Research Paper

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Adult Guardianship In Seniors With Mental Disorders – Example from Central Moravia, Czech Republic

Public Health

KEYWORDS : SENIORS – MENTAL CAPACITY – MENTAL DISORDERS – GUARDIANSHIP - GUARDIANS

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ABSTRACT

Background: Guardianship is a legal measure to protect individuals with demmaged capacity to manager their own affairs. As the population is getting older all over the world, increased incidence of dementia and other chronic mental disorders leading to the loss of competence is expected. As a consequence, guardianship and its ethical, juridical, social aspects remains a challenge for near future.

Aims: Main aim of the study is to determine prevalence of juridical incompetency in mentally ill seniors hospitalized for any mental disorder in Mental hospital Kromeriz, Central Moravia, Czech republic, and to study circumstances and outcomes of the process of deprivation of legal capacity which has been inicialized while hospitalization of seniors in Mental hospital Kromeriz.

Subjects and methods: retrospective analysis of medical records and written court records in patients older than 65 admitted to Mental hospital Kromeriz from January 2011 to December 2011.

Results: Incompetency in seniors when coming to the mental hospital was detected in158 admitted seniors (15.6% from all patients) , compared to 233 seniors (23.0% from all patients) when leaving the mental hospital. The most common inicializers of the process of deprivation of legal capacity before hospitalization in Mental hospital are the patient relatives. The most common mental disorder leading to incompetency in studied sample of seniors was schizophrenia followed by dementia of Alzheimer´s type and other organic disorders. As for type of guardians appointed by the Court private guardians formed the majority (61.8%) compared to public guardians (38.2 %).

Conclusion: schizophrenia and dementia have a potential to change competency in seniors and are the most common mental disorders leading to senior incompetency. In clinical practice this may lead to difficult situations especially in individuals who still remain officially competent althought their actual competence status is just being seriously altered (decision making in financial cases, informed consent, inheritance affairs). The process of deprivation of legal capacity by Court and appointment of a guardian to protect patients affairs stay both ethical and juridical problem to be solved.

Introduction

Actual demographic trends (prolongation of life expectancy, changes in human reproductive behavior pattern, better currability of noncommunicable diseases) result in aging of population in well-developped countries [1, 2]. Prevalence of specific age-related diseases will increase in future because of aging of population [3]. As for psychiatry it means increasing incidence of dementia and other organic mental disorders (age-related mental disorders), as well as increasing amount of seniors already having mental disorder from youth or adult age (age-influenced mental disorders such as schizophrenia, affective disorders or mental retardation with lifetime course). Such mental disorders may even lead to loss of competence in seriously mentally altered individuals [4-6] and this emmerges new ethical and legal dilemmas such as loss of autonomy or stigmatizing of an individual with label of mental disorder [7].

Loss of competence due to mental disorder (juridical incompetency) requires finding an alternative to protect human rights in such mentally altered individual [6, 8-9].

In Czech legal system it is task for Civil court which apllies the rules of Civil Code in process of deprivation of legal capacity in mentally altered person. This juridical process leads to loss of competence and appointment of a guardian by the Court who stands proxy for legally incompetent individual. In Czech republic, process of deprivation of legal capacity in mentally altered person is triggered by submitting application form to the Court. Applicants to inicialize process of deprivation of legal capacity usually recrute from patient´s relatives or public institution (local authority, mental hospital). In next step independent authorized expert is appointed by the Court to examine mental status of the patient and to elaborate expert´s report. In case of seriously mentally altered individuals such expert´s report is taken into account. Consequently Court delivers judgement of deprivation from competence in mentally altered individual and appoints a confidential guardian to stand proxy for the patient. Guardians usually recrute from patient´s relatives, other persons or public institutions in the Czech republic [1].

The similar practice in guardianship as in the Czech republic can be found in most well-developped countires of the world athought there might be different legal framework and definition for example in Australia [10], in United Kingdom [11], in United States [12, 13], in Germany [14], in France [15], in Japan [16], in Israel [6].

Most of authors all over the world conclude guardianship remains a serious ethical problem as a patient is deprived from his or her own rights [7, 17] especially when process of deprivation of capacity has not been finished yet [18]. There might be gentle slope between adult guardianship and elder abuse end neglect as well [8, 19-20].

Aims

Main aim of the study is to determine prevalence of juridical incompetency in mentally ill seniors hospitalized for any mental disorder in Mental hospital Kromeriz, Central Moravia, Czech republic. Furthermore to study circumstances and outcomes of the process of deprivation of legal capacity which has been inicialized while hospitalization of seniors in Mental hospital Kromeriz.

Subjects and Methods

Research was done from January to December 2011 in psychogeriatric wards of Mental Hospital Kromeriz, Central Moravia, Czech republic which is leading psychiatric hospital in the region.

Retrospective analysis both of medical records and written court records was used as a main method. All admissions to Mental hospital Kromeriz in patients older than 65 years old were studied. There were several points to be studied with respect to research questions: 1. main psychiatric admission diagnosis, 2. status of legal capacity in admitted patients, 3. monitoring of all cases where process of deprivation of legal capacity was inicialized while hospitalization in Mental hospital Kromeriz, 4. monitoring of the lenght of process of deprivation of legal capacity, 5. relation of main psychiatric diagnosis to patient capacity status, 6. types of guardians to be appointed by court (private / public guardianship), 7. types and amount of decision making emmergencies while process of deprivation of legal capacity has not been already finished (informed consent to medical procedure, patient financial affairs, patient juridical

affairs). All the data were statistically analyzed (MS Office Excel Program, 2009).

Research questions to be asked:

1. What is the patient capacity status when coming to the psychiatric hospitalization? What is the patient capacity status when leaving from psychiatric hospitalization? How many cases of still running process of deprivation of legal capacity with no court judgement can be revealed althought hospitalization has already finished?
2. If the process of deprivation of legal capacity starts while hospitalization in Mental hospital Kromeriz - who inicializes the process of deprivation of legal capacity?
3. If the process of deprivation of legal capacity starts while hospitalization in Mental hospital Kromeriz - how much time takes this process?
4. Which psychiatric diagnoses mostly lead to deprivation of legal capacity?
5. Who becomes a guardian to surrogate patients decision making?
6. How many cases of decision making emmergencies while process of deprivation of legal capacity has not been finished yet? What sort of emmergencies happened?

Ethical considerations: No ethical hazards were found (retrospective analysis of documents) thence no agreement of Central ethical comission was required.

Results

A. General data

In the 2011, 1 012 patients older than 65 years were admitted to treatment to Mental hospital Kromeriz. From these patients 611 were women (60.4%) and 401 men (39.6%). Average age of patients was 75.6 +- 7.9 years (women: 79.7 +- 9.6 years, men: 73.8 +- 7.5 years). The average duration of hospitalization in the sample was 101.3 +- 48.7 days.

B. Data about incompetency

1. Patient capacity status when coming to the hospitalization and when leaving Mental hospital. Amount of dimissed patients from hospitalization with still running process of deprivation of legal capacity

When coming to Mental hospital Kromeriz, mental competency status was monitored. Incompetency was detected in 158 patients (15.6% from all patients), 854 patients were competent. No running process of deprivation of legal capacity was found (table 1) .

Table 1. Incompetency in seniors with mental disorder when coming to the mental hospital

All patients admitted to psychogeriatric ward (2011)	1 012	100.0 %
Incompetent patient due to any mental disorder (N)	158	15.6 %
Competent patients (N)	854	84.4 %
Running process of deprivation of legal capacity (N)	0	0.0 %

When leaving the Mental hospital Kromeriz incompetency was detected in 233 patients (23.0 % from all patients), 750 patients were competent (74.1 %), in 29 patients (2.9 %) still running process of deprivation of legal capacity was found (table 2).

Table 2. Incompetency in seniors with mental disorder when leaving the mental hospital

All patients admitted to psychogeriatric ward (2011)	1 012	100.0 %
Incompetent patient due to any mental disorder (N)	233	23.0 %
Competent patients (N)	750	74.1 %
Still running process of deprivation of legal capacity	29	2.9 %

When comparing the two tables above (incompetent seniors when coming to the mental hospital N=158 vs. incompetent seniors when leaving the mental hospital N=233), 75 patients were deprived from competency while being hospitalized in Mental hospital Kromeriz (23.0 % vs. 15.6 %)

2. Inicializers of the process of deprivation of legal capacity before and while hospitalization in Mental hospital

From retrospective analysis of documents of incompetent patients to be admitted to the Mental hospital (N=158) there are several types of inicializers of the process of deprivation of legal capacity which has started and has been finished before hospitalization in Mental hospital (table 3). The most common inicializers of the process of deprivation of legal capacity before hospitalization in Mental hospital are the patient relatives (72.1 %).

Table 3. Inicializers of the process of deprivation of legal capacity before hospitalization in Mental hospital

Patient family	114	72.1 %
Institution except health care institutions	14	8.9 %
Health care institutions	18	11.4 %
Data not found / not recorded	12	7.6 %
Incompetency (total)	158	100.0 %

While hospitalization in Mental hospital, 75 cases of new incompetent seniors with final court judgment were found (incompetent seniors in total N=233), moreover, in 29 of cases (2.9 %) the process of deprivation of legal capacity has not been finished and is still running. Types of inicializers of the process of deprivation of legal capacity while psychiatric hospitalization are listed bellow (table 4). The most common inicializers of the process of deprivation of legal capacity while hospitalization in Mental hospital are the patient relatives (89.3%).

Table 4. Inicializers of the process of deprivation of legal capacity while hospitalization in Mental hospital

Patient family	67	89.3 %
Institution except health care institutions	1	1.3 %
Health care institutions (Mental hospital)	7	9.3 %
Data not found / not recorded	0	0.0 %
New cases of incompetency (total)	75	100.0 %

3. Time from inicialization of process of deprivation of legal capacity to appointment of guardian by the Court

In 75 cases of incompetent seniors deprived from competency while hospitalization in Mental hospital Kromeriz, time from inicialization of process of deprivation of legal capacity to appointment of guardian by the Court was monitored. Average time to Court judgment (N=75) was 94.5 +- 8.8 days.

4. Psychiatric diagnoses mostly leading to deprivation of legal capacity (studied at the end of psychiatric hospitalization)

The most common mental disorder leading to incompetency at the end of hospitalization in Mental hospital Kromeriz (N=233) was schizophrenia in 33.9% of cases (79 patients), followed by dementia of Alzheimer´s type in 26.6 % of cases (62 patients), other organic disorders in 11.2 % of cases (26 patients). Other diagnostic cathegories leading to loss of competency in seniors hospitalized in psychogeriatric ward in Mental hospital Kromeriz are listed bellow (table 5).

Table 5. Main diagnostic cathegories leading to incompetency

Schizophrenia	79	33.9 %
Dementia of Alzheimer´s type	62	26.6 %
Vascular dementia	20	8.6 %
Other organic disorders	26	11.2 %
Mood disorders	9	3.9 %
Mental retardation	15	6.4 %
Alcohol dependence syndrome	22	9.4 %
Total	233	100.0 %

5. Who becomes a guardian to surrogate patients decision making capacity (studied at the end of psychiatric hospitalization)

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At the end of hospitalization there was 233 of cases of incompetent seniors due to any mental disorder. Guardians were appointed by Court. Private guardians formed the majority (61.8%) compared to public guardians (38.2 %). Among private guardians, children were the most common(63.9 %). Among public guardians, municipality was the most common (88.8 %). For further details see table 6.

Table 6. Types of guardians (N=233)

Private guardians	144 from 233	61.8 %
Wife/Husband	20	13.9 %
Daughter/Son	92	63.9 %
Other family relatives	26	18.1 %
Private persons - no relatives	6	4.1 %
Public guardians	89 from 233	38.2 %
Municipality	79	88.8 %
Other institutions	10	11.2 %

6. Decision making emmergencies while process of deprivation of legal capacity has not been finished yet

Althought the process of deprivation of legal capacity has not been finished yet (N=29) there were some cases of decision making emmergencies to be resolved by physician. The most common type of such emmergency was obtaining the informed consent to medical procedure by mentally incapacitated senior (72.4 %). Other emmergent cases are listed bellow (table 7).

Table 7. Types of decision making emmergencies in mentally incapacitated seniors who were still formally competent (N=29)

Informed consent	21	72.4 %
Financial affair	5	17.3 %
Legal affair (testimony)	3	10.3 %

Discussion

Defining mental capacity status in patient with mental disorder is a problem sui generis [4, 5]. The diference between protection of the patient and potential elder abuse is very small [19] in routine clinical aspects. Patients capacity status may change while psychiatric hospitalization. As patients are seen daily during ward round by doctor the prognosis of mental disorder and its influence on capacity status is more and more specified. As a result, the prevalence of incompetent seniors increases during the psychiatric hospitalization according this study. No similar studies have been done as far as the author of this study knows. However, doctors are not the most common inicializers the process of deprivation of legal capacity. Relatives of patient are the most common types of such inicializers, therefore private guardians prevail to public guardians. The similar results can be found in different studies [1, 2].

Serious problem is in individuals who still remain officially competent althought their actual competence status is just being seriously altered. In routine practice in Mental hospital Kromeriz this may result in serious problems when patients makes decisions in his or her financial affairs or inheritance affairs. This is the vacuum space for juridical disputes which have to be resolved by Court. Another problem is when obtaining informed consent to medical procedure in such objectivelly altered patient. Similar situations have been described in other authors [11, 16]. Similar difficulties are emmerging from „still running" process of deprivation of legal capacity with no Court judgement yet [1, 21].

Another problem is in long time to make final judgement by the Court. According this study it takes more than three months when the process of deprivation of legal capacity finishes with the judgement (94.5 days). In Czech republic, this time consumming process starts with official admitting of request to inicialize such process, followed by appointment of independent authorized expert (usually licensed psychiatrist) and ellaboration of expert opinion. Then it takes another time to deliver final judgement and appointment of a confidential guardian. In accordance with White and Baldwin [18] this time delay may be critical both from ethical and clinical reasons.

In this study, schizophrenia, dementia of Alzheimer´s type and other organic mental disorders were found to be the most common mental disorders leading to the loss of compence in senior patients. The similar results can be found in the literature [1, 5].

This study has limits which should not be omitted – only main psychiatric diagnoses on patient admission were taken into account, althought there could be an additional influence of commorbid diagnoses or different sociopathological conditions (such as poverty of patients, lack of relatives, lack of social support, risk of social exclusion etc). No cases of elder abuse and neglect were taken into account as a potential confounder. Patients were not followed up in this study after their displacement from the mental hospital – therefore we don´t knot what was the end of the cases with „still running" process of deprivation of legal capacity. No gender of incompetent seniors was taken into account althought this could bring interesting information.

Conclusion

Serious long term mental disorders such as schizophrenia and dementia have a potential to change competency in seniors and are the most common mental disorders leading to senior incompetency.

In clinical practice this may lead to difficult situations especially in individuals who still remain officially competent althought their actual competence status is just being seriously altered (decision making in financial cases, informed consent, inheritance affairs).

The process of deprivation of legal capacity by Court and appointment of a guardian to protect patients affairs stay both ethical and juridical problem to be solved.

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