

Can a drunk patient give informed consent for medical treatment?

Czy pacjent pod wpływem alkoholu może wyrazić świadomą zgodę na interwencję medyczną?

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Abstract

When medical intervention is necessary, a physician faces a serious dilemma: can he/she perform medical intervention despite the lack of informed consent, or should he/she withdraw from such an intervention? The question is even more difficult when a patient under the influence of alcohol urgently requires a medical intervention. In such cases the possibility to gain informed consent is even more problematic, and such situations are not so rare. In such situations, a doctor must often decide whether to undertake medical interventions despite the lack of informed consent of a patient, if it is justified by patient's state of health, or to discontinue intervention, exposing him/herself to possible legal liability for such an omission.

Streszczenie

Jeżeli interwencja medyczna jest niezbędna, lekarz staje przed dylematem: czy przeprowadzić interwencję medyczną pomimo braku zgody, czy z uwagi na brak zgody powstrzymać się od niej. Odpowiedź na to pytanie jest jeszcze trudniejsza, gdy pilnej interwencji medycznej wymaga pacjent pod wpływem alkoholu. Uzyskanie świadomej zgody przed interwencją staje się problemem, a takie sytuacje wcale nie są rzadkie. Lekarz niejednokrotnie musi decydować w tego typu okolicznościach, czy podjąć interwencję medyczną pomimo braku świadomej zgody pacjenta, jeżeli jest to uzasadnione stanem pacjenta, czy zaniechać interwencji, narażając się na ewentualną odpowiedzialność prawną z tytułu zaniechania.

Introduction

A physician may conduct an examination or provide other health services, after he/she receives informed consent from the patient. This general rule, stipulated in the Act on the Medical Profession, subjects the doctor's activity to the patient's will, which determines the admissibility of medical intervention. If a patient is under the influence of alcohol, he/she might be unable to express his/her informed consent. Lack of consent for a medical intervention constitutes a violation of personal rights and may cause liability even if a medical procedure has been performed correctly.

A patient's consent to a medical procedure is informed if he/she has been provided with accessible information concerning the planned procedure. Informed consent is the consent of a patient who know-

ingly accepts the risk of certain surgery. Only such a state of mind excludes unlawfulness of a medical intervention. Each patient must be aware of the proposed method of treatment, the risk of surgery, and its consequences. The scope of the information a physician is obliged to give depends on what a reasonable person objectively needs to know to make an "informed" and intelligent decision regarding the proposed medical procedure.

A doctor is obliged to provide his/her patient or patient's legal representative with accessible information about his/her health, diagnosis, and proposed and possible diagnostic, therapeutic methods, foreseeable consequences of their use or omission, results of treatment, and prognosis. A physician's failure to correctly inform his/her patient violates the instruction of art. 31 of the Act on the Medical Profession, and it

deprives the patient of the possibility to co-decide on a treatment method.

Discussion

The physician's obligation to inform means to inform not only about the methods of treatment used in the unit in which the patient resides, but also applies to methods used in other national medical centres, and in exceptionally complicated cases – also in foreign centres. If a patient has been subjected to several surgical procedures during his/her stay in a hospital, of which only the first was a planned procedure, the information obligation should be met again, in accordance with these new circumstances.

The patient's will must be conscious, which obliges a physician to provide accessible and understandable information about possible (including negative) consequences of a certain medical procedure. Only such consent removes unlawfulness of a medical intervention. However, the risk the patient accepts by agreeing to certain medical procedure does not include complications caused by the physician's mistakes.

The patient's consent for a specific medical activity is not a legal act but a statement of will, separately regulated in the Act on Patients' Rights. To agree to a certain medical procedure means to accept the risk of ordinary postoperative complications, assuming that they will not be caused by a fault. Patient's consent must be "explained" because without proper information about available methods, risks, and consequences of a medical procedure the consent is "unclear" and as such is defective (Figure 1).

The fact that a patient has used alcohol does not mean in itself that he/she is not able to express his/her informed consent. The mere fact of alcohol consumption does not result in the loss of the ability to express

consent or object to medical intervention [1]. The responsibility to qualify a patient to a suitable group (able or unable to consent) belongs to the physician who provides the medical procedures. In the event of a dispute, this conflict will have to be resolved by a court.

Findings

The Medical Profession Act allows physicians to cure without a consent in an emergency situation [2–5]. An examination or providing different health benefit without the patient's consent is permissible if he/she requires immediate medical attention, and if, because of his/her health or age, he/she cannot consent and is unable to communicate with his/her legal representative or guardian. A physician may perform medical activities without the consent of a legal representative of a patient or consent of a competent guardianship court if the delay caused by the proceedings to obtain consent threaten loss of life, serious injury, or serious health disorder.

The abovementioned provisions, however, do not apply to situations in which a patient capable of making a decision does not agree to the proposed procedure or other intervention. However, they can be used when the patient's condition, especially the degree of intoxication, prevents him/her from making an appropriate decision and it is not possible to obtain the consent of the guardian court or another entity authorised to express the so-called replacement consent.

Patients under the influence of alcohol may be able to express informed consent if their condition enables them to [6–8]. However, if the level of intoxication is so high that informed consent is not possible, a physician is obliged to gain the consent of replacement entities, such as a legal representative in the case of a patient who is incapacitated or a guardianship court if he/she possesses full civil rights. However, in urgent situations, when a delay caused by the process of gaining the replacement consent could cause medical consequences, a doctor may proceed without consent and inform the proper entities *post factum* [9, 10].

Conflict of interest

The authors declare no conflict of interest.

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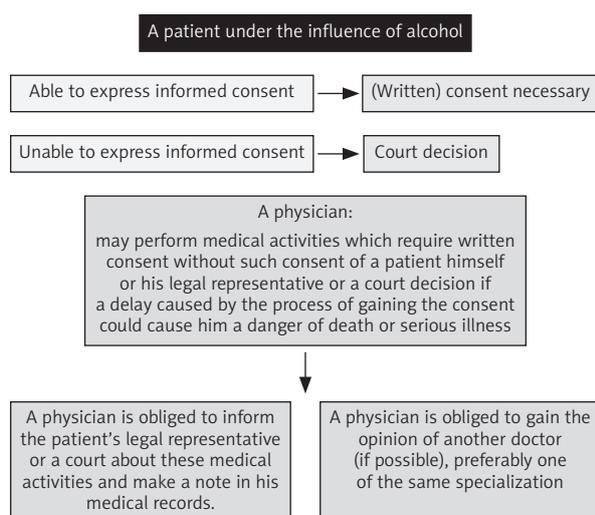


Figure 1. A patient under the influence of alcohol: rules of procedure

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