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Alcohol-intoxicated patients at admission room – analysis of legal aspects of rendered medical services

Justyna Zajdel[1], Radoslaw Zajdel[2], Adam Dziki[3], Grzegorz Wallner[4]

[1] *Department of Medical Law, Chair of Humanities, Medical University, Lodz, Poland*
[2] *Department of Medical Informatics and Statistics, Faculty of Health Sciences, Medical University, Lodz, Poland*
[3] *Department of General and Colorectal Surgery, Medical University, Lodz, Poland*
[4] *II Chair and Department of General Surgery, Gastroenterological and Alimentary Oncological Surgery, Medical University, Lublin, Poland*

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Abstract

Current legal regulations do not explicitly state whether the doctor should or should not ignore the patient's refusal to be provided with medical services when such refusal is given by the patients who is temporarily unable to take conscious decisions. The fact that there is no clear jurisdiction over the issue makes the relation between doctor and patient legally complicated. The doctor has no doubts whether he/she should or should not initiate the medical procedure when the patient clearly expresses the declaration of will, in which either refusal or consent is given to be provided with medical care. However, the patient remaining under the influence of alcohol, i.e. a substance which to some or great extent impairs cognitive functions, rational thinking, and the ability to evaluate incoming information. Alcohol makes the patient unable to interpret the information given by the doctor. Thus, the patient's consent or refusal to be provided with medical care is lacking in the needed elements of "informing" and "conscious declaration of will", which are considered by doctors and lawyers to be absolutely necessary to make such will valid. There are no clear, unambiguous regulations explaining how the doctor should behave in such cases. The authors of the presented study state that it is highly important to determine whether the intoxicated patient is able to understand the incoming information, evaluate it, make a conscious decision and finally, express an explicit (and therefore binding) refusal to accept recommended medical services. In the opinion of the authors, while dealing with such patients, the doctor should bear in mind the patient's right to make autonomous decisions, but that it is also the doctor's duty to provide the patient with medical services.

Key words

Alcohol intoxication, informed consent, legal medicine

INTRODUCTION

Current legal regulations do not explicitly state whether the doctor should or should not ignore the patient's refusal to be provided with medical services when such refusal is given by a patients who is temporarily unable to make conscious decisions. The fact that there is no clear jurisdiction over the issue makes the relation between the doctor and patient legally complicated. The doctor's decision, both to render medical services and abandon activities required to save the patient's life or/and health, might be questioned. The situation becomes even more complicated when the doctor does not provide the patient with medical help in an emergency situation, or when the doctor renders medical help without the patient's prior consent. In both cases, the doctor is civilly, criminally and professionally liable.

1. One of basic duties of the doctor is to render medical services in emergency situations. Article 30 of The Act on the Professions of a Medical Doctor and a Dentist [1] states that the doctor is obliged to provide medical help in any case in which abandoning medical services might result in negative implications, avoidable, if such services were rendered at the time when the patient had the best chances of recovery. In other words, on the basis of Article 30, it can be assumed that the doctor is obliged to provide the patient with medical help, regardless of the patient's age, state of health, logical or illogical thinking. The only factor which can influence that decision is an emergency situation.
2. The second principle concerning the relation between the doctor and patient, characteristic for both the Polish and international law, refers to the patient's consent to be medically treated. The doctor cannot render medical services unless the patient gives his consent. Under Article 32, Paragraph 1 of The Act on the Profession of a Medical Doctor and a Dentist, "the doctor can make a medical examination or render other medical services, subject to reservations provided by the Act of law, after the patient has given consent to initiating such services" [1]. Therefore, it can be concluded that any objection expressed by the patient renders the medical management process impossible, irrespective of the kind and character of the medical procedure.
3. The doctor has no doubts whether he/she should or should not initiate the medical procedure when the patient clearly

Address for correspondence: Radoslaw Zajdel, Department of Medical Informatics and Statistics, Faculty of Health Sciences, Medical University, Pl. Hallera 1, 90-647 Lodz, Poland.
E-mail: radoslaw.zajdel@umed.lodz.pl

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expresses the declaration of will, in which either refusal or consent to be provided with medical care is given. However, the patient remaining under the influence of alcohol, i.e. a substance which to some or great extent impairs cognitive functions, rational thinking and the ability to evaluate the incoming information, makes the patient unable to interpret the information given by the doctor [2]. Thus, the patient's consent or refusal to be provided with medical care is lacking in the needed elements of "informing" and "conscious declaration of will", which are considered by doctors and lawyers to be absolutely necessary to make such will valid.

The Act on the Profession of a Medical Doctor and a Dentist Profession, The Act on a Patient's Right and a Patient's Rights Spokesman and The Act on Medical Activity [1, 3, 4] do not provide any solution to the problem with regard to rendering or abandoning medical services as they do not directly refer to intoxicated patients. Moreover, the present regulations are ambiguous and not uniformly interpreted. Therefore, in medical practice, the doctor has to choose between providing medical help against the patient's will, or not initiating any medical procedure and thus putting the patient's life at risk or causing serious detriment to health.

AIM OF THE STUDY

In the context of the issue of rendering medical services to intoxicated people the following question was set:

- Should the doctor render medical services to the alcohol-intoxicated patient who has not responded to the doctor's recommended medical procedure?
- Should a refusal expressed by an adult and legally capacitated patient be considered binding and be the grounds for abandoning the medical procedure by the doctor?

MATERIALS AND METHODS

The material of the study includes legal regulations on rendering medical services, the possibility of expressing a consent or refusal to be medically treated by the patient, as well as situations when direct compulsion should be introduced. The authors used professional literature on various medical topics and presented the legal doctrine and jurisdiction of Polish courts.

The analysis refers to consent or refusal expressed by patients who have already come of age and are legally capacitated; in other words, they enjoy the full right to declare their will independently. Minors, patients partially incapacitated to take decisions to be medically treated, as well as adult patients, the mentally handicapped or retarded, and therefore legally incapacitated, were excluded from the study.

In the presented study, a research method was used which involves the analysis of the Acts of law and the opinion of the judiciary. By excluding contradictory elements, an attempt was made to create a common element which would allow for uniform interpretation of this controversial issue.

RESULTS

Definition of „alcohol-intoxicated patient". In this study, the term „alcohol-intoxicated patient" refers to a person who remains in "the state under the influence of alcohol" and to a person who is in "the state of intoxication". The two terms are defined by The Act on Sober Upbringing and Counteracting Alcoholism' [5]. Under Article 46, Paragraph 2 of the Act, the person "remains under the influence of alcohol when the blood alcohol concentration is between 0.2‰ – 0.5‰, or the person exhales 0.1 mg – 0.25 mg alcohol in $1dm^3$" [5]. Article 46, Paragraph 3 of the Act states that "the person remains in the state of intoxication when the blood alcohol concentration is higher than 0.5 ‰, or the person exhales more than 0.25 mg alcohol in $1dm^3$" [5]. The two definitions: "in the state under the influence of alcohol" and "the state of intoxication" are not grounds for implementing different procedures because of two different physical and mental states in the patients are in at a particular moment. To obtain an objective evaluation of the physical and mental state of the person who has consumed alcohol, the doctor should each time conduct a medical examination. The authors of the study decided to treat both the two physical and mental states on equal terms, as doctors mention cases in which patients were verbally coherent although the alcohol concentration was so high that, in theory, it posed a serious life risk. On the other hand, doctors observed cases in which their patients demonstrated impaired perception and were not verbally responsive, despite consuming a relatively small amount of alcohol. The authors suggest using the same terminology – the term: "alcohol-intoxicated patient" which would apply to a person who remains in the state under the influence of alcohol, and to a person who is in the state of intoxication [6].

Legal grounds for expressing the declaration of will. The Act on the Profession of a Medical Doctor and a Dentist, The Act on Patient's Rights and Patient's Rights Spokesman are the main Acts of law which present the procedure of expressing the declaration of will, either consent or refusal. Article 16 of The Act on Patient's Rights and Patient's Rights Spokesman states that "the patient has a right to agree to be provided with medical help or refuse to obtain such after he has been given information as provided by Article 9" [3]. Under Article 32, Paragraph 1 of The Act on the Profession of a Medical Doctor and a Dentist, "the doctor can make a medical examination or render other medical services, subject to reservations provided by the Act of law, after the patient has given his consent to initiating such services" [1].

This means that the doctor has a right to render any medical services only after he has been informed by the patient that he is ready to give his consent to such services. In the light of law, the doctor is forbidden to provide medical help of any kind if the patient has explicitly and consciously expressed refusal. The Polish judiciary has upheld that decision on many occasions. The verdict of the Supreme Court states that: "health objectives (curing, improving the state of health) should not be achieved at any cost; they should not overshadow other important matters for the patient" [7]. The Court of Appeal in Warsaw maintained a similar decision and stated that "a medical procedure performed without the patient's consent is an illegal act, even if it is carried out in compliance with current medical professional knowledge" [8]. According to the legal doctrine, the patient who has been

given medical help without prior consent has sustained harm. The harm does not imply physical injuries or detriment to health, but infringement of the right to take autonomous decisions [9]. The principle can be broken when the doctor has to introduce compulsion (described in particular regulations [10]), the patients remains in a bad condition of health (e.g. unconscious), and is unable to express the declaration of will, the patient's age prevents the making a decision, or there are other situations when no decision can be made (e.g. during a medical procedure/surgery there is a need to perform a different, additional procedure).

Intoxicated patient making no decision on the recommended medical procedure. From the legal point of view, such a situation when the patient is intoxicated and does not take any decisions on the recommended medical procedure, i.e. expresses neither consent nor refusal, is very convenient. Article 32, Paragraph 2 of The Act on the Profession of a Medical Doctor and a Dentist' states that "if the patient is a minor or unable to express the declaration of will, the consent of the patient's statutory representative is required; if the patient does not have a statutory representative, a custodial court is required to give such consent" [1]. This means that when the patient is unable to take a conscious decision, such a decision can be taken by the custodian court. It should also be emphasized that Article 34, Paragraph 7 of The Act on the Profession of a Medical Doctor and a Dentist' states that "the doctor has the right to render medical services if a delay in initiating a medical procedure would put the patient's life at risk, or cause serious detriment to the patient's health" [1]. In such cases, the doctor is required to inform the court of local jurisdiction about the medical services performed. The authors of the study, like other researchers [2], claim that the doctor should adopt a modified interpretation of their duty towards patient, and act in the best interest of patients if they are not able to make any decision because of inability to understand and evaluate the information given by the doctor, evaluate their state of health, and predict potential consequences. The doctor, therefore, ought to bear in mind the ethical principle *salus aegroti suprema lex esto.* Also Beauchamp and McCullough claim that such an infringement of the patient's autonomy by the doctor is entirely justifiable as it is aimed at helping the patient. It is worth mentioning that a similar opinion can be found in the Anglo-Saxon *common law* [11]. Moreover, Malone et al. state that the doctor not only has the right but is even obliged to act against a patient's will if such conduct lies in the best interest of the patient [2].

Intoxicated patient, refusing to be provided with medical services. Controversies arise when an adult alcohol-intoxicated patient refuses recommended medical help. There are not clear, unambiguous regulations explaining how the doctor should behave in such cases. The authors of the study state that it is highly important to determine whether the intoxicated patient is able to understand the incoming information, evaluate it, make a conscious decision and finally, express an explicit (and therefore binding) refusal to accept recommended medical services. Also foreign professional literature points out the key role of the right evaluation of the patient's intoxicated state by the doctor [12, 13, 14]. In the authors' opinion, while dealing with such patients, the doctor should bear in mind the patient's right to take autonomous decisions but also his duty to provide the patient with medical services.

Below there is information of current legal regulations. The patient is considered to take a conscious decision if he is able to analyze the information given by the doctor in the way described in Article 31 of "The Act on the Medical Doctor Profession and the Dentist Profession" and Article 9 of "The Act on Patient's Right and Patient's Right Spokesman" [1, 3]. Under Article 31, Paragraph 1 of "The Act on the Medical Doctor Profession and the Dentist Profession" "the doctor is obliged to inform the patient or his statutory representative on the state of health in a way understandable for the patient, diagnosis, recommended and possible diagnostic methods, management, consequences of introducing or abandoning the methods, results of procedures and prognoses" [1]. Article 31, Paragraph 6 of "The Act on the Medical Doctor Profession and the Dentist Profession" also states that "if the patient is unconscious or incapable of understanding the obtained information, the doctor informs the close person" [3]; Article 3, Paragraph 1, Point 2 of "The Act on Patient's Right and Patient's Right Spokesman" as of 6 November 2008 defines the term "close person".

It is pointed out in professional literature that the patient incapable of understanding the obtained information is a person who is alcohol-intoxicated, remaining under the influence of drugs, suffering acute pain or who has taken drugs which have impaired his mental well-being [15, 16]. In most cases alcohol-intoxicated patients demonstrate real, verbal ability to express their consent or refusal. However, it cannot be identified with the ability to make a conscious decision. We should differentiate between the ability to express a verbal and potential objection and the real, conscious ability to process the incoming information and, as a consequence, be involved in a thinking process which results in coming to a logical conclusion.

Having summed up the analysis of Polish law the authors conclude that any objection to rendering medical services expressed by the patient results in abandoning them by the doctor. The objection, however, is valid only when it is made consciously and the patient is not restricted by anything. The presented analysis of current normative acts remains in compliance with Polish jurisdiction and doctrine. The above examples of court verdicts refer exclusively to the patients who are capable of taking autonomous, conscious decisions on accepting recommended medical help.

The resolution issued on 27 October 2005 by the Supreme Court points out that "the patient is not obliged to agree to be provided with medical help and the doctor cannot force the patient to accept such, either by performing some medical procedures or by addressing to a court to deprive the patient of his free will to take his own decisions" [17]. Apart from this, the Supreme Court also stated that "respecting the patient's autonomy means respecting the patient's will regardless of motives (religious, ideological, health); therefore it should be assumed that the patient's refusal is binding for the doctor. It might seem unreasonable in the doctor's opinion; however medical deontology requires him to respect it" [17]. Also according to the doctrine, the patient's autonomy outdoes the doctor's duty to provide medical help [18].

The case presented below refers to the problem of refusal expressed by a drunk man and a decision of the Supreme Court. While being under the influence of alcohol the man fell down and sustained a spine injury [19]. Initially, the man

did not agree to be admitted to hospital. Eventually, he was hospitalized the day after. Despite having been treated, the man was partly paralyzed. The courts of first and second instance dismissed the plaintiff's claim by stating that the man had refused the help at the best possible time, i.e. when the patient's chances for recovery were the most promising. While reviewing the cassation claim, the Supreme Court decided to re-examine the case. The court also explained that "the doctor should remember to inform the patient on the way of medical treatment, the necessity to hospitalize him and potential health consequences which might be caused by delayed implementing of the medical procedure or by not initiating it at all, especially when the patient is under the influence of alcohol". The presented case enables us to conclude that the man was so strongly intoxicated with alcohol that he did not feel pain. The patient had difficulty evaluating his real health state and taking a right decision. Moreover, at the beginning of the examination it is difficult to evaluate objectively to what extent the patient's perception is proper. The state of verbal coherence does not necessarily go along with rational thinking and the ability to take conscious decisions. In the case described the doctor should have ignored the patient' refusal as at that moment his perception was impaired and he was therefore unable to think logically. The doctor should have acted against the patient.

The authors claim that Polish judicature should adopt practical, uniform solutions to the problem of intoxicated patients who do not agree on medical treatment. "The Act on the Medical Doctor Profession and the Dentist Profession" might be an initial step to find such a solution. Under this act the doctor is allowed to address to a custodian court in order to receive a consent and then perform a medical procedure, risky diagnostic activities to a patient who cannot take conscious decisions (Article 34, Paragraph 3 of "The Act on the Medical Doctor Profession and the Dentist Profession"). It should be mentioned that currently the doctor has a right to ask the court for such consent, which makes his medical activities be performed in compliance with law and therefore legally justified. However, this method is not always quick and effective. In the authors' opinion a good solution would be to call a group of medical consultants who would decide whether or not ignore the drunk patient's refusal to accept medical help. A joint decision would be more objective and the doctors who have made it would not be liable because of the infringement of the patient's autonomy. Under Article 33, Paragraph 1 and Paragraph 2 of "The Act on the Medical Doctor Profession and the Dentist Profession" allows the doctor to take a decision "on behalf" of the patient after he has consulted the problem with other medical professionals. The articles provide that "the doctor can render medical services without the patient's consent if he needs immediate medical care and his state of health prevents him from expressing the consent (…). The decision the doctor is going to take should be first discussed with other doctors". The quoted regulations refer only to procedures of "normal risk". They could be, however, extended and could also refer to "high risk" procedures.

Article 40, Paragraph 1 of "The Act on Sober Upbringing and Counteracting Alcoholism" also allows for rendering medical services to a person expressing his refusal to initiate such services. The act states that "an alcohol-intoxicated person who poses a threat to others or who remains in a state that is directly hazardous for him can be forced to go to a sobering house or other medical centre maintained by the local administration (…)" [5].

Article 41 of The Constitution of the Republic of Poland as of 2 April 1997 states that imprisonment or restriction of freedom can be carried out in compliance with the provisions of the act [20]. A form of restriction of freedom is taking a drunk person to a medical centre, sobering house or other place rendering medical services. After the person has been taken to a sobering house, a police station or other place, he can be transported to a medical place which provides 24 hour medical help. The decision on transporting the person depends on the doctor who has conducted a physical examination. Under Paragraph 4, Item 3 of the Regulations on bringing, admitting and discharging intoxicated patients as well as on the system of sobering houses or other units maintained by a local administration, "one should immediately notify medical emergency service – doctors or paramedics if he/she has observed any health disorders in the person brought to a sobering house, a police station or other place" [21].

Although "The Act on Sober Upbringing and Counteracting Alcoholism" does not explicitly state that the doctor can get the patient to accept the recommended medical procedure, it seems obvious that after the patient has been brought by force, the doctor can continue using physical force even if he were to act against the patient's will. Literally, Article 40, Paragraph 2 of "The Act on Sober Upbringing and Counteracting Alcoholism" states that it is possible to bring the drunk person to a medical centre, a sobering house etc. every time he is in life- or health-threatening circumstances [5]. It should be added that the case does not have to be really urgent and the patient's life and health do not necessarily have to be seriously threatened. Bearing that in mind, we can assume that under the act the doctor has a right to limit the patient's personal freedom in order to render medical services even against the patient's will. Dukiet – Nagórska T. has a similar opinion. She says that the activities carried out for the patient are of therapeutic nature and they are performed so as to save the health and life of the intoxicated person. In such cases the doctor should assume there is an implied assent [22].

When we analyze Article 40, Paragraph 2 of "The Act on Sober Upbringing and Counteracting Alcoholism" we encounter a question: Should the doctor provide the intoxicated patient with basic medical help against his will only when he has been brought or transported by a person authorized to do it (a policeman, traffic warden, medical ambulance) or does the compulsion refer also to the patient who has been brought to an admission room under different circumstances (e.g. by his guardian)? We should emphasize that the provisions of "The Act on Sober Upbringing and Counteracting Alcoholism" do not apply to the patient who has been brought to a sobering house by his relatives or friends. In such circumstances the doctor has a right to force the drunk patient to accept his medical help when he realizes the patient has expressed his refusal not consciously. The justification for such conduct can be the doctor's assumption that the intoxicated patient is not capable of evaluating the situation objectively; he cannot consider the information given, including the information on potential consequences of refusing the doctor's help.

DISCUSSION

Article 4 of "The Act on the Medical Doctor Profession and the Dentist Profession" states that "in his medical practice the doctor is obliged to proceed in compliance with current professional knowledge, by using available methods of treatment, prevention and diagnostics. He should follow ethical principles and perform his duties with due diligence" [1]. In other words, the doctor has to implement best possible solutions to prevent the patient from negative consequences for his health and/or life. In the light of Article 30 of "The Act on the Medical Doctor Profession and the Dentist Profession" the term "due diligence" is identified with the doctor's obligation to help in any situation in which a delay in his help would result in the patient's death or serious detriment to health [1]. The duty becomes even more meaningful especially when the patient is unable to take a conscious decision on the medical procedure and respecting his "unconscious" decision could result in negative consequences for his health and/or life or put them at risk.

Legal regulations do not explicitly state the doctor should introduce direct compulsion. However, he should be more flexible about using it for intoxicated patients and treat direct compulsion as the "due diligence". Professional literature calls such paternalistic conduct of the doctor a sort of "insurance policy", especially when the person who is in the possession of certain goods (e.g. life and health) is not able to appreciate the value of the goods or objectively evaluate the hazard [23].

The authors give answers to the questions above and draw the following conclusions:

1. When the alcohol-intoxicated patient does not take any decisions because he does not understand or evaluate the incoming information and cannot properly assess his health condition and predict consequences, the doctor not only has a right but is also obliged to act without the patient's consent if such conduct lies in the interest of the patient.
2. When the alcohol-intoxicated patient refuses to be provided with medical help it should be assumed that he is not fully aware of the circumstances in which he is. He cannot think clearly so his refusal appears to be invalid. Therefore, the doctor starts his medical treatment. The consent should be given by a custodian court. If it is difficult to obtain such or the legal procedure is too long takes, the doctor should take a right decision on behalf of the patient.

The authors of the study claim that there is a relation between the refusal to accept medical services expressed by the alcohol-intoxicated patient and the consent to be provided with such services. In both these situations the declaration of will is invalid. The authors believe that there is no need to discuss the problem in a different study. The same way of thinking can be implemented to solve the problem. The duties performed by the doctor in the case of refusal and consent are equally legally justified.

The issue of direct compulsion should be discussed in a more detailed way. One must answer the question whether the doctor can introduce direct compulsion in the case of alcohol-intoxicated patients. Such analysis is not relevant to the topic of the study so it will be carried out in a different research work.

Having analyzed some acts of law and the opinion of judicature and having excluded contradictory elements the authors managed to create a uniform opinion on the discussed issues.

1. When the alcohol-intoxicated patient does not take any decisions, the doctor can initiate a proper medical procedure.
2. When the alcohol-intoxicated patient definitely refuses to be provided with help, the doctors should evaluate the health condition of the patient and his ability to express a conscious refusal before he proceeds to initiate any medical procedures.
3. A team of medical consultants should evaluate to what extent the patient's decisions are conscious as such joint evaluation is expected to be more objective.
4. After the team of medical consultants have decided that the alcohol-intoxicated patient is fully aware of his refusal, the doctors are obliged to abandon any medical procedures and enter the information in the patient's medical history.
5. In the case of alcohol-intoxicated patients to which "The Act on Sober Upbringing and Counteracting Alcoholism" has been applied and have been brought to a sobering house, a medical centre etc. the patient's refusal is not binding for the doctor and there is no need to consider whether it has been taken consciously or unconsciously.

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