DOI: 10.15386/cjmed-628

THE ETHICS OF THE RELATION BETWEEN THE CONVICTED PATIENT AND THE PHYSICIAN

CRISTIAN GHERMAN[1,2], OVIDIU CHIROBAN[1], DAN PERJU-DUMBRAVA[1]

[1]Department of Legal Medicine, Iuliu Hatieganu University of Medicine and Pharmacy, Cluj-Napoca, Romania
[2]Victor Babeș University of Medicine and Pharmacy, Timișoara, Romania

Abstract

Background and aim. *Approaching the convicted patient is a topical issue in terms of alignment with EU provisions and recommendations, more so in the context of year by year increase in the number of convicts and consequently, prison patients. The prison patient exhibits increased vulnerability in regard to the rest of the convicts due to his/her medical status overlapping personality changes induced, while coping with a new environment. This represents a challenge for the physicians involved in the expertise process, which must act objectively within the limits and by the principles of professional ethics, while confronting a patient influenced by the prison environment.*

Methods. *We studied the existing legal and ethical framework concerning the expertise in view of sentence postponement/interruption on medical grounds and made a comparison between the theoretical information available and the "real life" situations encountered in our experience at the Institute of Legal Medicine Cluj-Napoca. Following this step we tried to establish some principles needed to optimize health care in the penitentiary system by detecting and sanctioning situations of deceptive behavior, doubled or not by simulation and over-simulation.*

Results. *Convicts present pathologies documented in medical records, but accuse new symptoms that could suggest a new pathological condition. During the expertise, convicted patients emphasize their symptoms and/or claim new symptoms unrelated to their documented medical condition. Convicts submit repeated requests for which treatment solutions within the NAP healthcare system had been already formulated.*

Conclusion. *The patient must be properly informed about the steps to be taken and duration expected in performing a legal medicine expertise in pursuit of sentence postponement or interruption for the treatment of a medical condition that cannot be properly addressed within the NAP sanitary system. Information should come from authorized sources. Efforts to determine unauthorized sources (mainly "experienced" detainees with records of unsubstantiated demands) are surely beneficial.*

Keywords: inmates, penitentiary, simulation, legal medicine expertise.

Article motivation

Detainees executing custodial sentences in prison represent a special category as their status differs from the rest of the society. Imprisonment for committing a felony subjects the detainee to conditions that mark both his/her physical condition and personality. A proportion of the detainees who are also patients of the health care system in the National Administration of Penitentiaries (NAP) sanitary network exhibit various pathological conditions. However, a noticeable number of inmates end up as patients due to self-harming or trauma inflicted by fellow inmates. Rights of in-custody persons are clearly stipulated in laws and internal regulations aligned with EU provisions and recommendations. The prisoners' right to health care - diagnosis, treatment and care - is strictly observed within the NAP sanitary network. Despite serious efforts, presently there is a shortage of qualified medical staff and equipment demanded and some pathological conditions cannot be investigated and properly treated in the NAP

Manuscript received: 04.01.2016
Received in revised form: 17.05.2016
Accepted: 26.05.2016
Address for correspondence: gcpnad2002@yahoo.com

sanitary network. Legal provisions allow treatment of such conditions in the public health care system provided that a legal medicine expertise would confirm that such action is necessary. The patient-physician relationship in the development of this medical expertise presents some particular aspects because of personality changes induced by the prison environment and in relation to the interdisciplinary character of this expertise.

The situation in Romania

Convicts, whether or not presenting pathological conditions, have to comply with prison routine and this can lead to several personality shifts induced by the need to obey institutional rules and to adapt to living among other convicts. Restrictions imposed by prison life induce a personality destructuration, i.e. giving up the former self in times of freedom, and lead to a new structure, i.e. adaptation of the individual to the new social identity, that of a prisoner. Separated from the outer world, detainees are restricted to relate to penitentiary personnel and other inmates. New acquisitions in terms of personality traits are determined by the newcomers' need to integrate. Prison is a limited and limiting environment where influence of other convicts is considerable. Arguably detainees are highly vulnerable to such influence and this may result in pursuing certain lines of action, some of them beneficial, e.g. enrolling in educational/spiritual programs or various physical labor activities.

Concern for the prisoners' health is an institutional necessity in view of EU provisions and recommendations in terms of civil rights to which Romania has subscribed. Since our prisons are overcrowded, increased efforts are required to prevent, diagnose and treat all pathological conditions within the penitentiary sanitary system.

A quick overview of the current situation, as revealed by official reports, shows the main challenges in this field. The number of prisoners in NAP custody was 31,874 as of December 31, 2014, while in March 2015 the figures were 29,952 (including 321 minors). If allocating a minimal area of 4 square meters per detainee, the NAP system could host a number of 18,893 detainees. Despite the significant reduction, the cell occupation index was 157.78% as of March 3, 2015. If relating to current regulations, the NAP hosting deficit totaled a number of 10,969 places in penitentiary units. Another aspect which could rise problems in the future period is the age based structure of convicts population: 9,693 detainees were between 31 and 40 years old, 8,249 between 41 and 60, 648 had over 60 years of age [1].

In our country, primary care for convicted patients is provided in medical practice offices within each prison. Specialist primary care involves transferring inmates to one of the 6 penitentiary hospitals in the country, according to the pathology presented and hosting availability. A penitentiary hospital is a unique structure that meets the criteria required of a prison unit, as well as medical equipment and healthcare professionals required of a hospital. The prison system has a total of 1,379 beds (March 2015). The number of medical consultations is increasing and hospital admissions have evolved from 11,328 in 2013 to 15,327 in 2014. On the other hand, admissions to secure medical units of the Ministry of Health (MOH) dropped from 626 in 2013 to 475 in 2014, relevant in claiming increased abilities and endowments in the NAP healthcare network [2]. In addition, increased number of co-operation protocols with medical and pharmaceutical service providers increases the detainees' access to healthcare and medication.

Rights and obligations of detainees – legal issues

Persons in custody can exercise their rights within legal limitations. Law 254/2013 [3] provisions guarantee their freedom of conscience, opinion and religious beliefs, the benefits of work, education and information, access to personal documents and legal counseling, communication, petition and correspondence rights, as well as marital rights (including scheduled intimate visits) or the possibility to acquire and own goods. There are some objective factors limiting the prisoners' possibility to exercise their conferred rights, depending on the regime of punishment enforced and security measures imposed on them, age or health status. Inmates' obligations are stated in the Internal Regulation of the National Administration of Penitentiaries [4].

Access to healthcare is one of the basic detainee rights. Medical examinations provided include investigations conducted by visiting civilian or legal medicine physicians and appropriate treatment for diagnosed (including psychiatric) conditions. Complete confidentiality of medical records is ensured. Facing patients in detention represents a great ethical challenge for physicians, including psychiatrists, working in correctional settings, with potential tensions between forensic and therapeutic demands [5]. There are several reasons why convicts turn into patients in such large numbers: they have pre-existent pathological conditions, or acquire some health problems after imprisonment, or their medical condition is the result of violence or self-harm. Cases of self-harm were frequently associated with younger age, white ethnic origin, prison type, and a life sentence or waiting forsentence [6]. Another study revealed that educational and occupational achievement, family history, demographic factors, mental health service use, and results of mental health screening at intake were predictive of self-injury [7]. However, many studies have demonstrated that the detainees population runs a higher risk of suicide than the general population, requiring a systematic diagnosis and appropriate treatment by mental health professionals during the imprisonment in order to prevent the risk of suicide [8].

A vital role in this respect is held by the Penitentiary Surveillance Judge, who will listen to all inmates' complaints, including health problems, and acts as an

interface between them and the court that holds jurisdiction over the respective penitentiary. Special attention is given to monitoring the human rights under the European Convention of Human Rights. Recommendations in 30 endings of the Penitentiary Surveillance Judge and 23 criminal sentences pronounced by the courts in 2014 regarded detainees rights, including the need to ensure optimal accommodation conditions (14 decisions/endings), allocation of sanitary materials (1 ending) and entitlement to healthcare (3 endings). Conditions of detention have been the subject of 148 views sent to the Ministry of Foreign Affairs (MFA) as government agent for the European Court of Human Rights (ECHR). The fact that Romania was condemned by the ECHR for violating detention conditions in 32 decisions in 2013 (totaling Euro 221,819.00 in damages) and 29 resolutions in 2014 (amounting to 196,400.00 Euro) shows that the situation in the penitentiary system requires efforts to correct this issue [9].

Allowing representatives of non-governmental organizations (NGOs) the possibility to check prison conditions and direct contact with the convicts serves as a control mechanism for observing detainees rights. In 2014 alone, a number of 74 evaluation reports were the result of NGO representatives' visits [9].

Legal framework for performing medical expertise in view of sentence postponement/ interruption on medical grounds

Analyzing procedural matters of the revised Romanian Code of Criminal Procedure when assessing if a person sentenced to a custodial sentence is suffering from pathological conditions that cannot be treated in the NAP healthcare network, one can notice that several details were changed in relation to February 2014 provisions. In essence, article 589 (former article 453 in the old code) which deals with sentence postponement cases and article 592 (former article 455) which deals with sentence interruption cases are almost similar in content. In case of sentence postponement, the application may be submitted only by the convict or the prosecutor. A sentence interruption may also be requested by the court in whose jurisdiction the convict's place of detention is or by the prison administration. In both cases a waiver request may be filed at any time by the applicant. Situations in the admission of a sentence postponement request are clearly stipulated: when a legal medicine commission establishes that the convict's medical condition cannot be treated either in the NAP health network, or under permanent security guard in public healthcare units, provided the convict does not pose threats to public order. Cases when the sentence interruption or postponement cannot be ordered include situations where the convict has harmed him/her-self, if he/she self-inflicted his/her medical condition, if he/she refused medical treatment or surgery intervention or avoided to submit to legal medicine examination [10].

Reception of initial verbal requests and submission of the convicts' formal written requests regarding postponement or interruption of the sentence on medical grounds are the responsibility of the penitentiary surveillance judge designated by the court that has jurisdiction over the penitentiary. The requests are submitted to the court, the only body empowered to order the performing of a legal medicine expertise in connection with any such request regarding a sentence disruption. Within this framework there is no medical "filter" between formulation and acceptance of such requests. Virtually all sentence postponement or interruption requests sanctioned by the court are followed by legal medicine expertise to assess the convicts' medical condition.

The methodology of performing legal medicine expertise in regard to sentence postponement or interruption requests is provided by Law no. 459 on the organization and functioning of legal medicine institutions (published in Official Gazette no. 418/27.07.2001). Concerning the postponement or interruption of a prison sentence, article 30 mentions that the commission conducting a legal medicine expertise in view of sentence postponement or interruption must include a forensic physician, a medical representative of the NAP and a certain number of specialist physicians pending on case details, and states the mandatory conditions needed to be met in performing the expertise, including thorough physical re-examination conducted by the commission members [11].

Given these aspects, it follows that, except for self-inflicted injuries and those produced by fellow inmates, for all requests based on pre-existent medical history or documented pathological conditions induced during detention, medical status would be the only reason behind such request [12]. Official information on this matter suggests otherwise. The number of expertises conducted in view of sentence postponement or interruption has seen a significant reduction (753 in 2012 and 909 in 2013) compared to past decade figures (6,287 cases in 2000). Despite such severe triage, 20% of the requests ordered to be conducted at the "Mina Minovici" National Institute of Legal Medicine (NILM) in 2012 were actually blocked by the convicts' refusal to submit to examination by the medical commission [13].

It thus becomes evident that, along with the medical status, several factors influence the convicts' motivation and timing in requesting such expertise. There are cases of repeated requests for medical expertise even in situations where conclusions that one's medical condition can be treated within the NAP sanitary system were reached. This kind of attitude is likely to generate an unjustifiably high number of requests, resulting in an unjustifiably high number of unfinished expertise which lead to work overload on behalf of medical and security staff required to transport convicts to the six penitentiary-hospitals where thorough

investigations can be performed, plus additional costs. Also the time consumed on these procedures is detrimental for patients in actually serious medical conditions, which face long waiting lists before being examined by the legal medicine commission.

Ethical Issues: Commission members vs. patients

Correctional medicine is associated with unique medical ethics issues that are often difficult to interpret using fundamental ethical principles from clinical medicine [14]. One aspect that needs special attention in reference to medical expertise requests is the high number of cases when the commission conducting the expertise indicated that the disease could safely be treated within the NAP sanitary network and declined to recommend sentence postponements or interruptions. From another point of view, courts still repeatedly accepted requests submitted by the very same convicts even if no changes in the medical condition were observed. It should be noted that current legal provisions do not limit the number of requests one can submit, irrespective of one's previous history including finalized expertise concluding a particular medical condition can be treated within the NAP sanitary system and/or dropouts i.e. declination to submit to thorough examinations.

Assumptions about the causes leading to such situations are:

• Convicts present pathologies documented in medical records, but accuse new

symptoms that could suggest a new pathological condition;

• During the expertise, convicted patients emphasize their symptoms and/or claim

new symptoms unrelated to their documented medical condition;

• Convicts submit repeated requests for which treatment solutions within the NAP healthcare system had been already formulated.

Simulation and over-simulation are documented features of detainees' behavior and experienced medical staff should have no problems in detecting fake claims in NAP primary care units. Documentation of such attempts in the convicts' medical expertise records should raise questions and a skeptical attitude in regard to sentence disruption requests. On the other hand there are prisoners who have already submitted such requests and their application was denied on the grounds that their condition could be treated within the NAP sanitary system, or have dropped out of ongoing medical expertise procedures for various reasons (such as claiming their medical condition improved even if before the sudden deterioration was suggested by the new attempt, or that the procedure was too elaborate and/or took too much time to complete. They should know there are no realistic motives to sustain a new request. Pursuing such action reflects a tendency to imitate "success stories" perpetuated within the penitentiary environment.

These elements are faced with the commission's need to comply with medical ethics norms defined by the principles of non-discrimination, respect, dignity, understanding and compassion [15]. Although there is clear subjectivism on behalf of the convicts submitting sentence postponements or interruptions requests, their claims cannot be objectively dismissed unless they are subjected to a new medical expertise.

The expertise commission is objective in reflecting the patient's medical status as assessed following legal procedures, reviewing treatment options within the NAP sanitary network under the guidance of the NAP medical representative. The expertise commission's objectivity reflects in referral to clinical and para-clinical (including laboratory) investigations in order to make an accurate diagnostic of the patient's pathological condition. Both commission physicians and specialists are called to clarify particular medical aspects needed to make all efforts required in order to diagnose the subjects' status and define their therapeutic needs in prison health-facilities. This is required in order to decide whether or not the sentence interruption or postponement are justified for the legally-binding duty that have the patient's best medical interest in mind. On the other hand, perhaps the system is tributary to past records when ignoring such requests led to deaths or aggravation of medical conditions and judges tend to be more permissive with detainees' claims, observing the "better safe than sorry" principle. Although there is no universally accepted definition of informed consent [16], this issue is always seriously taken into account when dealing with patients who are also convicts.

Situations in which doctors are confronted with controversial decisions made by these types of patients are also signs which point to a possible lack of competence of the patients thereby entailing an ethical obligation to evaluate their competence [17].

Other authors [18] believe that if the only question to which the forensic legal medicine doctors are called to respond to the court is whether the disease can be treated or not into the NAP, although valid, it is insufficient, and cannot clarify entirely the complex medical condition of the convict. Therefore, the doctor's role is to explain and argument to the judge the risks arising from his decision, whatever it may be. It is basically an ethical and deontological duty related to the exercise of the medical profession to be in support of that patient regardless of his social status [18].

Another ethical issue we think of is that of the nature of legal medicine doctor – patient. In our opinion this should be rather impersonal and distant, because the dialogue between the two actors is not based on honesty. On the contrary, as stated above it is not uncommon for the convicts to tell lies and simulate symptoms and signs of

certain types of diseases. This is not the case in the classical medical doctor (practitioner) – patient relationship, in which it's in the patient's interest to be honest and explain very clearly to the doctor the symptoms he suffers from, in order for the later to properly cure the disease. Therefore, judging by the ideas stated above we might conclude that concerning the ethics of a classic doctor – patient relation, the one we are involved in, is an exception from the rule that the doctor should create a personal relation between him and his patients. For instance it is considered very normal for a family doctor to give his/hers personal phone number to the patients in order to be as reachable as they can be. But, this harmless practice might prove to be rather harmful in the case of legal medicine doctor – patient (convict) relation, in which contrary interests arise, the one of the society on one hand which practically is based on the penal code and the convict's personal code, on the other hand.

Concerning the ethical particularities of the patient – physician relationship in developing a legal medicine expertise in view of sentence postponement/interruption on medical grounds, we state the importance of such studies due to the society's general interest of judicial processes celerity. Furthermore, a better understanding of the ethical boundaries that characterize this relationship, can give us a clue about the legal consequences that come along, such as delaying the outcome of lawsuits, burdening the activity of legal medicine doctors or creating the general opinion that "success stories" or breaches in the system can happen, by emphasizing the symptoms or even creating new ones.

Conclusions

The patient must be informed from authorized sources about the duration and steps to be taken in performing a legal medicine expertise in pursuit of sentence postponement or interruption based on medical conditions.

Efforts to determine unauthorized sources (mainly "experienced" detainees with records of unsubstantiated demands) are surely beneficial.

To provide a fair assessment of a patient's medical condition is a necessity and such findings should be taken into consideration by the penitentiary surveillance judge when analyzing requests of sentence postponement or interruption.

Repeated requests and waivers of sentence disruption requests present a multi-factorial determinism which always includes a medical condition but also various aspects that reveal the convicts' influence and perception of the expertise procedure as a break into the prison life routine.

Studies to identify the determinants of such behaviors among fellow convicts need to be initiated.

Reducing the number of unjustified requests would have a positive impact in relieving medical staff of "extra" activities in the legal medicine expertise commissions and allow channeling resources (time and money spent on examinations and investigations) towards subjects in real and serious medical conditions.

References

1. Annual Activity Report of NAP – 2014. Available from URL: http://anp.gov.ro/documents/10180/4605968/Raport+de+activitate+al+ANP+pe+anul+2014.pdf/318e6305-8299-44c8-b016-a64f6465a670.
2. The situation regarding accommodation units and their capacity to date 03.03.2015. Available from URL: http://anp.gov.ro/documents/10180/4831638/Capacitatea+de+cazare+a+unitatilor+-+4+mp+si+cumulat+mp+mc+-+03.03.2015.pdf/f6dadc7f-138c-4320-959a-532125831723.
3. Law no. 254/ 19.07.2013 on the execution of sentences and custodial measures ordered by the court in criminal proceedings - published in Official Gazette no. 514/14.08.2013.
4. Internal Organization Rules in the National Administration of Penitentiaries - published in the Official Gazette of Romania, Part I, no. 423/26.07.2012, approved by Decision no. 543/2012 issued by the Director General of the National Administration of Penitentiaries.
5. Trestman RL. Ethics, the law, and prisoners: protecting society, changing human behavior, and protecting human rights. J Bioeth Inq. 2014;11(3):311-318.
6. Hawton K, Linsell L, Adeniji T, Sariaslan A, Fazel S. Self-harm in prisons in England and Wales: an epidemiological study of prevalence, risk factors, clustering, and subsequent suicide. Lancet. 2014;383(9923):1147-1154.
7. Martin MS, Dorken SK, Colman I, McKenzie K, Simpson AI. The incidence and prediction of self-injury among sentenced prisoners. Can J Psychiatry. 2014;59(5):259-267.
8. Saavedra J, López M. Risk of suicide in male prison inmates. Rev Psiquiatr Salud Ment. 2015;8(4):224-231.
9.Administratia nationala a penitenciarelor [National Administration of Pententiaries]. Available from URL: http://anp.gov.ro/documents/10180/2256331/Bilant+ANP+2013+Rom.pdf/16418a7b-9258-4f2d-9320-1baea7a7f61f.
10. The revised Romanian Criminal Procedure Code - adopted by Law no. 135/2010, published in Official Gazette no. 486/15.07.2010, in force since February 1, 2014, as updated by Government Emergency Ordinance no. 3/2014 (Official Gazette 98/2014) and Law no. 255/2013 (Official Gazette 515/2013). Available from URL: http://legeaz.net/noul-cod-procedura-penala-ncpp/.
11. Law no. 459/2001 (published in the Official Gazette of Romania, Part I, no. 418 / 27.07.2001) approving Government Ordinance no. 1/2000 (published in the Official Gazette of Romania, Part I, no. 22/ 21.01.2000) regarding the organization and functioning of legal medicine institutes and law no. 271/2004 (published in the Official Gazette of Romania, Part I no. 616 / 07.07.2004) approved by Government Ordinance no. 57/2001 (published in the Official Gazette of Romania, Part I no. 531/31.08.2001) amending and supplementing Government Ordinance no. 1/2000.
12. Iftenie V, Dermengiu D. Medicina legala [Forensic medicine]. Editia 2. Editura C.H. Beck. Bucuresti. 2014.
13. Report on Legal Medicine Network Activity in 2013. Available from URL: www.legmed.ro
14. Dermengiu D, Hostiuc S, Simionescu M, Marcus I, Asavei V, Gherghe EV, et al. Is a full-fledged informed consent viable in

prison environments? Rom J Leg Med. 2015;23(2):143-150.
15.Code of Medical Deontology - of the College of Physicians in Romania. Issued by the Medical College of Romania on March 30, 2012, published in Official Gazette no. 298/7.05.2012.
16. Berg JW, Appelbaum PS, Lidz CW, Parker LS. Informed consent: legal theory and clinical practice. 2001.
17. Crişan H. Medical ethics and the Romanian law. Surrogate decisions regarding life-saving medical interventions. Clujul Med. 2013;86(4):305–308.
18. Buhaş C, Mihalache G, Pusta C. Expertiza medico-legală pentru amânarea sau întreruperea executării pedepsei pe motive medicale – argumente pro şi contra efectuării acesteia în cadrul instituţiilor de medicină legală [Forensic expertise for postponement or interruption of sentence based on medical grounds – arguments for and against performing such examinations within legal medicine institutes] . Rom J Leg Med. 2007;15(4):318–320.