kinds of activities* approved by the Decree of the Government of the KR dated May 24, 2000 N 162
- *Instruction On the Sanitary Regime of Pharmacies*, approved by the Order of the Ministry of Health of the KR dated May 24, 2000 N 162
- *Instruction On the Hand Hygiene of Medical Staff* approved by the Order of the Ministry of Health of the KR dated April 6, 2010 N 181
- *Instruction On the Prevention of Nosocomial Infections in Health Care Organizations (departments) of Surgical Profile* approved by the Order of the Ministry of Health of the KR dated April 6, 2010 N 181

d. Provider Codes of Ethics

There are no sections of the Health Ethics Code relevant to this obligation.

e. Other Relevant Sources

- *Manual: Epidemiological inspectorate of nosocomial infections* approved by the Order of the Ministry of Health of the KR dated January 29, 2008 N 34
- *Clinical Protocol for 1-3levels of Post-contact prophylaxis for HIV infection* approved by the Order of the Ministry of Health of the KR dated September 6, 2010 N437

f. Practical Examples**1. Example(s) of Compliance**

Before any surgery, doctors carry out mandatory sterilization treatment of their hands, including wash and surgical hand antisepsis.

2. Example(s) of Violation

Violations of licensing requirements in realization medicines and medical products in one of the pharmacies were revealed by a public prosecutor's office of Bishkek. At the time of testing in the pharmacy "X", the temperature storage regulator was 27 degrees Celsius, while in accordance with the rules of data storage products, storage temperature ranges from 8 to 15 degrees Celsius. According to the regulation on licensing of certain activities, the rules of storage and handling of drugs should be respected according to their physical-chemical, pharmacological and toxicological properties, as well as flammable and explosive properties. Contrary to the requirements of the rules of leave (sale) of drugs in pharmacies, chemist at "X" did not organize a proper storage of a number of drugs in lockable metal and wooden cabinets. According to the result of inspection, the prosecutor of Bishkek instituted proceedings based upon the administrative offence under Article 93 of the Code of Administrative Liability (Violation of the rules of production, procurement and implementation of medical, diagnostic, prophylactic and therapeutic and cosmetic products, technology products and medical devices, products, preventive nutrition and food additives). The LLC "X" was administratively liable to a fine of 10 specified rates.

3. Actual Cases

In one of the hospitals in Nookat, Osh region, due to habitual negligence and non-observance of good hygiene rules by a doctor, single-use catheters were reused. As a result, there was a mass poisoning of children with HIV infection. The case is in the investigative stage and has not gone to court.

g. Practice Notes for Lawyers

Cases of violations of sanitary regulations and standards and hygienic norms require special carefulness from lawyers because of the existence of a set of legal acts in this area. It is therefore necessary to ensure their validity at the time of detection of the respective violation. In the case of the legitimacy of the relevant acts, lawyers should identify which rules have been violated or have not been fulfilled in full.

It is necessary to know an expert's opinion to determine whether compliance with all sanitary-epidemiological rules and norms are observed.

6.2.4. THE OBLIGATION TO INFORM PATIENTS (OR LEGAL REPRESENTATIVES)

a. Clarification

This obligation is of great importance, because the absence or lack of awareness of the patient about his/her health condition may lead to irreparable consequences. Medical workers are required to provide each patient the information on the types and procedure, including the cost of medical services, the state of his/her health, including information on the examination results, the presence of the disease, his/her diagnosis and prognosis, treatment methods, potential risks, optional medical interventions and their consequences, and results of the treatment, as well as information on prophylactic medicine and promotion of a healthy lifestyle.

Information about his/her health condition is given to the patient. For the individuals under the age of 16, and the patients found incompetent in the manner prescribed by law, it is given to their legal representatives by the attending physician, head of department of the health organization, or other experts who took part in the examination and treatment.

The information about health cannot be provided to a patient against his/her will. In the case of an unfavorable prognosis of disease, information should be provided to the patient and his/her family in a delicate form of compliance with medical ethics, if the patient does not forbid the medical providers to tell them about it and/or has appointed a person who should be given such information.

b. Responsibility as Stated in Country Constitution/Legislation

Constitution

- Everyone has the right to freely seek, receive, store, use the information and disseminate it orally, in a written form, or other ways;
- Everyone has the right to obtain information about themselves from public authorities, local governments, institutions and organizations;
- Everyone is guaranteed the access to information held by public bodies, local authorities and their officials. The procedure for providing information is determined by the law (*Article 33*).

Legislation

The formulation of the duty in the Criminal Code of the KR:

Unlawful refusal to grant duly- collected documents and materials directly affecting the rights and freedoms of a citizen or to provide a citizen with deliberately incomplete or false information by the public officer, if these acts have caused substantial harm to the rights and lawful interests of citizens, are punished by a fine of up to fifty times of specified rates (*Article 138*).

The formulation of the duty in the Law of the KR On Protection of the Health of Citizens in the Kyrgyz Republic:

Individuals and legal entities engaged in private medical practice are obliged to provide citizens with complete and accurate information about their health status (*Article 96*).

The formulation of the duty in the Law of the KR On Protection of Population from Tuberculosis:

The state guarantees to provide the patient with accurate and timely information about his/her health status (*Article 4*).

The formulation of the duty in the Law of the KR On Psychiatric Care and Guarantees of Citizens' Rights in Its Provision:

- The doctor must provide a person with a mental disorder, in an accessible form for him/her and taking into account his/her mental state, with the information on the nature of the mental disorder, the aims, methods, including alternatives, and the recommended duration of treatment, as well as possible risks, side effects and expected outcomes (*Part 2 Article 11*).
- Consent to treatment of a minor under the age of 15, and of a person found incapable in the manner prescribed by the law, is given by his/her legal representatives after giving them information stipulated by part 2 of the Article (*Part 3 Article 11*).
- Administration and medical staff of a psychiatric hospital must create conditions for the realization of the rights of patients and their legal representatives prescribed by the Law, including informing relatives or legal representative of the patient, as well as any other person under his/her direction, on changes in health and emergencies with him/her (*Article 39*).

The formulation of the duty in the Law of the KR On Reproductive Rights and Guarantees of Their Realization:

- The state authority in the field of reproductive health of citizens provides information and educational activities in the field of reproductive health (*Article 7*).
- Health organizations are obliged to inform the woman who decides on abortion or refusal of abortion for medical reasons, of the possible negative consequences for her health (*Article 16*).

The formulation of the duty in the Law of the KR On Public Health:

The basic principles of state policy on public health in the KR are to ensure the citizens of objective and reliable information on disease prevention and health protection and promotion (*Article 4*).

c. Supporting Regulations/Bylaws/Orders

The order of the Ministry of Health of the KR On the recommended regulations on providing health care organizations with visual media, December 15, 2008N651

d. Provider Codes of Ethics

There are no sections of the Health Ethics relevant to this obligation.

e. Other Relevant Sources

There are no other relevant sources.

f. Practical Examples

1. Example(s) of Compliance

Citizen X asked for medical assistance from the National Center of Cardiology and Therapy named after M.Mirrahimov, where he was diagnosed with coronary heart disease. After the establishment of the diagnosis, the attending physician gave Citizen X. information on methods of treatment, the associated risks, and options for medical intervention, as well as their consequences.

2. Example(s) of Violation

Patient Z, was admitted to a hospital with exacerbation of chronic pyelonephritis. During the examination, a stone was revealed in the right kidney, which violated the flow of urine from the renal pelvis, resulting in hydronephrosis of a kidney. Therapy of non-narcotic analgesics, antibiotics, and antispasmodics was prescribed to her. After the treatment, the patient's condition improved and she was discharged under the supervision of a urologist at the clinic near the place of her residence. Due to a heavy workload, the attending physician did not explain to the patient the possible consequences of the disease and the need for surgical treatment in detail when she was being discharged from the hospital. In the subsequent exacerbation of urolithiasis, progressive hydronephrosis caused the death of the kidney and the need to remove it. Timely available full information about the disease and its effects would have led to the saving of the kidney.

3. Actual Cases

There are no examples of court cases and judgments.

g. Practice Notes for Lawyers

Lawyers are advised to check whether the information is adequately provided to the patient, how it is presented (orally or in a written form), whether the patient is able to perceive and understand.

In addition, if necessary, it is possible to refer to independent experts to find out whether the patient is provided with all necessary information (about the types and procedure, including the cost of medical services, the state of his/her health including information on the examination results, the presence of a disease, his/her diagnosis and prognosis, treatment options, associated risks, possible options for medical intervention, their consequences, and results of the treatment).

6.2.5. THE OBLIGATION TO OBTAIN THE PATIENTS' VOLUNTARY CONSENT TO MEDICAL INTERVENTION AND PARTICIPATION IN MEDICAL EXPERIMENTS

a. Clarification

Any intervention into the human body is possible only after obtaining consent from the patient for this intervention; otherwise, the actions of a health worker should be considered as violence against the person and causing bodily harm.

This obligation is closely connected with the duty of a medical worker to inform the patient. Since the patient is not an expert in the field of medicine to make an informed decision and consent to medical intervention, he/she needs the information about the nature of intervention, its causes, consequences, risks and possible alternative treatments. Such information can only be provided to the patient by a professional, a performer of medical services on whom the law imposes a duty to inform the patient.

b. Responsibility as Stated in Country Constitution//Legislation

Constitution

- Guarantees of the ban on medical, biological and psychological experiments on people without their consent, expressed and appropriately certified, are not subject to any restrictions established by the Constitution (*Part 4 Article 20*).
- It is not allowed to carry out medical, biological, or psychological experiments on people without their consent, expressed and appropriately certified (*Part 3 Article 22*).
- Everyone has the right to liberty and security (*Part 1 Article 24*).

Legislation

The formulation of the duty in the Criminal Code of the KR:

- Forcing a person to remove his/her or his/her relatives' organs or tissues for transplantation, committed with violence or threat of force or by fraud is punishable by imprisonment for a term of four years, with or without the disqualification to hold certain posts or practice certain activities for a period up to three years.

The same act committed against a person who is financially or otherwise dependent on the perpetrator is punished by imprisonment for a term of two to five years, with or without disqualification to hold certain posts or practice certain activities for up to three years (*Article 114*).

- Breach of the terms and procedure of the removal of organs and/or human tissue, or the terms and procedure of transplantation, stipulated by the law, that negligently caused the infliction of serious or less serious harm to the health of the recipient shall be punishable by restraint of liberty for up to three years or by imprisonment for a term not exceeding three years, with disqualification to hold certain posts or practice certain activities for up to three years.

The same act which negligently causes the death of the patient shall be punishable by restraint of liberty for up to five years or by imprisonment for a term not exceeding five years, with disqualification to hold certain posts or practice certain activities for up to three years (*Article 115*).

The formulation of the duty in the Law On Protection of the Health of Citizens in the Kyrgyz Republic:

- Clinical and medical-biological experiments on a person are conducted with his/her written consent. The experiment is terminated at any time at the request of the person being tested and in the case of a threat to his/her health (*Article 34*).
- An abortion, during a period not exceeding the first 12 weeks, is carried out in health care organizations at the request of a pregnant woman. An abortion is allowed during a period not exceeding 22 weeks in public health care organizations if there are social reasons and the desire of the pregnant woman. If there are medical indications, and the woman's consent, abortion is carried out in health care organizations, regardless of gestational age. The list of social reasons for artificial termination of pregnancy is determined by the government of the KR. The list of medical indications for abortion is determined by the authorized government body of the KR in the field of health care (*Article 37*).
- When applying for medical assistance and receiving it, the patient has the right to participate in scientific and medical experiments with his/her written consent and in accordance with the authorized state body of the KR in the field of health care (*Article 72*).
- A prerequisite for medical intervention is the voluntary consent of the citizen.

In cases when the condition of the citizen does not allow him/her to express his/her will, and medical intervention is necessary for emergency indications, the issue of its performance in the interest of the citizen is solved by the council of physicians in the health care institution where the surgery will take place; and if it is not possible to collect the council of physicians, it is made by an attending physician (doctor on duty), with subsequent notification to officials of health care organizations.

Consent to medical intervention for individuals under the age of 16, and citizens recognized as incompetent in accordance with the law, is given by their legal representatives after they receive the information to be given to them as prescribed by part 1 Article 73 of the law. In the absence of legal representatives, a council of physicians takes the decision to accept medical intervention; and if it is not possible to collect the council, it is made by an attending physician (doctor on duty), with subsequent notification of officials of health care organizations.

During surgery, for blood transfusion and the use of sophisticated invasive diagnostic methods, a written consent of the citizen is required.

Consent may be withdrawn except in cases when doctors have already started medical intervention and the withdrawal is not possible because of the threat to life and health of the person (*Article 74*).

- With the consent of the citizen, organizations providing health care have the right to seek information from other organizations which conducted his/her examination or treatment (*Article 78*).
- With the consent of the citizen or his/her legal representative, it is allowed to present the information constituting a medical mystery to other citizens, including officials, in the interest of examination and treatment of the patient for conducting of research, publications in scientific literature, and/or the use of this information in the learning process and other purposes (*Article 91*).

The formulation of the obligation in the Law of the KR On HIV / AIDS in the Kyrgyz Republic:

- Involvement of people living with HIV / AIDS, in the capacity of an object for testing drugs, doing research or teaching, taking photography, video or motion pictures is allowed only by their or their legal representatives' written consent (*Article 6*).

- A voluntary medical examination is carried out anonymously and confidentially on the basis of an informed, conscious, written consent of the person being tested or of his/her legal representative (*Article 7*).
- A mandatory medical examination is carried out only with the written consent of the examinee (*Article 8*). If the examinee is a doctor or other health care worker, for example, he/she will not be allowed to work in a health care institution if he/she refuses the examination.
- A medical examination of children under the age of 18 and those found incompetent in the manner prescribed by the law can be carried out at the written request or the written consent of their legal representatives, who have the right to be present during a medical examination.

Psychosocial consulting of children under the age of 18 is held with the participation of a child psychologist and parents or a legal representative who are invited with the consent of the child (under the age of 18).

It is not allowed to conduct a medical examination to test for HIV by order, to perform it without the consent of the examined person or with the use of physical, psychological and/or moral pressure, or when the examined persons are in dependent positions, such as those who use drugs, for example *Article 9*).

The formulation in the duty in the Law of the KR On Medicines:

The patient gives a written consent to participate in clinical trials of the drug.

In conducting clinical trials of drugs to minors, a written consent of their parents is required.

Clinical trials of drugs for the treatment of mental illness can be conducted on persons with mental illness and recognized incapable in the manner prescribed by the law of the KR On psychiatric care and guarantees of citizens' rights in its provision. Clinical trials of drugs in this case are conducted with the written consent of the legal representatives of such persons (*Article 28*).

The formulation of the obligation in the law of the KR On Reproductive Rights and Guarantees of Their Realization:

- Citizens should not be subjected to medical experiments related to reproductive health without their written full and free informed consent. Participation of children in medical experiments related to reproductive health is permitted only with the consent of children and teenagers (after 18 years of age), their parents or their legal representatives (*Article 10*).
- Any medical intervention is carried out with the mutual consent of the teenagers, parents or legal representatives, in observance of confidentiality and supportive attitudes towards children and teenagers (*Article 13*).
- Any medical intervention during pregnancy is carried out with the consent of both spouses, if the woman is married, or of an unmarried woman. In situations that are dangerous for the life of the pregnant woman, the decision is taken by appropriate professionals of health care organization, without the woman's consent (*Article 14*).
- An abortion during a period not exceeding the first 12 weeks of pregnancy is carried out at the woman's request. According to social evidence, abortion can be performed in the period of less than 22 weeks of gestation with the consent of both spouses or of an unmarried woman; and according to medical evidence - regardless of gestational age. Abortion for minors is performed with the mutual consent of minors (under 18 years of age) and their parents or their legal representatives (*Article 16*).
- Surgical sterilization is carried out only with the written consent of the individuals or their legal representatives in state health care institutions (*Article 22*).

The formulation of the duty in the law of the On Psychiatric Care and Guarantees of Citizens' Rights in its Provision:

- Psychiatric care is provided for voluntary treatment of a person or with his/her consent, except the cases as provided in the law.

Psychiatric care is provided to minors under the age of 15, and to the persons found

incompetent in the manner prescribed by the law, at the request or with the consent of their legal representatives in the manner prescribed by the law (Article 4).

- All persons suffering from mental disorders, in receiving psychiatric care, have the right to prior consent and refusal at any stage of use as an object of tests or trial for medicines and methods, scientific research or teaching process, or photo-video or film (Article 5).
- The treatment of the person suffering from mental illness is conducted after obtaining his/her written consent, except in the cases as provided by the *part 4 of Article 11*.

The physician must provide the person who has a mental disorder with the information on the nature of his/her mental disorder, the aims, methods, including alternatives, and the recommended duration of treatment, as well as possible risks, side effects and expected outcomes in an accessible form for him and taking into account his/her mental condition. The provided information is recorded in the patient's medical record.

Consent to treatment of a minor under the age of 15, or a person found incapable in the manner prescribed by the law, is given by their legal representatives after they are given the information required by the *part 2 of Article 11*.

The treatment can take place without the consent of the person suffering from a mental disorder, or without the consent of his/her legal representative, only under the application of compulsory medical measures on the grounds of the stipulated legislation of the KR, as well as involuntary hospitalization on the grounds of stipulated *Article 29 of this law*. In these cases, except emergency, the treatment is administered by the decision of the commission of psychiatrists.

With regard to the persons referred to in part 4 of article 11, it is not allowed to apply surgical and/or other methods causing irreversible consequences for the treatment of mental disorders or to conduct testing of medicines and methods (*Article 11*).

- A psychiatric examination and prophylactic check-up are conducted at the request of or with the consent of the examined person; in respect of a minor under the age of 15 - at the request of or with the consent of his/her parents or other legal representative; in respect of a person recognized as incapable in the manner prescribed by the law – at the request or with the consent of his/her legal representative. In the case of an objection by a parent or in the absence of parents or other legal representative, the medical examination is conducted by the decision of the juvenile guardianship authority, which may be appealed in court.

A psychiatric examination of a person may be held without his/her consent or without the consent of his/her legal representative if the examinee is under medical observation for the reasons stipulated in *Clause 1 of Article 27 of this Law*.

A psychiatric examination of a person may be held without his/her consent or without the consent of his/her legal representative in cases when in the presence of the available data, an examinee performs actions that give a reason to assume the presence of a severe mental disorder that causes:

- his immediate danger to himself/herself or others, or
- his helplessness, that is their own inability to meet basic living needs, or
- significant damage to his/her health due to deterioration in his/her mental state, if the person is left without psychiatric care.

A psychiatric examination of a person may be held without his/her consent or without the consent of his/her legal representative if the examinee is under medical observation for the reasons stipulated in *Clause 1 of Article 27 of this Act*.

The psychiatric examination and report on the mental health of the examinee are recorded in the patient's medical records, which indicate the reasons to see a psychiatrist and to receive medical advice (*Article 23*).

- Advisory -medical aid is rendered by a psychiatrist in visiting a person by himself/herself who is suffering from mental illness, at the person's request or with his/her consent; with regard to a minor under the age of 15, - at the request of or with the consent of his/her parents or another legal representative (*Article 26*).
- Taking a person to a psychiatric hospital, except in cases as provided in *Article 29* of the law, is voluntary, at his/her request or with his/her consent.

A minor under the age of 15 is placed in a psychiatric hospital at the request of or with the consent of his/her parents or another legal representative. A person found incapable in the manner prescribed by the law is placed in a psychiatric hospital at the request of or with the consent of his/her legal representative. In the case of an objection by a parent or in the absence of parents or another legal representative, taking a minor to a psychiatric hospital is carried out by the decision of the guardianship authority, which may be appealed in court.

An obtained consent to hospitalization is registered in the patient's medical record and signed by the person or his/her legal representative and a psychiatrist (*Article 28*).

- A person with a mental disorder may be hospitalized in a psychiatric hospital without his/her consent or without the consent of his/her legal representative before the judgment to determine whether the person will be sent to a psychiatric hospital, if his/her examination or treatment is possible only in stationary conditions, the mental illness is severe, and it causes:
 - immediate danger to himself/herself or others, or
 - helplessness, that is his/her inability to meet basic living needs, or
 - significant damage to his/her health due to deterioration in mental state if the person is left without psychiatric care (*Article 29*).

The formulation of the obligation in the Law of the KR On Transplantation of Organs and/or Tissues:

- The removal of organs and/or tissue from a living donor is permissible only if there is a legally-registered consent of a living donor, taking into account that his health will not suffer significant harm according to the conclusion of the council of medical specialists (*Article 2*).
- Coercion of a living donor to allow the removal of his/her organs and/or tissues by any person entails criminal liability in accordance with the legislation of the Kyrgyz Republic (*Article 4*).
- Transplantation of organs and/ or tissues is carried out with the written consent of the patient. In this case the patient must be warned about possible complications to his/her health due to the impending surgical intervention. If the patient has not reached 18 years of age or is recognized as incapable in the prescribed manner, such a transfer is carried out with the written consent of the parents or his/her legal representative.

Transplantation of organs and/or tissue to the patient without his/her consent or without the consent of his/her parent or legal representative is made in exceptional cases when a delay in the conduct of the operation endangers the life of the patient but it is impossible to obtain such consent (*Article 7*).

c. Supporting/Regulations/Bylaws/Orders

- Order of the Ministry of Health of the KR *On approval of instructions for medical examination of blood and its components on quarantine of fresh frozen plasma* of November 21, 2007 N 412
- Order of the Ministry of Health of the KR *On approval of new clinical protocols* of June 1, 2005 N 218
- Instruction *On the medical examination of blood and its components* approved by Order of the Ministry of Health of the KR dated November 21, 2007 N 412

d. Provider Codes of Ethics

There are no sections of the Health Ethics Code relevant to this obligation.

e. Other Relevant Sources

- *Rules of the medical examination to detect human immunodeficiency virus, the medical records and observation of persons with positive and equivocal results of HIV testing in the KR 2011* approved by the Decree of the Government of the KR dated April 25, 2006 N 296
- *The clinical protocol for 1-3 level. Testing and consulting for HIV infection approved by Order of the Ministry of Health of the KR* dated September 6, 2010 N 437

f. Practical Examples**1. Example(s) of Compliance**

Citizen I., a surgeon, was sent to the Republican AIDS Centre by the chief physician for mandatory testing for HIV. The doctor of the Republican AIDS Centre carried out a pre-test consultation; a written consent for a medical examination for HIV was received from the citizen I., after which the tests were taken.

2. Example(s) of Violation

Patient G., aged 12, came to the hospital, as she had purulent sinusitis. After the examination, she was explained the adverse effects of the disease, the need for a puncture of her maxillary sinus to remove the pus, and the introduction of drugs. The patient agreed (meaning that her parents agreed on her behalf) to a medical intervention, which was correspondingly recorded in the history of the disease. However, during the course of explaining the operation, the attending physician did not mention the fact that he would use a local anesthetic Novocain, to which the patient, as it turned out, had an allergic reaction. After the introduction of Novocain, the patient died from anaphylactic shock.

3. Actual Cases

Citizen M., aged 13, was taken to a hospital for emergency indications, the symptoms of food poisoning with abdominal pain, a violation of the stool, and vomiting. During the medical examination of the patient, doctors suspected appendicitis. Due to the fact that it was not possible to obtain the consent of his parents to intervene, as they were out of town in the countryside, the physician brought doctors together and raised the issue of holding an emergency medical intervention. Taking the condition of Citizen M. into consideration, the council of physicians took a decision to perform an emergency appendectomy. After the surgery, the patient was transferred to another department of the same hospital for further observation of doctors. Having arrived, his parents were outraged with the doctors, who, unbeknownst to them, had performed surgery on their child, and they filed a complaint against the doctors in court.

In proceedings in the court, the physician who performed the operation provided all necessary documents including the decision of the panel of doctors and referred to Article 74 of the law of the KR On protection of the health of citizens in the KR, according to which medical intervention can be performed by the decision of the council of physicians due to indications of an emergency, without the consent of parents or legal representatives, with subsequent notification to officials of the health care organization and legal representatives. Having examined the materials of the case, the court passed judgment that the doctor's actions were lawful, and in accordance refused to satisfy the parents' complaints.

g. Practice Notes for Lawyers

Lawyers need to know that voluntary informed consent must be given by the patient prior, i.e. it has to be obtained prior to medical intervention. In this case the patient should have time to think about the diagnosis and proposed treatment and be able to have an opportunity to refuse this

intervention in a written form. A medical worker must not only explain the essence of the health effects in detail, but also must offer other options for treatment or diagnosis if available. Consent to medical intervention is registered in the patient's medical records and signed by the patient or his/her representative and the attending physician. The absence of a written consent is a violation for which medical personnel bear responsibility under the law.

It is also necessary to know that health care workers are allowed to provide medical care without consent in the following cases:

- If the condition of a citizen does not allow him to express his/her will, and medical intervention is necessary for emergency reasons, in this case, the decision of its performance in the interest of the citizen is taken by a panel of doctors; and if it is not possible to collect a panel, then by an attending physician (doctor on duty), with subsequent notification to officials of health care organizations.

- If the intervention must be conducted in respect of a person who has not attained the age of 16 years or is found to be disabled, and he/she has no legal representatives, the issue of its holding is also solved by a panel of doctors, and if it is not possible to collect it - just by an attending physician (doctor on duty), with subsequent notification to officials of health care organizations and legal representatives.²²²

6.2.6. DUTY TO MAINTAIN MEDICAL RECORDS

a. Clarification

Health care workers are required to keep medical records on patients and persons asking for medical care, according to the forms and rules approved by the authorized state structure of the KR in the health field.

b. Responsibility as Stated in Country Constitution//Legislation

Constitution

There is no formulation of the duty in the Constitution of the KR.

Legislation

The formulation of the duty in the Law of the KR On Protection of the Health of Citizens in the Republic

- Private health care organizations and private health care workers are required to keep the statistics stipulated by the legislation of the KR, submit reports on giving medical-sanitary and sanitary-prophylactic care to health care organizations, and take responsibility for their accuracy (*Article 14*).
- Individuals and legal entities engaged in private medical practice are required to keep medical records on patients and to provide at a stated time notices and reports to the Ministry of Health on forms approved by the authorized state structure of the Kyrgyz Republic in the health field (*Article 96*).
- Medical and pharmaceutical workers, as well as academic teaching staff and students, permitted to work with the public are required to submit accurate information and reports in accordance with the regulations of the Kyrgyz Republic to superior health care organizations and bodies of state administration (*Article 97*).

222. Article 74 of the Law of the KR On protection of the health of citizens in the Kyrgyz Republic

c. Supporting Regulations/Bylaws/Orders

- The order of the Ministry of Health of the KR *On Approval of the patient's registration certificate* of April 30, 2003 N16
- The order of the Ministry of Health of the KR *On the organization of primary medical-sanitary care* of February 14, 2011N54
- The regulation *On the physician team of ambulance and emergency urgent outpatient care Center of Family Medicine* , approved by the order of the Ministry of Health of the KR of January 30, 2004N32
- The regulation *On the family doctor, approved by the order of the Ministry of Health of the KR* of March 28, 2007N149
- The regulation *On a psychiatrist approved by the order of the Ministry of Health of the KR* of January 14, 2010N12
- The regulation *On the doctor-psychotherapist approved by the order of the Ministry of Health* of January 14, 2010N 12
- The instruction *On filling out forms of record keeping of registration of the population* approved by the order of the Ministry of Health of the KR April 30, 2003 N 161
- *Job Description: Expert in drug and alcohol abuse approved by the order of the Ministry of Health of the KR* February 12, 2004 N 65

d. Provider Codes of Ethics

There are no sections of the Health Ethics Code relevant to this obligation.

e. Other Relevant Sources

The list of medical records in GFD(Group of Family Doctors)approved by the order of the Ministry of Health of the KR July 12, 2005 N 289

f. Practical Examples

1. Example(s) of Compliance

Citizen U. asked the Ministry of Health of the KR to send him information confirming that he was in the hospital of the city cardiological center in Bishkek from April 2011 to May 2011, referring to Article 4 of the Law of the KR On the Procedure for the treatment of citizens. The Ministry of Health within the statutory one month transmitted a response to Citizen U. which confirmed that Citizen U. was in in-patient treatment from April 15 to May 15, 2011, in the city cardiological center in Bishkek.

2. Example(s) of Violation

Citizen D. was delivered to the department of gynecology in the National Center of Cardiology and Therapy with emergency indications. This was due to the fact that she received poor-quality care in a private gynecological clinic. In this regard, she appealed to the Ministry of Health of the KR with a complaint against a private gynecological clinic. The Ministry of Health of the KR investigated the case and found no evidence (medical records) that the citizen D. was provided medical care in this gynecology clinic, and therefore her complaint was rejected.

3. Actual Cases

There are no examples of court cases and judgments.

g. Practice Notes for Lawyers

Failure to comply with the duty by the medical worker may lead to negative consequences for the patient. For example, in the absence of relevant medical records, if the patient care was not provided or was rendered poorly, it will be difficult for the patient to prove whether the patient asked for medical care.

The patient may request the necessary information in medical institutions referring to Article 4 of the Law of the KR On the procedure of consideration of citizens' appeals.

6.2.7. OBLIGATION TO KEEP MEDICAL SECRECY

a. Clarification

The information contained in medical records of a citizen is of medical confidentiality, which is defined as information about the fact of seeking care, the health state of the patient, the diagnosis (name) of his/her illness, the means and methods of treatment, the possible prognosis of the disease, as well as other information obtained during the examining and treating patients. The disclosure of information constituting a medical confidentiality is prohibited when it is revealed during training, professional performance, service and other duties.

With the consent of the citizen or his/her legal representative (designated representative, the court-appointed guardian) the dissemination of information constituting a medical confidentiality is allowed to other citizens, especially the officials, for examination and treatment of patients, for research, publications in scientific literature, the use of this information in the learning process, and for other purposes. Without the permission of the patient (or his/her representative) the transfer of data about him/her is illegal (i.e., it is considered disclosure of medical confidentiality).

b. Responsibility as Stated in Country Constitution//Legislation

Constitution

Everyone has the right to privacy, to protect his/her honor and dignity. It is not allowed to collect, store, use and disseminate confidential information about the private life of a person without his/her consent, except the cases as provided by the law (Article 29).

Legislation

The formulation of the duty in the Criminal Code of the KR:

- Disclosure of information about the disease or the results of a medical examination of the patient by a medical, pharmaceutical or another employee without professional necessity is punished by a fine of up to thirty specified rates.

The same act, as expressed in the dissemination of information about the presence of the human immunodeficiency virus is punished by a fine of up to fifty specified rates, or with imprisonment for a term of two years.

Actions envisaged in parts one and two of this Article, if they negligently cause serious consequences, shall be punishable with imprisonment for a term of three years (Article 145).

The formulation of the duty in the Law On Protection of the Health of Citizens in the Kyrgyz Republic:

- Information on performed artificial insemination, as well as the identity of the donor, constitutes medical confidentiality (Article 35).
- Information about the fact of seeking medical care, health condition of a citizen, the diagnosis of his/her illness, and other information obtained during his/her examination and treatment is of medical confidentiality. Guarantee of information confidentiality must be confirmed to the citizen.

It is not allowed to disclose information that constitutes a medical secret by the persons to whom it became known during training, professional performance, service and other obligations, except as provided in the third and fourth parts of the article.

The dissemination of information constituting a medical confidentiality is permitted with the consent of the citizen or his/her legal representative, to other citizens, including officials for examination and treatment of patients for research, publications in scientific literature, the use of this information in the learning process and in other purposes.

Information constituting a medical confidentiality, without the consent of the citizen or his/her legal representative may be provided:

- to examine and treat a citizen not able to express his/her will because of his/her condition;
- there is a threat of spread of infectious diseases, mass poisonings and injuries;
- at the request of inquiry agencies and investigation agencies, the prosecutor and the court in connection with the investigation or litigation;
- in the case of giving assistance to a minor under the age of 16 to inform his/her parents or legal representatives;
- if there is basis to believe that the injury caused to the citizen is a result of illegal actions.

Persons who are given information constituting medical confidentiality in proportion to the damage caused to the citizen in the manner prescribed in the law bear responsibility for disclosure of medical confidentiality along with medical and pharmaceutical workers in accordance with the legislation of the KR (*Article 91*)

- Individuals and legal entities engaged in private medical practice are required to keep medical confidentiality (*Article 96*).

The formulation of the obligation in the Law of the KR On HIV / AIDS in the Kyrgyz Republic:

- A medical examination for HIV is conducted in the state, municipal or private health care organizations on the basis of a license prescribed in accordance with the laws of the KR. The information about the infection of a person with human immunodeficiency virus or his/her disease of HIV infection or AIDS is an official confidentiality protected by the law (*Article 9*).

The formulation of the duty in the Law of the KR On Psychiatric Care and Guarantees of Rights:

- Information about the presence of a citizen's mental disorder, evidence of seeking psychiatric care and treatment in institutions providing such assistance, as well as other information about the state of mental health, is a medical confidentiality protected by the law. The information about the mental health of the person and about mental health care provided to him/her in an accessible form, and taking into account the patient's mental condition, can be given for the realization of the rights and lawful interests of persons suffering from mental illness at his/her request or at the request of his/her legal representative (*Article 9*).

The formulation of the obligation in the Law of KR On the Transplantation of Organs and Tissues:

- Medical and other health care workers are prohibited to disclose information which becomes known to them in the performance of professional duties about the donor and patient. Disclosure of such information shall entail responsibility in accordance with the laws of the KR (*Article 14*).

The formulation of the duty in the Law of the KR On Psychiatric Care and Guarantees of Rights

- A person who has applied voluntarily to drug treatment centers for medical treatment is

provided, at his/her request, the anonymity of treatment. Information about such treatment may only be disclosed to law enforcement authorities only in the case that the person has criminal or administrative responsibility/liability (*Article 38*).

The formulation of the obligation in the Law of the KR On Cancer Care to the Population:

- To reduce the negative impact of the environment and production technology on the health of citizens of the KR, as well as to support people with cancer, the KR Government provides the protection of a confidentiality about the health condition, diagnosis, and other information obtained during the examination and treatment of the patient from other people, if it is in his/her interests (*Article 5*).

The formulation of the obligation in the Law of the KR On Reproductive Rights of Citizens and Guarantees of Their Realization:

- State agencies, local governments, as well as legal entities and individuals, are obliged to keep information secret related to the realization of the citizens' reproductive rights (*Article 9*).
- Information about performed artificial insemination constitutes medical confidentiality (*Article 20*).

c. Supporting Regulations/Bylaws/Orders

- Order of the Ministry of Health of the KR *On Approval of the Provisional regulations "On the procedure of a primary psychiatric examination of citizens, On the procedure of emergency involuntary hospitalization, On the Procedure of report on the mental state of citizens"* of August 4, 2003 N 332
- Order of the Ministry of Health of the KR *On approval of clinical protocols on HIV / AIDS* of September 6, 2010 N 437
- Order of the Ministry of Health of the KR *On measures for further development and improvement of mental health services in the Kyrgyz Republic* of January 14, 2010 N 12
- Order of the Ministry of Health of the KR and Ministry of Justice of the KR *On the pilot program, "Methadone substitution therapy for people with drug dependence in institutions General Department of punishment of Ministry of Justice"* on January 17, 2005 N 13 and of January 17, 2005 N 7
- Order of the Ministry of Health of the KR *On measures for further development and improvement of drug treatment in the Kyrgyz Republic* dated February 12, 2004 N 65
- Order of the Ministry of Health of the KR *On Approval of "Status of the family physician," Regulations on the qualification characterization of a family doctor" and "Table of equipment of Group of family doctors"* dated March 28, 2007 N 149
- Regulation *On the psychiatrist approved by the order of the Ministry of Health of the KR* dated January 14, 2010 N 12
- Regulation *On the psychotherapist approved by the order of the Ministry of Health of the KR* dated January 14, 2010 N 12
- Regulation *On the family doctor approved by the order of the Ministry of Health of the KR* dated March 28, 2007 N 149
- *A job description of an expert in drug and alcohol abuse approved by the order of the Ministry of Health of the KR* dated February 12, 2004 N 65
- Provisional regulations *On the procedure of reporting information about the mental state of the citizens approved by the order of the Ministry of Health of the KR* dated August 4, 2003 N 332

d. Provider Codes of Ethics

The patient is entitled to expect that the health care worker will keep all medical and personal information entrusted to him confidential. A medical worker must not disclose the information obtained during the examination and treatments including the fact of seeking medical help without the permission of the patient or his/her legal representative. A medical worker must take measures

to prevent the disclosure of medical confidentiality. The death of the patient does not exempt medical workers from the obligation to medical confidentiality. Disclosure of medical confidentiality is allowed in cases stipulated by legislation of the KR (Article 9).

e. Other Relevant Sources

Clinical Protocol Arrangements in the identification of persons living with HIV/ AIDs approved by the order of the Ministry of Health of the KR dated September 6, 2010 N 437

f. Practical Examples

1. Example(s) of Compliance

When conducting a medical examination for HIV, the National Center on AIDs issues "Certificate of screening for antibodies to HIV," which is handed only to the patient who has passed a medical examination for HIV.

2. Example(s) of Violation

In 2008, a citizen H. learned about her positive HIV status. The attending physician reported information on HIV-positive status to her husband without the knowledge of the citizen H. Citizen H. refused to institute criminal proceedings against her doctor.

3. Actual Cases

The chief doctor of one healthcare institution permitted disclosure of the HIV-positive status of a patient through mass media. According to the Pervomaiskii rayon court verdict, the chief medical officer was found guilty of an offense specified in Article 145 of the Criminal Code of the Kyrgyz Republic, "the disclosure of medical confidentiality," on the basis of which he had a suspended sentence for a term of two years with the deprivation of the right to occupy the corresponding position in health care.

g. Practice Notes for Lawyers

Doctors found guilty of disclosing information constituting medical confidentiality bear responsibility depending on the nature and severity of the committed act. Disclosure can hardly be expressed in inaction, for example, leaving documents on the worktable, which in the absence of a physician can be read by third parties; it is more likely to be classified as neglect of duties. Disclosure may be expressed in the dissemination of information to a person or the general public either orally or in a written form.

The first type of liability, which may involve the guilty doctor is a disciplinary action. In accordance with Article 146 of Labor Code of the KR, a disciplinary penalty may be imposed for violations of labor discipline, that is a wrongful failure to perform or improper performance of duties conferred upon an employee at work, due to his/her fault. The employer may apply the following disciplinary sanctions: comment, reprimand, or dismissal.

In case of breach of confidentiality, local regulations of medical institution where the offender works should be carefully analyzed (especially when the medical confidentiality is not violated by a doctor but another health care worker).

The second type of liability which may involve the guilty doctor is criminal liability (Article 145 of the Criminal Code, "Disclosure of confidentiality"). The offense is the illegal dissemination of information about the private life of individuals that make up his/her personal or family secrets, without his/her consent, or dissemination of this information in a public speech or in the media. When a crime is committed by a medical worker, the composition is qualified as a crime if committed by a person using his/her official position.

- 7. 1. Introduction
- 7.2. Mechanisms to Protect/Enforce Rights and Responsibilities in Court
 - 7.2.1. The Constitutional Court Proceedings
 - 7.2.2. Civil Legal Proceedings
 - 7.2.3. Administrative Legal Proceedings
 - 7.2.4. Criminal Legal Proceedings
- 7.3. Alternative/Out-of-Court Mechanisms to Protect/Enforce Rights and Responsibilities
 - 7.3.1. Parliamentary (Representative)
 - 7.3.1.1. Committee of KR Jogorku Kenesh on Constitutional Legislation, State Structure, Legality and Human Rights
 - 7.3.2. Administrative and Executive
 - 7.3.2.1. KR Health Care Services
 - a. Ministry of Health of the KR
 - b. Department for Provision of Medicine and Medical Equipment under the KR Ministry of Health
 - c. Department of State Sanitary and Epidemiological Supervision of the KR Ministry of Health
 - d. Commission on Ethics of Public Servants of the KR Ministry of Health Care
 - 7.3.2.2. Medical Accreditation Commission
 - 7.3.2.3. Mandatory Health Insurance Fund under the Government of the Kyrgyz Republic
 - 7.3.2.4. State Agency on Anti-Monopoly Regulation under the Government of the Kyrgyz Republic
 - 7.3.3. Executive and Law Enforcement Mechanisms
 - 7.3.3.1. KR Internal Affairs Bodies
 - 7.3.4. Controlling and Law Enforcement Mechanisms
 - 7.3.4.1. KR Prosecution Bodies
 - 7.3.4.2. KR Institute of Ombudsman (Akyikatchy)
- 7.4. Annex
 - 7.4.1. List of National Normative Legal Acts
 - 7.4.2. List of Thematic Mandates of Special Procedures of the UN Human Rights Council
 - 7.4.3. UN Human Rights Agreements System
 - 7.4.4. Table of Adoption by the Kyrgyz Republic of Monitoring Bodies on Fundamental Human Rights Agreements
 - 7.4.5. Examples of Documents and Forms

7

National Procedures/ Mechanisms and Appendixes

7.1. INTRODUCTION

This chapter reviews the **national mechanisms (bodies)** for protecting the human rights, customers of health care organizations in the Kyrgyz Republic. The notion of “*mechanisms*” is closely connected with the notion of “*procedures*.” However, they should not be equated. Control mechanisms represent certain *organizational structures* (for example, courts, the Prosecutor’s Office, organs of internal affairs, Ombudsman, etc.). The procedures, however, determine the order and methods of examination of relevant information and response to the results of such examination. Different procedures can be used within a particular control body.

Mechanism is a complex term. It includes legal and general (economic, political, organizational, managerial, public, spiritual) guarantees of exercising human and citizen’s rights and freedoms. There are quite a few arguments for classifying the defense mechanisms. Based on the way of connection of the organizational elements of the mechanism, they are divided into state and public. In addition, the interstate and national mechanisms should also be noted. International mechanisms are divided into interstate (intergovernmental) and nongovernmental. National mechanisms can be divided into judicial and non-judicial. By the level of organizational and authoritative manifestation they can be divided into regional and local. The mechanisms of social and state character can be created.

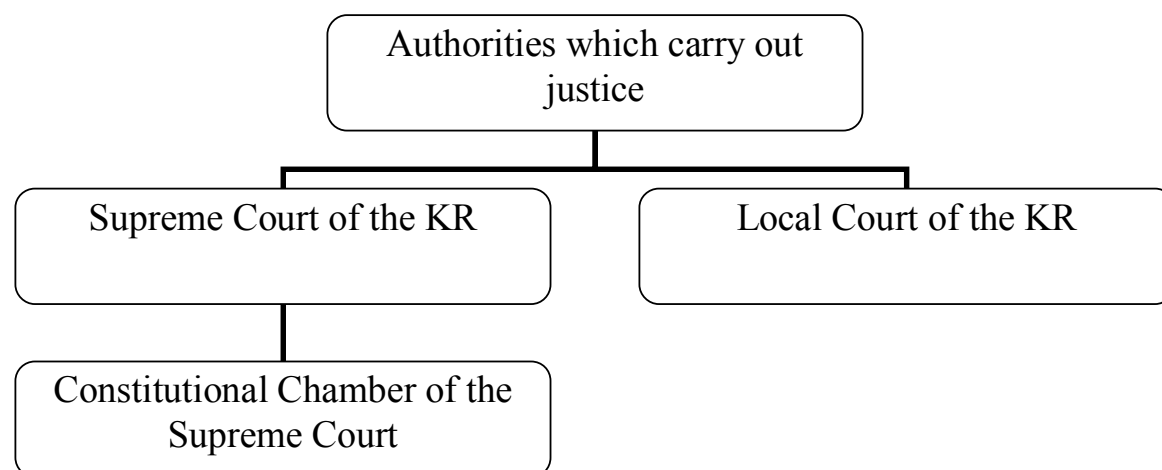
National mechanisms

Thus, as it has been mentioned above, domestic mechanisms of rights protection can be divided into judicial and non-judicial.

7.2. MECHANISMS TO PROTECT/ENFORCE RIGHTS AND RESPONSIBILITIES IN COURT

Judicial proceeding is believed to be the most effective in the system of national legal guarantees and protection. The courts implement the highest jurisdictional activity on behalf of the state, based on the Constitution and enacted legislation. Administration of justice is closely connected with decision-making on primary issues of implementing social and economic, political and personal human and citizen’s rights and freedoms, and rights and legal interests of the government or other organizations.

The justice system of the Kyrgyz Republic is established by the Constitution of the KR²²³, and laws of the KR and consist of:



223. Constitution of the KR, as amended on October 23, 2007, No. 157

It is justice that has the leading role in finding a certain person guilty in committing a crime and imposing the punitive measure or other influence identified in the legislation. Justice has the same role in determining legal consequences for private disputes related to the exercising of the citizens' rights.

Justice represents a special type of the state activity, which can be realized in certain ways, but not arbitrarily, at the discretion of any officials or bodies. These ways are quite precisely set by the law.

Supreme Court of the Kyrgyz Republic and Local Courts

The Supreme Court shall be the highest body of judicial power in respect of civil, criminal, and administrative as well as other cases; it shall uphold or revise the court rulings of local courts upon appeals of the participants in the judicial process in accordance with procedures established by the law (*Article 96 of the KR Constitution*).

The Supreme Court and local courts form a unified system of courts administering justice in civil, criminal, administrative, economic and other cases provided by law" (*Article 3 of the Law of the KR On Supreme Court of Kyrgyz Republic and Local Courts*).

Local courts, in accordance with the Law of the KR On the Supreme Court and Local Courts of the KR, consist of courts of first instance (regional courts, regional courts in the city, city courts, interregional courts, garrison military courts) and appellate courts (regional courts, the Bishkek city court, Military Court of the KR).

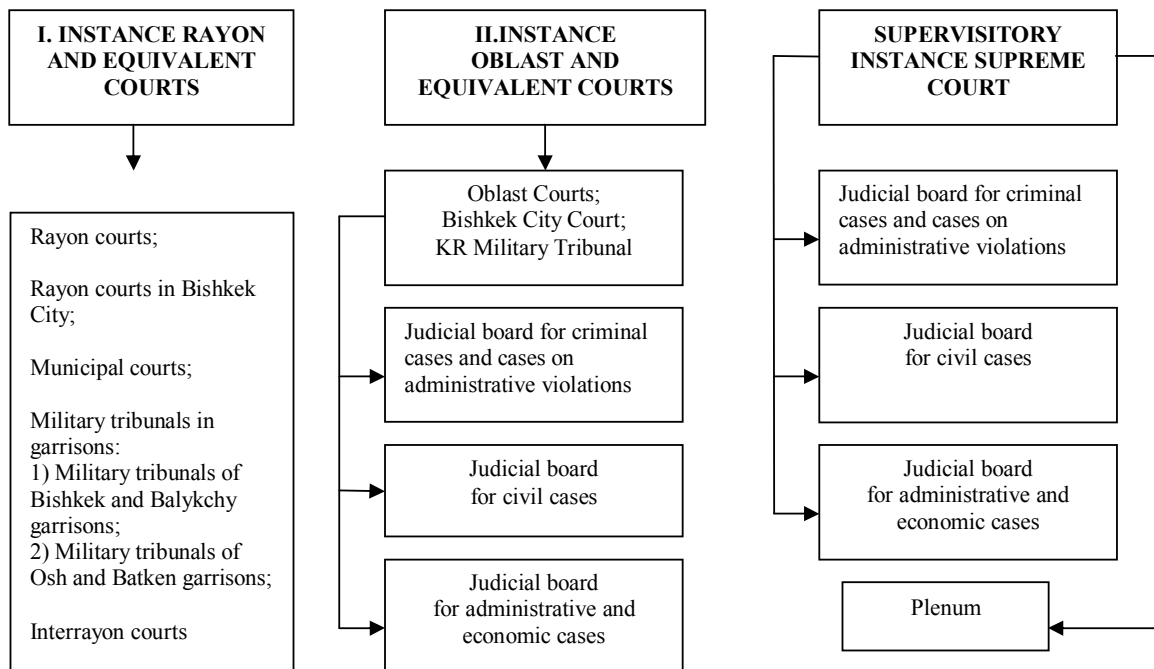
The Court of First Instance consists of a chief justice and judges. According to Article 35 of the Law of the KR On the Supreme Court of the KR and the Local Courts, powers to the court of first instance include:

- consideration of civil, criminal, economic and administrative cases, cases of administrative violation and other cases and materials;
- review on newly discovered evidence which become valid legal acts adopted by that court;
- the execution of judicial acts;
- keeps records of management and judicial statistics, studies and generalizes judicial practice, keeps track of the movement and timing of cases before the court, provides storage of cases and materials;
- realizes other powers in accordance with the laws of the KR.

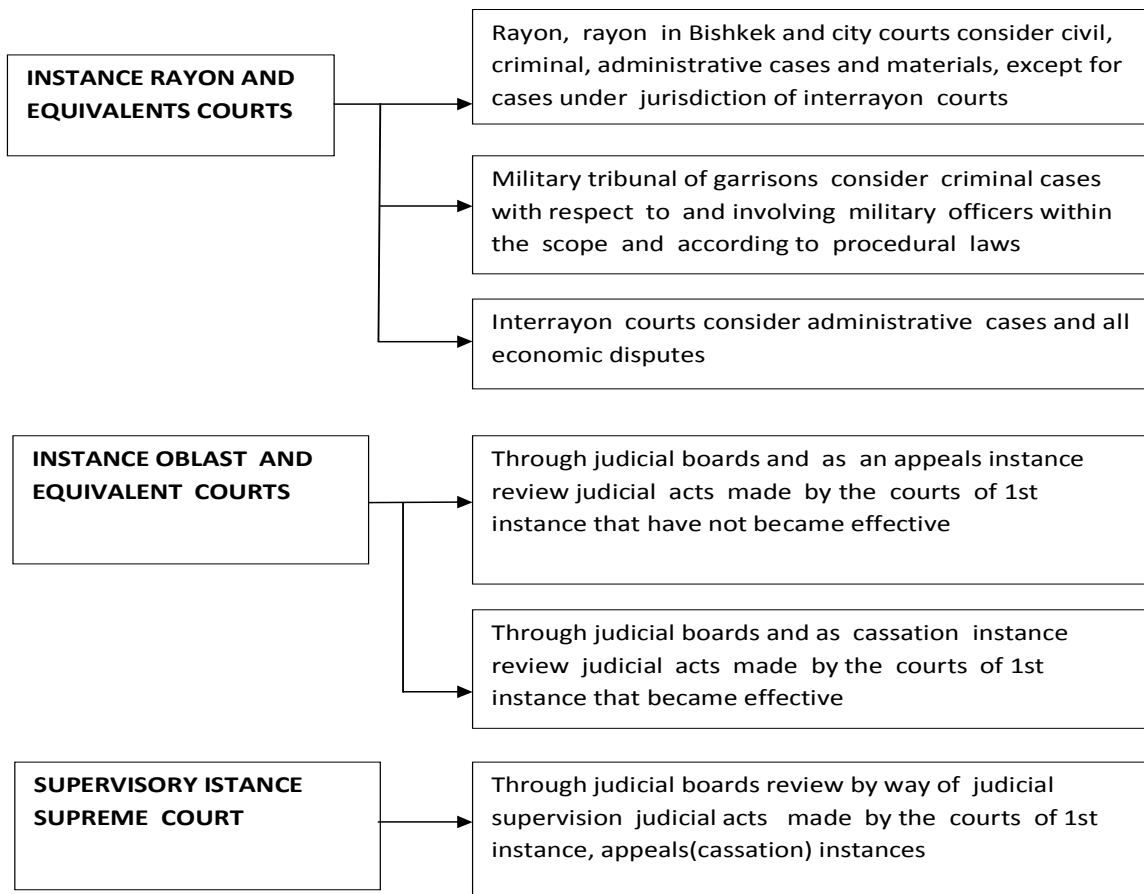
The Court of Second Instance consists of a chairman, deputies, and judges. According to *Article 28 of the Law On the Supreme Court of the KR and the Local Courts*, the powers of the court of second instance include:

- it carries out the review of judicial decisions of courts of first instance which do not come into legal force on appeal;
- it reviews judicial decisions of courts of first instance entered into force on appeal;
- it reviews judicial acts in cases stipulated by the procedural laws in newly-discovered circumstances;
- it manages records, , studies and summarizes judicial practice, keeps records of progress of cases and timing before the court, provides storage of the court's records, and records the judicial statistics;
- it realizes other powers in accordance with the laws of the KR.

Structure of the Supreme Court and local courts of the Kyrgyz Republic



Court Jurisdiction



The procedural activity of the Supreme Court of the Kyrgyz Republic and local courts is carried out in accordance with the Constitution of the KR, KR Code of Civil Procedure²²⁴, KR Administrative Liability Code²²⁵, KR Criminal Procedural Code, KR Judge's Code of Honor, and KR Law On Supreme Court and Local Courts.

According to the Constitution of the KR (*Articles 93–96*), the following options for implementing judicial power are established, which are called the types of legal proceedings:

- The Constitutional Court proceedings at the Supreme Court of the KR (see 7.2.1)
- Civil legal proceeding (see 7.2.2.);
- Administrative legal proceeding (see 7.2.2.);
- Criminal legal proceeding (see 7.2.3.).

Each of these legal proceedings are regulated by the relevant normative and legal acts of the KR, in particular, KR Civil Procedural Code, KR Criminal Procedural Code, and KR Administrative Liability Code, as well as a number of other laws or legal acts on specific issues related to the area of health care.

7.2.1. THE CONSTITUTIONAL COURT PROCEEDINGS

Authority review	The Constitutional Chamber of the Supreme Court of the KR
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Credentials	The Constitutional Chamber of the Supreme Court (hereinafter Constitutional Chamber) is the highest judicial body exercising constitutional control by means of constitutional legal proceedings. The Constitutional Chamber was established in order to ensure the supremacy of the KR in the territory of the KR and to protect Constitutional order, rights and freedoms, including the right to health (<i>Article 47 of the Constitution of the KR</i>).
	Note: The Constitutional Chamber does not consider questions about the legality of sentences and other judgments of the courts, decisions of the investigation, prosecution in civil, criminal, administrative and arbitration proceedings, except the cases when these acts have been adopted pursuant to law, contrary to the Constitution.

224. KR Code Procedural Code, as amended on July 24, 2009, No. 252.

225. KR Administrative Liability Code, as amended on December 25, 2009, No. 315.

226. KR Criminal Procedural Code, as amended on July 24, 2009, No. 250.

227. KR Judge's Code of Honor as amended on July 8, 2006

Parties	Applicant	<ul style="list-style-type: none"> - The health care organization - The health worker - The patient - OR their representative or attorney <p>Any of the above may apply to the Constitutional Chamber of the KR with a petition on issues directly affecting their constitutional freedoms and rights, if they are not under the jurisdiction of other courts</p>
	Respondent	The authority or official that issued the normative act about checking the constitutionality

The initiation of proceedings	<p>Petitions of citizens and legal persons are sent to the Constitutional Court, and they are to be signed by the citizen or legal person (<i>Article 19 of the Regulations of the Constitutional Court of the KR</i>). The petition, received in a lawsuit at the time of admission or by mail, is studied to ensure compliance with the Constitutional Laws of the KR <i>On the Constitutional Chamber of the Supreme Court of the KR and On the Constitutional Legal Proceedings of the KR</i> by specialist staff and is passed to the Chief of Staff with a quick reference to report to the Chairman of the Constitutional Court. After reporting to the Chairman of the Constitutional Court, an appeal beyond the jurisdiction of the Constitutional Court is sent to the jurisdiction thereof</p>
	Contact Details
	<p>Contact Details of the Constitutional Chamber of the KR: Phone: 996 (312) 66-29-43, Address: index 720046, the Kyrgyz Republic, Bishkek. Orozbekova Street 37</p>

Procedures for submission and consideration of requests / complaints	<p>Procedure for appeal to the Constitutional Chamber of the KR, and procedures and terms of the consideration are determined by the Law On Constitutional Procedure of the KR and Regulations of the Constitutional Court of the KR</p>
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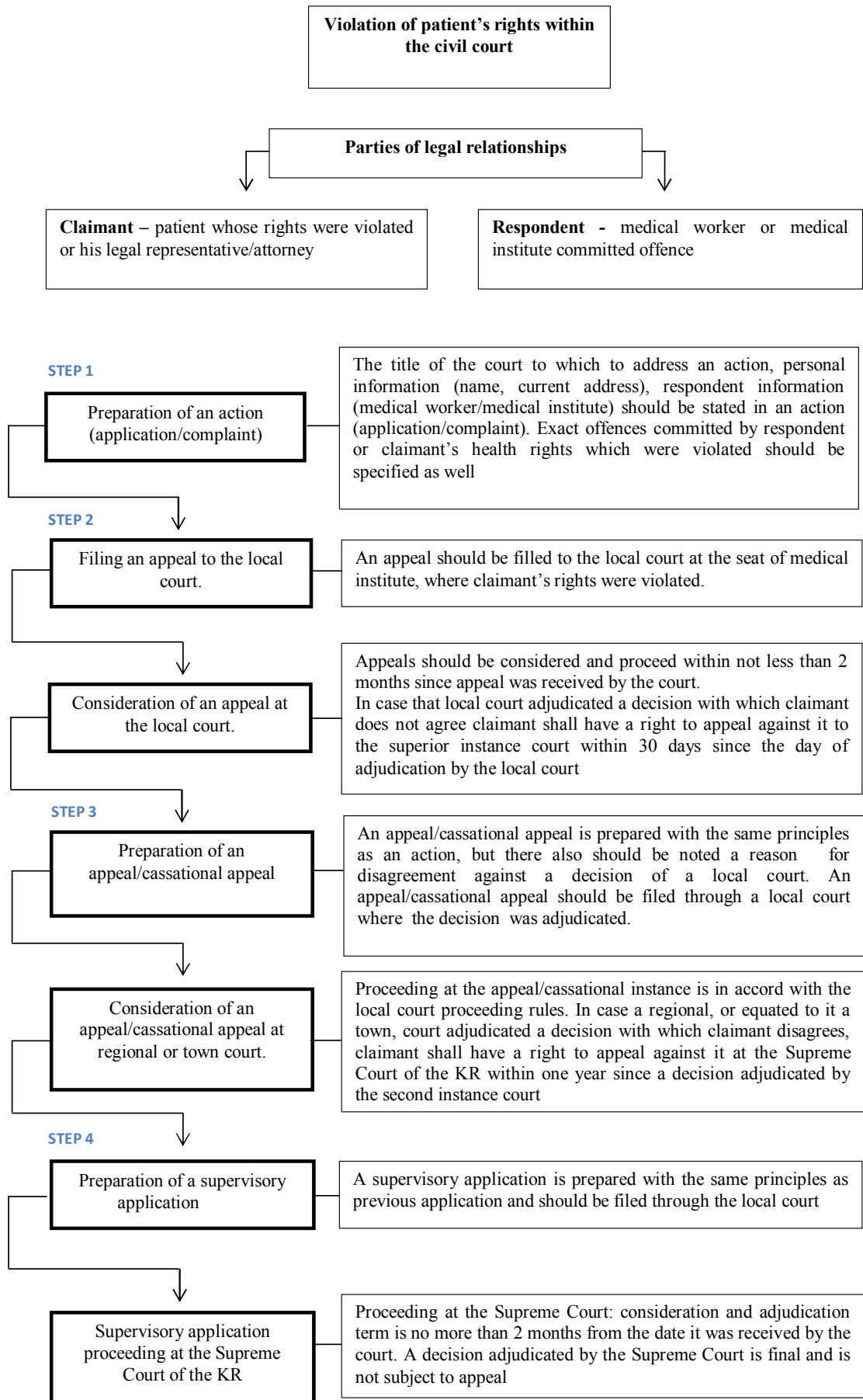
Samples of documents	See Appendix № 7.4.5.
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Examples of violation of patients' rights
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<p>Legislation of the KR in the field of health care (laws, decrees, regulations, instructions, orders and other acts) often contain contradictions, discrepancies and conflicts with the constitutional provisions guaranteeing the rights and freedoms of citizens</p>	
Legal instruments	Precedents and interpretations
<p>a) <i>Part 1 Article 4 of Law of the KR On Normative Legal Acts of the KR</i>, "The Constitution is a legal act, which has the highest legal force...; "According to <i>Part 2 of Article 6 of this Law</i>: "The normative legal acts shall not contradict the normative legal act having a greater legal force in comparison with it</p>	<p>a) The provisions governing the obligation of citizens suffering from AIDS and sexually transmitted diseases, at the request of medical facilities to be tested and treated contradictory the Constitution, as well as the stipulated compulsory process, assessment and treatment in case of evasion were excluded from the <i>Law On Protection of the Health of Citizens in the KR in 2005</i></p>
<p>b) <i>Paragraph 13 of Article 14 of the Constitution of the KR</i>: "Everyone has the right: to the inviolability of their private life and to respect and protection of honor and dignity. "According to <i>Article 90 of the Constitution of the KR</i>" "The Court is not entitled to apply the normative act contradicting the Constitution."</p>	<p>b) Article 94, Duties of the Patients, "<i>Law On Protection of the Health of Citizens</i>" in the KR contains a duty of the patient, to provide the person giving medical aid, with information known to him/her about his/her health..."Based on this article of the law, a nurse, subjected to risk of HIV infection during medical procedures, filed a claim against the patient. At the same time, Article 14 of the Constitution of the KR states the right of citizens to the inviolability of private life, respect and protection of honor and dignity. On the basis of the regulations of the Constitution of the KR, the court recognized the nurse's claim as unlawful</p>

7.2.2. CIVIL LEGAL PROCEEDING

Considering authority		Courts of general jurisdiction: Supreme Court of the KR and local courts
Jurisdiction		<p>The civil justice covers a wide and varied range of disputes or violations related to proprietary and certain non-proprietary rights of individuals (citizens, foreign citizens, stateless persons, entities, institutions and organizations)</p> <p>Note: a health care worker can be co-sued along with the health care institution</p>
Parties	Claimant	A patient or his representative or attorney has the right to apply to the court for protection of the violated or disputed rights, freedoms or legitimate interests (<i>Paragraph 1 Article 4 of the CPC of the KR</i>)
	Sued person	A health care organization
Initiation of proceedings	<p><i>Part 4 Art. 29 of the Constitution of the KR</i> guarantee everyone the judicial protection of all citizens' rights and freedoms set forth in the Constitution and laws of the KR. Under no circumstances can a person be denied such judicial protection.</p> <p>A court shall initiate a civil proceeding at the request of a person interested in protection of his rights, freedoms or legitimate interests (<i>Article 5 of the CPC of the KR</i>).</p> <p>The petition (claim /complaint) shall be filed in the court in writing.</p>	
	Contact Details	
	<p>Contact Details of the Supreme Court of the KR: Phone: +996 (312) 66-29-43, Address: index 720046, the Kyrgyz Republic, Bishkek Street Orozbekova 37.</p>	
Procedures for submission and considering claims/complaints		The order for filing and the procedures and terms for considering a petition are set forth by the CPC of the KR, as well as some other laws and other legal acts on specific issues
Samples of documents		See Appendix



Review of Enforcement Practice in Civil Justice

Examples of violation of patients' rights	
<p>1. There are often cases of causing physical and moral suffering to patients through disclosing patient's confidentiality, causing pain, leaving scars and burns on patient's body due to improper or unfavorable treatment, etc.</p> <p>2. The right of patients to privacy and confidentiality is often violated by health care workers</p> <p>3 - 4. There are cases of inappropriate health care services provided to the patients</p>	
Legal tools	Precedents and interpretation
<p>1) - <i>Article 16 of the CC of the KR</i>²²⁸: "If the violator's actions infringing on the person's intangible benefits or violating his personal non-property rights cause moral damages (physical or moral sufferings) to this person, and in other cases provided by law, the court may oblige the violator to pay monetary or other material compensation for the said damages"</p> <p>- <i>Article 65</i> "The right of citizens to compensation for damage caused to health" of the <i>KR Law On Health Protection of Citizens in the Kyrgyz Republic</i> of January 9, 2005</p>	<p>The court found the actions of a doctor, who disclosed medical secrecy, illegal and sentenced him to pay monetary compensation to the affected patient.</p> <p>See also:</p> <ul style="list-style-type: none"> - <i>Resolution # 20 of the KR Supreme Court's Plenum of December 5, 2003</i> "On certain issues of judicial practice of resolution of disputes related to protection of honor, dignity and business reputation" - Review of judicial practice on protection of honor, dignity and business reputation - <i>Resolution # 11 of the KR Supreme Court's Plenum of November 4, 2004</i> "On certain issues of judicial practice on application of the law on compensation for moral harm." - Review of judicial practice on cases related to compensation for moral harm for the period 2002 and 6 months of 2003

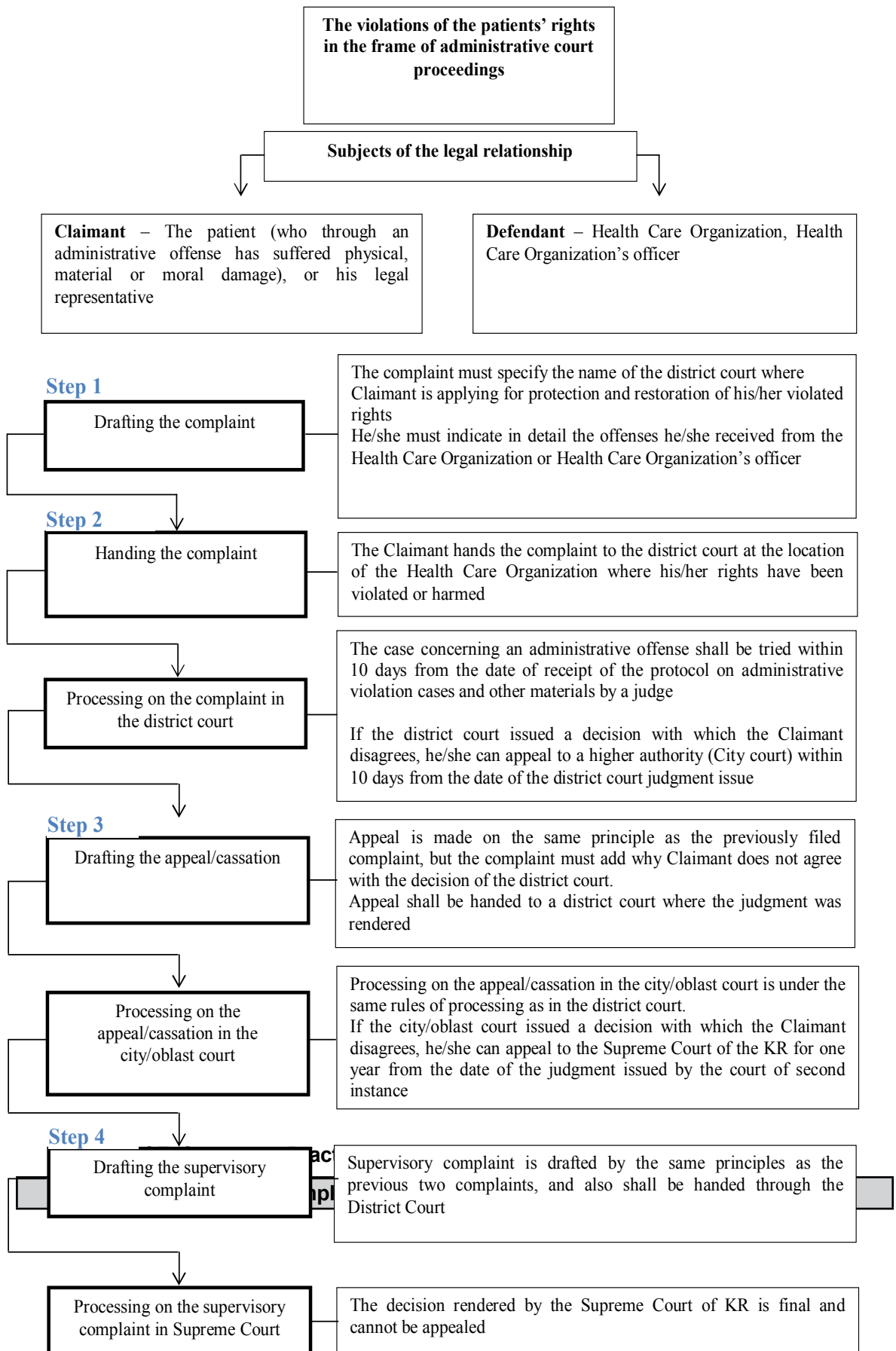
228. Civil Code of the KR, Part1

<p>2) - <i>Part 1 Art. 20 of the CC of the KR</i>: “A citizen shall have the right to privacy: medical or attorney secrecy”</p> <p>- <i>Art. 91 “Medical Secrecy” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p>	<p>Chief doctor of a health care facility allowed disclosure of patient’s HIV-positive status through the media. The court recognized his actions as illegal and convicted him jointly with the health care facility to compensate the proprietary and moral harm caused to the affected patient</p>
<p>3) - <i>Article 993 of the CC of the KR</i>²²⁹: “A harm inflicted to a person or the property of either an individual or a legal entity must be indemnified in full by the person who inflicted the harm”</p> <p>- <i>Article 65 “Right of citizens to compensation of damage for harm to their health” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p> <p>- <i>Article 102 “Liability of medical and pharmaceutical workers” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p>	<p>Some harm was caused to patient’s health through incorrect diagnosis and treatment. The court convicted the health care institution to compensate for proprietary and moral harm caused to the affected patient.</p> <p>See also:</p> <p>- Comments to Part II of the CC of the KR</p> <p>- <i>Resolution No 14 of the KR Supreme Court’s Plenum “On certain issues of judicial practice of application of law on compensation for damage caused to life and health” of 30 November 2006”</i></p>
<p>4) - <i>Article 997 of the CC of the KR</i>: “ A legal entity or a citizen shall indemnify the harm inflicted by his employee while exercising his labor (working, official) duties”</p> <p>- <i>Article 65 “Right of citizens to compensation of damage for harm to their health” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic;</i></p> <p>- <i>Article 103 “Responsibility of healthcare facilities” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p>	<p>The court’s decision satisfied a civil claim of the patient against a healthcare facility, which was ordered to compensate for harm resulting from wrongful acts of its employee.</p>

229. Civil Code of the KR, Part1

7.2.3. ADMINISTRATIVE PROCEEDING

Considering authority	State or judicial authorities (depending on jurisdiction)	
Jurisdiction	Implement the activity set forth in the KR Administrative Liability Code and aimed to resolve administrative cases and impose administrative penalty on physical or legal entities that have committed an administrative violation (offense)	
	<p>Note. “Officials” mean persons permanently, temporarily or through a special authorization exercising, or in the manner prescribed by law vested with administrative powers in relation to persons who are not officially subordinated to them, as well as persons performing organizational and administrative or administrative and economic functions in state bodies or controlling functions in state bodies or local self-governments bodies</p> <p>Regardless of ownership, managers and employees of legal entities (organizations) who have committed administrative violations in performing their organizational and administrative or administrative and economic duties shall bear administrative responsibility as officials</p>	
Parties	Claimant	A patient, who through an administrative violation was caused physical, proprietary or moral damage
	Sued person	<ul style="list-style-type: none"> - A healthcare organization - an official of the health care organization
Initiation of proceedings	Administrative claim is filed and the proceeding on such claim starts from the moment of compiling a protocol on administrative violation or the administrative detention of a person brought to administrative responsibility (<i>Article 548 of the ALC of the KR</i>)	
Procedure of consideration	The order of administrative proceedings is defined in the ALC of the KR, as well as some other laws and legal acts on specific issues	
Samples of documents	See Annex	



<ol style="list-style-type: none"> 1. There are cases of violations of sanitary and anti-epidemiological rules and norms by healthcare institutions. 2. There are often cases when health care institutions do not take appropriate measures to enforce quarantine or to prevent the outbreak or spread of dangerous infections. 3. There are some violations of the rules of procurement and sales of medicines. 4. Medical services are sometimes provided by persons with no special medical education and permits (licenses) from health care authorities. 5. Prices for paid medical services are deliberately inflated or persons who are entitled to free medical care are deliberately forced to pay for medical aid. 	
Legal tools	Precedents and interpretation
<p>1) - <i>Article 90</i> of the KR ALC: "Violation of sanitary and anti-epidemiological rules"</p> <p>- <i>Article 23</i> "Duties of Healthcare Organizations," <i>Article 27 "Responsibilities of Healthcare Organizations" of the Law of the KR # 116 of August 13, 2004 "On Healthcare Organizations in the Kyrgyz Republic"</i>²³⁰</p> <p>- <i>Article 10</i> "Authorized state body of the KR in the area of healthcare," <i>Article 27</i> "Sanitary and preventive aid," <i>Article 64</i> "The right of citizens to information about health affecting factors" and <i>Article 95</i> "Responsibilities of health care organizations providing healthcare and sanitary aid" of the <i>Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p> <p>- <i>Article 18</i> "Organization of anti-epidemic activities," <i>Article 20</i> "Measures for patients dated June 24, 2009 #248 On Public Healthcare"²³¹</p>	<p>A few patients in a medical institution were infected as a result of violation of sanitary, hygiene and anti-epidemiological rules by medical personnel. The chief doctor of the institution was imposed an administrative penalty/ fine for violating the above rules.</p>

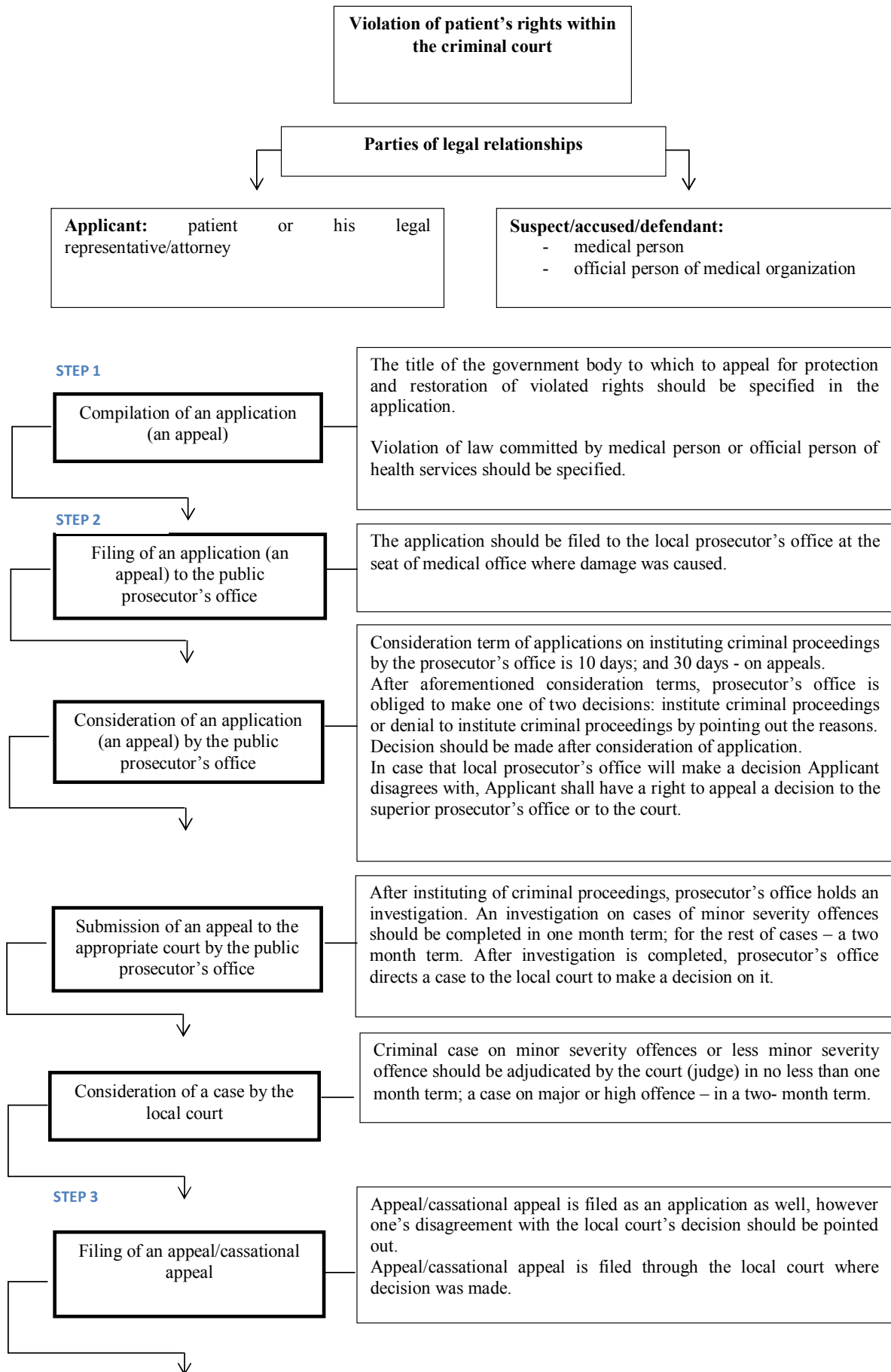
230. The KR Law No 116 on Healthcare Organizations in the KR revised on 13.08.2004

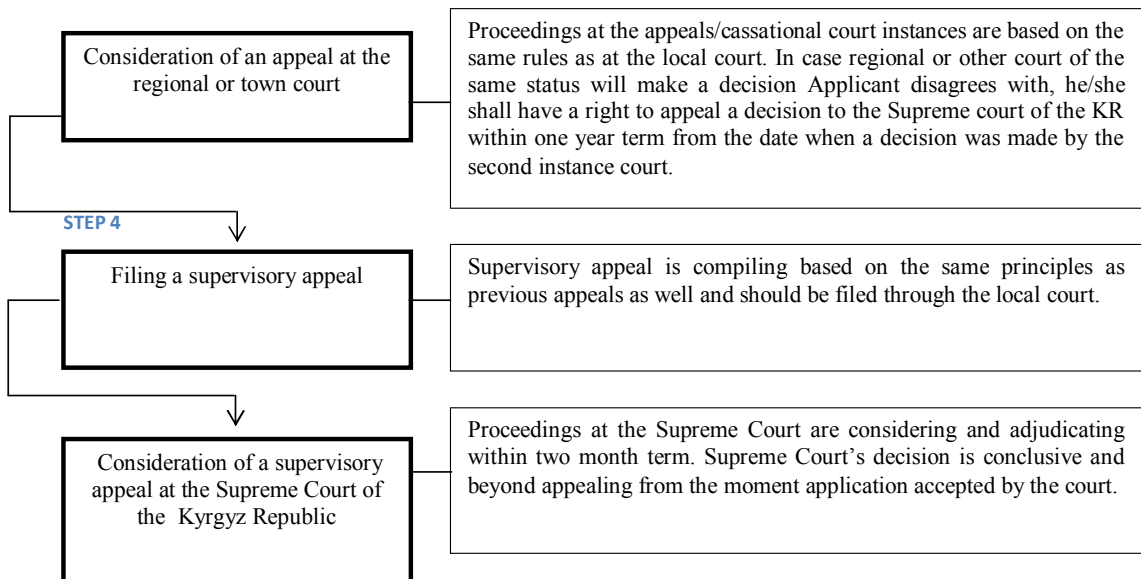
231. Law of the KR On Public Health, as amended on July 24, 2009, #248

<p>2) - <i>Article 91 of the KR ALC: “Violation of anti-epidemic rules”</i></p> <p>- <i>Article 10 “Authorized state body of the KR in the area of healthcare,” Article 27 “Sanitary and preventive aid,” Article 31 “Providing medical and sanitary care to citizens engaged in physical culture and sports” and Article 95 “Responsibilities of health care organizations providing medical and sanitary aid” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p> <p>- <i>Article 18 “Organization of anti-epidemic activities» and Article 20 “Measures for patients with infectious diseases” of the Law of the KR of June 24, 2009 # 248 On Public Healthcare</i></p>	<p>A doctor epidemiologist at a district hospital was imposed an administrative penalty – a monetary fine for late submission of information to the Sanitary and Epidemiological Station about children’s disease.</p>
<p>3) - <i>Article 95 of the KR ALC: “Illegal practice of medicine”</i></p> <p>- <i>Article 100 “The responsibility for the illegal practice of medicine” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p>	<p>Individuals and legal entities were brought to administrative responsibility by court’s decision for providing medical services without special medical education and permits (licenses) from healthcare authorities</p>
<p>4) - <i>Article 96 of the KR ALC: “Violation of the established order of providing paid medical services in state healthcare institutions”</i></p> <p>- <i>Article 20 “State guarantees program aimed to ensure medical and sanitary care to citizens in the Kyrgyz Republic” of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i></p>	<p>Based on the inspection of a healthcare institution, the State Agency for Antimonopoly Policy and Competition Development under the Government of the KR has revealed that prices for paid medical services were deliberately inflated. In accordance with the Resolution of the above Agency, this healthcare institution had to pay the illegally obtained funds to the state.</p> <p>See also:</p> <ul style="list-style-type: none"> - <i>Law of the KR of December 1997, # 90 On Consumer Rights Protection</i> - <i>the State Guarantees Program aimed to ensure medical and sanitary care to citizens of the Kyrgyz Republic, approved by the KR Government’s Resolution No 363 of August 24, 2007</i>

7.2.3 CRIMINAL PROCEEDINGS

Considering authority	Courts of general jurisdiction: Supreme Court of the KR and local courts	
Jurisdiction	Criminal justice covers a relatively limited range of offenses, namely, only those deemed as crimes, i.e. committed by socially dangerous acts prohibited by the Criminal Code of the KR.	
Parties	Claimant	A patient (or his representative, attorney) who was caused moral, physical or property damage as a result of a crime
	Suspected/accused/sued person	- a healthcare worker - an official of the health care organization
Initiation of proceedings	Reasons for initiating a criminal case are: 1) Application of citizens; 2) A statement of guilt; 3) A report from an official of an organization; 4) A message in the mass media; 5) Direct detection of elements of a crime by an inquiry body, investigator or prosecutor Grounds for initiating criminal proceedings are sufficient evidence indicating the committing of a crime (<i>Article 150 of the CrPC of the KR</i>).	
	Contact details	
	Contact details of the Supreme Court of the KR Phone: +996 (312) 66-29-43, Address: index 720046, The Kyrgyz Republic, Bishkek, Orozalieva Street 37	
Procedures for submission and considering claims/complaints	The order of applying to law enforcement agencies, as well as procedures and terms of considering the application are set forth in the CrPC of the KR.	
Samples of documents	See Annex	





REVIEW OF ENFORCEMENT PRACTICE IN THE FRAME OF CRIMINAL JUSTICE

Examples of violation of patients' rights	
1) Cases of causing death and injury to a patient as a result of negligence in the course of performing health professional duties by healthcare workers 2) Illegal abortion 3) Nosocomial infection of patients with HIV 4) Improper performance of professional duties by healthcare workers 5) Refusal to provide medical care or interruption of patient's treatment 6) Non-provision of medical care to a patient 7) Failure to ensure confidentiality and disclosure of medical secrecy 8) Paid medical services to those entitled to free medical care 9) Non-performance or improper performance of duties by an official of a healthcare institution	
Legal tools	Precedents and interpretation
1) - <i>Part 2 Article 101 of the Criminal Code of the KR: "Causing Death by Negligence"</i> - <i>Article 102 "Liability of medical and pharmaceutical workers" of the Law of the KR of January 9, 2005, #6 On Health Protection of Citizens in the Kyrgyz Republic</i>	A patient was delivered to a healthcare institution with a suspected appendicitis attack. The surgery was performed 5 hours later. In addition, sanitation and drainage of the abdominal cavity were done improperly resulting in sepsis – the so-called septic fever, which led to the patient's death. In accordance with the court's decision, the surgeon was found guilty of causing death by negligence as a result of improper performance of his professional duties.

<p>2) <i>Article 116 of the Criminal Code of the KR: “Illegal abortion”</i></p>	<p>A young girl approached a private gynecologist for an abortion. The gynecologist agreed to perform the surgery for a certain fee. The abortion was performed improperly and had harmful effects on patient’s health. The doctor was found guilty of illegal abortion.</p>
<p>3) <i>Part 4. Article. 117 of the Criminal Code of the KR: “Infection with HIV”</i></p> <p>- <i>Article 6 of the Law of the KR of August 13, 2005, #149 On HIV/AIDS in the KR</i></p>	<p>As a result of improper performance of professional duties by healthcare workers – doctors and nurses (re-use of catheters and syringes for injection), there was nosocomial infecting with HIV of more than 150 children. The court found these healthcare workers guilty of infecting with HIV as a result of improper performance of their professional duties.</p> <p>See also:</p> <p>- <i>Decision No 15-3 of the Board of the KR MoH “On measures to strengthen control in the country aimed to prevent HIV infection and ensure safety of the donated blood and medical procedures” of December 22, 2006</i></p>
<p>4) <i>Article 119 of the Criminal Code of the KR: “Improper performance of professional duties by healthcare workers”</i></p>	<p>A patient with suspected gallstones was delivered to a medical institution. A doctor made improper examination and diagnosis, and with neither conservative therapy nor full preoperative preparation of the patient, performed surgery with topical anesthesia. After the surgery, the patient was transferred to a general ward without appropriate supervision. 10-15 minutes later the patient complained about pares the sia (numbness) in the neck and chest followed by respiratory arrest and heart failure.</p> <p>The court found the surgeon guilty of improper performance of his professional duties.</p>
<p>5) <i>Article 120 of the Criminal Code of the KR: “Illegal interruption of patient’s treatment”</i></p>	<p>A patient was hospitalized with a diagnosis of fibro-cavernous pulmonary tuberculosis; however, when the head of department learnt that the patient was a drug-addict, he discharged the patient from the hospital.</p>
<p>6) <i>Article 121 of the Criminal Code of the KR: “Abandonment in danger”</i></p>	<p>A patient was delivered to a hospital by the ambulance service. The doctor on duty refused to accept him, stating that the patient had a chronic disease of the legs (trophic ulcers) and that he could be treated on an outpatient basis in a clinic at the place of residence. In addition, the patient was repeatedly treated in this hospital; he was aggressive, violated the rules of staying in hospital and ignored the doctor’s instructions. The ambulance delivered the patient back to his home, where he died of kidney failure.</p>

7) <i>Article 145 of the Criminal Code of the KR: “Disclosure of medical secrecy”</i>	A senior doctor of a medical institution allowed disclosure of HIV-positive status of a patient through the media. In accordance with the court’s decision, the senior doctor was found guilty of disclosing medical secrecy.
8) <i>Article 166 of the Criminal Code of the KR: “Fraud”</i>	Doctors of a state healthcare institution charged payment from the parents for providing medical care for their children stating that provision of medical care for children is fee- based. However, according to the healthcare legislation, children under 5 years old are entitled to free medical services. In accordance with the court’s decision the doctor was found guilty.
9) <i>Article 316 of the Criminal Code of the KR: “Negligence”</i>	a. Members of the Commission of the Ministry of Health of the KR procured vital medications with a delay; as a result patients had no access to the above medications. b. In one of the hospitals there was a nosocomial infecting of more than 150 children. The investigation and forensic examination revealed flagrant violation of sanitary-epidemiological regime at all stages of work of the medical staff. See also: - The Resolution No 15 of the KR Supreme Court’s Plenum “On certain issues related to application by Kyrgyz Republic courts of the legislation on liability for misconduct” of September 27, 2003 - Review of judicial practice with regard to cases of misconduct considered by the local courts of the Kyrgyz Republic from 1999 to 2002

7.3. ALTERNATIVE, NON-JUDICIAL MECHANISMS TO PROTECT/ENFORCE RIGHTS AND RESPONSIBILITIES

The following are non-judicial mechanisms of protection:

1. Parliamentary (representative);
2. Administrative and executive;
3. Executive and law enforcement;
4. Controlling and law enforcement.

In accordance with this rating, below is the information on each of these mechanisms.

7.3.1. PARLIAMENTARY (REPRESENTATIVE) MECHANISMS

Jogorku Kenesh - the Parliament of the Kyrgyz Republic - is a representative body having legislative power and control functions within its authority.

Parliamentary control is designed to control the activities of the executive bodies and central government authorities that are not executives (the Chamber of Accounts, the National Bank, the Central Election Commission and General Prosecution).

Parliamentary hearings	Governmental day
Control over implementation of laws	Parliamentary investigations

Parliamentary hearings are a common form of Deputies' work in the Jogorku Kenesh, by which Parliament mobilizes the society and government around issues that are the most important and socially significant for the country, and conducts public examination of draft laws or control over the implementation of the adopted law.

Governmental day (hour) is a common form of parliamentary control implemented in the form of questions to the Prime Minister or members of the government. It is conducted once a month as a plenary meeting of the Jogorku Kenesh in the form of questions and answers.

Control over the execution of resolutions, protocols, instructions, inquiries, suggestions and comments of Deputies of the Jogorku Kenesh of the Kyrgyz Republic is one of the most common and effective forms of control by Parliament over the activities of the executive power. Such control ensures the discipline of the executive power and increases its responsibility. It is carried out by the Standing Committees and temporary commissions of the Parliament on a regular, scheduled or unscheduled basis.

Parliamentary investigation is a form of parliamentary control over the executive power, which may entail mainly political, administrative and often criminal liability. It is implemented in the form of a temporary commission out of parliamentary deputies.

Parliamentary committees and temporary commissions are structures designed to ensure the legislative process in the parliament and control over the implementation of laws and decisions adopted by the Parliament.

7.3.1.1. COMMITTEE ON CONSTITUTIONAL LAW, STATE STRUCTURE, LEGALITY AND HUMAN RIGHTS OF THE KR JOGORKU KENESH

Considering authority	The Committee on Constitutional Law, State Structure, Legality and Human Rights of the KR Jogorku Kenesh
Jurisdiction	Observance of rights and freedoms of persons and citizens including the right to protection of life and health fall under the jurisdiction of the Committee.

Functions	<p>With regard to matters within its competence, the Committee:</p> <ul style="list-style-type: none"> - implements the control over enforcement of laws and decisions adopted by the Jogorku Kenesh on matters within the jurisdiction of the Committee - hears the reports of heads of government agencies on matters within the jurisdiction of the Committee
	<p>Note: In the event that the Committee reveals violation of laws or other regulations that may cause harm to the rights and interests of citizens, it makes a binding decision to remove these violations, unless such violations are immediately removed</p>

Parties	Claimant	Grounds for consideration by the Committee are letters, appeals, as well as information in the mass media from: citizens, community organizations, deputies, ministries and agencies, etc
	Sued person	The authorized state body in charge of the issue being considered by the Committee

Procedures of submission and consideration	<p>Procedure and terms for consideration are governed by:</p> <ul style="list-style-type: none"> - <i>Law of KR On Regulations of Jogorku Kenesh of November 25, 2011 # 3</i> - <i>Law of KR On Procedure for Implementing Control Functions by the Jogorku Kenesh of August 13, 2004 # 121</i> - <i>Regulation "On the Committee on Constitutional Law, State Structure, Legality and Human Rights of the Jogorku Kenesh of KR"</i> <p><i>See also: Law of the KR On Status of the Deputy of Jogorku Kenesh of the KR, of December, 18 2008, # 267</i></p>
	Contact information:
	<p>Committee on Constitutional Law, State Structure, Legality and Human Rights of the Jogorku Kenesh of KR</p> <p>Address: 207, Abdymomunova Str., Bishkek Telephone of the general secretariat: 66-58-97</p> <p>Web-site: www.kenesh.kg</p>

Examples of violation of patients' rights

There is evidence of non-observance or improper observance of patients' rights guaranteed by the Constitution of the KR and regulatory acts in the field of healthcare by healthcare institutions and their officials.

Overview of the law enforcement practice

a. On 10 June 2008, Akyikatchy (Ombudsman) of the KR presented his report *“On the situation with rights and freedoms of persons and citizens in the KR in 2007”* to the Committee. Having considered it, the Committee decided to make an appropriate recommendation to the General Prosecutor of the KR – to investigate the extent of responsibility of officials of the Internal Affairs Department and prosecutors who violated the constitutional rights referred to in the annual report of the Akyikatchy (Ombudsman) of the KR

b. On 16 September 2008, the Committee decided to implement control over the compliance with laws in the institutions providing inpatient psychiatric care. It formed a temporary parliamentary commission and approved a plan of inspections of the above institutions for compliance with laws of the Kyrgyz Republic *“On Psychiatric Care and Guarantees of Citizens' Rights in the course of its Provision”* and *“On Republican Budget of the Kyrgyz Republic for 2008.”*

The following problems were identified in the course of inspections in the institutions (the Republican Center for Mental Health in Bishkek, the Republican Psychiatric Hospital in Chym Korgon village, the Republican Children's Psychiatric Hospital, and Osh Oblast Mental Health Center):

- low wages of doctors, junior and other medical staff;
- lack of staff;
- lack of electricity;
- lack of heating;
- inadequate provision of food;
- inadequate provision of modern medicine;
- poor conditions in the wards;
- unsatisfactory sanitary and hygienic condition of bathrooms;
- the need to restore health and production workshops

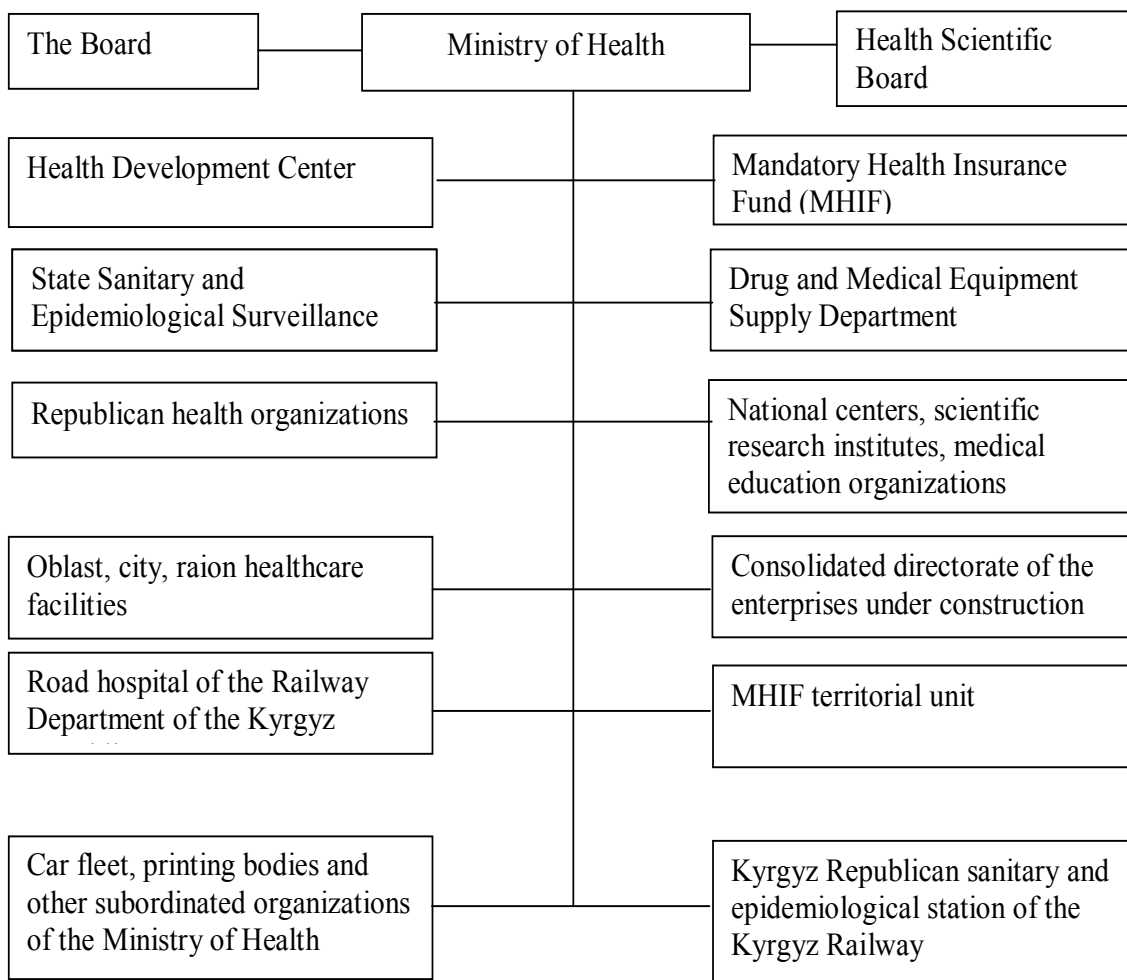
The parliamentary commission continues its work in this direction. It intends to inspect psychiatric institutions in Jalal-Abad and Batken Oblasts.

7.3.2.1. HEALTHCARE SERVICES OF THE KR

In the Kyrgyz Republic there is a comprehensive integrated healthcare system consisting of state and private healthcare sectors.

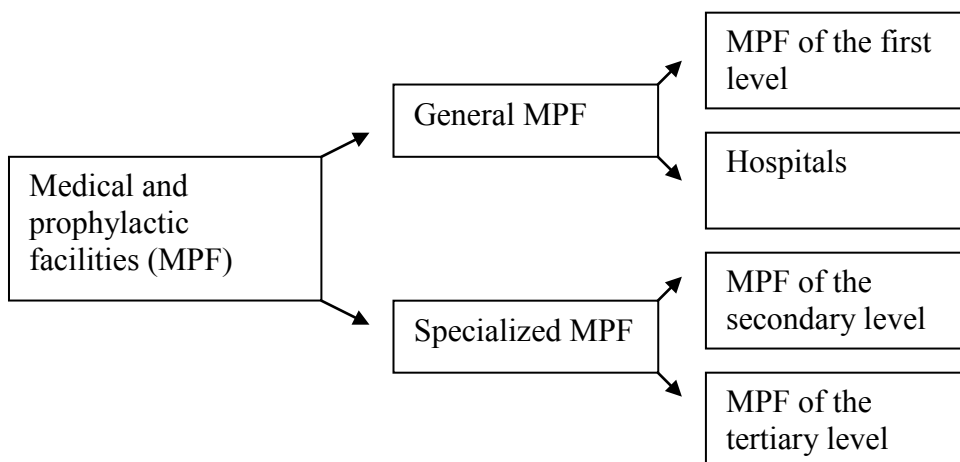
The state health sector is represented by state and municipal healthcare institutions, as well as departmental medical, medical-sanitary and sanitary-preventive services.

The private healthcare sector is represented by private healthcare organizations, as well as by persons engaged in private medical practice and pharmaceutical activities.



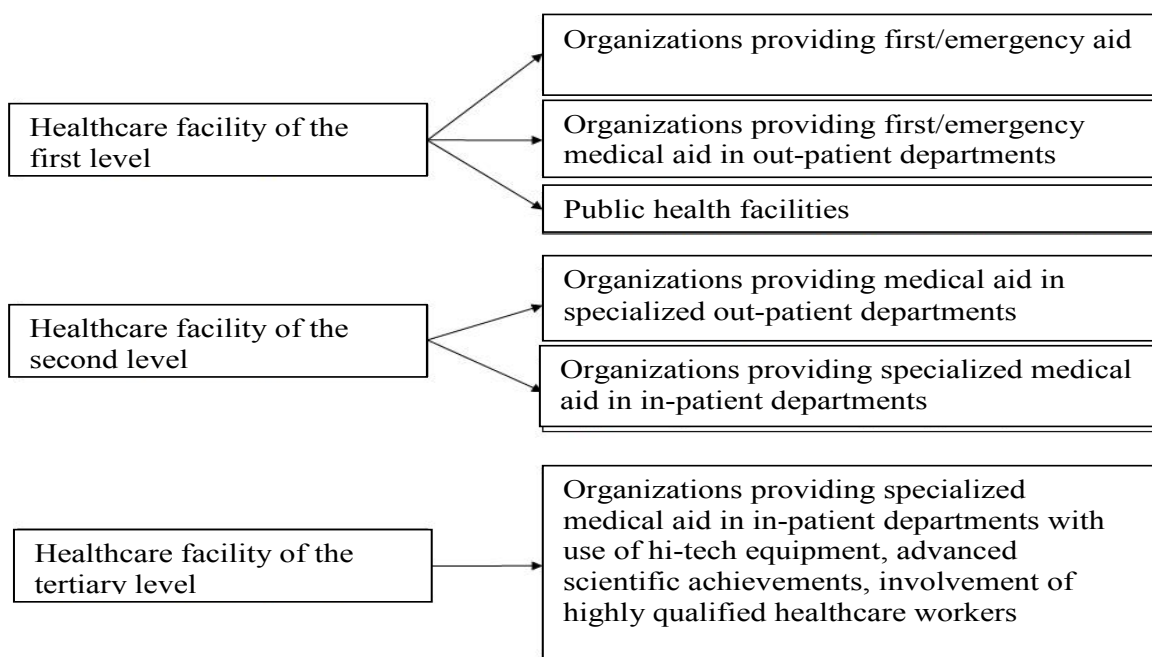
The Ministry of Health of the Kyrgyz Republic (KR MoH) is the central state body implementing state policy in the area of protection of citizens' health in the Kyrgyz Republic.

There are the following types of healthcare institutions:



Public Health Organizations	Ensure sanitary supervision, carry out sanitary and hygienic and anti-epidemiological activities
Scientific research organizations	Carry out scientific research in the area of fundamental, applied medicine and hygiene, and carry out the medical and prophylactic and pedagogical activity
Educational organizations	Hold training, re-training and refresher training of the healthcare personnel
Medical and social organizations	Provide medical and social aid, including rehabilitation, prosthesis and orthopedic, dental prosthesis support, including social aid
Rehabilitation organizations	Carry out medical rehabilitation of persons affected by the congenital, acquired, acute, chronic diseases and consequences of trauma
Pharmaceutical organizations	Produce, supply and sell medicines

There are healthcare facilities of the first, second and third levels.



The following may be referred as to the main normative legal acts in the healthcare sector:

- *Constitution of the KR*, of June 27, 2010
- *Criminal Code of the KR*, of October 1, 1997, # 68
- *Civil Code of the KR, Part II*, of January 5, 1998 # 1
- *Administrative Penalty Code of the KR*, of August 4, 1998 # 114
- *Children's Code of the KR*, of August 7, 2006 # 151
- *Code of Professional Ethics of a Healthcare Worker of the KR* (approved by the board of the Ministry of Health of the KR, of January 16, 2004 # 2-4)
- *Code of Professional Ethics of Public Servants of the Ministry of Health of the KR* (approved by Order of the Ministry of Health of the KR, of January 29, 2007 # 32)
- *Family Code of the KR* of August 30, 2003 # 201
- *Law of the KR On Healthcare Facilities in the KR*, of August 13, 2004, # 116
- *Law of the KR On Health Protection of Citizens in the Kyrgyz Republic*, of January 9, 2005, # 6
- *Law of the KR On Public Health*, of July 24, 2009, # 248
- *Law of the KR On Pharmaceuticals*, of April 30, 2003, # 91
- *Law of the KR On Health Insurance of Citizens in the KR*, of October 18, 1999, # 112
- *Law of the KR On the Single Payer System in Funding of Healthcare of the KR*, of July 30, 2003, # 159
- *Law of the KR On Licensing*, of March 3, 1997, # 12
- *Law of the KR On Consumer Rights Protection*, of December 10, 1997, # 90

In addition, there are a number of specialized laws regulating certain areas of healthcare, such as:

- *Law of the KR On Protection of the Population from TB*, of May 18, 1998, #65
- *Law of the KR On Psychiatric Care and Guarantees of Rights of Citizens in Its Provision*, of June 17, 1999, # 60
- *Law of the KR On Prevention of Iodine Deficiency Diseases*, of February 18, 2000, # 40
- *Law of the KR On Oncological Care to the Population*, of October 4, 2000, # 83
- *Law of the KR On Immunoprophylactics of Communicable Diseases*, of June 26, 2001, # 56
- *Law of the KR On HIV/AIDS in the KR*, of August 13, 2005, # 149
- *Law of the KR On Protection of Chest Breeding of Children and Regulation of the Marketing of Products and Funds for Artificial Nutrition for Children*, of December 17, 2008 # 263
- *Law of the KR On Reproductive Rights of Citizens and Guarantees of their Enforcement*, of August 10, 2007, # 147
- *Law of the KR On Diabetes*, of August 9, 2006, # 166
- *Law of the KR On Protection of Health of Citizens of the Kyrgyz Republic from Harmful Impact of Tobacco*, of August 21, 2006, # 175
- *Law of the KR On Rights and Guarantees of Disabled People*, of April 3, 2008, # 38;
- *Law of the KR On Narcotic, Psychotropic Substances and Precursors*, of May 22, 1998, # 66
- *Law of the KR On Donorship of Blood and its Components*, of July 2, 2007, # 96
- *Law of the KR On Transplantation of Human Organs and (or) Tissues*, of January 13, 2000 # 2

There are many bylaws adopted based on and for execution of the above legislation.

A. MINISTRY OF HEALTH OF THE KR

Considering authority	Ministry of Health of the KR
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Jurisdiction	<ul style="list-style-type: none"> - controls over the quality of medical and sanitary aid provided by suppliers of medical and preventive services - protects interests of insured citizens, within its scope and programs implemented - performs public outreach campaigns on citizens' rights to health protection - controls government budget spending, mandatory medical insurance and co-payment funds by suppliers
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Parties	Claimant	A patient (or his/her representative, lawyer) whose rights to health protection were violated
	Sued person	<ul style="list-style-type: none"> - a health care organization/institution - an officer of a health care organization

Procedures for submission and considering claims/complaints	<p>The procedure for applying to the KR MoH, and the procedure and period for consideration are stipulated in the following :</p> <ul style="list-style-type: none"> - <i>Law of the KR On Procedure for Consideration of Applications from Citizens</i>, of May 4, 2007, # 67; - <i>Regulation on the KR MoH</i>, approved by Resolution of the KR Government of February 13, 2006, # 93
	Contact details
	<p>Contact details of the Ministry of Health of the KR</p> <p>Phone number: +996 (312) 62-26-80</p> <p>Address: the Kyrgyz Republic</p> <p>Bishkek, Moskovskaya Street 148</p> <p>Web-site: www.med.kg</p>

Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Lack of medical and sanitary aid (MSA) in some regions of the Republic, inaccessibility (physical and economic) of the republican and oblast health care organizations and, in some cases, of rayon health care organizations - Poor availability of medical remedies - Wrong diagnostics and treatment - Poor quality of MSA - Failure to provide benefits for MSA - Cases of unofficial payments
Overview of the law enforcement practice
<p>During a period of 5 months in 2008, 404 letters, applications and complaints from the population were received by the Division for Organization of Health Care of the KR MoH; 12 of them were re-submitted (3%).</p> <p>The major topics in letters and applications received were requests from low income persons and pensioners to provide medical aid for examination and treatment at the republican level Medical and Preventive Organizations (MPO) on beneficial terms (total number was 140, or 35%); rendering surgical aid – 85, or 21%; and allocation of pharmaceuticals used for treatment of diabetes insipidus and diabetes mellitus – 46, or 11.4%. There were 94 (23.2%) applications and complaints against the quality of treatment and examination, claims to medical specialists and cases of informal payments. The reasons for complaint were marked in 24 cases (6%) and included renting out premises at MPO of the Republic, prices of medical remedies at pharmacies, acquisition of the disability status, removal from the register due to mental condition, rendering material aid, disposition of emergency ambulance and medical equipment, and receiving information about the state guarantees program. 10 complaints were filed against private clinics' work (2.5%) and 5 complaints against the activity of some MPO executives (1.2%).</p> <p>According to the breakdown of the number of letters and complaints received by regions, the largest number was from citizens of Bishkek City – 192 (47.5%), followed by Chui oblast – 99 (24.5%), Naryn - 29 (7.2%), Issykkul – 27 (6.6%), Jalalabad – 26 (6.4%), Osh – 20 (4.9%). The least number of letters and complaints was received from Talas and Batken Oblasts, - 5 and 6, respectively. Out of the total number of applications regarding the quality of treatment and examination and claims to medical specialists (94), complaints against actions of surgeons were 34 (36.1%), against obstetrician-gynecologists – 22 (23.4%), general practitioners – 15 (16%), complaints against the work of experts from medico-legal investigation – 8 (8.5%), and other types of complaints made up 15 (16%).</p> <p>Out of 140 letters and complaints with the request from low income persons and pensioners to help to undergo examination and take treatment on beneficial terms, the largest share related to carrying out surgery at the Research Institute for Surgery and Organ Transplantation (RISOT); that is 62 cases (44.2%). Assistance was provided to more than a half of applicants.</p> <p>32 written applications were submitted regarding the operation of obstetric and childcare medical organizations, and undue and inferior quality medical aid to patients.</p> <p>Upon results of internal investigations on the reasons for complaint by the population, nearly all cases were admitted as justified; the administrative non-punitive measures were applied, in particular, 11 (11) reprimands were announced, five (5) reproofs and instructions were given, two (2) people were dismissed, and illegally- paid money was returned to three (3) people.</p> <p>According to complaints from the population regarding medical services quality, six (6) criminal cases were instituted, including three (3) maternal death incidents (Maternity Hospital # 1 in Bishkek City, Talas and Issykkul Oblasts Combined Hospital), two (2) neonatal death incidents (National Center for Protection of Motherhood and Childhood, Jayil Tuberculosis Hospital), and one (1) failure to provide aid to a patient (Ton Tuberculosis Hospital) .</p>

B. DEPARTMENT OF DRUG PROVISION AND MEDICAL EQUIPMENT UNDER THE KR MINISTRY OF HEALTH CARE

Considering authority	Department of Drug Provision and Medical Equipment under the KR Ministry of Health Care independently performs specific executive and controlling and supervisory functions, and intersectoral coordination and guidance over provision of medicines for the population of the KR.
Jurisdiction	<ul style="list-style-type: none"> - performs state control over activity of legal entities, irrespective of proprietary forms and departmental subordination, and individuals engaged in production, manufacture, storage, wholesale and retail sale of medicines, and medical equipment - performs constant analysis of current status of availability of drugs for the population, and medical and preventive organizations - analyzes a price level for pharmaceuticals and development of mechanisms for price formation - forecasts and determines the need and performs control over legal circulation of hazardous, narcotic and psychotropic pharmaceuticals, precursors at health care institutions - determines the volume for use of pharmaceuticals under the list established - arranges social protection regarding provision of medicines - arranges control over rational use of pharmaceuticals purchased out of budget allocations and humanitarian aid - arranges work on standardization, state control over the quality of pharmaceuticals produced in the Republic and imported, and confirms safety of pharmaceuticals received from the humanitarian aid - arranges work to monitor and examine side effects of pharmaceuticals - performs licensing and accreditation of legal entities and individuals engaged into production, import, export and sale of pharmaceuticals, medical products and medical equipment in accordance with the procedure established - arranges advanced vocational training of experts, including attestation, who are engaged into production and sale of pharmaceuticals, and must have the certificate for adequacy for the job

Parties	Claimant	A patient (or his/her representative, lawyer) whose rights to health protection have been infringed
	Sued person	- a health care organization/institution - an officer of a health care organization

Procedures for submission and considering claims /complaints	<p>The procedure for applying to the DDPME, and the procedures and period for consideration are contained in the following:</p> <ul style="list-style-type: none"> - <i>Administrative Liability Code of the KR</i> August 4, 1998, # 114; - <i>Law of the KR On Administrative Procedures</i> of March 1, 2004, # 16; - <i>Law of the KR On Procedure for Consideration of Applications</i> from the Citizens of May 4, 2007, # 67; - <i>Regulation On the DDPME</i>, approved by Resolution of the KR's Government of September 26, 1997, # 556 - <i>Regulation On Rrocedure for Imposition of Administrative Fines for Violation of Rules for Production, Purchase and Sale of Pharmaceuticals, Diagnostic Agents, Preventive and Health and Beauty Aids, Medical Products and Equipment, and Engagement Into Pharmaceutical Activity Without an Appropriate License</i>, approved by the Order of the KR MoH of March 16, 1999, # 84..
	Contact details
	<p>Contact details of Department of Drug Supply and Medical Equipment under the Ministry of Health:</p> <p>Phone: +996 (312)54-29-23,</p> <p>Address: the Kyrgyz Republic, Bishkek, Street Thirdline 25.</p> <p>Web-site: www.pharm.med.kg</p>

Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Sale of inferior quality and, often, counterfeit pharmaceuticals and medical equipment - Violation of rules for manufacture, purchase, and sale of pharmaceuticals, diagnostic agents, preventive and health and beauty aids, medical products and equipment - Carrying out pharmaceutical activity without an appropriate license - Provision of medicine on a paid basis to people who have benefits

Overview of the law enforcement practice

Seven (7) complaints were received by the Department for Provision of Medicines and Medical Equipment over 2007, including two (2) complaints without a sender's address; therefore the facts could not be verified. In two cases the facts were not confirmed. In two other cases a pharmacy store was imposed a fine and operation of a pharmacy store was suspended. In one case the report on violation was drawn up.

Over five months of 2008, only three (3) complaints against the quality of medicine purchased were received; the report was drawn up and the conclusion made on compliance with the normative documentation of the state pharmacopeia of X edition.

C. DEPARTMENT FOR STATE SANITARY AND EPIDEMIOLOGICAL SUPERVISION OF THE MINISTRY OF HEALTH CARE OF THE KR

Considering authority	Department for State Sanitary and Epidemiological Supervision of the Ministry of Health Care of the KR is a government health care institution that arranges state sanitary and epidemiological supervision, normative regulation, special permissive, supervisory and controlling actions to ensure sanitary and epidemiological well-being of the population of the KR.
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Jurisdiction	<ul style="list-style-type: none"> - performs preventive and routine sanitary and epidemiological supervision of compliance with sanitary epidemiological norms and rules, hygienic standards by institutions, organizations, enterprises, and associations, irrespective of a proprietary form, as well as other economic entities, as necessary - performs sanitary and hygienic expert's review of products subject to mandatory certification - carries out state registration of potentially toxic chemicals - according to the procedure established by the legislation of the Kyrgyz Republic, makes decisions on issuance of special permits and licenses for manufacture, sale and importation to the territory and exportation from the territory of alimentary raw materials, food stuff, consumer goods, food additives, makeup preparations, articles for hygienic purpose, and departure of tourist companies or groups
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Parties	Claimant	A patient (or his/her representative, lawyer) whose rights to health protection have been infringed
	Sued person	<ul style="list-style-type: none"> - a health care organization/institution - an officer of a health care organization

Procedures for submission and considering claims/complaints	The procedure for applying to the DSSSES or a subordinate body , and the procedures and period for consideration are stipulated by the following: - <i>Administrative Liability Code</i> of the KR August 4, 1998, # 114 - <i>Law of the KR On Administrative Procedures</i> of March 1, 2004, # 16 - <i>Law of the KR On Procedure for Consideration of Applications from the Citizens</i> of May 4, 2007, # 67 - <i>Regulation on Department for State Sanitary and Epidemiological Supervision of the Ministry of Health Care of the KR</i> approved by Resolution of the KR Government of May 28, 1997, # 299
	Contact details
	Contact details for the Department of State Sanitary and Epidemiological Inspectorate Ministry of Health of the KR Phone: +996 (312) 32-32-01

Samples of documents	See Annex
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Examples of violation of patients' rights
- Violation of sanitary and hygienic and anti-epidemiological rules
Overview of the law enforcement practice
64 letters and complaints were received by the DSSSES in 2008. Out of the total number of applications and claims against health care institutions and healthcare workers, six (6) were related to abuse of position by officials.

D. COMMISSION ON ETHICS OF GOVERNMENT OFFICIALS OF THE MINISTRY OF HEALTH CARE OF THE KR

Considering authority	Commission on Ethics of Government Officers of the Ministry of Health Care of the KR
	Note: Pursuant to the Code of Professional Ethics of a Healthcare Worker of the KR approved by the collegial board of the KR MoH on January 16, 2004, # 2-4, the Commission on Ethics of Healthcare Workers operates in every health care organization/institution.

Jurisdiction	<ul style="list-style-type: none"> - carry out actions targeted at impartial, full and comprehensive investigation of circumstances of the alleged disciplinable offence committed by a government official - submit proposals and recommendations to the Minister on the issues of ethics and undertaking of relevant actions with respect to government officials - control over observance of the legislation on public service and professional ethics by government officials - conduct inspections of the activity of government officials for compliance with the public service legislation - request and receive from the Ministry and officials the information required for implementation of its functions - introduce proposals to the Ministry and executives on cancellation or changes in decisions made in violation of the legislation
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Parties	Claimant	A citizen and/or patient (or his/her representative, lawyer) whose rights to health protection have been infringed
	Sued person	A healthcare worker holding higher and specialized secondary medical education, involved in rendering medical and preventive aid at the state, municipal and private health care organizations and institutions

Procedures for submission and considering claims/complaints	<p>The procedure for applying to the Commission on Ethics of Government Officials of the Ministry of Health Care of the KR, the procedure and period for consideration are stipulated by the following:</p> <ul style="list-style-type: none"> - <i>Code of Professional Ethics of a Healthcare Worker of the KR</i> approved by the MoH Order of the KR on January 29, 2007, # 32 - <i>Law of the KR On Public Service</i> of August 11, 2004, # 114 - <i>Decree of the President of the Kyrgyz Republic On Ethics of Public Servants of the Kyrgyz Republic</i>, of January 9, 2001, # 11
	<p>Contact details</p> <p>Contact details of the Commission on the Ethics of civil servants of Ministry of Health of the KR:</p> <p>Phone: 996 (312) 62-18-30,</p> <p>Address: Kyrgyz Republic, Bishkek, Moscovskaya Street 148</p> <p>Web-site: www.med.kg</p>

Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Degrading and abusive attitude to the patients - Use of methods of medical influence on the patient to punish him/her - Refusal to perform official investigation upon a patient's complaints - Formal attitude to applications and complaints by the patients: runaround
Overview of the law enforcement practice
<p>In 2008, 1,121 people addressed the MoH community liaison office, including from regions: 216 (19%) from Bishkek City, 51 from Chui Oblast (2.4%), 23 from Issyk-Kul Oblast (2%), 10 from Naryn Oblast (0.9 %), 8 from Jalal-Abad Oblast (0.7%), and 7 each from Osh and Talas (0.6 %).</p> <p>2,673 applications from the population were received by the Mandatory Health Insurance Fund (MHIF) and its territorial divisions, including 2005 by hotlines, 190 in writing, and 478 visits. Out of total number of applications, 152 cases were complaints, including 75 cases recognized as justified (49.3%).</p> <p>By results of the official investigations, the proposals for specific actions were introduced. Each case is discussed by the commission on ethics of medical organizations; and in case of established fault of healthcare workers, administrative penalties are imposed on these people.</p>

7.3.2.2. MEDICAL ACCREDITATION COMMITTEE

Considering authority	The mission of the Medical Accreditation Committee is to ensure and protect the rights of medical service consumers to get medical aid in the required amount and quality
Jurisdiction	<ul style="list-style-type: none"> - organization and conduct of monitoring of the quality of activity of accredited entities, in case the information was received to the MAC from the population or government bodies empowered to control the health care institutions about the low quality of medical aid by these accredited entities - suspend validity and recall the accreditation certificate issued to the institutions and organizations according to the established procedure - raise issue of suspension or annulment of the license to the government body which issued the license in case an accredited entity renders poor quality medical services

Parties	Claimant:	- A citizen and/or patient (or his/her representative, lawyer) whose rights to health protection have been infringed - a government body empowered to control the health care organization/institution
	Sued person	a health care organization/institution

Procedures for submission and considering claims/complaints	The procedure for applying to the MAC, and the procedure and period for consideration are contained in the following: - <i>Regulation on Accreditation of Health Care Organizations</i> in the KR approved by the KR MoH's Order of March 26, 2006, # 146
	Contact details Contact details of Medical Accreditation Commission: Phone: 996 (312) 09.30.51 Address: Kyrgyz Republic, Bishkek, Bokonbaeva, 144 A, 3rd floor Web-site: www.mak.med.kg e-mail: accredit@elcat.kg

Samples of documents	See Annex
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7.3.2.3. MANDATORY HEALTH INSURANCE FUND UNDER THE GOVERNMENT OF THE KYRGYZ REPUBLIC

Considering authority	The Mandatory Health Insurance Fund is a government body of the Kyrgyz Republic implementing the state policy in the area of mandatory medical insurance of the population, as a component of the state social insurance and health care funding in the Single Payer system.
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Jurisdiction	- control the utilization of the consolidated budget by health care organizations working in the Single Payer system - conduct the expert's review of the quality of medical, preventive, and pharmaceutical services rendered by suppliers - within its jurisdiction, protect the interests of insured citizens under the program implemented - improve public awareness on rights to health protection
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Parties	Claimant	Patient (or his/her representative, lawyer), whose rights to health protection were violated
	Sued person	A health care organization/institution

Procedures for submission and considering claims/complaints	The procedure for applying to the MHIF or its subordinate body, and the procedure and period for consideration are stipulated by the following: - <i>Law of the KR On Procedure for Consideration of Applications from the Citizens</i> of May 4, 2007, # 673; - <i>Regulation On Mandatory Health Insurance Fund under the KR Government</i> of December 4, 2009, # 728
	Contact details
	Contact details of the Mandatory Health Insurance: Phone: +996 (312) 66-05-29, Address: the Kyrgyz Republic, Bishkek, Chui Avenue122 Web-site: www. foms.med.kg

Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Violation of medical ethics - Provision of medical services of improper quality - Illegal collection of money - Inadequate provision of medicine - Refusal to render medical help
Overview of the law enforcement practice
<p>2,673 people addressed the Fund for MHI and its territorial units in 2008, including 2005 by hotlines, 190 in writing, and 478 visits.</p> <p>Out of the total number of applications, 152 cases were complaints against defect while getting the medical aid, including 75 cases recognized as justified (49.3%). Over the same period in 2007, 333 complaints were submitted, including 309 recognized as justified (92.8%). The largest share in the pattern of complaints are applications related to:</p> <ul style="list-style-type: none"> - Violation of ethics - 67 (21.7%); - Improper quality of medical services – 18 (24%); - Illegal collection of money - 13 (17.3%); - Provision of medicine – 8 (10.7%); - Refusal to render medical help – 8 (10.7%); - Other (availability of MHI insurance policy, sanitary and hygienic condition of a medioprophylactic institution, violation of the principle of free choice of a doctor, emergency aid, etc.) – 10 (13.3%). <p>The official investigation of each complaint is undertaken, and each case is examined with the healthcare workers involved in a patient's treatment; conditions for provision of treatment are identified; and the reasons that resulted in violation of a patient's rights are detected. Upon the findings of the official investigation, the proposals for specific actions are introduced. Each case is discussed by the commission on ethics of medical organizations, and, in cases of healthcare workers established as guilty, administrative penalties are imposed on these people. Upon the findings of the official investigation of complaints from the population, 75 cases were recognized as justified (49.3%).</p> <p>The actions were undertaken in every case, namely: 22 reprimands were given; 25 reproofs; in 11 cases, illegally paid money was paid back; in eight (8) cases the material rewards were eliminated; in 13 cases financial sanctions were applied; two (2) healthcare workers were dismissed; in one (1) case, the wage rate for second employment was canceled; Medicus Eurasia LLC. pharmacy store in Bishkek City was closed; and 45 cases were considered by the ethics commissions. Anonymous complaints are reported to the leadership of the health care organizations that contracted a territorial unit of the MHIF.</p>

7.3.2.4. STATE AGENCY OF ANTIMONOPOLY REGULATION UNDER THE GOVERNMENT OF THE KYRGYZ REPUBLIC

<p>Considering authority</p>	<p>State Agency of Antimonopoly Regulation under the Government of the Kyrgyz Republic is a government body implementing the unified state antimonopoly and price regulation in the economic sectors</p> <p>Note: Coordination Council for Protection of Consumers' Rights under the Government of the Kyrgyz Republic operates in the Republic (hereinafter referred to as "the Council"). This is a collegial advisory body established for undertaking the coordinated actions of the government bodies, local self-governance bodies, consumers' public associations (their unions, associations) in the area of protection of consumers' rights. The Council is chaired by the Prime Minister of the Kyrgyz Republic. The antimonopoly body of the KR implements functions of the Council's working body, the Secretariat</p>
<p>Jurisdiction</p>	<ul style="list-style-type: none"> - consider complaints and applications from individuals and legal entities, irrespective of a proprietary form, related to non-observance of legislation on protection of consumers' rights, advertisement and antimonopoly legislation of the Kyrgyz Republic, as well as illegal actions by the government bodies and local self-governance bodies - issue mandatory order to terminate violation on issues related to the State Agency's competence to the government bodies and local self-governance bodies, individuals and legal entities irrespective of a proprietary form - make decisions on imposition of a fine and economic sanctions for violation of the legislation of the Kyrgyz Republic by government bodies and local self-governance bodies and their officials, economic entities, organizations and institutions and their executives, as well as individuals - address courts with suits and petitions, and participate in sittings of the court at consideration of cases related to violation of antimonopoly legislation, legislation on protection of consumers' rights and other normative and legal acts followed by the State Agency in its activity - send materials for solution of cases on institution of an action on violation of legislation to the law enforcement bodies within its jurisdiction

Parties	Claimant	Patient (or his/her representative, lawyer), whose rights to health protection were violated
	Sued person	- a health care organization/institution

Procedures for submission and considering claims/ complaints	<p>The procedure for applying to the SAAR under the GoKR or its subordinate body and the procedure and period for consideration are stipulated by the following:</p> <ul style="list-style-type: none"> - <i>Administrative Liability Code of the KR August 4, 1998, # 114</i> - <i>Law of the KR On Administrative Procedures March 1, 2004, # 16</i> - <i>Law of the KR On Procedure for Consideration of Applications from the Citizens of May 4, 2007, # 67;</i> - <i>Law of the KR On Protection of Consumers' Rights of December 10, 1997, # 90;</i> - <i>Regulation On State Agency of Antimonopoly Regulation under the Government of the Kyrgyz Republic of December 4, 2009, # 732;</i> - <i>Procedure for consideration of cases on violation of legislation on protection of consumers' rights approved by Resolution of the State Commission of Antimonopoly Policy under the Government of the Kyrgyz Republic of December 5, 2001, # 58;</i> - <i>Instruction on procedure for conducting inspections of business entities regarding observance of antimonopoly legislation, legislation on advertisement, protection of consumers' rights and proper formation and setting of prices (tariffs) for paid services (works) approved by Resolution of the State Commission on Antimonopoly Policy under the Government of the Kyrgyz Republic of July 11, 2008, # 205.</i>
	Contact details
	<p>Contact details of the State Agency of antimonopoly regulations under the Government of the KR:</p> <p>Phone: +996 (312) 54-85-69,</p> <p>Address: the Kyrgyz Republic, Bishkek, Ahunbaeva Street 119.</p> <p>antimonopolia@gmail.com</p>

Examples of violation of patients' rights
<ul style="list-style-type: none"> - Violation of the prescribed procedure for rendering paid medical services at health care organizations - Concerted actions between healthcare workers and private health care organizations on overpricing tariffs for pharmaceuticals and medical services

Overview of the law enforcement practice

The State Agency of Antimonopoly Policy and Competition Promotion under the Government of the Kyrgyz Republic (hereinafter—“the State Agency”) carries out the state control over observance of laws and other normative and legal acts of the Kyrgyz Republic regulating relationships in the area of protection of consumers’ rights.

Within 8 months of 2009, while performing this activity the State Antimonopoly Body reviewed over 356 applications from consumers (citizens) on cases of violation of their rights stipulated by the Law of the Kyrgyz Republic On Consumer Rights Protection. Over 85% were settled for the favor of consumers and 15% were settled judicially, pursuant to the legislation of the Kyrgyz Republic.

It should be also mentioned that due to review of above-stated applications from the consumers, the State Antimonopoly Body restored and paid back KGS 1,519.784 to consumers. At present, the State Antimonopoly Body takes an active part in improvement of the legislation on protection of consumers’ rights of the Kyrgyz Republic.

Protection of the consumers’ rights is one of the major tasks of the State Antimonopoly Body. Analysis of the market of laboratory tests (laboratory diagnostics) held by the experts of the State Agency has revealed that there are concerted actions between practitioners of policlinics, hospitals and independent laboratories in the market of laboratory tests. In particular, doctors thrust unfavorable conditions upon a patient despite his/her will, referring a patient to undergo tests to a laboratory named by the doctor. The laboratories, in their turn, pay commission fees to the doctors. It allows a laboratory to save on marketing and advertising and quickly get a significant amount of orders. The main factor for choice of a laboratory is the doctor’s advice. Even the distance from the laboratory to a patient’s house or office does not play a great role. As advised by the doctor, a person can go to the other side of the city. In case a doctor trusts a specific laboratory and advises a patient to go there, the patient would go this way.

The above-mentioned was confirmed by results of the independent survey held by the experts of the State Agency in private laboratories, namely, Intelmed LLC (Laboratory of Bonezkyi), and PE Bahanov MMCLD (Magnat). Out of 10 respondents, only two (2) people underwent tests in laboratories upon their own will, while the other 8 people were sent at a doctor’s insistence. In addition, as required by the doctor to undergo tests in a specific laboratory, people had to come from suburban areas. However, similar laboratory tests are done at rayon medical institutions at place of residence.

Concerted actions of doctors and laboratories significantly restrict competition on the laboratory tests market and infringe on a consumer’s right to choose a laboratory depending on his/her solvency, forcing him/her to pay several times more than the factual cost of the test. For example, the cost of the most wide-spread type of analysis – blood examination – is KGS 23 at laboratories under the state medical institutions, at Express Plus laboratory – KGS 55, and Magnat laboratory price is KGS 65; and the highest price is KGS 110 at Intelmed LLC (Laboratory of Bonezkyi). The difference between the minimum and maximum prices for this test is KGS 87; the test cost at Intelmed LLC (Laboratory of Bonezkyi) 4.8 times exceeds the cost of test at a state laboratory. The cost of reagents would be roughly equal in all cases. The similar price situation takes place for all types of laboratory tests carried out by the laboratories of Bishkek City.

Overview of the law enforcement practice

The actions of the laboratories and doctors violate requirements and norms of existing legislation, in particular, Article 13 of Section 1 “Freedoms and Rights of Citizen” of the Constitution of the Kyrgyz Republic, stipulating freedom of choice for each person and non-admission of infringement of freedoms and rights of a citizen by any public or personal circumstances, Article 7 “Invalidity of Competition-Limiting Agreements (Concerted Actions) of Economic Entities” of the Law of the Kyrgyz Republic On Restriction of Monopolistic Activity, Development and Protection of Competition, as well as Article 27 of the Law of the Kyrgyz Republic On Consumer Rights Protection.

According to the findings and to protect rights of consumers and prevent concerted actions, a letter stating the need to undertake urgent measures to eliminate and prevent further in the future the above stated violations on this market was sent to the Ministry of Health Care of the Kyrgyz Republic.

7.3.3. EXECUTIVE AND LAW ENFORCEMENT MECHANISMS

Law enforcement bodies play an important role in the state non-judicial mechanisms for protection of patients’ rights. These mechanisms include administrative and procedural and operative mechanisms protecting the public order as a whole, struggling against crime, ensuring security of a person and the society, ensuring control over rule of law, implementing judicial decisions on civil, criminal and administrative cases, etc.

The bodies of the KR Ministry of Internal Affairs exercise a number of functions. According to these functions, the duties assigned are embedded into the mechanisms for protection of patients’ rights, as their major purpose is law enforcement to ensure security of citizens and the state. Of paramount importance are the functions of the internal affairs bodies, such as ensuring personal security, life and health, protection of honor and dignity of a person, ensuring certain constitutional rights and freedoms of a person and a citizen.

The Ministry of Internal Affairs of the KR (hereinafter referred to the KR MIA) is an executive body, which, within its scope and authority, implements public administration in the field of protection of human rights and freedoms, public order, public safety and directly fulfills the main directions of the activity of the KR’s internal affairs bodies and interior troops of the Ministry of Internal Affairs of the KR.

The KR MIA leads the system of internal affairs bodies, including the Headquarters, main divisions, internal affairs divisions and departments of oblasts, cities, rayons, internal affairs units (departments and units) at railway, air transport, internal security service, national central office of Interpol, information analysis center, cynological center, expert and criminalistics center, government courier service, Academy named after Major General of Militia Ergesh Aliev, specialized secondary school named after Major General of Militia Japar Shabirov, state automobile inspection, enterprises, institutions and organization formed to implement the tasks assigned by the internal affairs bodies and interior troops.

Legal basis for the activity of the KR internal affairs bodies constitute the following fundamental normative and legal acts:

- *Constitution of the KR* of June 27, 2010;
- *Criminal Code of the KR* of October 1, 1997, # 68;
- *Criminal Procedura Code of the KR* of June 30, 1999, # 62;
- *Administrative Liability Code of the KR* of August 4, 1998, # 114;

- *Law of the KR On Internal Affairs Bodies of the KR*, of January 11, 1994, # 1360-XII;
- *Law of the On Operational Investigation Activity in the Kyrgyz Republic*, of October 16, 1998, # 131;
- *Law of the KR On Crimes Prevention in the KR*, of June 25, 2005, # 82;
- Other legislative and normative acts of the Kyrgyz Republic, as well as international agreements and agreements.

7.3.3.1. INTERNAL AFFAIRS BODIES OF THE KR

Considering authority	Internal Affairs Bodies of the KR is a state armed law enforcement body implementing executive and administrative functions to ensure public order, security of a person and a society and fight against crime
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Jurisdiction	<ul style="list-style-type: none"> - ensure public order, security of a person and a society - expose, prevent, repress and deter crimes, register incoming data thereof - conduct inquiry and preliminary investigation
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Parties	Claimant	A patient (or his/her representative, lawyer) to whom a moral, physical and material damage was caused by a crime
	Suspected/accused	<ul style="list-style-type: none"> - Health worker - An official of a health care organization

Initiation of proceedings	<p>The grounds for institution of a criminal case are as follows:</p> <ol style="list-style-type: none"> 1) applications from citizens 2) statement of confession 3) report from an official of an organization 4) report in mass media 5) direct disclosure of indication of a crime by an examining body, an investigator, or a prosecutor <p>The ground for institution of a criminal case is availability of ample evidence indicating commission of a crime (<i>Article 150 CrPC of the KR</i>)</p>
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Procedures for submission and considering claims/complaints	The procedure for applying to the internal affairs bodies, the procedure and period for consideration are stipulated by the CrPC of the KR
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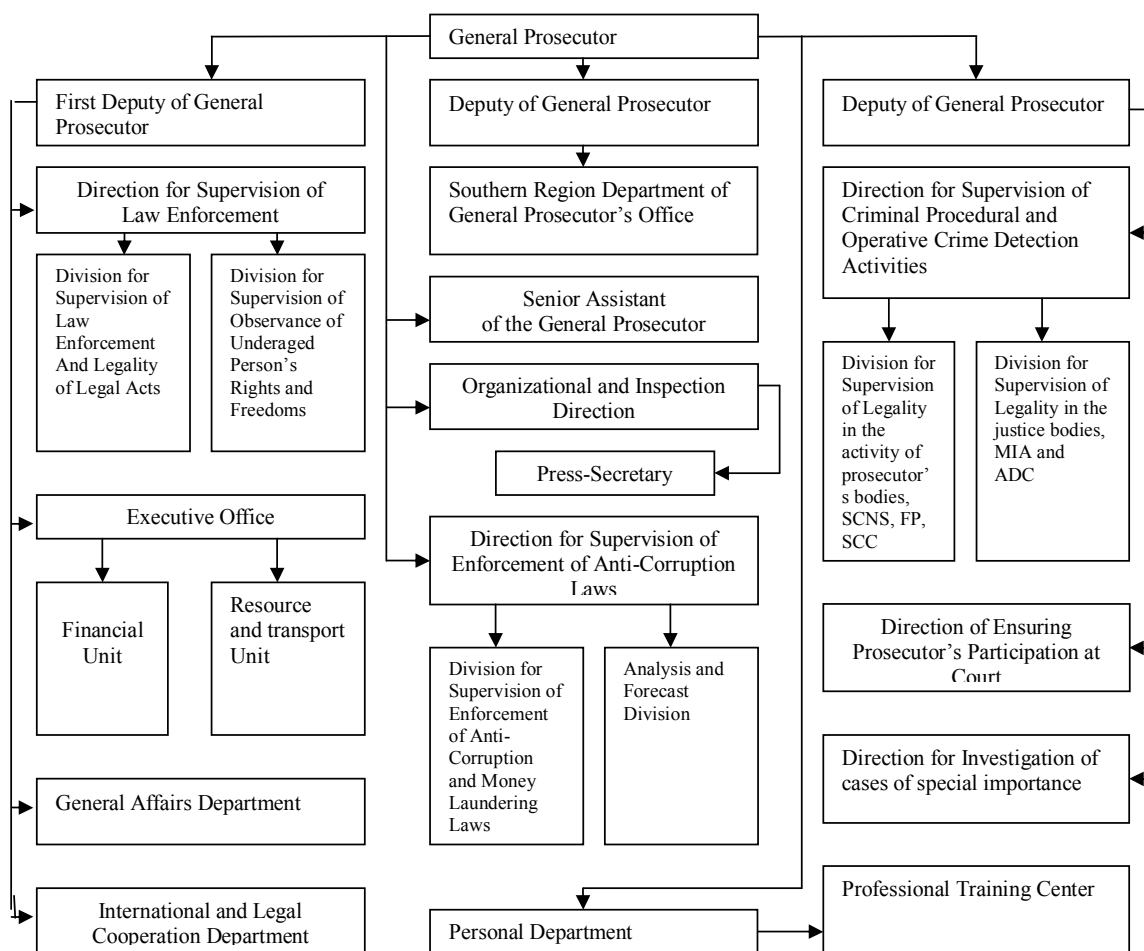
Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Infliction of death by negligence - Forced removal of human organs and tissue for transplantation purpose - Violation of rules of conduct at conducting transplantation operations - Illegal abortion - Infection with HIV - Improper fulfillment of professional duties by a healthcare worker - Illegal termination of a patient's treatment process - Failure to give assistance to persons in mortal danger - Illegal medical treatment - Illegal placement into psychiatric in-patient hospital - Insult - Disclosure of medical secrecy - Fraud - Corruption - Abuse of position - Excess of power

7.3.4. CONTROL AND LAW ENFORCEMENT MECHANISMS

The Prosecutor’s Office is an important tool for protection of patients’ rights. The main function of the KR’s prosecution bodies is to supervise strict and uniform observance of laws and other normative and legal acts applicable in the territory of the KR. The KR’s Law “On Prosecutor’s Office” of July 17, 2009, # 224, stresses its activity in supervision of observance of human rights and freedoms, including right to health protection, by all representative and executive government bodies, local self-governance bodies, and their officials, heads of organizations, and institutions, irrespective of proprietary form. The Prosecutor reviews and checks applications, complaints and other reports on violation of human and citizen’s rights and freedoms, explains the procedure for protection of rights and freedoms to victims, undertakes measures to prevent and suppress violation of human rights, brings infringers to liability and reimbursement of damage. The Prosecutor in case of violation of human rights has the power to institute a criminal case or proceedings on an administrative offence or to hand out materials to a body or an official authorized to review them. He/she may also institute and support suits for the interests of victims at the court.

**STRUCTURE
Of the Central Office of the General Prosecutor’s Office of the Kyrgyz Republic**



7.3.4.1. KR PROSECUTION BODIES

Considering authority	KR Prosecutor’s Office is a central government body exercising oversight over strict and uniform execution of laws and other normative and legal acts of the Kyrgyz Republic.
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Jurisdiction	<ul style="list-style-type: none"> - implement oversight over execution of laws and other normative and legal acts by the Government of the Kyrgyz Republic, ministries, state committees, administrative bodies, services, local state administrations and other executive bodies, banking institutions, local self-governance bodies and their officials, management bodies and executives of legal entities irrespective of a proprietary form, as well as by citizens - implement oversight over observance of human and citizen's rights and freedoms by the Government of the Kyrgyz Republic, ministries, state committees, services, local state administrations and other executive bodies, local self-governance bodies and their officials, as well as management bodies and executives of legal entities irrespective of a proprietary form - exercise criminal prosecution in cases and under the procedure established by the criminal procedural legislation of the Kyrgyz Republic - participate in judicial review of cases, make submissions for contrary to law decisions, sentences, court rulings and resolutions
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Parties	Claimant	Patient (or his/her representative, lawyer), whose rights to health protection were violated
	Sued person	<ul style="list-style-type: none"> - A health care organization/institution - An official of a health care organization

Procedures for submission and considering claims/ complaints	<p>The procedure for applying to the KR Prosecution bodies and the procedures and period for consideration shall be determined by:</p> <ul style="list-style-type: none"> - <i>Criminal Procedural Code of KR</i> June 30, 1999 # 62 - <i>Code of the KR On Administrative Liability</i> of August 4, 1998 # 114 - <i>Law of the KR On Prosecutor's Office</i> from July 17, 2009 # 224 - <i>Law of the On Procedure for Consideration of Applications from the Citizens</i> of May 4, 2007, # 67
	Contact details
	<p>Contact details of the General Prosecutor's Office of the KR:</p> <p>Phone: +996 (312) 66-33-77</p> <p>..... 32-35-77</p> <p>Address: the Kyrgyz Republic, Bishkek, Erkindik Avenue 39</p>

Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Pronouncement of acts by the KR MoH infringing the rights of patients - Infringement of rights of patients by healthcare workers
Overview of the law enforcement practice

On March 20, 2008, the General Prosecutor's Office of the Kyrgyz Republic took to a court the criminal case over the mass infection of children with HIV in medical treatment facilities of Osh oblast.

According to the investigation agencies "...41 children have been infected with HIV as a result of lack of proper control from the heads of medical treatment facilities of Osh oblast and other people in charge." According to the law enforcement bodies, the reason for infection was "a repeated use of unsterile medical instruments."

The charge was brought against 14 healthcare workers, including the chief medical officer of the Osh Oblast Center of Prevention and Fight with HIV/AIDS, the chief medical officer of the territorial hospital of Nookat Rayon, epidemiologists of Osh Oblast Center of the State Sanitary and Epidemiological Surveillance, nurses and doctors of the nursing department of the interregional children's clinical hospital of Osh oblast, and other healthcare workers.

Healthcare workers are charged with intentional infecting with HIV of other people, illegal sale of pharmaceuticals through fraud, and improper execution of their professional duties, which resulted in infection of other people with HIV.

From the beginning of investigation of the case of mass infection of children in Osh oblast hospital 42 children up to two years old are infected with deadly virus, as well as 8 mothers and one healthcare worker who have been identified in the Republic.

Previously, the Ministry of Health of the Kyrgyz Republic decided to examine for HIV/AIDS all children going through treatment in Osh oblast hospital starting from January 2005. As of February 28, 6,127 children, 268 parents, 63 donors and all 6,844 healthcare workers who were in contact with infected people were examined. Epidemiological investigation regarding detection of HIV infection is still in progress.

The General Prosecutor's Office has made a submission addressed to the Minister of Health Care regarding the causes and conditions that contributed to commission of a crime.

7.3.4.2. INSTITUTE OF AKYIKATCHY (OMBUDSMAN)OF THE KYRGYZ REPUBLIC

Considering authority	Akyikatchy (Ombudsman) of the Kyrgyz Republic – within its jurisdiction implements control over observance of constitutional human and citizen's rights and freedoms on the territory of the Kyrgyz Republic
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Jurisdiction	<ul style="list-style-type: none"> - protect human and citizen's rights and freedoms declared by the Constitution and laws of KR, international agreements and agreements ratified by the KR - carry out observance and respect of human and citizen's rights and freedoms by the government authorities, local self-governance bodies and their officials - prevent violation of human and citizen's rights and freedoms or contributes to their restoration - prevent any forms of discrimination in implementing of its rights and freedoms by a person - promote legal awareness of population and protection of confidential information about individual
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Parties	Claimant	Patient (or his/her representative, lawyer), whose rights to health protection were violated
	Sued person	<ul style="list-style-type: none"> - A health care organization/institution - An official of a health care organization

Procedures for submission and considering claims/complaints	The procedure for applying to Ombudsman (Akyikatchy) of the KR and its territorial bodies and the procedures and period for consideration shall be determined by the <i>Law of the KR On Ombudsman (Akyikatchy) of the Kyrgyz Republic</i> , of July 31, 2002, # 136
	Contact details: T. Akun – KR Ombudsman (Akyikatchy) Address: Bishkek, Tynystanova str. 120 Phone number:(0 312) 66-31-36 Web-site: www.ombudsman.kg

Samples of documents	See Annex
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Examples of violation of patients' rights
<ul style="list-style-type: none"> - Failure to render medical and sanitary assistance - Malpractice (violation of medical ethics) - Provision of medical services of inadequate quality - Provision of medical remedies of inadequate quality - Non-provision of benefits for medical care - Extortion of money - Lack of medical and sanitary aid in some regions of the Republic, inaccessibility (physical and economic) of the republican and oblast health care organizations and in some cases rayon health care organizations - Insufficiency of medical remedies, lack of pharmacies in villages
Overview of the law enforcement practice
<p>The Ombudsman received 1142 written requests from applicants in 2005 regarding violation of their rights in the field of health care. People complained about lack of funds to buy expensive medicines and surgical operations. Heads of medical institutions in their appeals complained of hard working conditions, low salaries, lack of medical equipment, and medicines.</p> <p>The situation has been aggravated by annual budget sequestering (imposition of a prohibition on use of funds): 56.4 million som was sequestered in 2003, 20 million som in 2004, for example. In addition, financing was distributed unevenly across the regions. This led to reduction of quality of medical aid. Affordability of medical services decreased, especially for the rural population. Cost of medical remedies increased dramatically.</p> <p>Inspections in 2005 conducted in territorial hospitals of Chui, Osh, Jalalabad, Issyk-Kul, Naryn, Batken and Talas oblasts showed the failure of the "Manas" reform. The situation at the antituberculous medical facilities is better in Jety-Oguz sanatorium, Jalalabad dispensary, and Tuberculosis institute as compared to Bishkek hospitals.</p> <p>More than 1000 professionals leave the medicine sector annually. From three to five specialists instead of the supposed 10-15 work in many of the territorial hospitals. The level of professional training at the nine (9) faculties of medicine is very low. In the forefront of "regional patriotism," medicine faculties have been opened in Osh, Jalalabad, Kyrgyz-Russian Slavonic University and other places.</p> <p>About 400 rural settlements throughout the Republic do not have medical facilities. On the whole, the number of hospitals decreased by 42% (from 342 in 1997 to 143 in 2005). Hospital stock (bed space) decreased by 49.8%. Children's and adults' polyclinics were consolidated. More than half of republican villages do not have a single pharmacy store on their territory.</p>

7.4. ANNEX

- 7.4.1. List of National Normative Legal Acts
- 7.4.2. List of Thematic Mandates of Special Procedures of the UN Human Rights Council
- 7.4.3. UN Human Rights Agreements System
- 7.4.4. Table of Adoption by the Kyrgyz Republic of Monitoring Bodies on Fundamental Human Rights Agreements
- 7.4.5. Examples of Documents and Forms

7.4.1. LIST OF NATIONAL NORMATIVE LEGAL ACTS

Constitution of the Kyrgyz Republic of June 27, 2010

CODES OF THE KYRGYZ REPUBLIC:

1. *Civil Code of the KR, Part I*, of May 8, 1996, # 15
2. *Civil Code of the KR, Part II*, of January 5, 1998, # 1
3. *Civil Procedural Code of the KR*, of December 29, 1999, # 146
4. *Children's Code of the KR*, of August 7, 2006, # 151
5. *Family Code of the KR*, of August 30, 2003, # 201
6. *Labor Code of the KR*, of August 4, 2004, # 106
7. *Administrative Liability Code of the KR*, of August 4, 1998, # 114
8. *Criminal Code of the KR*, of October 1, 1997, # 68
9. *Criminal Penal Code of the KR*, of December 13, 1999, # 142
10. *Criminal Procedure Code of the KR*, of June 30, 1999, # 62.
11. *Code of Professional Ethics of a Healthcare Worker of the Kyrgyz Republic*, January 16, 2004, # 2-4

LAWS OF THE KYRGYZ REPUBLIC:

1. Law of the KR *On Health Protection of Citizens in the Kyrgyz Republic*, of January 9, 2005, # 6
2. Law of the KR *On Prevention of Iodine Deficiency Diseases*, of February 18, 2000, # 40
3. Law of the KR *On Donor ship of Blood and its Components*, of July 2, 2007, # 96
4. Law of the KR *On Personal Information*, of April 14, 2008, # 58
5. Law of the KR *On Protection of Health of Citizens of the Kyrgyz Republic from Harmful Impact of Tobacco*, of August 21, 2006, # 175
6. Law of the KR *On Narcotic, Psychotropic Substances and Precursors*, of May 22, 1998, # 66
7. Law of the KR *On Drinking Water*, of March 25, 1999, # 33
8. Law of the KR *On Reproductive Rights of Citizens and Guarantees of their Enforcement*, of August 10, 2007, # 147
9. Law of the KR *On Protection of the Population from TB*, of May 18, 1998, #65
10. Law of the KR *On Ontological Aid to the Population*, of October 4, 2000, # 83
11. Law of the KR *On Labor Protection*, of August 1, 2003, # 167
12. Law of the KR *On Health Insurance of Citizens of the Kyrgyz Republic*, of October 18,

- 1999, # 112
13. Law of the KR *On Rights and Guarantees of Disabled Persons*, of April 3, 2008, # 38
 14. Law of the KR *On Physical Culture and Sports*, of January 21, 2000, # 36
 15. Law of the KR *On Public Healthcare*, of July 24, 2009, # 248
 16. Law of the KR *On Immunoprophylaxis of Communicable Diseases*, of June 26, 2001, # 56
 17. Law of the KR *On Pharmaceuticals*, of April 30, 2003, # 91;
 18. Law of the KR *On Psychiatric Care and Guarantees of Rights of Citizens in its Provision*, of June 17, 1999, # 60
 19. Law of the KR *On HIV/AIDS in the Kyrgyz Republic*, of August 13, 2005, # 149
 20. Law of the KR *On Diabetes*, of August 9, 2006, # 166
 21. Law of the KR *On Transplantation of Human Organs and (or) Tissues*, of January 13, 2000, # 2
 22. Law of the KR *On the Procedure and Conditions of Detention in Custody of Persons Apprehended on Suspicion and Accused of Committing Crimes*, of October 31, 2002, # 150
 23. Law of the KR *On Consumer Rights Protection*, of December 10, 1997, # 90
 24. Law of the KR *On Trade Unions*, of October 16, 1998, # 130
 25. Law of the KR *On Licensing*, of March 3, 1997, # 12
 26. Law of the KR *On Non-commercial Organizations*, of October 15, 1999, # 111
 27. Law of the KR *On the State Social Insurance*, of June 17, 1996, # 20
 28. Law of the KR *On Education*, of April 30, 2003, # 92
 29. Law of the KR *On the Prosecutor's Office of the Kyrgyz Republic*, of July 17, 2009, # 224
 30. Law of the KR *On Advocacy*, of October 21, 1999, # 114
 31. Law of the KR *On Ombudsman (Akyikatchy) of the Kyrgyz Republic*, of July 31, 2002, # 136
 32. Law of the KR *On the Supreme Court of the Kyrgyz Republic and Local Courts*, of July 18, 2003, # 153
 33. Law of the KR *On Status of Judges of the Kyrgyz Republic*, of July 9, 2008, # 141.

BY-LAWS:

1. Resolution of the Government of the KR *On Medical Care of Foreign Citizens*, of June 15, 2000, # 346
2. Resolution of the Government of the KR *On Program of State Guaranteesto provide the citizens of the KR with medical-sanitary assistance for 2011* of July 1, 2011№ 350
3. *Doctor's Deposit Program, approved by Resolution of the Government of the KR*, of May 23, 2006, # 373
4. *List of employees of production, works, profession and positions subject to mandatory medical examination*, approved by Resolution of the Government of the KR, of April 25, 2006, # 296
5. Regulation *On Licensing of Certain Types of Entrepreneurial Activity*, approved by Resolution of the Government of the KR, of May 31, 2001, # 260
6. Regulation *On Attestation and Registration of Medical and Pharmaceutical Workers*, approved by Order of the Ministry of Health of the KR, of March 18, 2008, # 118
7. Instruction *On the procedure of prophylactic medical examination in the educational establishments of the Kyrgyz Republic to identify minors using drugs and psychotropic substances*, approved by Order of the Ministry of Health of the KR and of the Ministry

- of Education and Culture of the KR, of November 15, 2002, # 468/662/1
8. *Program of State Guarantees of Provision of Citizens of the Kyrgyz Republic with Medical care on 2011;*
 9. *Regulation On Arrangement of Activity of the Unit (Substation) of the First and Emergency Station/ Center for Emergency Outpatient Medical Care, approved by Order of the Ministry of Health of the KR , of January 30, 2004, # 32*
 10. *Order of the Ministry of Health On Arrangement of Activity of Maternity Houses (Departments) and further Improvement of Quality of the Obstetric-Gynecologic and Neonatal Care in the Kyrgyz Republic, of March 5, 2009, # 92*
 11. *Rules for issuing prescriptions for medicines approved by Order of the Ministry of Health of the KR, of January 5, 2011, # 2*
 12. *Order of the Ministry of Health of the KR On Implementation of the Law of the Kyrgyz Republic "On Amendments to the Law of the of the Kyrgyz Republic "On Immunoprophylaxis of Communicable Diseases," October 26, 2005 № 457*
 13. *Order of the Ministry of Health of the KR On Approval of the New Clinical Protocols, of June 1, 2005, # 218*
 14. *Regulation On Procedure of Payment of Single-Time Allowances for Compensation of Harm to Persons Affected by HIV in Discharge of their Functions, approved by Resolution of the Government of the KR, of April 25, 2006, # 296*

ACTS OF THE SUPREME COURT:

1. *Decree of the Plenum of the Supreme Court of the KR On Some Issues of Judicial Practice of Resolution of Disputes on Protection of Honor, Dignity and Business Reputation, of December 5, 2003, # 20*
2. *Review of the Judicial Practice On Cases on Protection of Honor, Dignity and Business Reputation for 2002 and 6 months of 2003*
3. *Resolution of the Plenum of the Supreme Court of the KR On Some Issues of Judicial Practice of Enforcement of Legislation on Compensation of the Moral Damage, of November 4, 2004, # 11*
4. *Review of the Judicial Practice of Consideration of Cases On Compensation of Moral Damage, for 2002 and 6 months 2003*
5. *Resolution of the Plenum of the Supreme Court of the KR On Some Issues of Judicial Practice of Enforcement of Legislation on Compensation of Damage to Life and Health, of 30 November 2006, # 14*
6. *Resolution of the Plenum of the Supreme Court of the KR On Some Issues of Application by Courts of the Kyrgyz Republic of Legislation on Responsibility for Official Crimes, of September 27, 2003, # 15*
7. *Review of the Juridical Practice On Cases of Criminal Crimes considered in 1999-2002 by local courts of the Kyrgyz Republic*

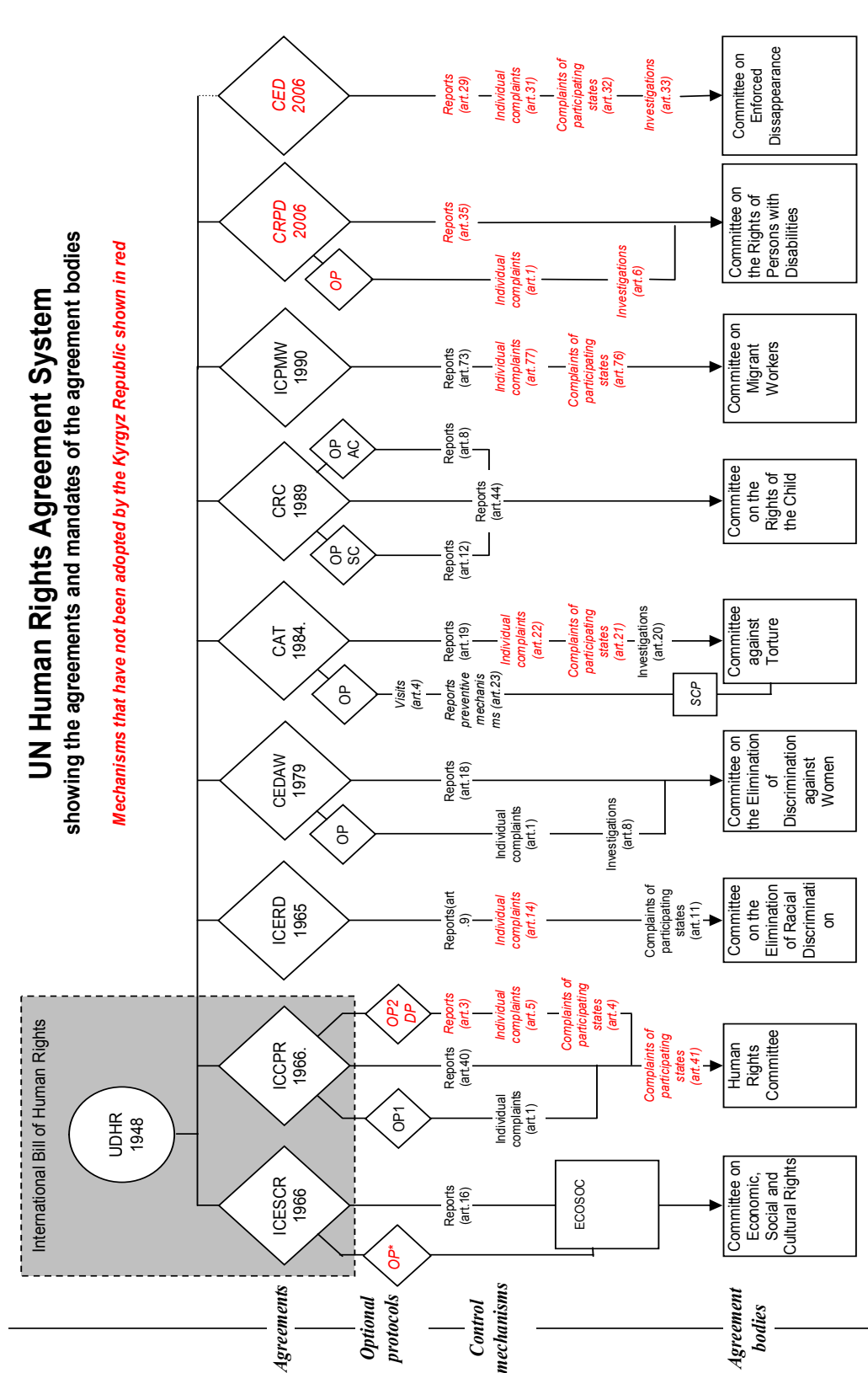
7.4.2.LIST OF THEMATIC MANDATES OF SPECIAL PROCEDURES OF THE UN HUMAN RIGHTS COUNCIL

- UN Working Group on Enforced or Involuntary Disappearances (1980)
- Special Rapporteur on extrajudicial, summary or arbitrary executions (1982)
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (1985)
- Special Rapporteur on freedom of religion or beliefs (1986)
- Special Rapporteur on trafficking in children, child prostitution and child pornography

(1990)

- Working Group on Arbitrary Detention (1991)
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (1993)
- Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1993)
- Special Rapporteur on the Independence of Judges and Lawyers (1994)
- Special Rapporteur on violence against women, its causes and consequences (1994)
- Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (1995)
- Independent Expert on human rights and extreme poverty (1998)
- Special Rapporteur on the right to education (1998)
- Special Rapporteur on the human rights of migrants (1999)
- Special Rapporteur on the situation of human rights defenders (2000)
- Special Rapporteur on the right to food (2000)
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (2000)
- Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights (2000)
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (2001)
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2002)
- Working Group of Experts on People of African Descent (2002)
- Special Rapporteur on trafficking in persons, especially in women and children (2004)
- Representative of the Secretary-General on the human rights of internally displaced persons (2004)
- The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (2005)
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2005)
- Independent Expert on minority issues (2005)
- The independent expert on human rights and international solidarity (2005)
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (2005)

7.4.3. LIST OF THEMATIC MANDATES OF SPECIAL PROCEDURES OF THE UN HUMAN RIGHTS COUNCIL



OHCHR, 2005. Initial diagram in English taken from <http://www.ohchr.org/english/bodies/docs/UNHRTS.gif>

Specification of control mechanisms, N of procedure articles and mechanisms adopted by the Kyrgyz Republic and translation of the diagram into Russian: Dmitry Kabak, imazEsengetdiev (e-servis@mail.ru). The diagram was prepared in September 2006, modified in 2007, 2008 and 2009.

Information about participation in agreements and operation of control mechanisms as of July 2009.

SCP = Sub-Committee on Prevention

* This optional protocol was adopted by the UN Human Rights Council on June 18, 2008. After approval by the UN General Assembly they will start the collection of twentieth ratification instrument or the instruments of accession required for the agreement to come into effect.

7.4.4. TABLE OF ADOPTION BY THE KYRGYZ REPUBLIC OF MONITORING BODIES ON FUNDAMENTAL HUMAN RIGHTS AGREEMENTS

Name of control mechanism envisaged by the agreement						
Agreement	Interstate Complaint		Individual Complaint		Investigation of mass or gross violations	
	Article #	Committee competence acknowledged	Article #	Committee competence acknowledged, coming into effect	Article #	Committee competence acknowledged
CEDAW-OP			art.1	July 22, 2002 October 22, 2002	art.8	July 22, 2002 (a)
CRPD-OP			art.1	Not acknowledged	art.6	Not acknowledged
CAT	art.21	Not acknowledged	art.22	Not acknowledged	art.20	September 5, 1997 (a)
CED	art.32	Not acknowledged	art.31	Not acknowledged	art.33	Not acknowledged
ICPMW	art.76	Not acknowledged	art.77	Not acknowledged		
ICERD	art.11	Acknowledged	art.14	Not acknowledged		
ICCPR	art.41	Not acknowledged				
ICCPR-OP1			art.1	January 7, 1994 January 7, 1995		
ICCPR-OP2-DP	art.4	Not acknowledged	art.5	Not acknowledged		

7.4.5. EXAMPLES OF DOCUMENTS AND FORMS

To _____ rayon (city)
court _____ oblast
from _____
(citizen's name and address)
Defender: _____
(government authority) _____
(or official, address)

**APPEAL
Against Illegal Actions of an Official
(Government Body)**

Date _____
_____ (specify the full name of the official)

_____ (place of work (state government body),

_____ (committed actions infringing the rights and legitimate interests)

_____ (of the citizen filing complaint, time of their commitment)

Illegal actions

_____ (specify the name of the official or the state government body)

are confirmed by the following:

_____ (specify the reasons why the applicant considers the actions of the state government body

_____ as prejudicial to his interests)

" ____ " _____ I appealed against these actions to the superior by way of subordination

_____ (specify the name of superior

_____ official or body by way of subordination)

However the actions complained of by me are unreasonably found legitimate (the reply has not been received within the established time limit).

Based on the Articles 262, 263 of the KR Civil Procedural Code and KR Law "On Procedure for Consideration of Proposals, Applications and Appeals of Citizens", I request you to oblige:

(official, (state government body) over

to reconstitute the committed violation of my right.

In the order of preparation of the case for hearings to demand and obtain the materials concerning my appeal from

(name of superior official of state government body

by way of subordination)

Attachment:

1. Reply from the state government body or official, which was the basis for appeal (if any).
2. Available written evidence of the illegality of actions of the official, state government body.
3. Copy of the appeal.
4. Receipt confirming the payment of State duty.

Date

Signature

Rayon (city) Prosecutor _____ oblast

Prosecutor's name _____

from _____

(Citizen's name and address)

APPEAL

**Against Illegal Actions of an Official
(Government Body)**

Date _____

(specify the full name of the official,

place of work (state government body),

committed actions infringing the rights and legitimate interests

_____ of

the citizen filing complaint, time of their commitment)

Illegal actions

_____ (specify the name of the official or the state government body)

_____ are confirmed by the following:

_____ (specify the reasons why the applicant considers the actions of the state government body

_____ as prejudicial to his interests)

" ____ " _____ I appealed against these actions to the superior by way of subordination

_____ (specify the name of _____

_____ superior official or body by way of subordination)

However the actions complained of by me are unreasonably found legitimate (the reply has not been received within the established time limit).

Based on the KR Criminal Procedure Code and KR Law "On Prosecutor's Office"

I REQUEST YOU TO:

1. Investigate all circumstances of this appeal.
2. Make a legitimate decision on this appeal and bring offenders to legal responsibility;
3. Reconstitute committed violation of my right.

Attachments:

1. Reply from the state government body or official which was the basis for appeal (if any).
2. Available written evidence of the illegality of actions of the official, state government body.
3. Copy of the appeal.

Date

Signature

7.5. GLOSSARY

7.5.1. International Glossary

7.5.2. National Glossary

7.5.1. INTERNATIONAL GLOSSARY

A

Acceptability

One of four criteria set out by Committee on Economic, Social and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Acceptability: means that all health facilities, goods and services must be respectful of medical ethics, culturally appropriate, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned. See also "Accessibility" "Availability," and "Quality."

Accessibility

One of four criteria set out by Committee on Economic, Social and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Accessibility: means that health facilities, goods and services have to be accessible to everyone without discrimination. Accessibility has four overlapping dimensions: non-discrimination, physical accessibility, economic feasibility (affordability), and information accessibility (General Comment 14). See also "Acceptability," "Availability," and "Quality."

Accession

The act whereby a state that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession." Accession has the same legal effect as ratification (q.v.). Accession is generally employed by States wishing to express their consent to be bound by a treaty where the deadline for signature has passed. However, many modern multilateral treaties provide for accession even during the period that the treaty is open for signature.

Actio Popularis (public action)

A legal action brought by any member of a community in vindication of a public interest.

Adoption

The formal act by which negotiating parties establish the form and content of a treaty. The treaty is adopted through a specific act expressing the will of the States and the international organizations participating in the negotiation of that treaty, e.g., by voting on the text, initialing, signing, etc. Adoption may also be the mechanism used to establish the form and content of amendments to a treaty, or regulations under a treaty.

Treaties that are negotiated within an international organization are usually adopted by resolution of the representative organ of that organization. For example, treaties negotiated under the auspices of the United Nations, or any of its bodies, are adopted by a resolution of the General Assembly of

the United Nations

Adoption Theory

A theory maintaining that international law becomes an automatic part of domestic law following treaty accession (q.v.) or ratification (q.v.), without further domestication (q.v.).

Amicus Curiae (Friend of the court)

A legal document filed with the court by a neutral party generally advocating a particular legal position or interpretation. The plural form is amici curiae.

Ambulatory Care

Medical care including diagnosis, observation, treatment and rehabilitation provided on an outpatient basis.

Availability

One of four criteria set out by Committee on Economic, Social and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Availability: means that functioning public health and health care facilities, goods and services, as well as programs, have to be available in sufficient quantity. This should include the underlying determinants of health, such as safe drinking water, adequate sanitation facilities, clinics and health-related buildings, trained medical personnel, and essential drugs (General Comment 14). See also "Acceptability," "Accessibility," and "Quality."

B

Basic Needs

Used largely in the development of community to refer to basic health services, education, housing, and other goods necessary for a person to live.

Bioethics

Refers to "the broad terrain of the moral problems of the life sciences, ordinarily taken to encompass medicine, biology, and some important aspects of the environmental, population and social sciences. The traditional domain of medical ethics would be included in this array, accompanied now by many other topics and problems." (Encyclopedia of Bioethics, Warren T. Reich, editor-in-chief, New York: Simon & Schuster Macmillan, 1995, page 250)

Biomedicine

The term unifies fields of clinical medicine and research for health purposes. Broadly it is also defined as the application of the principles of the natural sciences, especially biology and physiology, to clinical medicine.

C

Concluding Observations

Recommendations by a treaty's enforcement mechanism on the actions a state should take in ensuring compliance with the treaty's obligations. This generally follows both submission of a state's country report (q.v.) and a constructive dialogue with state representatives.

Country Report

A state's report to the enforcement mechanism of a particular treaty on the progress it has made in implementing it.

Convention

This term is used interchangeably with treaty, but it can also have a specific meaning as a treaty binding a broad number of nations. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually instruments negotiated under the auspices of an international organization are entitled conventions. The same holds true for instruments adopted by an organ of an international organization.

Customary International Law

One of the sources of international law (q.v.). It consists of rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act that way. It follows that customary international law can be discerned by a widespread repetition by States of similar international acts over time (State practice). Acts must occur out of a sense of obligation and must be taken by a significant number of States and not be rejected by a significant number of States. A particular category of customary international law, *jus cogens* (q.v.) refers to a principle of international law so fundamental that no state may opt out by way of treaty or otherwise. Examples might include prohibitions against slavery, genocide, torture and crimes against humanity. Other examples of customary international law include the principle of non-refoulement and, debatably, the right to humanitarian intervention

D

De Facto (In fact, in reality)

Existing in fact

De Jure (By right, lawful)

A situation or condition that is based on a matter of law, such as those detailed in ratified treaties.

Declaration

An interpretative declaration is a declaration by a State as to its understanding of some matter covered by a treaty or its interpretation of a particular provision. Unlike reservations (q.v.),

declarations merely clarify a State's position and do not purport to exclude or modify the legal effect of a treaty.

Dignity

The quality of being worthy, honored, or esteemed. Human rights are based on inherent human dignity and aim to protect and promote it.

Discrimination

Distinction between persons in similar cases on the basis of race, sex, religion, political opinions, national or social origin, associations with a national minority or personal antipathy (World Health Organization).

Domestication

The process by which an international treaty is incorporated into domestic legislation

Dual Loyalty

Role conflict between professional duties to a patient and obligations-express or implied, real or perceived-to the interests of a third party such as an employer, insurer, or the state.

E

Entry into Force

The moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. This may be a date specified in the treaty or a date on which a specified number of ratifications, approvals, acceptances or accessions have been deposited with the depositary.

Essential Medicines

Medicines that satisfy the priority health-care needs of the population. Essential medicines are intended to be available at all times in adequate amounts, in the appropriate dosage forms, with assured quality, and at a price the individual and the community can afford.

Exhaustion of Domestic Remedies

Refers to the process required before submitting a complaint on behalf of a victim to any regional or international tribunal. All available procedures must first be used to seek protection from future human rights violations and to obtain justice for past abuses. There are limited exceptions to the requirement that domestic remedies be exhausted: remedies may be unavailable, ineffective (i.e. a sham proceeding) or unreasonably delayed.

G

General Comments/Recommendations

Interpretive texts issued by a treaty's enforcement mechanism on the content of particular rights. Although these are not legally binding, they are widely regarded as authoritative and have significant legal weight.

H

Health

A state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity (World Health Organization)

Health Care or Patient Care

The prevention, treatment, and management of illness and the preservation of mental and physical well-being through the services offered by the medical, nursing, and allied health professions. This embraces all the goods and services designed to promote health, including preventive, curative, and palliative interventions, whether directed to individuals or populations (World Health Organization).

Health Care Establishment

Any health care facility such as a hospital, nursing home, or establishment for disabled persons (World Health Organization)

Health Care Providers

Physicians, nurses, dentists, or other health professionals (World Health Organization)

Health Care System

The organized provision of health care services

Interdependent/Indivisible

The term used to describe the relationship between civil and political rights and economic and social rights. Interdependence and indivisibility mean that one set of rights does not take precedence over the other, and that guaranteeing each set of rights is contingent upon guaranteeing the other.

Indirect Discrimination

Descriptive term for a situation in which the effect of certain imposed requirements, conditions or practices has a disproportionately adverse impact on one group or other. It generally occurs when a rule or condition applying to everyone is met by a considerably smaller proportion of people from a particular group, the rule is to their disadvantage, and it cannot be justified on other grounds.

Individual Rights in Patient Care

Rights more readily expressed in absolute terms than are social rights in health care. When made operational, these can be made enforceable on behalf of an individual patient (Declaration on the Promotion of Patients' Rights in Europe, WHO EURO, Amsterdam 1994, Guiding Principles). See also "Social Rights in Health Care" and "Patient's Rights."

Informed Consent

A legal condition in which a person can be said to agree to a course of action based upon an appreciation and understanding of the facts and implications. The individual needs to be in possession of relevant facts and the ability to reason.

Informed Consent in the Health Care Context

A process by which a patient participates in health care choices. A patient must be provided with adequate and understandable information on matters such as the treatment's purpose, alternative treatments, risks, and side-effects.

In-patient

A patient whose care requires a stay in a hospital or hospice facility for at least one night

International Human Rights Law

Codifies legal provisions governing human rights in various international and regional human rights instruments

International Law

The set of rules and legal instruments regarded and accepted as binding agreements between nations. International law is typically divided into public international law (q.v.) and private international law. Sources are (a) custom; (b) treaties; (c) general principles of law and (d) judicial decisions and juristic writings (see Art 38(1) (d) of the Statute of the International Court of Justice).

J

Jus Cogens

Peremptory principle of international law (e.g., prohibition on torture) from which no derogation by treaty is permitted

M

Maximum Available Resources

Key provisions of ICESCR, Article 2, obliging governments to devote maximum of available

government resources to realizing economic, social and cultural rights

Medical Intervention

Any examination, treatment, or other act having preventive, diagnostic, therapeutic or rehabilitative aims and which is carried out by a physician or other health care provider (WHO)

Monitoring/Fact Finding/Investigation

Terms often used interchangeably, generally intended to mean the tracking and/or gathering of information about government practices and actions related to human rights

N

Negative Rights

Rights under which a State is obliged to refrain from unjustly interfering with a person and/or their attempt to do something

Neglected Diseases

Diseases affecting almost exclusively poor and powerless people in rural parts of low-income countries that receives less attention and resources

O

Out-patient

Patient receiving treatment without spending any nights at a health care institution

P

Party

A State or other entity with treaty-making capacity that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession, etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law (see article 2(1) (g) of the Vienna Convention 1969).

Patient

A person who is waiting for, is receiving, or has received health care services.
User(s) of health care services, whether healthy or sick (World Health Organization).

Patient Autonomy

The right of patients to make decisions about their medical care. Providers can educate and inform patients, but cannot make decisions for them.

Patient-centered Care

Doctrine recognizing the provision of health care services as a partnership among health care providers and patients and their families. Decisions about medical treatments must respect patients' wants, needs, preferences, and values.

Patient Confidentiality

Doctrine that holds that the physician has the duty to maintain patient confidences. This is to allow patients to make full and frank disclosure to their physician, enabling appropriate treatment and diagnosis.

Patient Mobility

Concept describing patient movement beyond their catchment area or area of residence to access health care; mobility can take place within the same country or between countries.

Patient Responsibility

Doctrine recognizing the doctor/patient relationship as a partnership with each side assuming certain obligations. Patient responsibilities include communicating openly with the physician or provider, participating in decisions about diagnostic and treatment recommendations, and complying with the agreed-upon treatment program.

Patients' Rights

A movement that has emerged out of increasing concern about human rights abuses in health care settings, particularly in countries where patients are assuming a greater share of health care costs and thus expect to have their rights as "consumers" respected

Specific patient rights have been codified in regional and international instruments (e.g., European Charter of Patient Rights; Declaration on the Promotion of Patients' Rights in Europe) as well as in national charters and legislation. See also "Individual Rights in Patient Care" and "Social Rights in Health Care."

What is owed to the patient as a human being by physicians and the State

Patient Safety

Freedom from accidental injury due to medical care or medical errors (Institute of Medicine)

Positive Rights

Rights under which a State is obliged to do something for someone

Primary Health Care

General health services available in the community near places where people live and work; the first level of contact that individuals and families have with the health system

Progressive Realization

The requirement that governments move as expeditiously and effectively as possible toward the goal of realizing economic, social and cultural rights, and to ensure there are no regressive developments.

Protocol

Refers to a section in a treaty that clarifies terms, adds additional text as amendments, or establishes new obligations. These new obligations can be quantitative targets for nations to achieve.

Public International Law

Establishes the framework and the criteria for identifying states as the principal actors in the international legal system. Deals with the acquisition of territory, state immunity and the legal responsibility of states in their conduct with each other. Also concerned with the treatment of individuals within state boundaries including human rights, the treatment of aliens, the rights of refugees, international crimes and nationality. It further includes the maintenance of international peace and security, arms control, the pacific settlement of disputes and the regulation of the use of force in international relations. Branches therefore include international human rights law (q.v.), international humanitarian law, refugee law and international criminal law.

Q

Quality

One of four criteria set out by Committee on Economic, Social, and Cultural Rights by which to evaluate the right to the highest attainable standard of health. Quality: means that health facilities, goods, and services must be scientifically and medically appropriate and of good quality. This requires skilled medical personnel, scientifically-approved and unexpired drugs, and hospital equipment (Comment 14). See also "Acceptability," "Accountability," and "Availability."

R

Ratification

The formal acceptance of the rights and obligations of a treaty. If the treaty has entered into force, the treaty thereafter becomes legally binding to parties that have ratified the treaty. Requires two steps: (a) the execution of an instrument of ratification, acceptance or approval by the Head of State, Head of Government or Minister for Foreign Affairs, expressing the intent of the State to be bound by the relevant treaty; and (b) for multilateral treaties, the deposit of the instrument with the depositary; and for bilateral treaties, the exchange of the instruments between parties.

Reservation

A statement made by a State by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that State. A reservation may enable a State to participate

in a multilateral treaty that it would otherwise be unable or unwilling to participate in. States can make reservations to a treaty when they sign, ratify, accept, approve or accede to it. When a State makes a reservation upon signing, it must confirm the reservation upon ratification, acceptance or approval. Since a reservation purports to modify the legal obligations of a State, it must be signed by the Head of State, Head of Government or Minister for Foreign Affairs. Reservations cannot be contrary to the object and purpose of the treaty. Some treaties prohibit reservations or only permit specified reservations.

Respect, Protect and Fulfill

Governments' obligations with respect to rights. Respect: Government must not act directly counter to the human rights standard. Protect: Government must act to stop others from violating the human rights standard. Fulfill: Government has an affirmative duty to take appropriate measures to ensure that the human rights standard is attained.

Right to Health

Right to the enjoyment of a variety of facilities, goods, services, and conditions necessary for the realization of the highest attainable standard of health.

S

Secondary Health Care

General health services available in hospitals

Social Rights in Health Care

Category of rights that relate to the societal obligation undertaken or otherwise enforced by government and other public or private bodies to make reasonable provision of health care for the whole population. They also relate to equal access to health care for all those living in a country or other geopolitical area and the elimination of unjustified discriminatory barriers, whether financial, geographical, cultural or social and psychological. They are enjoyed collectively (Declaration on the Promotion of Patients' Rights in Europe, WHO EURO, Amsterdam 1994, Guiding Principles). See also "Individual Rights in Patient Care" and "Patients' Rights."

Self-Executing Treaty

A treaty that does not require implementing legislation for its provisions to have effect in domestic law.

Shadow Report

An independent NGO submission to a treaty enforcement mechanism to help it assess a state's compliance with that treaty

Signatory

A party that has signed an agreement. In regards to a treaty, a signatory is not yet legally bound

by the treaty. Instead, a signatory agrees to an obligation not to defeat the object and purpose of a signed treaty. See ratification (q.v.).

Special Rapporteurs

Individuals appointed by the Human Rights Council to investigate human rights violations and present an annual report with recommendations for action. There are both country-specific and thematic special rapporteurs, including one on the right to the highest attainable standard of health.

T

Tertiary Health Care

Specialized health services available in hospitals.

Transformation Theory

A theory maintaining that international law only becomes part of domestic law after domestication (q.v.) and the incorporation of treaty provisions into domestic legislation.

Treaty

A formal agreement entered into by two or more nations which are binding upon them. A bilateral treaty is a treaty between two parties. A multilateral treaty is a treaty between more than two parties.

W

Working Groups

Small committees appointed by the Human Rights Council on a particular human rights issue. Working groups write governments about urgent cases and help prevent future violations by developing clarifying criteria on what constitutes a violation.

7.5.1. NATIONAL GLOSSARY

A

Action

Action (claim) – claimant`s appeal to the court to consider the substantive dispute with the defendant and protect the violated subjective right or interest protected by law

Administrative Infraction

Administrative infraction - intentional or inadvertent action or inaction of an individual person, or unlawful action or omission of a legal entity, for which the Code of Administrative Responsibility envisages administrative responsibility

Administrative Responsibility

Administrative responsibility – is a responsibility of individuals and legal entities for administrative offences; one of the forms of legal liability, less strict than criminal liability

Appeals Instance

An Appeals Instance is a court of second instance, considering the case on petition for appeal (protest) against the entering into force of the sentences or resolution of the court of first instance.

Application

Application – it is an appeal containing a request of a citizen to state, law-enforcement and judicial authorities to assist in the implementation of his/her constitutional rights and freedoms, or constitutional rights and freedoms of others persons, or reporting about violations of the laws and other normative legal acts as well as shortcomings in activity of agencies and officials

Ayil District

Ayil District is an administrative and territorial unit, consisting of one or several villages, in which the local community performs local self-government in accordance with rules installed by the Constitution and laws of the Kyrgyz Republic.

C

Claim

Claim - in the procedural sense, a petition to court with a request to consider a substantive dispute with the defendant and to protect a violated subjective right or interest protected of law

Clinical Protocol

Clinical Protocol – a scheme of diagnosis, treatment and prevention of a particular disease or condition of the patient, to be followed by health care workers

Complaint

Complaint – it is an appeal, which contains the citizen`s request for a reinstatement of his/her violated rights and freedoms or legitimate interests or rights, or the freedoms or legitimate interests of other persons

Compulsory Health Insurance

Compulsory health insurance - a form of state social protection, required by law and paid for by the citizens, aimed at ensuring the rights of citizens of the Kyrgyz Republic in the areas of health; the guaranteed provision of insured persons in the Kyrgyz Republic to quality medical and preventive care, protection of the rights and interests of the insured persons in obtaining medical, preventive and other services of the program of compulsory health insurance, as well as the provision of insured citizens of temporary disability benefits during pregnancy and childbirth

Concilium

Concilium (consultation) - collegial review and the decision regarding the diagnosis and treatment of the patient

Co-payment

Co-payment - participation of the citizen in the payment cost of received medical services, provided in addition to the volume of financing of the State Guarantees Program

Court of First Instance

Court of first instance is a court trying a criminal case on the merits

D**Defendant**

The defendant is a citizen or legal entity against whom a claim is filed in a court

District

“District” is the administrative-territorial unit, uniting the village, towns and / or the city of district level, located within the established boundaries of the district in which the state administration is carried out with regard to the interests of local communities and the competence of local authorities

Indemnification

Indemnification - compensation of property damage, arising as a result of causing the injury

H**Health Care Facility**

Health care facility – an entity or organization set up and financed by the owner(s) in whole or in part for the implementation of social and other non-commercial health care functions

Healthy Lifestyle

A healthy lifestyle is a set of human behaviors aimed at maintaining and promoting health. (Article 23 of the Law on Public Health)

J**Judicial Charges**

Judicial charges are the state fee(s) and the costs associated with the proceedings in a court

action.

Jurisdiction

Jurisdiction is a distribution between the courts of cases to be heard in the first instance, establishment of the specific court that should resolve the particular case.

M

Medical Examination

A medical examination is a set of organizational, analytical and practical activities aimed at establishing a level of quality in different fields of healthcare.

L

Legal Capacity

Legal capacity – a citizen`s ability to acquire and exercise civil rights by his/her actions, to create civil duties for himself and to perform them

Legal Representatives

Legal representatives - parents, foster parents, guardians, or trustees, protecting legally-protected interests of disabled citizens, persons lacking full capacity or having recognized limitedly capacity to act

P

Petition

A petition is a request of a party or applicant addressed to the appropriate Authority, which carries it out in criminal or civil proceedings

Plaintiff

Plaintiff a citizen and/or legal person, who brings a court action in his/her own interests, or in the interests of others, in respect of whom the court action was presented

Program of state guarantees to ensure that the citizens of the Kyrgyz Republic receive health - sanitary care

State guarantees a program to ensure the citizens of the Kyrgyz Republic for health- sanitary care – the guaranteed volume, types and conditions of providing health care to citizens in the Kyrgyz Republic

R

Region

A Region is the administrative-territorial unit, which combines the territory of the cities of regional importance, as well as areas located within the area of state administration with regard to the interests of local communities and the competence of local authorities.

Registration of Application

Registration of application is a fixation of summary data about the content of each petition in the accounting information document and assignment the registration number of applications received by each.

S

Statement of Claim

Statement of a claim - the external form of expression of the claim which contains defined details: name of the court, to where addressed, the name and addresses of the parties, the actual cause of action and supporting evidence, the content and amount of the claim, and the list of attached documents

T

Therapeutic and Prophylactic Organizations

Treatment and prevention organizations that provide health care to citizens of the Kyrgyz Republic

Trade Unions (Unions)

Trade unions (unions) - in the Kyrgyz Republic, voluntary associations of citizens based on common interests or type of activity in both the manufacturing and non-manufacturing sectors, created for the protection of labor and socio-economic rights and interests of its members

V

Victim

A Victim is a person in respect to whom there is a reason for believing that he/she directly suffered moral, physical or property damage due to a specific offense

Human Rights in Patient Care: A Practitioner Guide is a practical, how-to manual for lawyers taking human rights cases in health care settings. Each volume in the series contains information on rights and responsibilities of both patients and providers, as well as procedures for ensuring that these rights are protected and enforced at the international, European, and national levels. This is the first compilation of diverse constitutional provisions, statutes, and regulations organized by right and responsibility, paired with practical examples of compliance, violation, and enforcement. The guide explores litigation and alternate forums for resolving claims, such as ombudspersons and ethics review committees. The Practitioner Guide is a useful reference for lawyers and other professionals working in a region where the legal landscape is often in flux. The full series is available for multiple countries at www.health-rights.org.



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