

COERCIVE MEASURES IN THE TREATMENT OF DRUG-DEPENDENT PATIENTS

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CASE EXAMPLE

Patient "Kevin", intoxicated, is committed to the emergency unit. His consciousness is tarnished, but he is able to respond to questions. Health care personnel establish that Kevin took heroin. Despite the need for treatment, explained to the patient by the attending physician, he refuses treatment and any other kind of help and expresses his decision to go home. (Variant: The doctors are of the opinion that Kevin's life and health is in severe danger.)

The physician decides to dispense an antidote, a procedure Kevin refuses. A staff member tries to inject the antidote, when Kevin starts screaming and slashing about violently. Nurses fixate him on arms and legs and the physician inserts the needle to dispense the antidote.

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PROJECT: „MEDICAL TREATMENT AT THE INTERFACE BETWEEN PATIENT'S AUTONOMY AND TREATMENT MANDATE”

- Case example: typical situation when treating drug-dependent intoxicated patients
- Challenging & distressing for clinics staff
- Additionally: Criminal legal provisions cause problems

➔ Legal security for practitioners
Enhancement of patient's rights

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THE CASE: LEGAL QUESTIONS

- Competency: Is the patient competent?
- Treatment refusal: May the patient legally refuse treatment?
- Criminal legal limits: Is the choice of treatment within criminal legal limits?
- Fixations: Is fixating the patient legal?

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„COERCIVE MEASURES“

- Curative and other medical treatment **without** the patient's consent
- Coercive measures restraining patient's freedom

➔ criminal legal culpability

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COERCIVE CURATIVE TREATMENT – AUSTRIAN LAW

- Treatment of **competent** patients without consent: prohibited
"unauthorised curative treatment"
- Treatment of **incompetent** patients without consent: consent presumed, treatment mandatory if **life and health are severely endangered**

➔ intoxicated patients must not be treated if they are competent and refuse treatment

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COERCIVE CURATIVE TREATMENT – CASE EXAMPLE

- Is the patient competent?
 - Competency: „ability to comprehend reason for and consequences of the treatment and subsequently make an autonomous decision in accordance with this comprehension"
- Physician's decision
- Can the patient comprehend the consequences of the treatment? And the consequences of non-treatment?
- Can he refuse treatment?

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COERCIVE CURATIVE TREATMENT – PRACTICAL PROBLEMS

- Competency difficult to establish in cases of uncertainty
- Physicians have to make decision on (in)competency even if difficult
- Motivation to declare patients incompetent:
 - Possibility to treat if patient refuses
 - Complicated patient group
- Coercive medical treatment often leads to freedom restraints

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COERCIVE CURATIVE TREATMENT – CASE EXAMPLE: RESULTS

➔ The patient must be treated if he is incompetent and his life and health are in severe danger, but must not be treated if he is competent to refuse the treatment.

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OTHER COERCIVE MEASURES – FIXATIONS

- Patients often (auto-)aggressive
- Fixations necessary?
 - Application in practice
- Why are patients fixated?
 - Fixations in order to enable treatment
 - Fixations in order to restrain patient
 - Who is aggressive towards others
 - Who is auto-aggressive
 - Who needs to calm down / sober up

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FIXATIONS AUSTRIAN LAW

- Are fixations legal?
- Fixations: not part of curative treatment
- Clinics staff probably culpable for „deprivation of liberty"
- Only general legal provisions applicable for justification
- Differentiation legally necessary between
 - Auto-aggressive / aggressive behaviour
 - Fixations necessary to enable treatment / other fixations

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FIXATIONS – COMPETENT PATIENTS

- Fixating competent patients: only with consent
- Exception: patient endangering others, e.g. clinics staff
 - Justification of fixations by self-defence
- Patient endangering himself
 - Justified emergency applicable?
 - Dogmatic controversy

FIXATIONS – CASE EXAMPLE: RESULTS

- ➔ If the patient is competent, he must not be fixated. He must not be treated medically against his will. He must be allowed to leave the hospital.

FIXATIONS – INCOMPETENT PATIENTS

- Fixations necessary to enable treatment
 - Presumed consent can be taken as justification:
 - Fixations are essential for conducting life-saving treatment
 - Presumed consent includes consent to fixations
 - Fixations part of curative treatment? Would be excessive

FIXATIONS – INCOMPETENT PATIENTS

- Fixations **not** necessary to enable treatment
 - Patient endangers others: justification of fixations by self-defence
 - Patient endangers himself
 - Presumed consent or justified emergency?
 - Dogmatic controversy
 - No possibility to restrain auto-aggressive patients?
- Situation difficult for practitioners regarding course of actions and criminal legal consequences thereof

FIXATIONS – CASE EXAMPLE: RESULTS

- The incompetent patient's life and health are severely endangered and he refuses treatment
- Fixations are necessary to enable medical treatment
 - ➔ Fixations are legal
- Life and health are not in danger
 - ➔ Fixations would be illegal and culpable as "deprivation of liberty"
possible exception: justified emergency

ETHICAL APPROACH

- "Principles of Biomedical Ethics" by *Beauchamp and Childress*
- Four principles:
 - Beneficence
 - Non-maleficence
 - Justice
 - Autonomy
- Conflict between beneficence and autonomy
 - Treating patient vs. respecting treatment refusal


ETHICAL APPROACH

- Beneficence: Patients' wellbeing is to be promoted
- Autonomy: Respect for patient's autonomy
- Balance of beneficence and autonomy:
 - Principles not absolutes
 - Potentially life-saving medical treatment (beneficence) has priority over respect for autonomy
 - Coercive curative treatment even acceptable with competent patients
 - Probably even fixations of competent patients ethically acceptable

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ETHICAL APPROACH

- Accordance of ethical approach and legal provisions if patient's life is severely endangered
 - Treatment of patient ethically and legally „right“
- Different ethical and legal solutions if no severe danger for life and health
 - Legally: treatment not possible; fixations possible under certain preconditions
 - Ethically: treatment and fixations might be „right“

 further distress and uncertainty of practitioners

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CONCLUSIONS & SOLUTIONS

- Practitioners aware of legal problems, but do not know how to deal with them – therefore distressed

or

- Practitioners unaware of legal provisions
 - Believe that fixations are always legal
 - Patients' competency denied
 - Paternalistic approach
- Also distressing situation, the more so for nursing staff
 - Direct contact to patients
 - Position between patients and physicians

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CONCLUSIONS & SOLUTIONS

- Differentiated approach:
 - Recognition of competency
 - Cooperation with medical officers / police physicians and police officers – release from hospital
 - Option of letting patient cool down instead of using restraints
- Law should not lead to problems, but prevent problems from arising

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CONCLUSIONS AND SOLUTIONS

- Factors enhancing legal conformity:
 - Advanced training & regular updates for clinics staff
 - Legal hotline for emergencies
 - Consultation of psychiatric experts in order to establish competency
 - Commitment to psychiatric unit for restricted period of time
 - Implementation of medical-ethical and legal guidelines

 Enhancement of patient's rights and practitioners' legal security

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THANK YOU FOR YOUR ATTENTION!

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