

Psychological, ethical and legal aspects of neurosurgical procedures in conscious patients with judgment consent

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Abstract

Neurosurgical procedures are often performed on patients with brain diseases, making them mentally dysfunctional. These patients may be unconscious, and the surgery is emergency and life-saving then. Its execution from a legal point of view is performed with implied consent. Another problem, both ethically and legally, are the conscious patients who, however, has mental limitations and disturbed criticism, are fully conscious and who do not agree to pronounced treatment. Judgment approval is necessary in these cases. A certain dilemma is the implementation of treatment during the consistently emphasized refusal of treatment. It is difficult for physician, especially since he has contact with this patient every day. We present our own experience in the treatment of such patients. We share our comments and observations. We describe cases of patients treated for brain tumors, hydrocephalus and chronic subdural hematomas. We present the daily ethical, legal and organizational aspects of treating such patients. We suggest that empathy and conversation with such patients is of key importance.

Keywords: ethical, legal, neurosurgical procedures, consent

Article Received: 18 October 2020, Revised: 3 November 2020, Accepted: 24 December 2020

Introduction

Every medical procedure requires the informed consent of patient. In a situation where it is a life - saving surgery that must be performed immediately, it is obviously performed without the patient's consent. Such a patient is usually unconscious and in severe condition. Then the physician decides to perform surgery, most often

determines the indications with another specialist and performs the procedure [1,2]. This has to be documented in detail in medical papers, and after the procedure, there is an obligation to report it judgment in order to obtain approval. This the legal and organizational procedure in The Republic of Poland [1].

According to the polish law, responsibility to give informed consent to treatment for the patient is

regulated by legal acts: the Act on the Medical Profession in the Republic of Poland, the Medical Code of Ethics and, the European Bioethical Convention of the European Union [2,3]. Before undergoing a surgical procedure, the patient must be informed in detail about the essence of the operation, benefits and possible complications [4,5]. The patient must understand the disease, and must know what would happen if the surgical procedure would be abandoned. The patient also needs to be aware of any possible alternative treatments, if any [5]. By signing the consent, the patient accepts that physician will incise his skin and tissues. Patient also takes the risk of common postoperative complications. In the case of incapacitated patients, i.e. partially or completely

deprived of physical capacity to perform legal acts, the informed consent to the surgery is signed by the patient's legal representative, which is equal according to the law [6,7].

Case reports

We present case reports of patients operated on with judgment approval, who were, however, conscious and in speech contact, but illogical.

In the period November 2020- February 2021, five such patients were treated surgically. Relevant data about these patients - both neurosurgical and mental conditions are presented in Table 1.

number of patients	medical diagnosis	mental disorder
2	brain tumor (glioma)	schizophrenia - psychotic syndrome
2	chronic subdural hematoma	severe dementia
1	hydrocephalus - shunt dysfunction	mental retardation in the course of cerebral palsy

Table 1. Conscious patients operated on the basis of judgment approval

In the topic of patients with gliomas, these were always high grade gliomas (HGG). These patients suffered from schizophrenia for years, and during admission to our neurosurgical department they were in the state of acute psychotic syndrome. They did not give formal consent to surgery. The consulting psychiatry specialist stated that they are incapable of self - determination, are not aware of the disease, and are not critical. They are unaware of the treatment method and the consequences of abandoned surgery. They were male aged 49, 58 and 60. A judgment procedure was initiated to obtain consent for the surgery. Those patients presented acute psychotic disorders in contact with the doctor. It was impossible to get any communication with them. It was not possible, despite all efforts, to convince these patients to undergo surgery, regardless of the simultaneous court procedure. After obtaining the consent for

surgery, the patients took premedication drugs without any problems and underwent general anesthesia. These patients were treated surgically. In one case, radical resection was performed, in one case cytoreduction (partial removal of the tumor), and in one case, a biopsy. After the surgery, these patients were in an unchanged mental state, with psychotic symptoms, uncritical towards reality and unaware of the treatment method. Their behavior was calm, they did not make any claims, that they had been operated on. Despite the fact that in the entire process of treating these patients - neurosurgical surgery and perioperative care, the medical staff showed empathy and tried to explain to patients the essence of the disease and the need for treatment, it was not possible to reach an agreement with these patients because of advanced and decompensated schizophrenia. HGG MRI of one of these patients is shown in Figure 1.

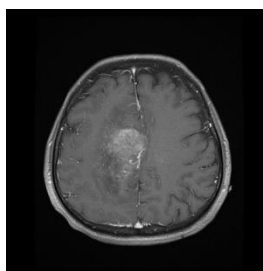


Figure 1. MRI - HGG of treated patient

In the topic of patients treated for chronic subdural hematoma (ChSH), the patients were in good general condition, conscious, but they did not agree to surgery. Their mental state was disturbed by severe dementia. The psychiatrist stated that the patient was not able to make decisions about himself and that his criticism was disturbed. The consent for surgery was issued by the judgment. While waiting for surgery, showing great empathy, we managed to establish an understanding with the patients and convince them of the legitimacy of the

surgery. The surgical treatment of the evacuation of the hematoma through the burr hole was performed both with the consent of the judgment and with the patient's approval. Obviously, this approval was not important from the formal and legal point of view, however, for the patient's comfort and the comfort of the neurosurgeon, it was essential. Surgical treatment was uncomplicated. The patients were discharged home in good general condition. ChSH CT of one of these patients is shown in Figure 2.



Figure 2. ChSH of treated patient

In the subject of a patient with shunt dysfunction and hydrocephalus, he was mentally retarded. He was calm, showed a good mood, even euphoria (most probably in the course of mental disorders) and did not agree to surgical procedure. The patient had hydrocephalus due to shunt dysfunction. Shunt was implanted 15 years earlier. The psychiatrist stated that the patient was unable to make decisions about himself and that his criticism was disturbed. The consent for surgery

was issued by the judgment. While waiting for surgery, showing great empathy, we managed to establish an understanding with the patients and convince them of the legitimacy of the operation. The operation involved implanting a new shunt. The patient was discharged home in good general condition and satisfied with the treatment process. CT presenting hydrocephalus of treated patients is shown in

Figure 3.

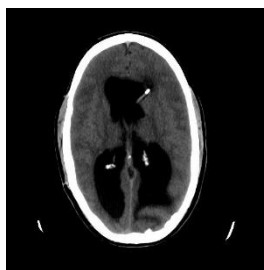


Figure 3. Hydrocephalus of treated patient

When dealing with such patients, the authors of this manuscript, apart from the judicial procedure, conduct parallel conversations in order to obtain, through empathy, the consent of the

patient himself, although formally insignificant, but very important from a psychological and interpersonal point of view (Figure 1).

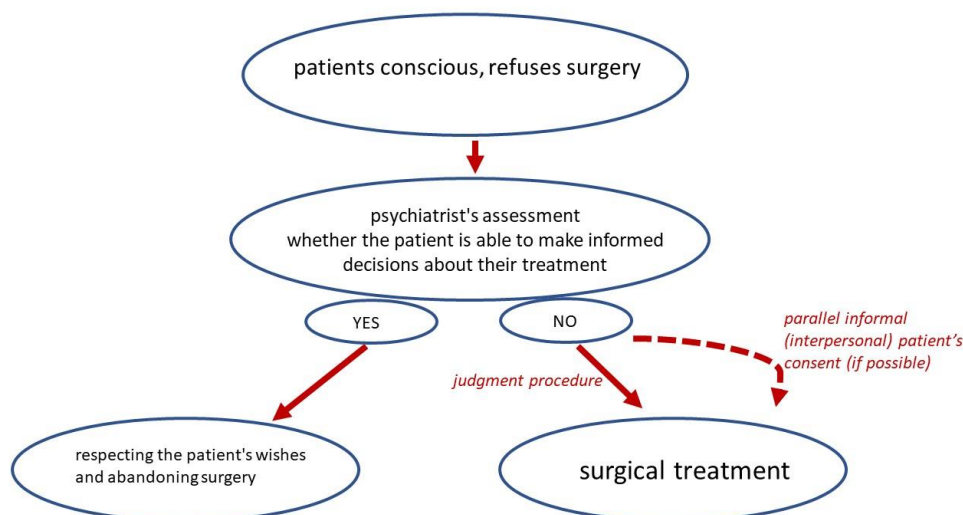


Figure 4. Algorithm for the management of conscious patients incapable of informed consent

Legal point of view

In the legal system of the Republic of Poland, there are 3 normative legal acts regulating the issue of informed consent to medical procedures:

1. The Act on the Medical Profession (pol. Ustawa o Zawodzie Lekarza)
2. The Code of Medical Ethics (pol. Kodeks Etyki Lekarskiej)
3. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine known as European Bioethical Convention

No normative act regulates the situation when a patient who cannot agree to surgery is conscious but mentally disturbed and it is possible to have conversations with him. From a legal point of view, consent must be given by a judgment [7], and any simultaneous informal consent out of legal and administrative procedures.

Conclusions

If it is necessary to obtain judgment consent for the surgical treatment of a conscious patient with mental disorders, it is justified from the point of view of medical empathy and interpersonal relations to obtain informal approval of the patient for surgical treatment. It is beneficial for the patient's comfort - it allows to avoid performing

medical procedures against the patient's will. This is also important for the comfort of the physician.

Abbreviations

- ChSH - chronic subdural hematoma
- HGG - high grade glioma

Declarations

- Availability of data and materials: All relevant data are within the paper.
- Competing Interests: The authors declare that they have no conflict of interest
- Authors contribution: ZS treated the patients and noticed the essence of communicating to the patients about consent in parallel to judgment procedure, taking into account empathy and interpersonal relations, KN also treated the patients and participated in obtaining the judgment approvals. AG - a lawyer - was a consultant in the field of law, SS from India collaborated on the subject of informed consent and empathy, being a Bachelor of Medicine from India - she is interested in interpersonal relations with patients and she participated in the editorial work. MŚ checked manuscript in formal terms.

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