

Response to letter to the Editor regarding physical restraint in psychiatric setting

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Abstract

The following letter addresses the issues of the applicability of physical restriction, with particular attention to the therapeutic regime and its meaning as a therapeutic or restrictive provision, while considering possible alternative measures in the context of Italian jurisprudence. The letter, in response to the questions posed by Cioffi and Tomassini, examines the possible legal implications for doctors and suggests that the integration of jurisprudence and psychiatry seems to be mandatory to define the operational protocols for the management of physical restraint.

Introduzione. La seguente lettera affronta il problema relativo all'applicabilità della contenzione fisica, con particolare riferimento al regime terapeutico, nonché la sua valenza giuridica quale misura terapeutica o restrittiva, considerando eventuali approcci alternativi. La lettera, in risposta alle domande poste da Cioffi e Tomassini, esamina le possibili implicazioni legali cui possono incorrere i medici nell'applicare la contenzione fisica, suggerendo la necessità di un'integrazione tra le norme giurisprudenziale e la scienza psichiatrica, al fine di definire i protocolli operativi di gestione della contenzione fisica. *Clin Ter 2019; 170(4):e??-???. doi: 10.7417/CT.2019.????*

Key words: Medical liability, Forensic Psychiatry, Legal Medicine

Dear Editor,

We are grateful to the authors who showed interest in our article on physical restraint (1) and proposed constructive comments on the question discussed in our manuscript (2). We want to briefly implement their suggestions on the argument. Based on the sentence issued by the Italian Court of Cassation (n.50497-18), containment measures seem to be justified both in case of self and hetero-aggressiveness, in accordance with our opinion that, in case of motor and psychic agitation, the protection of patients and third subjects is equally important. Furthermore, in clinical setting a clear distinction between purposes of damage towards oneself or others can be difficult to make (3). Concerning the issue of

the applicability of physical containment in case of Voluntary Treatment, must be underlined that the use of physical restraint assumes legitimacy when the justification of "state of necessity" is recognized (art. 54, Italian Criminal Code.). Otherwise, explicit consent of the patient is required. In case of serious mental alterations, the criteria for the Involuntary Health Treatment must be satisfied in order to apply physical restraint. Although fundamental in certain circumstances, physical restraint measures represent an unpleasant condition both for patient and personnel involved in care (4-6). As a consequence, the question arisen by the Authors about the choice between contention, pharmacological treatment and isolation management assumes great importance. The Supreme Court emphasizes the need to limit the use of mechanical restraint to completely exceptional situations, while respecting the inviolability of personal freedom in accordance with Article 13 of the Italian Constitution. Furthermore, the guarantee position held by the health care professional, and the legal obligations of protection and custody of the patient (Art. 40, Italian Criminal Code) related to it, do not in any case allow exceeding the limits established by law for the use of restraint. As a consequence, physical restraint impacts not only personal freedom, but also physical integrity and human dignity. Consistently, the application of physical restraint appears to expose the professional to the possibility to be involved in a criminal offense. Nevertheless, alternative measures of seclusion and pharmacological restraint must both be weighed according to costs and benefits for the patient in terms of efficacy, adverse physical effects and impact on general conditions. If pharmacotherapy and physical restraint can be considered comparable as protection measures for physical safety, the examined sentence traces a difference in terms of curative purposes. Nevertheless, it appears of importance to establish if physical restraint is a legitimate mandatory measure in the context of a security position (art. 40, Italian Criminal Code) or if it has to be considered as a provision to be justified according to a necessity state (art.54, Italian Criminal Code). According to our point of view, a proper interpretation of the issues above requires the integration between medico-legal (11-18) and

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clinical aspects in order to determine rules of good professional practice, especially because the matter of containment is particularly controversial in Psychiatry (7-10).

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